

**STATE OF ALASKA**  
**DEPARTMENT OF EDUCATION & EARLY  
DEVELOPMENT**



***Guidance for Special Education Personnel***

***SELECTED REGULATIONS AND INFORMATION  
REGARDING ALASKA SPECIAL EDUCATION***

**February 2020 Edition**

*Guidance for Special Education Personnel*

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***DISCLAIMER***

*This document was developed by the State of Alaska, Department of Education & Early Development, Division of Student Learning. The opinions expressed herein do not necessarily reflect the position of the United States Department of Education, and no endorsement of the United States Department of Education should be inferred. If any portion of this document conflicts with law or regulation, the law or regulation takes precedence.*

**CONTACT INFORMATION**

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Juneau, AK 99811-0500

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*Email:* [sped@alaska.gov](mailto:sped@alaska.gov)

**PURPOSE OF THIS DOCUMENT**

This Guidance for Special Education Personnel is a guide for special education directors working in Alaska; its purpose is to clarify requirements for the operation of district special education programs. **This is not a regulatory document.** Regulatory information is quoted; however it does

not provide legal advice, nor should it serve in lieu of the Alaska Administrative Code. All directors and others interested are encouraged to contact the State of Alaska, Department of Education & Early Development (hereafter referred to as DEED). Those unfamiliar with the basics of federal statute (20 United States Code (USC) et.seq) and regulations (34 Code of Federal Regulations (CFR), Part 300) related to special education should start here: [idea.ed.gov](http://idea.ed.gov). The definitive source concerning issues of Alaska law and regulation related to schools (including special education) can be found online here:

**Alaska Administrative Code (State Regulations):**

<http://www.legis.state.ak.us/basis/folioproxy.asp?url=http://www.jnu01.legis.state.ak.us/cgi-bin/folioisa.dll/aac/>

or

<http://www.legis.state.ak.us/basis/aac.asp>

**Statutes (State Laws):**

<http://www.legis.state.ak.us/basis/folio.asp>

or

<http://www.akleg.gov/basis/statutes.asp>

or

one may purchase a copy of *Alaska School Laws and Regulations* here:

[www.lexisnexis.com/store](http://www.lexisnexis.com/store)

or more specifically here:

<http://store.lexisnexis.com/categories/area-of-practice/education-law-284?subcategory=284&query=&within=&f.Shop%20by%20Jurisdiction|category156=Alaska&f.Area%20of%20Practice|category153=Education%20Law>

**NOT IN THIS GUIDANCE**

Importantly, this Guidance for Special Education Personnel cannot answer specific questions of practice, nor can it describe how to handle local or individual issues. For example, this Guidance for Special Education Personnel *can* (and does) list the required components of an IEP, but it *cannot* tell you what a ‘good’ or ‘bad’ IEP might be for a given student. It will clarify required actions under the law, but will not address how to put together a decent education for students with disabilities. Additionally, three major laws impacting the operation of public school programs for all students – including students with disabilities – are not discussed in this Guidance for Special Education Personnel. These laws are:

**‘ESSA - Every Student Succeeds Act’**

ESSA (<https://www.ed.gov/ESSA>) is broad federal legislation covering the education of students in public schools ESSA impacts a variety of programmatic considerations for directors in Alaska, from operations to instruction to assessment; directors with questions about federal programs should contact the Alaska Department of Education & Early Development, Division of Teaching and Learning Support: <https://education.alaska.gov/akessa/>

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### **‘Section 504 / §504’**

‘Section 504,’ or §504, is part of the Rehabilitation Act of 1973 (29 U. S. C. § 794); as such it is not a special education law, but is instead a federal nondiscrimination law that applies to public schools in Alaska. Though a full discussion of §504 is beyond the scope of this Guidance for Special Education Personnel, special education directors in Alaska are also often tasked with ensuring districts are in compliance with the law. For a good discussion of the differences between IDEA and §504, see the United States Department of Education’s publication, “Frequently Asked Questions About Section 504 and the Education of Children with Disabilities,” at: [www2.ed.gov/about/offices/list/ocr/504faq.html](http://www2.ed.gov/about/offices/list/ocr/504faq.html) or by contacting this office:

#### **Seattle Office, Office for Civil Rights**

#### **U.S. Department of Education**

915 Second Avenue Room 3310

Seattle, WA 98174-1099

Telephone: 206-607-1600

FAX: 206-607-1601; TDD: 800-877-8339

Email: [OCR.Seattle@ed.gov](mailto:OCR.Seattle@ed.gov)

There is a link to 504 information on the state special education webpage at: <https://education.alaska.gov/sped/section504>

### **‘Americans with Disabilities Act / ADA’**

The Americans with Disabilities Act (42 USC § 12101 et seq.) is a federal civil rights law that also applies to public schools in Alaska. A full discussion of the ADA is beyond the scope of this Guidance for Special Education Personnel, as the law impacts a wide range of school district operations, such as employment, transportation, communications, and architecture. For a good discussion of the requirements of the ADA – including its expanded definition of disability, see the United States Government’s ADA resources and technical assistance site: [www.ada.gov](http://www.ada.gov).

### **Calendar and Monitoring Schedule**

Special education directors and coordinators are frequently responsible for submitting data and reports to DEED. To that end, DEED maintains a current school-year calendar of required reporting.



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**Key Special Education Reporting Due Dates**

Month	Event	Date
August	VI-B/619 Year-End Fiscal Report	Aug 31
September	Annual New Special Education Directors Training	TBD
October	Paraprofessional and Classified Staff	Oct 15
	Certified Staff	Oct 15
	VI-B/619 1st Quarter Fiscal Report	Oct 31
	<i>End of Count Date is the fourth Friday of Oct</i>	
November	Intensive Needs Funding Review	Nov 1 (see annual memorandum)
	Fall OASIS (Due two weeks after the end of count)	
January	VI-B/619 2nd Quarter Fiscal Report	Jan 31
March	Annual Special Education Directors Training	TBD
April	Assessment Participation Rate (Due three weeks after the first day of testing)	
	Title VI-B/Section 619 Grant Application	Apr 30
	VI-B/619 3rd Quarter Fiscal Report	Apr 30
June	Suspension, Expulsion, Truancy (SET)	Jun 30
July	Special Education Supplemental Workbook	Jul 15
	CEIS Results Reporting (if applicable)	Jul 15
	Summer OASIS	Jul 15
	VI-B/619 4th Quarter Fiscal Report	Jul 31

*Note: All Plans of Improvement Corrective Actions from monitoring activities are due to DEED 6 months from the date of the letter notifying the district of findings of non-compliance. Individual district timelines will vary depending on the date of notification.*

Responsibilities for data and report submission vary widely by district. For additional information and details concerning these requirements, please contact the state special education office at [sped@alaska.gov](mailto:sped@alaska.gov) or call (907) 465-8693.

**Monitoring Schedule**

Compliance and other monitoring activities are scheduled annually based on a variety of variables. The general special education onsite monitoring is a four year rotation. That is, all districts will be monitored at least once every four years. In addition to the regularly scheduled monitoring, department visits may be scheduled for technical assistance (TA). Reasons for a TA visit may be based on a variety of reasons ranging from district statistical data to public calls concerning a

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district. Please note that *this schedule does not reflect TA visits or districts added to the schedule for cause*. If a district is uncertain about whether the department has a scheduled monitoring or TA visit scheduled, please contact (907) 465-8693. In accordance with 4 AAC 52.770 (c), “At least 30 days before visiting a district for a scheduled program review, the department will provide written notice to the district of the date and purpose of the visit.” There is no requirement for the department to provide advance notice of a TA visit, however, whenever possible advance notice will be given.

**Monitoring Rotation Schedule** (*May be subject to change - see 4 AAC 52.770 (c) for details*)

**Rotation 1** – “Green” (FY 21-22)

Anchorage, Denali Borough, Fairbanks, Haines, Iditarod, Juneau, Kashunamuit, Kenai, MatSu, North Slope, Pelican, Petersburg, Sitka, Skagway, Southeast Islands and Unalaska

**Rotation 2** – “Blue” (FY 22-23)

Aleutians East, Anchorage, Annette Island, Bristol Bay, Chatham, Delta Greely, Dillingham, Fairbanks, Ketchikan, Kuspuk, Lake & Pen, Lower Kuskokwim, MatSu, Pribilof, Wrangell, Yukon Koyukuk

**Rotation 3** - “Red” (FY 19-20)

Anchorage, Bering Strait, Chugach, Copper River, Cordova, Fairbanks, Galena, Kake City, Kenai, Kodiak Island, Lower Yukon, MatSu, Southwest Region, St. Marys, Yakutat, Yupiit

**Rotation 4** – “Yellow” (FY 20-21)

Alaska Gateway, Aleutian Region, Anchorage, Craig, Fairbanks, Hoonah, Hydaburg, Klawock, MatSu, Mt. Edgecumbe, Nenana, Nome, Northwest Arctic, Tanana, Valdez, Yukon Flats

This rotation schedule does *not* include TA visits or visits added for cause. For a copy of the current rotation schedule or a detailed monitoring schedule with dates, scheduled TA visits and monitoring lead information, contact [sped@alaska.gov](mailto:sped@alaska.gov) or call (907) 465-8693.

### **Model Forms in the Document**

The model forms in this document are authorized under the 2004 IDEA model forms; “Part B of the Individuals with Disabilities Education Act (IDEA) sets forth requirements for States and local educational agencies (school districts) in providing special education and related services to children with disabilities, ages 3 through 21.” The federal Department of Education has developed base model forms, however state me choose to modify the language, content and other aspects of the forms provided the models forms meet the federal requirements. The federal Department of Education further states: “The content of each of these forms is based upon the requirements set forth in the final Part B regulations. Although States must ensure that school districts include all of the content that Part B requires for each of the documents that they provide to parents, States are not required to use the format or specific language reflected in these forms. States may choose to add additional content to their forms, so long as any additional content is not inconsistent with Part B requirements.”

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The model forms in this document are not mandatory, however; the state and federal requirements are satisfied in the provided forms. Districts electing to use alternate versions of these forms are permitted **provided** these documents are submitted to the department for review and approval to meet state and federal requirements. This includes the use of an automated system, online or otherwise. The state is not responsible for costs involved in changing electronic systems to align with the state model forms.

## **CHAPTER 1: IDENTIFICATION**

### **Child Find**

Special education directors must coordinate activities that actively identify, evaluate, and offer special education and related services to eligible children ages 3-21<sup>1</sup> in their districts. Alaska regulation 4 AAC 52.090 specifies that districts must include in these activities (bold added for emphasis):

- “(1) **highly mobile children**, such as migrant or homeless children;
- (2) children being educated **in their homes** by a parent;
- (3) children who have been **expelled or suspended** from school; and
- (4) children enrolled in
  - (A) **public schools**, including **charter schools** and the district's **correspondence study program**;
  - (B) **private schools**; and
  - (C) educational programs in **correctional facilities** in the district, except for individuals 18 - 21 years of age who are incarcerated in an adult correctional facility unless 34 CFR 300.102(a)(2) requires that those individuals be provided a FAPE; 34 CFR 300.102(a)(2), as revised as of October 13, 2006, is adopted by reference.”

Alaska regulation 4 AAC 52.100 requires the following child find activities (bold added for emphasis):

- “(1) **annual public notice** that states the
  - (A) type of disabilities that qualify as a disabling condition;
  - (B) the educational needs of children with disabilities;
  - (C) right to a FAPE;
  - (D) special services available within the district;
  - (E) confidentiality protections; and
  - (F) person to contact for information and how to contact that person;
- (2) a **screening program**, which may be operated in cooperation with other public agencies, to include health, vision, hearing, general development and basic skills, primary language and culture, and daily skills in home and community obtained through parental input; and
- (3) **referral for evaluation** of children suspected to be children with disabilities.”

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<sup>1</sup> A child with a disability in Alaska is “...at least three years of age but less than 22 years of age (AS 14.30.180[1]).” In more specific terms, 4 AAC 52.140(c) requires that “[a]n initial IEP must be developed before a child’s third birthday **and implemented** on the child’s third birthday,” (Note: An IEP for student turning 3 during the summer need not be implemented on the date of their birthday unless the IEP calls for Extended School Year services) while 4 AAC 52.090 clarifies that children with disabilities are eligible for services “...if less than 22 on July 1 of the school year.” Alaska law (AS 14.30.350) and regulation (4 AAC 52.790[3]) - include 14 categories of disability eligible for special education and related services; these categories are not necessarily coexistent with those defined under the Americans with Disabilities Act (PL 110-325); see **Chapter 2: Evaluation & Eligibility** for greater detail.

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Required **annual public notice** under 4 AAC 52.100(3)(b) “...must be reasonably calculated to reach all persons within the district and all persons responsible for children who are enrolled in the district's statewide correspondence study program and must include, as appropriate, the dissemination of information through public meetings, posters, newspapers, radio, and television. A district shall provide notice in each language in which a bilingual program is offered in the district under AS 14.30.400 (which requires a “...a bilingual-bicultural education program for each school in a city or borough school district or regional educational attendance area that is attended by at least eight pupils of limited English-speaking ability and whose primary language is other than English.”) and 4 AAC 34.055 (which requires districts to create plans of service for students identified as limited English proficient).”

Districts must operate **screening programs** for all children ages 3-21 under 4 AAC 52.100(2). Screenings must “...include health, vision, hearing, general development and basic skills, primary language and culture, and daily skills in home and community obtained through parental input.” Screening programs must include **all** students covered by child find requirements under 4 AAC 52.090; screenings are not evaluations for eligibility for special education (34 CFR § 300.302), but screening information may be used to make referrals.

Under 4 AAC 52.100(3) districts must have procedures that include **referral for evaluation** “...of children suspected to be children with disabilities.” If a referral is deemed by the district to be inappropriate (*i.e.*, the district does not believe a special education referral is warranted), the district must provide written notice to the parents of the child under 4 AAC 52.190, which adopts the federal requirements under 34 CFR § 300.503.

*Note: Federal requirements for a referral do not establish a timeline. The term “reasonable” is referenced, which is not defined.*

For children with disabilities from birth through age three, the Alaska Department of Health & Social Services (DHSS), Senior Disability Services, Alaska Early Intervention / Infant Learning Program (ILP) coordinates statewide child find activities. Contact information for the Alaska ILP is here: <http://dhss.alaska.gov/dsds/Pages/infantlearning/default.aspx> Districts should coordinate local child find efforts with local ILP programs to prepare for effective transitions of young children to district special education programs at age three. Coordinated child find coordination efforts as well as procedures for effective referrals transitions must be included in an interagency agreement (e.g., MOA or MOU) with the local ILP program.

A sample *Referral* form can be found at the end of this chapter. A notification from a local ILP program of a child who has been served by ILP and will shortly reach the age of three (often combined with an invitation to a Transition Conference for the child) is a referral to Part B. The receipt of such notification invokes the requirement to obtain parental consent for an evaluation and provide notice of procedural safeguards. Consent must be obtained in a timely manner in order to allow for eligibility determination and initial IEP development prior to the child's third birthday. The 90-day timeline requirement from parental consent to eligibility determination applies to children transitioning from ILP programs.

### **Response to Intervention & Child Find**

Many schools and districts are implementing Response to Intervention (RTI) programs; the goal of many such programs is to provide early detection of students who struggle and early intervention to improve student learning. Contact and program information about RTI in Alaska is available here: <https://education.alaska.gov/esea/rti>

However, RTI programs of any sort **do not** replace or relieve districts of obligations under Alaska or federal law with respect to child find, screening, referral, eligibility – or any other component of special education programs. RTI does **not** change any timelines, does not change evaluation or eligibility requirements, and should not be confused at any point with special education programming or responsibilities. In short, RTI strategies cannot be required before or used to delay or deny a timely special education evaluation of a student suspected of having a disability.

The only intersection of RTI and special education in Alaska is embedded in regulation 4 AAC 52.120, which adopts 34 CFR 300.309(a)(2); the regulation allows the use of a “...child’s response to scientific, research-based intervention” for the purposes of determining the existence of a specific learning disability. For more information, especially on the relationship between RTI and SLD eligibility, see [Chapter 2: Evaluation & Eligibility](#).

### **Transition from Part C to Part B**

Part C is the program for infants and toddlers with disabilities. It is a federal grant program that assists states in operating a comprehensive statewide program of early intervention services for infants and toddlers with disabilities serving ages of birth through age 2 years, and their families. Part B of IDEA 2004 describes preschool and school age programs for children with disabilities ages 3 through 5 and 6 through 21.

For children with disabilities from birth to age 3 who are already identified and being served by Part C, a referral to Part B should be completed at least 90 days and not more than nine months prior to the child’s 3rd birthday.

School districts will receive notification of all children served under Part C prior to turning 3 years of age, unless the parents “opt out” of this referral process. **This notification constitutes a referral for special education services.** A transition meeting should be scheduled. Any evaluations that may be needed to determine if the child is eligible for Part B services should be discussed at that time.

### **Eligibility for Preschool Special Education Services**

The school district is responsible for reviewing existing data on the child, including information provided by parents and the Early Intervention Services (EIS) program. If the school district decides that it will not conduct an evaluation, the school district shall provide the parent with prior written notice addressing the decision. If the child is to be evaluated, the school district provides prior written notice that addresses the areas of assessments and requests the parent’s informed written consent to conduct an initial evaluation. If the parent does not provide consent the school district may ask the parent to participate in mediation or request a due process hearing to override the parent’s refusal to consent.

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The school district then convenes the evaluation team (includes parents) to review results of the evaluation(s) and determine eligibility. Parents may request Part C personnel to attend these meetings to assist with the transition of services (34 CFR 300.321(f)). Qualifying children may be eligible for preschool services under Part B (IDEA Section 612(a)(9) and 34 CFR 300.124). The school district must provide the parent with prior written notice addressing the eligibility decision.

### **Part C to Part B Individualized Education Program (IEP) Team Meeting**

Children determined to be eligible for special education and related services require an IEP team meeting. This may be conducted in conjunction with the evaluation and eligibility meeting. When developing the initial IEP for children transitioning from Part C services to Part B, the IEP team must consider any Individualized Family Service Plan (IFSP) described in IDEA 20 USC 1437 §636(d) and its implementing regulations at 34 CFR §300.323(b)(1). An IEP must be developed before the child's 3rd birthday. If parents do not consent to the provision of initial services the district is not required to convene the IEP meeting.

### **Child Outcome Summary (COS)**

School districts are required to report to the state individual entry and exit scores for each student in preschool special education. The state will use this information to report to the federal government on the percent of preschool aged children with Individualized Education Programs (IEPs) who demonstrate improvement in these areas:

- Positive social-emotional skills
- Acquisition and use of knowledge and skills
- Use of appropriate behaviors to meet their needs

These outcomes should be reported on a COS form at these two times:

Entry: Must be completed by age 3 or at the beginning of services (up to age 5½)

Exit: Complete when the child exits preschool special education services (if served at least 6 months)

This form is for state reporting purposes. Do not collect or report annual progress on this form. This form is not a part of any school district annual testing. **Limit data to the information gathered at the initial entry (within 3 months) and upon the exit.** This document is a part of the student's special education file and should follow the student in the event of changing school locations. For assistance in the completion of this form, please contact [sped@alaska.gov](mailto:sped@alaska.gov) or call (907) 465-8693.

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### CHILD OUTCOME SUMMARY - COS

**Student Name:** \_\_\_\_\_ **DOB:** \_\_\_\_\_

**Student ID Number:** \_\_\_\_\_

**Date of ENTRY summary:** \_\_\_\_\_ **Age:** \_\_\_\_\_ **Person completing summary:** \_\_\_\_\_

*Entry Instructions: Must be completed by age 3 or at the beginning of services (up to age 5½)*

**Date of EXIT summary:** \_\_\_\_\_ **Age:** \_\_\_\_\_ **Person completing summary:** \_\_\_\_\_

*Exit Instructions: Complete when the child exits preschool special education services (served at least 6 months)*

**Persons involved in deciding summary ratings:**

Name	Role

Sources of supporting evidence	Date

Positive Socio-Emotional Skills	Acquiring and Using Knowledge and Skills	Taking Appropriate Actions to Meet Needs
A. To what extent does this child show behaviors related to this outcome appropriate for his or her age across a variety of settings and situations? <i>(mark one rating box)</i>	A. To what extent does this child show behaviors related to this outcome appropriate for his or her age across a variety of settings and situations? <i>(mark one rating box)</i>	A. To what extent does this child show behaviors related to this outcome appropriate for his or her age across a variety of settings and situations? <i>(mark one rating box)</i>

RATING	Completely	< Completely	Somewhat	< Somewhat	Emerging	< Emerging	Not Yet		Completely	< Completely	Somewhat	< Somewhat	Emerging	< Emerging	Not Yet		Completely	< Completely	Somewhat	< Somewhat	Emerging	< Emerging	Not Yet		
	7	6	5	4	3	2	1		7	6	5	4	3	2	1		7	6	5	4	3	2	1		
<b>Enter</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>		<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>		<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	
<b>Exit</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>		<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>		<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	

B. Has there been progress since the entry summary? Check One: <input type="radio"/> Yes <input type="radio"/> No Comments:	B. Has there been progress since the entry summary? Check One: <input type="radio"/> Yes <input type="radio"/> No Comments:	B. Has there been progress since the entry summary? Check One: <input type="radio"/> Yes <input type="radio"/> No Comments:
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*This form is for state reporting purposes - Do not collect or report annual progress on this form.  
 Limit data to the information gathered at the initial entry (within 3 months) and upon the exit.  
 This document should be attached to the student's Individual Education Program (IEP).*



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<b>Referral Form</b>			
Student Name:			Referral Date:
Birthdate:	Age:	Grade:	Gender:
Referred By:			Student Number:
School:			Teacher:
Parent/Guardian:			District:
Parent/Guardian:			Email1:
Primary Phone:			Email2:
Address:			Alternative Phone:
			City:
			Zip Code:
<b>REASON FOR REFERRAL</b>			
<input type="radio"/> Educational <input type="radio"/> Reading <input type="radio"/> Writing <input type="radio"/> Math <input type="radio"/> Cognitive <input type="radio"/> Communication <input type="radio"/> Speech <input type="radio"/> Language <input type="radio"/> Hearing <input type="radio"/> Vision		<input type="radio"/> Pre-Academic School Readiness <input type="radio"/> Behavioral/Social/Emotional <input type="radio"/> Adaptive <input type="radio"/> Motor Skills <input type="radio"/> Fine <input type="radio"/> Gross <input type="radio"/> Other:	
<b>SUMMARY OF EXISTING INFORMATION</b>			
<input type="radio"/> Intervention Strategies <input type="radio"/> Current Work Samples <input type="radio"/> RTI Data		<input type="radio"/> Report Card <input type="radio"/> Developmental Profile <input type="radio"/> Other:	
<b>SCREENING INFORMATION</b>			
Vision Date:	<input type="radio"/> Pass	<input type="radio"/> Fail	Hearing Date:
	<input type="radio"/> Pass	<input type="radio"/> Fail	<input type="radio"/> Pass <input type="radio"/> Fail
<b>PRIOR DATA</b>			
Dates of any prior Special Education Referrals:			
<b>PRIOR EVALUATIONS</b>			
Last Psychological Evaluation Date:			
Last Educational Evaluation Date:			
Last Physical/Medical Evaluation Date:			
<b>DAYS ABSENT</b>			
Days Missed this Year (include Suspensions):		As of (Date):	
Days Suspended this Year:			
Days Missed Last Year (total):			
Grades Repeated:			
<b>LANGUAGE</b> <i>(Translation services must be requested in advance)</i>			
Primary Language of the Student:			
Primary Language Spoken in the Home:			
<b>NOTES:</b>			

## CHAPTER 2: EVALUATION & ELIGIBILITY DETERMINATION

After a child has been referred for special education, the school must notify the parents that the child has been referred for special education evaluation. Alaska regulation 4 AAC 52.200 requires two procedures take place: written notice and informed written consent. In addition, the parents must be provided with a copy of their procedural safeguards as required by 34 CFR 300.504 and 4 AAC 52.480.

### Written Notice

Written notice, described by 34 CFR 300.503 (adopted by 4 AAC 52.190), is required any time a district:

- “(1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or
- (2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.”

*NOTE: A school district may refuse to conduct an initial evaluation under IDEA because federal law does not mandate a district to evaluate all children for whom evaluations are requested. A parental request for an evaluation does not automatically trigger a requirement to evaluate, however, the District must thoroughly investigate the possible existence of a disability and potential need for special education before refusing to evaluate, especially when the request is from a parent and the student is not progressing well in school. The school district would then be obligated to provide the parents with written notice refusing the evaluation along with a copy of the procedural safeguards.*

Written notice must include (34 CFR § 300.503, adopted by Alaska regulation 4 AAC 52.190) (bold added for emphasis):

- “(1) A **description of the action** proposed or refused by the agency;
- (2) An **explanation** of why the agency proposes or refuses to take the action;
- (3) A description of each evaluation procedure, assessment, record, or report the agency used as a **basis for the proposed or refused action**;
- (4) A statement that the parents of a child with a disability have protection under the **procedural safeguards** of this part 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;
- (5) Sources for parents to **contact** to obtain assistance in understanding the provisions of this part;
- (6) A description of **other options** that the IEP Team considered and the reasons why those options were rejected; and
- (7) A description of **other factors** that are relevant to the agency's proposal or refusal.”

Further, written notice must be in **understandable language** (34 CFR § 300.503, adopted by Alaska regulation 4 AAC 52.190) (bold added for emphasis):

- “(1) The notice required under paragraph (a) of this section must be--
  - (i) Written in language **understandable to the general public**; and

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(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.

(2) If the native language or other mode of communication of the parent is not a written language, the public agency 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 paragraphs (c)(2)(i) and (ii) of this section have been met.”

These are some examples of when a written notice is required. This is not an exhaustive list:

- Initial referral (include a Notice of Procedural Safeguards)
- Initial evaluation (prior to evaluation)
- Refusal to evaluate
- Student found eligible/ineligible for special education services
- IEP meeting (after meeting)
- Refusal/failure to respond to a consent for a reevaluation
- Reevaluation without further assessments conducted
- Reevaluation with assessments conducted
- District accepts out-of-district IEP and eligibility
- Change of placement
- Change in the type and amount of services
- Change in the IEP/IEP amendment
- Exit from special education (including graduation)
- District refuses services requested by parent
- District proposes/refuses to change the disability category
- District changes/destroys student information in district files
- Intent to transfer parental rights (at least by 17)
- Disciplinary action (include a Notice of Procedural Safeguards)

**Informed written consent**, under AS 14.30.350(5), means (bold added for emphasis):

“(1) a child's parent has been **fully informed, in the parent's native language** or other mode of communication, of all information relevant to the activity for which consent is sought;

(2) the parent **understands and agrees in writing** to the carrying out of the activity for which the parent's consent is sought;

(3) the consent **describes that activity** and lists any records that will be released and to whom; and

(4) the parent understands that the **granting of consent is voluntary on the part of the parent and may be revoked at any time.**”

*Note: The IDEA regulations clarify that the revocation of consent is applicable only when the action consented to, has not yet been completed. See 34 CFR 300.9(c)(2)*

Districts must obtain consent for **all** evaluation areas sought. Parents or guardians may consent to the **entirety** of the district’s proposal to evaluate, to **specific components**, or to **no evaluation** at all. If parents refuse to provide consent for all proposed evaluations as part of an *initial* evaluation, districts may either discontinue the evaluation (and provide written notice to that effect), or pursue the evaluation via mediation or due process procedures (see 34 CFR § 300.300(a)(3)(i)). Under 34 CFR § 300.300(a)(3)(ii), districts not pursuing evaluations when consent has been denied or revoked **do not** violate requirements for child find or evaluations (see 34 CFR §§ 300.111 & 300.301-311). Importantly, consent to evaluate is **not** the same as consent for provision of special education and related services (see 34 CFR § 300.300(b)); districts must obtain separate consent for both. More details about **consent** can be found in Chapter 7: Procedural Safeguards.

A sample *Consent for Evaluation* form can be found at the end of this chapter.

A sample *Written Notice* form can be found at the end of this chapter.

A sample *Authorization to Obtain Information* form can be found at the end of this chapter.

### **Timelines from Consent**

Under Alaska regulation 4 AAC 52.115, once consent is obtained, districts have 90 calendar days to evaluate, determine eligibility, and offer services. 4 AAC 52.115 reads;

“(a) No later than 90 calendar days after obtaining parental consent for an initial evaluation or reevaluation of eligibility the district shall evaluate the referred child, develop an IEP if the child is determined to be eligible and parental consent for services is obtained, and provide the child with special education and related services.

(b) A district remains obligated under AS 14.30.278 to develop an IEP not later than 30 days after the determination of the child’s eligibility.”

For clarity, the district has up to 90 days to determine eligibility and provide an IEP. If a district determines eligibility earlier, for example in 35 days, the district would then have 30 days from the eligibility determination to develop and to provide an IEP. If the district determines eligibility after 60 days, for example in 70 days, the district may not exceed the 90 days to provide IEP services.

### **Initial Evaluations**

Under 34 CFR § 300.301(b), either districts or parents may request an initial evaluation to determine if a student has a disability. The two basic requirements for districts determining eligibility are (4 AAC 52.125 bold added for emphasis) the use of “...a **variety of sources**,” and “...that the eligibility decision be made by a group consisting of **qualified professionals and a parent** of the child.” Furthermore, districts are required to provide written notice concerning eligibility decisions to parents, and must also provide parents with “...a copy of the evaluation report and the documentation of the determination of eligibility (4 AAC 52.125(b)).”

Note: Under 34 CFR 300.305(a) as part of the initial evaluation (if appropriate) the Team shall view existing evaluation data on the child including evaluations and information provided by the parents; current classroom based, local, or state assessments, classroom based observations, and observations by teachers and related service providers. Based on that review and input from the parents, the Team determines what additional data, if any, are needed to determine if the child is

eligible as a child with a disability and the educational needs of the child. The review of the existing data may be conducted without a meeting. See 34 CFR 300.305(b)

To meet the “**variety of sources**” requirement, districts may include (*this list is not exhaustive*):

1. Aptitude and achievement tests;
2. Current classroom-based assessments;
3. Observation by the teacher and related service providers;
4. Physical condition;
5. Social or cultural background;
6. Information provided by the parents; and
7. Adaptive behavior.

For most disability categories, the “**qualified professionals and a parent**” requirement under 4 AAC 52.125 and 34 CFR 300.306 does not specify who must be a member of the eligibility team beyond at least one parent; districts should assemble a team that can carefully and coherently interpret the data presented.

However, teams considering eligibility in the category ‘**specific learning disability,**’ *do* have specific team membership requirements under 34 CFR § 300.308 (adopted by 4 AAC 52.120); these teams must include a parent and (bold added for emphasis):

- “(a)(1) The child's **regular teacher**; or
- (2) If the child does not have a regular teacher, a **regular classroom teacher qualified to teach** a child of his or her age; or
- (3) For a child of less than school age, an **individual qualified by the SEA to teach a child of his or her age**; and
- (b) At least one person **qualified to conduct individual diagnostic examinations** of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher.”

*Note: IEP teams considering initial or continuing eligibility in the area of **specific learning disability** must, under 34 CFR § 300.310, “...[h]ave at least one member of the group... conduct an observation of the child's academic performance in the regular classroom...”. The eligibility team for students suspected of having a specific learning disability **must** include whoever conducted the regular classroom observation.*

### **Evaluation Procedures**

Requirements for evaluation procedures are described at some length in federal regulation 34 CFR § 300.304(b), adopted by 4 AAC 52.120.

34 CFR § 300.304 Evaluation procedures:

- “(b) Conduct of evaluation. In conducting the evaluation, the public agency must--
- (1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent that may assist in determining--
    - (i) Whether the child is a child with a disability under Sec. 300.8; and

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- (ii) The content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities);
  - (2) Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and
  - (3) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.
- (c) Other evaluation procedures. Each public agency must ensure that--
- (1) Assessments and other evaluation materials used to assess a child under this part--
    - (i) Are selected and administered so as not to be discriminatory on a racial or cultural basis;
    - (ii) Are provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child 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;
    - (iv) Are administered by trained and knowledgeable personnel; and
    - (v) Are administered in accordance with any instructions provided by the producer of the assessments.
  - (2) 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.
  - (3) Assessments are selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).
  - (4) The child 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;
  - (5) Assessments of children with disabilities who transfer from one public agency to another public agency in the same school year are coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as possible, consistent with Sec. 300.301(d)(2) and (e), to ensure prompt completion of full evaluations.
  - (6) In evaluating each child with a disability under Sec. 300.304 through 300.306, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.
  - (7) Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.”

Notable in the regulation is that districts must use a **variety of assessments** to determine eligibility (not just one); must conduct evaluations in student's **native language(s)**; and must identify **all of the child's special education and related service needs**.

Parents have the right to request **independent educational evaluations** (IEEs) at any time (4 AAC 52.540, which adopts 34 CFR § 300.502). Specifically, districts (bold added for emphasis):

“...shall provide to a parent, upon request, information about **where an independent educational evaluation may be obtained**, and the **district's criteria** under which a district evaluation is obtained including the location of the evaluation and the qualifications of the examiner.”<sup>1</sup>

*Note: The parent has a right to an IEE at any time, but has the right to a **publicly funded IEE** only when there is disagreement with the school's evaluation. 34 CFR 300.502(b). Please be aware that courts have also ordered public reimbursement of the IEE where the school has refused to conduct an evaluation of the student upon parent's request and where the court found the school did not have grounds for refusing the parent request.*

### **Disqualifiers**

There are three specific **disqualifiers** under 34 CFR § 300.306(b)(1) that **prevent** teams from finding that a student has **any** disability (bold added for emphasis):

“A child must not be determined to be a child with a disability under this part--

(1) If the **determinant** factor for that determination is—

- (i) Lack of appropriate **instruction in reading**, including the essential components of reading instruction (as defined in section 1208(3) of the ESEA);
- (ii) Lack of appropriate **instruction in math**; or
- (iii) **Limited English proficiency**.”

*Note: Teams must be cautious when considering absences as a determinate factor for “lack of appropriate instruction.” The psychological and physical impact of a disability can result in school avoidance, necessitating teams to examine the reasons for excessive absenteeism. Whereas there is no guidance on how to determine reasons for excessive absenteeism, the team should consider relevant information from school files and special education files, as well as information provided by the child, parents, teachers, and other professionals knowledgeable of the child. Denial of special education services due to absences related to a disability may be a violation of IDEA.*

The defining focus of special education programs is a **disability** in an educational setting; a lack of instruction or English proficiency prevents teams from determining if a disability exists in that setting. Special education programs should never be confused with remedial education programs.

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<sup>1</sup> As well (bold added for emphasis): “An independent educational evaluation shall be provided **at district expense** unless, without unreasonable delay, the district initiates a **due process hearing** under 4 AAC 52.550 and the hearing officer rules that the: “(1) district's evaluation is appropriate; or (2) evaluation obtained by the parent did not meet agency criteria.” For further details about IEEs, see **Chapter 7: Procedural Safeguards & Confidentiality**.

The district’s immediate job for these ‘ineligible’ students is **to provide appropriate reading, math, or English instruction**, not to provide inappropriate disability-focused special education.

### Eligibility

Alaska regulation 4 AAC 52.130: ‘**Criteria for determination of eligibility**’ specifies the eligibility criteria for determination of eligibility in 14 categories. Disability alone is insufficient grounds for determining eligibility. Under 4 AAC 52.130, a student must “...require special facilities, equipment, or methods to make the child’s education program effective.”<sup>1</sup>

Eligibility teams must determine three things:

1. Whether the student has a **disability** (34 CFR § 300.301) which adversely affects their educational performance; all disability categories have documentation requirements (see 4 AAC 52.130);
2. Whether the student **requires special education** and/or related services (4 AAC 52.130);
3. The **educational needs** of the student (34 CFR § 300.301).

*Note: Districts must “provide that the eligibility decision be made by a group consisting of qualified professionals and a parent of the child...” (4 AAC 52.125(2); Neither federal nor Alaska law elaborates on the definition of ‘qualified professionals;’ however, 34 CFR 300.305(a) states that the evaluation team will consist of “the IEP Team and other qualified professionals”. 34 CFR 300.321 establishes IEP Team members. More details about the **IEP Team** can be found in **Chapter 3: Individual Education Programs**.*

*Note: The regulations at 34 CFR 300.310(c) require, in the case of a child less than school age or out of school, a group member must observe the child in an environment appropriate for a child of that age.*

### Eligibility Categories

This is a listing of all of the Alaskan eligibility categories for special education services:

Cognitive Impairment	Visual Impairment
Specific Learning Disability	Speech or Language Impairment
Emotional Disturbance	Other Health Impaired
Deafness	Multiple Disabilities
Hearing Impairment	Early Childhood Developmental Delay
Deaf and Blind	Autism
Orthopedic Impairment	Traumatic Brain Injury

Refer to 4 AAC 52.130 for specific details regarding these **general** eligibility notes. 4 AAC 52.130 reads (bold added for emphasis);

“(a) Repealed 8/22/2001.

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<sup>1</sup> ‘Special education’ under Alaska law AS. 14.30.350(9) incorporates the federal definition (34 CFR 300.39), which “...means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability.”



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(b) To be eligible for special education and related services as a child with **cognitive impairment**, a child must

- (1) **score two or more standard deviations** below the national norm on an individual standardized test of intelligence, and exhibit deficits in adaptive behavior manifested during the developmental period which adversely affect the child's educational performance;
- (2) **require** special facilities, equipment, or methods to make the child's educational program effective;
- (3) **be diagnosed** as cognitively impaired by a psychiatrist, or by a psychologist who is licensed under AS 08.86, certified under 4 AAC 12.355, or endorsed under 4 AAC 12.395; and
- (4) be certified by the group established under 4 AAC 52.125(a) (2) as qualifying for and needing special education services.

(c) To be eligible for special education and related services as a child with a **learning disability**, a child must

- (1) exhibit a specific learning disability as **defined in**
  - (A) 34 CFR 300.8(c)(10), as revised as of October 13, 2006, and adopted by reference; and
  - (B) 34 CFR 300.309, adopted by reference in 4 AAC 52.120;
- (2) require special facilities, equipment, or methods to make the child's education program effective; and
- (3) be certified by the group established under 4 AAC 52.125(a) (2) in the manner set out in 34 CFR 300.308, adopted by reference in 4 AAC 52.120, as qualifying for and needing special education services.

(d) To be eligible for special education and related services as a child with an **emotional disturbance**, a child must

- (1) be emotionally disturbed as **defined in** 34 CFR 300.8(c)(4), as revised as of October 13, 2006, and adopted by reference;
- (2) **require** special facilities, equipment, or methods to make the child's educational program effective;
- (3) **be diagnosed** as emotionally disturbed by a psychiatrist, or by a psychologist who is licensed under AS 08.86, certified under 4 AAC 12.355, or endorsed under 4 AAC 12.395; and
- (4) be certified by the group established under 4 AAC 52.125(a) (2) as qualifying for and needing special education services.

(e) To be eligible for special education and related services as a child who is **deaf**, a child must

- (1) exhibit a hearing impairment that hinders the child's ability to process linguistic information through hearing, with or without amplification, and that adversely affects educational performance;
- (2) **require** special facilities, equipment, or methods to make the child's educational program effective;
- (3) **be diagnosed** by a physician or audiologist as deaf; and
- (4) be certified by the group established under 4 AAC 52.125(a) (2) as qualifying for and needing special education services.

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(f) To be eligible for special education and related services as a child with a **hearing impairment**, a child must

- (1) exhibit a hearing impairment, whether **permanent or fluctuating**, that adversely affects educational performance, **but is not** within the meaning of (e) of this section;
- (2) **require** special facilities, equipment, or methods to make the child's educational program effective;
- (3) **be diagnosed** by a physician or audiologist as hard of hearing; and
- (4) be certified by the group established under 4 AAC 52.125(a) (2) as qualifying for and needing special education services.

(g) To be eligible for special education and related services as a child who is **deaf and blind**, a child must

- (1) **exhibit concomitant hearing and visual impairments**, the combination of which causes such severe communication and other developmental and educational problems that the child **cannot be accommodated in a special education program solely for deaf or blind** children;
- (2) require special facilities, equipment, or methods to make the child's educational program effective;
- (3) **be diagnosed** by an optometrist or ophthalmologist and by a physician or audiologist, as appropriate, as deaf-blind; and
- (4) be certified by the group established under 4 AAC 52.125(a) (2) as qualifying for and needing special education services.

(h) To be eligible for special education and related services as a child with an **orthopedic impairment**, a child must

- (1) exhibit a **severe orthopedic impairment**, including impairments caused by congenital anomaly, disease, or other causes, **that adversely affects educational performance**;
- (2) **require** special facilities, equipment, or methods to make the child's educational program effective;
- (3) **be diagnosed** by a physician as orthopedically impaired; and
- (4) be certified by the group established under 4 AAC 52.125(a) (2) as qualifying for and needing special education services.

(i) To be eligible for special education and related services as a child with a **visual impairment**, a child must

- (1) exhibit a
  - (A) visual impairment, not primarily perceptual in nature, resulting in measured **acuity of 20/70 or poorer in the better** eye with correction, **or** a visual field **restriction of 20 degrees** as **determined by an optometrist or ophthalmologist**, that, even with correction, adversely affects educational performance; or
  - (B) **physical eye condition** that affects visual functioning to the extent that specially designed instruction is needed;

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- (2) **require** special facilities, equipment, materials, or methods to make the child's educational program effective as determined by a teacher of children with visual impairment; and
- (3) be certified by the group established under 4 AAC 52.125(a) (2), that includes a certified teacher of children with visual impairment, as qualifying for and needing special education services.

(j) To be eligible for special education and related services as a child with a **speech or language impairment**, a child must

- (1) exhibit a communication disorder such as **stuttering, impaired articulation, a language impairment, or a voice impairment**, that adversely affects educational performance;
- (2) **require** special facilities, equipment, or methods to make the child's educational program effective;
- (3) **be diagnosed** by a physician, a speech-language pathologist, or a speech-language therapist as speech or language impaired; and
- (4) be certified by the group established under 4 AAC 52.125(a) (2) as qualifying for and needing special education services;
- (5) repealed 11/28/92.

(k) To be eligible for special education and related services as a child with **other health impairments**, a child must

- (1) exhibit **limited strength, vitality, or alertness** due to **chronic or acute health problems such as** a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, **fetal alcohol spectrum disorder**, diabetes, or a heightened alertness to environmental stimuli, due to **attention deficit disorder** or **attention deficit hyperactivity disorder**; for a child to be eligible, a health impairment must adversely affect that child's educational performance;
- (2) **require** special facilities, equipment, or methods to make the child's educational program effective;
- (3) **be diagnosed** by a **physician** or **advanced practice registered nurse** as having a health impairment described in (1) of this subsection; and
- (4) be certified by the group established under 4 AAC 52.125(a) (2) as qualifying for and needing special education services.

(l) To be eligible for special education and related services as a child with **multiple disabilities**, a child must

- (1) exhibit two or more of the impairments **set out in (b) - (i), (k), (o), and (p)** of this section, the combination of which causes such **severe educational problems** that the child cannot be accommodated in a special education program that is appropriate for only one of the conditions;
- (2) **require** special facilities, equipment, or methods to make the child's educational program effective;
- (3) **be diagnosed** as set out in **(b) - (i), (k), (o), and (p)** of this section for each condition; and

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(4) be certified by the group established under 4 AAC 52.125(a) (2) as requiring special education services that cannot be provided in a program for a single condition set out in (b) - (i), (k), (o), and (p) of this section.

(m) Repealed 8/22/2001.

(n) Except as provided in (q) of this section, to be eligible for special education and related services as a child with **early childhood developmental delay**, a child who is not less than three nor more than eight years of age must

(1) either

(A) function **at least two standard deviations** below the national norm, **or 25 percent delayed in age equivalency**, in at least one of the following **five areas**:

(i) cognitive development;

(ii) physical development, which includes fine and gross motor;

(iii) speech or language development, which includes expressive and receptive language, articulation, and fluency;

(iv) social or emotional development;

(v) adaptive-functioning, self-help skills; or

(B) function **at least 1.7 standard deviations below the mean, or 20 percent delayed in age equivalency**, in **two or more** of the **five areas** in (A)(i) - (v) of this paragraph;

(2) be **certified by the group** established under 4 AAC 52.125(a) (2) as qualifying for and needing special education and related services as a child with early childhood developmental delay, as follows:

(A) the group must find that the child has learning problems that are **not** primarily the result of **bilingualism, cultural difference, environmental disadvantage, or economic disadvantage**;

(B) in evaluating the child, **if** it is clearly **not** appropriate to use **a norm-referenced** instrument, the group shall use another instrument, such as a **criterion-referenced** measure, to document the delay;

(C) the group shall base its determination of **the delay** and its detrimental **effect** on the child's daily life and educational performance on qualitative and quantitative measures, including developmental history, basic health history, observation of the child in multiple environments, **and supportive evidence of how the disability adversely affects educational performance**; and

(3) need special facilities, equipment or methods to make the child's educational program effective.

(o) To be eligible for special education and related services as a child with **autism**, a child must

(1) exhibit

(A) a **developmental disability** significantly **affecting verbal and non-verbal communication and social interaction** that adversely **affects educational performance**; this type of developmental disability is **generally evident before the child reaches three** years of age; or

(B) other characteristics **often associated** with autism such as engagement in **repetitive activities** and stereotyped **movements**, resistance to environmental **change** or change in

daily routines, or unusual responses to **sensory experiences** that **adversely affect educational performance**;

(2) **not** have educational performance adversely affected primarily by an **emotional disturbance**, as defined in 34 CFR 300.8(c)(4), adopted by reference in (d)(1) of this section;

(3) **require** special facilities, equipment, or methods to make that child's educational program effective;

(4) **be diagnosed** as autistic by a **psychiatrist or other physician, an advanced nurse practitioner** authorized to practice under 12 AAC 44.380 in pediatrics, family health, or family psychiatric/mental health, and who has in effect a written plan that includes pediatric neurodevelopment in the clinical scope of practice, as required under 12 AAC 44.400, or a psychologist licensed under AS 08.86, certified under 4 AAC 12.355, or endorsed under 4 AAC 12.395; and

(5) be certified by the group established under 4 AAC 52.125(a) (2) as qualifying for and needing special education services.

(p) To be eligible for special education and related services as a child with **traumatic brain injury**, a child must

(1) exhibit an acquired **injury to the brain** caused by an **external physical force**, resulting in total or partial functional disability or psychosocial impairment or both, that adversely affects educational performance;

(2) exhibit **impairments** in one or more areas, **including** cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech caused by open or closed head injuries;

(3) **not** have brain injuries that are **congenital or degenerative, or induced by birth trauma**;

(4) **require** special facilities, equipment, or methods to make the child's educational program effective;

(5) **be diagnosed** by a physician as having a traumatic brain injury; and

(6) be certified by the group established under 4 AAC 52.125(a) (2) as qualifying for and needing special education services.

(q) If a district does not use the criteria in (n) of this section to determine a child's eligibility for special education and related services, with regard to a child with early childhood developmental delay, the district shall apply the criteria of (b) - (l), (o), or (p) of this section.”

### **Response to Intervention (RTI) & Eligibility**

Regulation 34 CFR § 300.309 (adopted by 4 AAC 52.120) supports the use of the child's response to scientific, research-based intervention when considering eligibility. Alaska regulations allow districts to determine their own processes; however, any process that involves a student's response to intervention cannot impede, delay or deny timely evaluation for the purposes of special education.

Districts must at all times comply with the following (bold added for emphasis):

“(c) The public agency must promptly request parental consent to evaluate the child to determine if the child needs special education and related services, and must adhere to the timeframes described in §§ **300.301** [initial evaluations] and **300.303** [reevaluations], unless extended by **mutual written agreement** of the child's parents and a group of qualified professionals, as described in **§ 300.306(a)(1-2)**”.

34 CFR 300.306(a)(1-2) reads:

“(1) If, prior to a referral, a child has not made adequate progress after an appropriate period of time when provided instruction, as described in paragraphs (b)(1) and (b)(2) of this section; and (2) Whenever a child is referred for an evaluation.”

### **Evaluation Summary & Eligibility Reports (ESERs)**

Under 4 AAC 52.125(b), “...[a] A district shall give a parent of the evaluated child a copy of the evaluation report and the documentation of the determination of eligibility at no cost to the parent.”

A sample *Evaluation Summary & Eligibility Report (ESER)* form that meets requirements can be found at the end of this chapter.

### **Reevaluations**

Alaska regulation 4 AAC 52.180 and the IDEA 34 CFR 300.303 requires that districts reevaluate each child with a disability to determine whether the child remains eligible for special education and related services and to determine the educational needs of the child. Federal regulation 34 CFR § 300.303 requires districts to reevaluate all students with disabilities under a variety of scenarios (bold added for emphasis):

“(1) If the public agency determines that the **educational or related services needs**, including improved academic achievement and functional performance, of the child warrant a reevaluation; or

(2) If the child's **parent or teacher requests** a reevaluation.

(b) Limitation. A reevaluation conducted under paragraph (a) of this section--

(1) May occur **not more than once a year**, unless the parent and the public agency agree otherwise; and

(2) Must occur **at least once every 3 years**, unless the parent and the public agency agree that a reevaluation is unnecessary.”

If a student's team believes that the student no longer requires special education programming or related services in a particular area (e.g. OT, math support, etc.), the team must conduct a reevaluation meeting prior to “discontinuing” the identified programming or service. A reevaluation meeting may not necessarily require full assessments. Data may be obtained from the service provider or other source(s). It is a team decision.

The reevaluation meeting shall be carried out by a group consisting of qualified professionals and a parent of the child. The group shall: (1) review existing evaluation data on the child, including evaluations and information provided by a parent of the child, current classroom-based assessments and observations, and teacher and related services providers' observations; and (2) on the basis of this review and information obtained from a parent of the child, identify and obtain additional data needed to determine (4 AAC 52.180(b)(2)) (bold added for emphasis):

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- “(A) whether the child continues to have a **disability**;
- (B) the child's **present levels of performance** and educational needs;
- (C) whether the child continues to **need special education** and related services; and
- (D) whether any **change is needed** in the child's special education and related services to enable the child to meet the measurable annual goals set out in the IEP and to participate, as appropriate, in the general curriculum.”

*Note: The 90 day timeline (4 AAC 52.115) applies to any additional evaluations sought as part of a re-evaluation.*

It is **not** a requirement that the team conduct additional evaluations to determine eligibility. Under 4 AAC 52.180(e), if a reevaluation team (bold added for emphasis):

“...determines that **no additional data** are needed, it

- (1) shall notify the child's parents of that determination, the reasons for it, and the right of the parents to request an evaluation to determine whether the child continues to be a child with a disability; and
- (2) is not required to conduct an additional evaluation unless requested to do so by a parent of the child.”

Parents must receive a written notice if no additional evaluations are necessary. If new evaluation data is required, written notice must be sent and written consent must be obtained. The school may go forward with the reevaluation without consent if they have documentation that the district has repeatedly attempted to obtain consent and the parents have not responded. If the parent has responded and refuses to consent, the school may pursue the issue by offering mediation or requesting a due process hearing. See 34 CFR 300.300(C).

Under 4 AAC 52.130(n) and 4 AAC 52.180(d) for students eligible in the category ‘**early childhood developmental delay**,’ reevaluation is required **before the student's 9th birthday**.

*NOTE: Teams should carefully plan the timing of re-evaluations for children eligible in the category ‘early childhood developmental delay’ as to complete the comprehensive evaluation and eligibility determination AND placement for special education and related services on an IEP prior to the 9th birthday.*

Under 34 CFR § 300.305(e) (adopted by 4 AAC 52.120), reevaluation is **not** required before the termination of a student's eligibility for special education services due to graduation with a regular high school diploma, or to aging-out. Graduation with a regular diploma constitutes a change of placement requiring written notice. See 34 CFR 300.102(a)(3). There is no written notice requirement when a student exits special education based on aging out.

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<b>Authorization to Obtain Information</b>		
Student Name:	Date of Birth:	Date:
District:		
District Address:		
District Point of Contact:		
I hereby authorize the release of information from the following person/agency:		
Check All Appropriate:		
<input type="radio"/> Transcripts	<input type="radio"/> Health Records	
<input type="radio"/> Psychological Records	<input type="radio"/> Counseling Records	
<input type="radio"/> Special Education Records	<input type="radio"/> Police Records	
<input type="radio"/> School Records	<input type="radio"/> Other:	
I understand that the information obtained will be treated in a confidential manner and will not be transmitted to a third party. I also understand that it is my right to request a copy of all information and that I may contest any information I feel is incorrect.		
Parent Name (Printed):	Parent Signature:	
Parent Address:		



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<b>Consent for Evaluation</b>		
<b>PURPOSE:</b> A school district is required to obtain parental written consent for an initial evaluation or a reevaluation of a student. This form asks your voluntary consent for the evaluation activities described below. If you have questions regarding this request, please contact the district's director of special education.		
Student Name:	Birthday:	Date:
Parent(s) Name:		
<b>TYPE OF EVALUATION:</b>	<input type="radio"/> Initial Evaluation	<input type="radio"/> Reevaluation
<b>SPECIFIC AREAS FOR ASSESSMENT</b>		
<input type="radio"/>	<b>EDUCATIONAL</b> - To assess the level at which a student is achieving in the areas of reading, math, and written expression; curriculum-based assessments and/or standardized academic achievement tests may be used <input type="radio"/> Reading <input type="radio"/> Writing <input type="radio"/> Math	
<input type="radio"/>	<b>MOTOR SKILLS</b> - To assess fine motor skills, writing skills, functional motor skills, mobility, and/or positioning for accessing and participating in the school environment and curriculum <input type="radio"/> Fine <input type="radio"/> Gross	
<input type="radio"/>	<b>VISION</b> – An assessment visual acuity by a licensed professional - <i>does not refer to screening information</i>	
<input type="radio"/>	<b>HEARING</b> - To document hearing sensitivity and discrimination of speech (e.g., pure tone audiometry, speech discrimination, aided thresholds) - <i>does not refer to screening information</i>	
<input type="radio"/>	<b>ADAPTIVE</b> - To assess the student's independent functioning at home, at school and in the community	
<input type="radio"/>	<b>COGNITIVE</b> - To assess general aptitude for school-based learning; standardized intelligence tests may be used	
<input type="radio"/>	<b>COMMUNICATION</b> - To assess how the student verbally communicates and understands language; standardized and informal measures of articulation, language, voice and fluency may be used <input type="radio"/> Speech <input type="radio"/> Language	
<input type="radio"/>	<b>BEHAVIORAL, SOCIAL, EMOTIONAL</b> - To assess social and/or emotional development, school and home behavior; standardized and informal assessments may be used	
<input type="radio"/>	<b>VOCATIONAL EVALUATION</b> - Age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills	
<input type="radio"/>	<b>OTHER:</b>	
I consent to the action(s) selected above.		
_____	_____	
Parent Signature	Date Signed by Parent	

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<b>Written Notice</b>		
Student Name:	Date of Birth:	Date:
The purpose of this letter is to notify you of the district's proposal to make a change, or refusal to make a change in your student's educational program. The details of the proposed action are indicated below.		
Description of the proposed or refused action:		
Reason for the proposed action:		
Description of evaluation procedure, test, record or report used in deciding to propose or refuse action:		
Description of other options considered, if any, and reason for rejecting them:		
Other factors relevant to the proposal or refusal:		
You have specific rights or procedural safeguards. A copy of those rights may be obtained from me or another school district representative. If you need an explanation of your rights or have any questions regarding this notice, please contact me.		
Name	Title	Phone Number
For further assistance in understanding your parental rights you may contact:		
<b>STONE SOUP GROUP</b> 307 E. Northern Lights Blvd, #100 Anchorage, AK 99503 (907) 561-3701 – In Anchorage (877) 786-7327 – Toll Free (907) 561-3702 – Fax <a href="http://www.stonesoupgroup.org">www.stonesoupgroup.org</a>	<b>DISABILITY LAW CENTER</b> 3330 Arctic Blvd., Ste. 103 Anchorage, AK 99503 (907) 565-1002 – In Anchorage (800) 478-1234 – Toll Free (907) 564-1000 – Fax <a href="http://www.dlcak.org">www.dlcak.org</a>	<b>AK DEPARTMENT OF EDUCATION AND EARLY DEVELOPMENT</b> 801 W. 10 <sup>th</sup> St., Ste. 200 Juneau, AK 99801 (907) 465-8693 – Phone (907) 465-2806 – Fax <a href="http://education.alaska.gov/sped/">http://education.alaska.gov/sped/</a>

**Medical Certification for Other Health Impaired**

\_\_\_\_\_  
Student Name:

\_\_\_\_\_  
DOB:

To be eligible for special education and related services as a child with other health impairments, a child must be diagnosed by a physician or advanced practice registered nurse as having a health impairment.

The undersigned certifies that the student exhibits:

Official's Initials

\_\_\_\_\_ Exhibit limited strength, vitality, or alertness due to;

\_\_\_\_\_ Chronic or acute health problems

*(such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, fetal alcohol spectrum disorder, diabetes, or a heightened alertness to environmental stimuli, due to attention deficit disorder or attention deficit hyperactivity disorder)*

\_\_\_\_\_  
Physician or Advanced Practice Registered Nurse's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Phone or email contact information

\_\_\_\_\_  
Other Health Impairment condition

*Please note that a Physician or Advanced Practice Registered Nurse's signature is only one portion of special education qualifying requirements. The medical signature does not, on its own, qualify a student for services under the Individuals with Disabilities Education Act (IDEA) / Special Education. For a child to be eligible, a health impairment must adversely affect that child's educational performance as determined by the Individual Education Program (IEP) Team. Additionally, the child must require special facilities, equipment, or methods to make the child's educational program effective and finally, be certified by the IEP Team as qualifying for and **needing** special education services.*

<b>EVALUATION SUMMARY AND ELIGIBILITY REPORT - ESER</b>				
<b>Section 1 – GENERAL INFORMATION</b>				
School Site		ESER Meeting Date	ESER Expiration Date	Student ID
Student Last Name	First Name	Middle Name	Date of Birth	Age
Date Consent for Evaluation Signed	Type of ESER	Gender	Grade	Primary Language

<b>Section 2 – EVALUATION SUMMARIES</b>		
Parent Information	Provided By:	Date Obtained:
Summary of Existing Information	Provided By:	Date Provided:
	Provided By:	Report Date:
	Provided By:	Report Date:
	Provided By:	Report Date:

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	Provided By:	Report Date:
	Provided By:	Report Date:
	Provided By:	Report Date:
	Provided By:	Report Date:
	Provided By:	Report Date:
	Provided By:	Report Date:
	Provided By:	Report Date:
	Provided By:	Report Date:

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Section 3 – LEARNING DISABILITY - Complete this section <i>only</i> for students suspected of having a learning disability	
AREAS OF SUSPECTED DIFFICULTY:	
<input type="radio"/> Basic Reading	<input type="radio"/> Reading Comprehension
<input type="radio"/> Written Expression	<input type="radio"/> Listening Comprehension
<input type="radio"/> Math Calculation	<input type="radio"/> Math Problem Solving
	<input type="radio"/> Reading Fluency
	<input type="radio"/> Oral Expression
IDENTIFY THE MODEL USED TO DETERMINE ELIGIBILITY ( <i>An Observation Report <b>must</b> be included with this ESER:</i> )	
<input type="radio"/>	DISCREPANCY MODEL ( <i>Define the difference between the IQ score and achievement scoring used</i> )
<input type="radio"/>	SCIENTIFIC RESEARCHED-BASED INTERVENTION MODEL
The eligibility team must describe the model selected above and justify the eligibility decision.	
- The basis for consideration of a learning disability <b>must</b> be supported by data listed in this report	
CONSIDERATIONS:	
<input type="radio"/> Yes <input type="radio"/> No	The team considered the following effect: environmental; cultural; or economic factors, as well as visual, hearing, cognitive, motor or emotional disability, and has determined they are not the primary reason for the suspected disability.

Section 4 – ELIGIBILITY - Complete this section for <i>all</i> students	
<input type="radio"/> Yes <input type="radio"/> No	Evaluation conducted in primary language or the student’s other mode of communication. If “No” explain:
<input type="radio"/> Yes <input type="radio"/> No	The student is eligible for consideration as a student experiencing a disability and this determination is not based on a lack of appropriate instruction in reading or math.
<input type="radio"/> Yes <input type="radio"/> No	It is the decision of the team that the student meets the criteria for having a disability based on the data provided in this report.
<input type="radio"/> Yes <input type="radio"/> No	It is the decision of the team that the student demonstrates an educational need that requires specially designed instruction.
<input type="radio"/> Yes <input type="radio"/> No	The student is eligible for consideration as a student experiencing a disability and this determination is not based on limited English proficiency. <i>Note: Students with limited English proficiency must qualify on data collected in their native language</i>
ELIGIBILITY CATEGORY:	
INFORMATION SUPPORTING THE ELIGIBILITY DECISION	

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<b>Section 5 – EDUCATION NEED</b>	
<b>EDUCATIONAL NEED</b>	<b>RECOMMENDATION TO FULFILL THE NEED</b>
1.	
2.	
3.	
4.	

<b>Section 6 – PARTICIPANTS</b> <i>(For any person that disagrees, attach the reason for the disagreement)</i>		
_____	_____	_____
Print (or type) Name	Title	Signature
_____	_____	_____
Print (or type) Name	Title	Signature
_____	_____	_____
Print (or type) Name	Title	Signature
_____	_____	_____
Print (or type) Name	Title	Signature
_____	_____	_____
Print (or type) Name	Title	Signature
_____	_____	_____
Print (or type) Name	Title	Signature
_____	_____	_____
Print (or type) Name	Title	Signature
_____	_____	_____
Print (or type) Name	Title	Signature

**Parents received a copy of this report and supporting documentation.**

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ESER - NOTICE REQUIREMENTS AND PROCEDURAL SAFEGUARDS		
<p><b>WRITTEN NOTICE</b> - This form describes the information required in each of the components of written notice for an IEP meeting. The written notice includes the IEP as a description of the proposed action and a description of the procedures and factors used in determining the proposed action.</p>		
<p><b>Describe the proposed action and explain why the district has taken such action:</b></p>		
<p><b>Describe why the action is proposed or refused:</b></p>		
<p><b>Describe the evaluation procedure, test, record or report used in deciding the proposed or refused action:</b></p>		
<p><b>Describe any other options considered, if any, and the reasons for rejecting them:</b></p>		
<p><b>If applicable, describe any other factors that are relevant to the proposal or refusal:</b></p>		
<p><b>PROCEDURAL SAFEGUARDS</b> - As the parent of a student (or an adult student) who is, or may be determined, eligible for special education services, you have rights regarding identification, evaluation, classification, development of an IEP, placement and the provision of a free and appropriate public education under the Alaska Administrative Code (4 AAC Chapter 52). A description of these rights, which are called procedural safeguards, is contained in the document, <i>Notice of Procedural Safeguards</i>. This document is published by the Alaska Department of Education. A copy may be obtained from the school district, the individual listed below, or can be found online at: <a href="http://education.alaska.gov/sped">http://education.alaska.gov/sped</a></p> <p><b>To obtain the <i>Notice of Procedural Safeguards</i>, your parental rights for special education, please contact:</b></p> <p style="text-align: center;"> <span style="margin-right: 200px;">School Representative's Name</span> <span>Phone Number</span> </p>		
<p><b>For help in understanding your rights, you may contact any of the following:</b></p>		
<p><b>STONE SOUP GROUP</b>                      307 E. Northern Lights Blvd, #100                      Anchorage, AK 99503                      (907) 561-3701 – In Anchorage                      (877) 786-7327 – Toll Free                      (907) 561-3702 – Fax  <a href="http://www.stonesoupgroup.org">www.stonesoupgroup.org</a></p>	<p><b>DISABILITY LAW CENTER</b>                      3330 Arctic Blvd., Ste. 103                      Anchorage, AK 99503                      (907) 565-1002 – In Anchorage                      (800) 478-1234 – Toll Free                      (907) 564-1000 – Fax  <a href="http://www.dlcak.org">www.dlcak.org</a></p>	<p><b>AK DEPARTMENT OF EDUCATION AND EARLY DEVELOPMENT</b>                      801 West 10<sup>th</sup> St., Ste. 200                      Juneau, AK 99801                      (907) 465-8693 – Phone                      (907) 465-2806 – Fax  <a href="http://education.alaska.gov/sped/">http://education.alaska.gov/sped/</a></p>



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<b>Observation Form for Specific Learning Disabilities</b>		
Student Name:	Grade:	Date:
Observer:	Teacher:	
Activity:	Time:	
<b>AREAS OF ACADEMIC CONCERN:</b> <input type="radio"/> Basic Reading <input type="radio"/> Reading Comprehension <input type="radio"/> Reading Fluency <input type="radio"/> Written Comprehension <input type="radio"/> Listening Comprehension <input type="radio"/> Oral Expression <input type="radio"/> Math Calculation <input type="radio"/> Math Problem Solving		
<b>NOTES:</b>		
<u>Level Of Activity</u> <input type="radio"/> Hyperactivity <input type="radio"/> Appropriate <input type="radio"/> Lethargic/Tired  <u>Attention</u> <input type="radio"/> Listens to instructions <input type="radio"/> Understands directions <input type="radio"/> Doesn't understand directions <input type="radio"/> Able to stay on task <input type="radio"/> Easily distracted <input type="radio"/> Begins work <input type="radio"/> Able to work independently <input type="radio"/> Understands concepts <input type="radio"/> Doesn't understand concepts	<u>Relationship With Teacher</u> <input type="radio"/> Cooperative <input type="radio"/> Withdrawn <input type="radio"/> Seeks attention <input type="radio"/> Needs individual attention <input type="radio"/> Refuses to follow instructions  <u>Effort/Motivation</u> <input type="radio"/> Tries hard <input type="radio"/> Gives up easily <input type="radio"/> Careless in work <input type="radio"/> Eager to please <input type="radio"/> Hesitant to begin working <input type="radio"/> Apathetic/indifferent <input type="radio"/> Works at a reasonable pace <input type="radio"/> Works slowly	<u>Relationship With Peers</u> <input type="radio"/> Works/plays alone <input type="radio"/> Participates in group activities <input type="radio"/> Interacts well with others <input type="radio"/> Hitting/poking/distracting peers <input type="radio"/> Initiates social interaction <input type="radio"/> Waits for others to initiate <input type="radio"/> Avoids peer interaction  <u>Temperament</u> <input type="radio"/> Happy <input type="radio"/> Depressed/withdrawn <input type="radio"/> Angry/hostile <input type="radio"/> Anxious <input type="radio"/> Daydreams <input type="radio"/> Confused <input type="radio"/> Easily upset
Describe how the observed behaviors relate to the area(s) of difficulty:		

## **CHAPTER 3: INDIVIDUAL EDUCATION PROGRAMS**

IEPs (Individual Education Programs) and IFSPs (Individual Family Service Plans) are tightly regulated and documentation must follow requirements, but IEPs and IFSPs themselves should be written in easily understandable language. The procedure by which parents and school staff members develop a written individualized education program (IEP) should describe a student's special learning needs and the special education services to be provided to meet those needs.

### **When IEPs Must Be In Effect**

Requirements for when IEPs must be in effect are described at some length in federal regulation 34 CFR 300.323 (adopted by 4 AAC 52.140).

Sec. 300.323 When IEPs must be in effect.

- “(a) General. At the beginning of each school year, each public agency must have in effect, for each child with a disability within its jurisdiction, an IEP, as defined in Sec. 300.320.
- (b) IEP or IFSP for children aged three through five.
  - (1) In the case of a child with a disability aged three through five (or, at the discretion of the SEA, a two-year-old child with a disability who will turn age three during the school year), the IEP Team must consider an IFSP that contains the IFSP content (including the natural environments statement) described in section 636(d) of the Act and its implementing regulations (including an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills for children with IFSPs under this section who are at least three years of age), and that is developed in accordance with the IEP procedures under this part. The IFSP may serve as the IEP of the child, if using the IFSP as the IEP is-
    - (i) Consistent with State policy; and
    - (ii) Agreed to by the agency and the child's parents.
  - (2) In implementing the requirements of paragraph (b)(1) of this section, the public agency must-
    - (i) Provide to the child's parents a detailed explanation of the differences between an IFSP and an IEP; and
    - (ii) If the parents choose an IFSP, obtain written informed consent from the parents.
- (c) Initial IEPs; provision of services. Each public agency must ensure that--
  - (1) A meeting to develop an IEP for a child is conducted within 30 days of a determination that the child needs special education and related services; and
  - (2) As soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child's IEP.
- (d) Accessibility of child's IEP to teachers and others. Each public agency must ensure that--
  - (1) The child's IEP is accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation; and
  - (2) Each teacher and provider described in paragraph (d)(1) of this section is informed of-
    - (i) His or her specific responsibilities related to implementing the child's IEP; and

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- (ii) The specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.
- (e) IEPs for children who transfer public agencies in the same State. If a child with a disability (who had an IEP that was in effect in a previous public agency in the same State) transfers to a new public agency in the same State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide FAPE to the child (including services comparable to those described in the child's IEP from the previous public agency), until the new public agency either-
  - (1) Adopts the child's IEP from the previous public agency; or
  - (2) Develops, adopts, and implements a new IEP that meets the applicable requirements in Sec. Sec. 300.320 through 300.324.
- (f) IEPs for children who transfer from another State. If a child with a disability (who had an IEP that was in effect in a previous public agency in another State) transfers to a public agency in a new State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide the child with FAPE (including services comparable to those described in the child's IEP from the previous public agency), until the new public agency-
  - (1) Conducts an evaluation pursuant to Sec. Sec. 300.304 through 300.306 (if determined to be necessary by the new public agency); and
  - (2) Develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in Sec. Sec. 300.320 through 300.324.
- (g) Transmittal of records. To facilitate the transition for a child described in paragraphs (e) and (f) of this section--
  - (1) The new public agency in which the child enrolls must take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous public agency in which the child was enrolled, pursuant to 34 CFR 99.31(a)(2); and
  - (2) The previous public agency in which the child was enrolled must take reasonable steps to promptly respond to the request from the new public agency.”

The most basic requirement under 34 CFR § 300.323 is: “At the beginning of each school year, each public agency must have in effect, for each child with a disability within its jurisdiction, an IEP.” IEPs expire; they must be updated “...on an annual basis or more frequently if conditions warrant,” (4 AAC 52.140[d]). Expired IEPs expose districts to liability.

### **Revising IEPs**

The district must ensure that the IEP contains the necessary special education/related services and supplementary aids/services to ensure that the student’s IEP can be appropriately be implemented, otherwise the district must conduct another IEP (revision) meeting. 34 CFR 300.324.(b)(1)(ii) lists factors that IEP teams must consider when determining whether changes are needed in a child’s program:

“(b) Review and revision of IEPs.

(1) General. Each public agency must ensure that, subject to paragraphs (b)(2) and (b)(3) of this section, the IEP Team-(i) Reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and

(ii) Revises the IEP, as appropriate, to address-

(A) Any lack of expected progress toward the annual goals described in Sec. 300.320(a)(2), and in the general education curriculum, if appropriate;

(B) The results of any reevaluation conducted under Sec. 300.303;

(C) Information about the child provided to, or by, the parents, as described under Sec. 300.305(a)(2);

(D) The child's anticipated needs; or

(E) Other matters.

(2) Consideration of special factors. In conducting a review of the child's IEP, the IEP Team must consider the special factors described in paragraph (a)(2) of this section.

(3) Requirement with respect to regular education teacher. A regular education teacher of the child, as a member of the IEP Team, must, consistent with paragraph (a)(3) of this section, participate in the review and revision of the IEP of the child.”

### **Transfer Students (In State and Out of State)**

There are specific rules for transfer students whose IEPs were developed by their prior district in Alaska and those who have IEPs in effect from a different state.

**In-state:** Under 34 CFR § 300.323(e), districts receiving students from other Alaska school districts “...must provide FAPE to the child (including services comparable to those described in the child's IEP from the previous public agency after consulting with the student’s parents), until the new public agency either [bold added for emphasis]-

“(1) **Adopts the child's IEP** from the previous public agency; or

(2) Develops, adopts, and implements a **new IEP** that meets the applicable requirements in §§ 300.320 through 300.324.”

**Out-of-state:** Under 34 CFR § 300.323(f), districts receiving students from outside the state of Alaska “...must provide the child with FAPE (including services comparable to those described in the child's IEP from the previous public agency), until the new public agency [bold added for emphasis] --

“(1) **Conducts an evaluation** pursuant to §§ 300.304 through 300.306 (if determined to be necessary by the new public agency); and

(2) Develops, adopts, and implements a **new IEP**, if appropriate, that meets the applicable requirements in §§ 300.320 through 300.324.”<sup>1</sup>

*Note: When the district conducts a new evaluation for out of state transfer students, this is documented in an Alaskan ESER with the appropriate meetings conducted. This is equally true if the test results from a previous state’s assessments are used (allowed).*

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<sup>1</sup> 34 CFR § 300.323(g) requires receiving districts to “...take reasonable steps to promptly obtain the child’s records,” and sending districts to “...take reasonable steps to promptly respond to the request from the new public agency.”

*Note: Districts receiving an out of state transfer student must obtain an **Alaskan** Consent for Placement in **nearly all** cases and conduct necessary assessments as “expeditiously as possible.” According to OSEP, (see Letter to Champagne 53 IDELR 198) “if the parent previously provided consent for the initial provision of services and child never exited special education, there is no need for the new public agency to obtain consent for the provision of special education services.” The letter goes on to state that if the new school district determined that a new evaluation is necessary for a transfer student then “the public agency must follow the consent requirements for initial evaluations and the initial provision of special education and related services.”*

*Note: Do not let records from the previous district/agency delay special education or related services. If services are known, implement services comparable to those described in the child’s IEP from the previous district/agency.*

### **Responsibility for IEPs**

Districts are responsible for the special education and related services of all eligible students (4 AAC 52.090; bold added for emphasis):

- “...who reside in the district, including [...] (4) children enrolled in
- (A) **public schools**, including **charter schools** and the district's **correspondence study program**;
  - (B) **private schools**; and
  - (C) educational programs in **correctional facilities** in the district...”

*Note: A school district would be obligated to provide IEP services for students in a **private school** only if the IEP Team placed the student there as a means of providing FAPE in the LRE.*

### **Correspondence Program**

Districts operating **statewide correspondence programs** (per 4 AAC 52.090(b)), “...shall administer a program offering special education and related services to children enrolled in the program, and shall coordinate its provision of those services with the district of residence as specified in 4 AAC 33.432.”

Concerning public school students enrolled in correspondence **and** brick-and-mortar programs (dual enrolled): Alaska regulation 4 AAC 33.432 is clear (bold added for emphasis):

- “If a special education student is enrolled in more than one district, the district with the responsibility under this section is
- (1) the district that receives the **larger share of the student's full-time equivalent** count for state funding purposes under 4 AAC 09.040(c) and 4 AAC 33.430;
  - (2) if the student's full-time equivalent count for each district in which the student is enrolled is **equal**, the student's **district of residence**; or
  - (3) if the student is enrolled in more than one statewide correspondence study program and the student's full-time equivalent count for each program is **equal**, the **first statewide program that enrolled the student**.
- (b) A district **may** enter into individualized cooperative agreements with another school district to meet the requirements of this section.”

When districts place students outside the district of residence, "...it is the resident district's responsibility to assure that an IEP for that child is developed and implemented (4 AAC 52.140[e]).” Alaska regulations 4 AAC 52.150(c) requires parental consent for that placement. Placement issues are discussed at length in Chapter 5: Placement.

### **Individual Family Service Plans (IFSPs)**

Individual Family Service Plans (IFSPs) are plans for children ages 3-5 with disabilities. Districts **must** consider an existing IFSP when developing an initial IEP for a child who has been served by ILP (34 CFR 300.323(b), adopted by 4 AAC 52.140[f]); bold added for emphasis:

“...the IEP Team must **consider** an IFSP that contains the IFSP content...described in section 636(d)”. The goal of an Individualized Family Service Plan under 20 USCS § 1436(a) is threefold:

- “...for each infant or toddler with a disability, and the infant's or toddler's family, to receive-
- (1) a multidisciplinary assessment of the unique strengths and needs of the infant or toddler and the identification of services appropriate to meet such needs;
  - (2) a family-directed assessment of the resources, priorities, and concerns of the family and the identification of the supports and services necessary to enhance the family's capacity to meet the developmental needs of the infant or toddler; and
  - (3) a written individualized family service plan developed by a multidisciplinary team, including the parents, as required by subsection (e), including a description of the appropriate transition services for the infant or toddler.”

The IEP team, including the parent, may offer an IFSP to a student “...three through five years of age (4 AAC 52.142[a]).” A parent may, at any time, decline an IFSP and opt for an IEP instead (34 CFR § 300.323[b]); districts using IFSPs must have IEPs in place for eligible students on or before the child's sixth birthday or their first day of Kindergarten.

Districts seeking to use IFSPs in place of IEPs must do two things (4 AAC 52.142[b]); bold added for emphasis:

- “(1) provide to the child's parents a detailed explanation of the **differences** between an IFSP and an IEP; and
- (2) obtain written, informed **consent** from a parent that chooses an IFSP.”

IFSPs must meet several requirements under Alaska and federal regulations (4 AAC 52.140; 34 CFR §§ 300.321-325 & §§ 300.327-328), such as requirements for IEP team composition, parent participation, timelines, and IEP development, review, and revision. Additionally, IFSPs must also address the unique intersections of infants and toddlers with disabilities, early intervention programs, and schools, specifically including (20 USCS § 1436); bold added for emphasis:

- “(1) a statement of the infant's or toddler's **present levels** of physical development, cognitive development, communication development, social or emotional development, and adaptive development, based on objective criteria;
- (2) a statement of the **family's resources, priorities, and concerns** relating to enhancing the development of the family's infant or toddler with a disability;
- (3) a statement of the **measurable results or outcomes expected** to be achieved for the infant or toddler and the family, including pre-literacy and language skills, as developmentally appropriate for the child, and the criteria, procedures, and timelines used to determine the

- degree to which progress toward achieving the results or outcomes is being made and whether modifications or revisions of the results or outcomes or services are necessary;
- (4) a statement of specific **early intervention services** based on peer-reviewed research, to the extent practicable, necessary to meet the unique needs of the infant or toddler and the family, including the frequency, intensity, and method of delivering services;
  - (5) a statement of the **natural environments** in which early intervention services will appropriately be provided, including a justification of the extent, if any, to which the services will not be provided in a natural environment;
  - (6) the projected **dates** for initiation of services and the anticipated length, duration, and frequency of the services;
  - (7) the identification of the **service coordinator** from the profession most immediately relevant to the infant's or toddler's or family's needs (or who is otherwise qualified to carry out all applicable responsibilities under this part) who will be responsible for the implementation of the plan and coordination with other agencies and persons, including transition services; and
  - (8) the steps to be taken to support the **transition** of the toddler with a disability to preschool or other appropriate services.”

### **Individualized Education Programs (IEPs)**

Content requirements for IEPs are described in federal regulation 34 CFR §§ 300.320 (adopted by 4 AAC 52.140(f)).

Sec. 300.320 Definition of individualized education program.

- “(a) General. As used in this part, the term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with Sec. Sec. 300.320 through 300.324, and that must include-
- (1) A statement of the child's present levels of academic achievement and functional performance, including-
    - (i) How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); or
    - (ii) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;
  - (2)(i) A statement of measurable annual goals, including academic and functional goals designed to-
    - (A) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and
    - (B) Meet each of the child's other educational needs that result from the child's disability;
  - (ii) For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;
  - (3) A description of-
    - (i) How the child's progress toward meeting the annual goals described in paragraph (2) of this section will be measured; and

*Guidance for Special Education Personnel*

- (ii) When periodic reports on the progress the child 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) will be provided;
- (4) 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 child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child—
  - (i) To advance appropriately toward attaining the annual goals;
  - (ii) To be involved in and make progress in the general education curriculum in accordance with paragraph (a)(1) of this section, and to participate in extracurricular and other nonacademic activities; and
  - (iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section;
- (5) An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in paragraph (a)(4) of this section;
- (6)(i) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and district wide assessments consistent with section 612(a)(16) of the Act; and
  - (ii) If the IEP Team determines that the child must take an alternate assessment instead of a particular regular State or district wide assessment of student achievement, a statement of why--
    - (A) The child cannot participate in the regular assessment; and
    - (B) The particular alternate assessment selected is appropriate for the child; and
- (7) The projected date for the beginning of the services and modifications described in paragraph (a)(4) of this section, and the anticipated frequency, location, and duration of those services and modifications.
- (b) Transition services. Beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, and updated annually, thereafter, the IEP must include--
  - (1) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and
  - (2) The transition services (including courses of study) needed to assist the child in reaching those goals.
- (c) Transfer of rights at age of majority. Beginning not later than one year before the child reaches the age of majority under State law, the IEP must include a statement that the child has been informed of the child's rights under Part B of the Act, if any, that will transfer to the child on reaching the age of majority under Sec. 300.520.
- (d) Construction. Nothing in this section shall be construed to require--
  - (1) That additional information be included in a child's IEP beyond what is explicitly required in section 614 of the Act; or
  - (2) The IEP Team to include information under one component of a child's IEP that is already contained under another component of the child's IEP.”



The basic required components of IEPs include:

1. A statement of the child's **present levels of academic achievement and functional performance**, including how the child's disability affects his/her involvement and progress in the general education curriculum, or for preschool children, how the disability affects the child's participation in appropriate activities;
2. A statement of **measurable annual goals**; Alaska regulation 4 AAC 52.140(g) requires districts to write "...a statement of benchmarks or **short-term objectives** designed to facilitate progress toward meeting the annual goals.";
3. A description of how the child's progress toward meeting the annual goals will be **measured**, and how **progress will be reported**;
4. A statement of the **special education and related services**;  
*Note: Avoid identifying specific individuals or vendor programs in the IEP*
5. An explanation of the extent, if any, to which the child **will not participate with nondisabled peers** in the regular class and in extracurricular and other nonacademic activities;
6. **Accommodations** on state & district-wide assessments, or justification & details regarding the alternate assessment;
7. Consideration of eligibility for **Extended School Year** services;
8. Indication of **Special Considerations**;
9. **Projected date(s)** for the beginning of the services, and the anticipated **frequency, location, and duration** of services and modifications, and (for some students),
10. **Transition services**. See Chapter 4: Secondary Transition

There are *sample forms* at the end of this chapter, which meet regulatory requirements:

*Meeting Invitation, Written Notice, Individualized Education Program (IEP) and Transfer of Rights*

### **Definition of Special Education**

The definition of special education can be found at 34 CFR 300.39, which reads (bold added for emphasis):

"(a) General.

(1) Special education means **specially designed instruction, at no cost** to the parents, to meet the unique needs of a child with a disability, including--

(i) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and

(ii) Instruction in physical education.

(2) Special education includes each of the following, if the services otherwise meet the requirements of paragraph (a)(1) of this section--

(i) **Speech-language** pathology services, or any other related service, if the service is considered special education rather than a related service under State standards;

(ii) **Travel training**; and

(iii) **Vocational education**.

(b) Individual special education terms defined. The terms in this definition are defined as follows:

(1) **At no cost** means that all specially-designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program.

(2) **Physical education** means--

(i) The development of—

(A) Physical and motor fitness;

(B) Fundamental motor skills and patterns; and

(C) Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports); and

(ii) Includes special physical education, adapted physical education, movement education, and motor development.

(3) **Specially designed instruction** means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction--

(i) To address the unique needs of the child that result from the child's disability; and

(ii) To ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children.

(4) **Travel training** means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to--

(i) Develop an awareness of the environment in which they live; and

(ii) Learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).

(5) **Vocational education** means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career not requiring a baccalaureate or advanced degree.”

### **Definition of Related Services**

The federal definition of related services is identified in 34 CFR 300.34. It reads (bold added for emphasis):

“(a) **General. Related services** means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training.

(b) **Exception**; services that apply to children with surgically implanted devices, including cochlear implants.

(1) Related services do not include a medical device that is surgically implanted, the optimization of that device's functioning (e.g., mapping), maintenance of that device, or the replacement of that device.

(2) Nothing in paragraph (b)(1) of this section—

(i) Limits the right of a child with a surgically implanted device (e.g., cochlear implant) to receive related services (as listed in paragraph (a) of this section) that are determined by the IEP Team to be necessary for the child to receive FAPE.

(ii) Limits the responsibility of a public agency to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school; or

(iii) Prevents the routine checking of an external component of a surgically-implanted device to make sure it is functioning properly, as required in Sec. 300.113(b).

(c) Individual **related services terms** defined. The terms used in this definition are defined as follows:

(1) **Audiology** includes--

(i) Identification of children with hearing loss;

(ii) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;

(iii) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation;

(iv) Creation and administration of programs for prevention of hearing loss;

(v) Counseling and guidance of children, parents, and teachers regarding hearing loss; and

(vi) Determination of children's needs for group and individual effectiveness of amplification.

(2) **Counseling services** means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

(3) **Early identification and assessment of disabilities in children** means the implementation of a formal plan for identifying a disability as early as possible in a child's life.

(4) **Interpreting services** includes--

(i) The following, when used with respect to children who are deaf or hard of hearing: Oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, and transcription services, such as communication access real-time translation (CART), C-Print, and TypeWell; and

(ii) Special interpreting services for children who are deaf-blind.

(5) **Medical services** means services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services.

(6) **Occupational therapy**—

(i) Means services provided by a qualified occupational therapist; and

(ii) Includes--

(A) Improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation;

(B) Improving ability to perform tasks for independent functioning if functions are impaired or lost; and

(C) Preventing, through early intervention, initial or further impairment or loss of function.

- (7) **Orientation and mobility** services—
- (i) Means services provided to blind or visually impaired children by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community; and
  - (ii) Includes teaching children the following, as appropriate:
    - (A) Spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street);
    - (B) To use the long cane or a service animal to supplement visual travel skills or as a tool for safely negotiating the environment for children with no available travel vision;
    - (C) To understand and use remaining vision and distance low vision aids; and
    - (D) Other concepts, techniques, and tools.
- (8)
- (i) **Parent counseling and training** means assisting parents in understanding the special needs of their child;
  - (ii) Providing parents with information about child development; and
  - (iii) Helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP.
- (9) **Physical therapy** means services provided by a qualified physical therapist.
- (10) **Psychological services** includes--
- (i) Administering psychological and educational tests, and other assessment procedures;
  - (ii) Interpreting assessment results;
  - (iii) Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;
  - (iv) Consulting with other staff members in planning school programs to meet the special educational needs of children as indicated by psychological tests, interviews, direct observation, and behavioral evaluations;
  - (v) Planning and managing a program of psychological services, including psychological counseling for children and parents; and
  - (vi) Assisting in developing positive behavioral intervention strategies.
- (11) **Recreation** includes--
- (i) Assessment of leisure function;
  - (ii) Therapeutic recreation services;
  - (iii) Recreation programs in schools and community agencies; and
  - (iv) Leisure education.
- (12) **Rehabilitation counseling services** means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to a student with a disability by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended, 29 U.S.C. 701 et seq.

(13) **School health services** and school nurse services means health services that are designed to enable a child with a disability to receive FAPE as described in the child's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person.

(14) **Social work services in schools** includes--

- (i) Preparing a social or developmental history on a child with a disability;
- (ii) Group and individual counseling with the child and family;
- (iii) Working in partnership with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school;
- (iv) Mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program; and
- (v) Assisting in developing positive behavioral intervention strategies.

(15) **Speech-language pathology services** includes--

- (i) Identification of children with speech or language impairments;
- (ii) Diagnosis and appraisal of specific speech or language impairments;
- (iii) Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;
- (iv) Provision of speech and language services for the habilitation or prevention of communicative impairments; and
- (v) Counseling and guidance of parents, children, and teachers regarding speech and language impairments.

(16) **Transportation** includes--

- (i) Travel to and from school and between schools;
- (ii) Travel in and around school buildings; and
- (iii) Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.(Authority: 20 U.S.C. 1401(26) )”

## **IEP Team Configurations**

Requirements for IEP teams are described at some length in 34 CFR §§ 300.321, adopted by 4 AAC 52.140(f). Importantly, requirements for IEP team membership vary *by task*:

### **1. Initial identification; evaluation & reevaluation teams**

Teams must “provide that the eligibility decision be made by a group consisting of qualified professionals and a parent of the child...” (4 AAC 52.125(2)); “*qualified professionals*” include professionals *specified under the eligibility requirements* of 4 AAC 52.130. Mandatory members must be in attendance. Specific members may be required for some ESER categories.

### **2. IEP meeting team**

If the student is found eligible, the district must assemble an IEP team, whose membership is specifically defined (34 CFR § 300.321, adopted by 4 AAC 52.140[f]); bold added for emphasis:

- “(a) General. The public agency must ensure that the IEP Team for each child with a disability includes--

- (1) The **parents** of the child;
- (2) Not less than one **regular education teacher** of the child (if the child is, or may be, participating in the regular education environment);
- (3) Not less than one **special education teacher** of the child, or where appropriate, not less than one special education provider of the child;
- (4) 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 children with disabilities;
  - (ii) Is knowledgeable about the general education curriculum; and
  - (iii) Is knowledgeable about the availability of resources of the public agency.
- (5) An individual who can **interpret the instructional implications of evaluation results**, who may be a member of the team described in paragraphs (a)(2) through (a)(6) of this section;
- (6) At the discretion of the parent or the agency, **other individuals** who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and
- (7) Whenever appropriate, the **child** with a disability.”

*Note: Concerning (4)(iii) above, this individual must have the authority to commit the school district to carry out the agreed upon IEP. Also, IDEA regulations 34 CFR 300.321(d) allow a school district to designate another member of the IEP Team to also serve as the district representative if they meet the criteria.*

#### **Regular Education Teachers at IEP meetings**

Regular education teachers are required members of the IEP Team. Regulations **require** participation specifically for these purposes (34 CFR §§ 300.324[a](3)) (bold added for emphasis):

“...the determination of-

- (i) Appropriate positive **behavioral interventions and supports** and other strategies for the child; and
- (ii) Supplementary **aids and services, program modifications, and support for school personnel** consistent with § 300.320(a)(4).”

#### **Excusal from Meetings**

IEP team members *irrelevant* to the decisions at hand may be **excused** from meetings under 34 CFR § 300.321(e)(1): (bold added for emphasis): “...if the parent of a child with a disability and the public agency 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.” Additionally, under 34 CFR § 300.321(e)(2), required and *relevant* team members “...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, in writing to the parent** and the IEP Team, input into the development of the IEP **prior** to the meeting.”

### **3. IEP Teams Considering Private School Placements**

For IEP teams making decisions about **student placement in private schools**, 34 CFR § 300.325(a) specifies: “(2) The agency must ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the agency must use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.”

### **4. IEP Teams Considering Early Childhood Transition**

For teams **developing initial IEPs** for students transitioning from **ILP**, 34 CFR § 300.321(f) requires that: “...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 of the Part C system to assist with the smooth transition of services.”

### **5. IEP Teams Considering Secondary Transition Planning**

IEP teams discussing **secondary transition services** have additional requirements under 34 CFR § 300.321(b) (bold added for emphasis):

“...the public agency **must invite a child with a disability to attend** the child's IEP Team meeting if a purpose of the meeting will be the consideration of the postsecondary goals for the child and the transition services needed to assist the child in reaching those goals under Sec. 300.320(b).

(2) If the child does not attend the IEP Team meeting, the public agency must take other steps to ensure that the child's preferences and interests are considered.

(3) To the extent appropriate, with the consent of the parents or a child who has reached the age of majority, in implementing the requirements of paragraph (b)(1) of this section, the public agency **must invite a representative of any participating agency** that is likely to be responsible for providing or paying for transition services.”

### **Parent Participation**

Requirements for parent participation are described in federal regulation 34 CFR 300.322, adopted by 4 AAC 52.140(f). Parents of students with disabilities in Alaska have robust rights. The most basic of these rights are IEP team membership and meeting participation (bold added for emphasis):

34 CFR 300.322 Parent participation.

“(a) Public agency responsibility-general. Each public agency must take steps to ensure that one or both of the **parents of a child with a disability 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**.

(b) Information provided to parents.

(1) The notice required under paragraph (a)(1) of this section must--

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

(ii) Inform the parents of the provisions in Sec. 300.321(a)(6) and (c) (relating to the participation of other individuals on the IEP Team who have knowledge or special expertise about the child), and Sec. 300.321(f) (relating to the participation of the

- Part C service coordinator or other representatives of the Part C system at the initial IEP Team meeting for a child previously served under Part C of the Act).
- (2) For a child with a disability beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, the notice also must--
- (i) Indicate--
    - (A) That a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child, in accordance with Sec. 300.320(b); and
    - (B) That the agency will invite the student; and
  - (ii) Identify any other agency that will be invited to send a representative.
- (c) Other methods **to ensure parent participation**. If neither parent can attend an IEP Team meeting, the public agency must **use other methods** to ensure parent participation, including individual or conference **telephone** calls, consistent with Sec. 300.328 (related to alternative means of meeting participation).
- (d) Conducting an IEP Team meeting without a parent in attendance. A meeting **may be conducted without a parent** in attendance if the public agency 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--
- (1) Detailed records of telephone calls made or attempted and the results of those calls;
  - (2) Copies of correspondence sent to the parents and any responses received; and
  - (3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.
- (e) Use of interpreters or other action, as appropriate. The public agency 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.
- (f) Parent copy of child's IEP. The public **agency must give the parent a copy** of the child's IEP at no cost to the parent.”

### **Written Consent**

Prior to initial placement of students into special education programs, districts must obtain **written consent** for the provision of special education and related services (34 CFR 300.300, adopted by 4 AAC 52.200). Written consent for the provision of special education is important, because it allows for unilateral parent rejection of special education services (see *Initial Consent for Services form* at the end of this chapter). When parents do not give written consent for services, districts must *offer* an IEP but *cannot* implement, *cannot* pursue mediation or due process. District are also are relieved of their obligation to provide special education and related services to that student in accordance with 34 CFR 300.300[b]:

- “(3) If the parent of a child fails to respond to a request for, or **refuses to consent to, the initial** provision of special education and related services, the public agency--
- (i) **May not use** the procedures in subpart E of this part (including the mediation procedures under § 300.506 or the **due process** procedures under §§ 300.507 through 300.516) in order to obtain agreement or a ruling that the services may be provided to the child;



- (ii) **Will not be considered to be in violation of the requirement to make FAPE available** to the child because of the failure to provide the child with the special education and related services for which the parent refuses to or fails to provide consent; and
  - (iii) Is **not required** to convene an IEP Team meeting or **develop an IEP** under §§ 300.320 and 300.324 for the child.
- (4) If, at any time subsequent to the initial provision of special education and related services, the **parent of a child revokes consent in writing** for the continued provision of special education and related services, the public agency--
- (i) **May not continue to provide** special education and related services to the child, **but must provide prior written notice** in accordance with § 300.503 before ceasing the provision of special education and related services;
  - (ii) **May not use** the procedures in subpart E of this part (including the mediation procedures under § 300.506 or the **due process** procedures under §§ 300.507 through 300.516) in order to obtain agreement or a ruling that the services may be provided to the child;
  - (iii) **Will not be considered to be in violation of the requirement to make FAPE available** to the child because of the failure to provide the child with further special education and related services; and
  - (iv) Is **not required** to convene an IEP Team meeting or **develop an IEP** under §§ 300.320 and 300.324 for the child for further provision of special education and related services.”

*Note: The parent’s right to revoke consent is for special services in its **entirety**, not service by service. The school is required to respond to the parent’s written revocation by providing the parent with written notice that, among other things, specifies the date when services will end. Also, the student will be deemed a regular education student for disciplinary purposes.*

### **Age of Majority and Consent**

Requirements for parent participation under federal and Alaska law (34 CFR 300.322, adopted by 4 AAC 52.140[f]) **do not hold for students at or above the age of majority**, which is 18 in Alaska (see AS 25.20.010 & 34 CFR § 300.520). The only exception is if a court of competent jurisdiction otherwise determines. 4 AAC 52.620 reads:

“Any rights afforded a parent under this chapter accrue to a student who is eligible for services under this chapter, including a student who is incarcerated in a correctional institution, upon reaching 18 years of age, unless otherwise provided by a court of competent jurisdiction. The student's district shall notify the child and the student's parents of the transfer of these rights, as provided in the IEP in accordance with 34 CFR 300.320(c), adopted by reference in 4 AAC 52.140(f). The district, in conformance with 34 CFR 300.520, as revised as of October 13, 2006, and adopted by reference, shall provide any notice required by this chapter to both the student and the student's parents.

### **IEP Development**

Requirements for IEP development are described at some length in 34 CFR §§ 300.324, adopted by 4 AAC 52.140[f]. The basic concept is that an IEP must be developed that provides FAPE in the LRE.

To do so, teams must consider four basic areas for each student (34 CFR §§ 300.324[a]) (bold added for emphasis):

- “(i) The **strengths** of the child;
- (ii) The **concerns of the parents** for enhancing the education of their child;
- (iii) The results of the initial or most recent **evaluation** of the child; and
- (iv) The academic, developmental, and functional **needs** of the child.”

### **Special Factors**

Several student issues create additional requirements for IEP teams developing IEPs (34 CFR §§ 300.324[b]), bold added for emphasis:

- “(i) In the case of a child whose **behavior** impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior;
- (ii) In the case of a child with **limited English proficiency**, consider the language needs of the child as those needs relate to the child's IEP;
- (iii) In the case of a child 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 child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child'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 child;
- (iv) Consider the communication needs of the child, and in the case of a child who is **deaf or hard of hearing**, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and
- (v) Consider whether the child needs **assistive technology** devices and services.”

### **Assistive Technology**

Alaska requires that **assistive technology** be “...made available to a child with a disability who needs devices or services for supplementary aids and services in regular classes or in the child's home or other setting in order to receive a FAPE (4 AAC 52.148).” Assistive Technology (AT) includes low-tech items, as well as those more advanced. Some examples, but by no means an exhaustive list, of AT devices are as follow: alternate keyboards, anti-slide mat, highlighted bar magnifier, correction tape, reading text guides, graphic organizer, grid paper, handheld audio reader, highlighter tape, interactive white boards, jumbo rulers, magnetic sheets, on screen keyboards, pencil grips, raised line paper, rubber stamps, screen magnification, screen reader software, speech recognition software, switches (access, voice output, etc.), tactile rulers, templates, timer, touch screens, Velcro, whiteboard/ chalkboard, word prediction software, and word rings. This list is intended to give a small idea of AT variations.

### **IEP Amendments**

It is not always necessary to convene an entire IEP team to amend an IEP between the annual IEP review dates. If the IEP team has already conducted the annual IEP team meeting **and parents and an authorized staff person from the district agree**, an IEP amendment is possible under 34 CFR § 300.324(a)(6): “Changes to the IEP may be made... 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.” If the parent or district **do not agree** to suggested amendments, an IEP team meeting must be convened (34 CFR § 300.324(a)(4)).

*Note: If changes are made to the child’s IEP as a result of an agreement with the parent outside the IEP Team meeting process, the child’s IEP Team must be informed of those changes, including written notice to parents. (34 CFR 300.324(a)(4)(ii)).*

### **Annual Review of IEPs**

The purpose of the annual review requirement is “...to determine whether the annual goals for the child are being achieved;” (34 CFR § 300.324(b)). Annual review meetings should start with the **goals** as written, and look at evidence of success or failure. Then, IEP teams conducting annual reviews should **revise** the IEP “...as appropriate, to address –

- “(A) Any lack of expected progress toward the annual goals described in § 300.320(a)(2), and in the general education curriculum, if appropriate;
- (B) The results of any reevaluation conducted under § 300.303;
- (C) Information about the child provided to, or by, the parents, as described under § 300.305(a)(2);
- (D) The child's anticipated needs; or
- (E) Other matters.”

*NOTE: **Draft IEPs**, while a district cannot present a completed IEP to the parents at the beginning of a meeting, the preparation of a draft IEP is acceptable **provided** the intent is to use the IEP document as a basis for discussion. It is highly encouraged to provide the parent with a copy of the draft IEP prior to the IEP meeting to allow them the opportunity to review the draft.*

### **Reevaluations (including 3-Year Reevaluations)**

Federal regulation 34 CFR § 300.303 requires districts to reevaluate all students with disabilities under a variety of scenarios (bold added for emphasis):

- “(1) If the public agency determines that the **educational or related services needs**, including improved academic achievement and functional performance, of the child warrant a reevaluation; or
  - (2) If the child's **parent or teacher requests** a reevaluation.
- (b) Limitation. A reevaluation conducted under paragraph (a) of this section--
- (1) May occur **not more than once a year**, unless the parent and the public agency agree otherwise; and
  - (2) Must occur **at least once every 3 years**, unless the parent and the public agency agree that a reevaluation is unnecessary.”

*Note: The 90 day timeline (4 AAC 52.115) **does** apply to re-evaluations.*

### **Assessments**

IEP teams must ensure that students with disabilities are provided appropriate accommodations for all assessments. The goal of **accommodations** is to construct assessment conditions that support valid inferences about student knowledge and skills. To assist IEP teams making assessment decisions, DEED provides a variety of information regarding assessments which may be found online at: <https://education.alaska.gov/tls/Assessments/>

### **Accommodations**

The IEP form allows for listing assessment accommodations required for the student in Section 6 of the IEP (see IEP form at the end of this chapter). *It is noteworthy to point out that the following list is not to be used as a selection of what accommodations might best assist the student in completing the state annual assessment.* Select the accommodations that the student would expect and be capable of using as though this were any other assessment. Students must be familiar with and accustomed to provided accommodations. A student should not be provided a unfamiliar accommodations immediately before an assessment. A list of some accommodations available for the IEP follows:

**PRESENTATION RELATED:** Audio CD (Limitations Apply), Auditory Amplification Device, Braille Edition, Clarification Of Directions, Clarification Of Embedded Test Directions, Detailed Monitoring Of Answer Marking, Large Print, Math Manipulatives, Place Markers, Read/Re-Read Directions, Human Read Aloud (Limitations Apply), Securing Paper With Tape, American Sign Language (Signing Limitations Apply), Special Pen Or Non-#2 Pencil, Specific Test Proctor, Text To Speech (Limitations Apply), Use Of Checklist Of Tasks To Be Completed, Use Of Graphic Organizers, Writing Helpful Verbs on Board or Paper (from the directions)

**RESPONSE ORIENTED:** Additional Room For Written Responses, Allow Marking In Test Booklet, Alternative Responses i.e. Oral, Point, Word Processor, Graph Paper

**SETTING RELATED:** Adaptive Devices, Equipment And Special Furniture, Auditory Calming (Student Selects Music Track), Headphones (Not Music), Individual Administration, Preferential Seating, Small Group Administration, Special Lighting or Acoustics

**TIMING RELATED:** Additional Time, Frequent Breaks

**UNIVERSAL and/or COMPUTER BASED:** Braille, Assistive Technology, Calculator (Basic, Scientific, Graphing), Color Overlay, Color Contrast or Reverse Contrast, Line Guide, Highlighter, Magnification, Masking, Scratch Paper or Sticky Note, Strikethrough

Some accommodations may not be available on all assessments. Example: A given assessment may not have an Audio CD available, in which case, the next best possible solution typical in the student's regular assessment environment would be used.

### **Alternate Assessment (“1% Test”)**

Students with significant cognitive disabilities (4 AAC 06.775[b]) may considered for the **alternate assessment** (bold added for emphasis):

“(b) The commissioner shall select an alternate assessment for use in this state, to be known as the Alaska Alternate Assessment, for assessment of students with significant cognitive disabilities who are not able to complete either regular curricular offerings or substitute courses under 4 AAC 06.078 that would lead to a diploma. A student's eligibility for the Alaska Alternate Assessment shall be established in the student's IEP in accordance with the criteria in the *Participation Guidelines for Alaska Students in State Assessments*, adopted by reference in (a) of this section. Each district shall administer the Alaska Alternate Assessment to eligible

students whenever it administers the state assessments described in 4 AAC 06.710. Achievement levels for the English language arts and mathematics Alaska Alternate Assessment are advanced, at target, approaching target, or emerging. Students obtaining an achievement level of advanced or at target meet standards. Achievement levels for the science Alaska Alternate Assessment are advanced, proficient, below proficient, or far below proficient. Students obtaining an achievement level of advanced or proficient meet standards...”

District personnel must be trained to access and administer the Alternate Assessment. Students taking the Alternate Assessment must be instructed according to the alternate standards, known as the “Essential Elements” (see “*Essential Elements*” on the state Alternate Assessment website at <https://education.alaska.gov/sped/alternate>).

Students seeking a **regular diploma** should **not** be considered for the Alternate Assessment. Instruction in the Essential Elements *may not* lead to a diploma. **Parents must be informed** that their student's assessment will be based on alternate achievement standards (proficiency scores and performance level descriptors that differ from the general assessments). The assessment does not determine the student's diploma track. Additional information is located online at: <https://education.alaska.gov/sped/alternate>

*Note: A parent acknowledgement of this decision must be included in the student's file and **reviewed annually**.*

### **Extended School Year (ESY)**

Extended school year services are (4 AAC 52.144[b]): “...special education and related services that are provided to a child with a disability

- (1) beyond the normal school year;
- (2) in accordance with the child's IEP; and
- (3) at no cost to the parents of the child.”

Districts must provide extended school year (ESY) services to students “...as necessary to provide a FAPE if a child's IEP team determines... that the services are necessary for the provision of FAPE to the child. Extended school year services must be clearly set out in a child's IEP.” ESY services must be considered for all children including children who have been served in ILP programs, are determined eligible for special education and related services, and will reach the age of three during the summer. There is no federal or Alaska standard defining ESY eligibility. Historically districts have decided ESY eligibility by considering factors such as *regression* or *emerging skills* (loss of skills or knowledge without ESY provision) or inordinate *recoupment* time (time to obtain previous skills or knowledge). However, current views on ESY focus on the provision of FAPE. Districts should offer ESY services if IEP teams have determined that they are necessary to the provision of FAPE.

A decision regarding the necessity of ESY services must be documented on the IEP. An IEP team may not state on the IEP that it has not determined whether ESY services are necessary. If an IEP team revises its decision regarding the necessity of ESY services, it must hold an IEP meeting and/or amend the IEP with a written amendment. As with all IEP team decisions, ESY services must be individualized

and supervised as required. Additionally, there are some restrictions for ESY services (34 CFR § 300.106):

- “(3) In implementing the requirements of this section, a public agency may not--
- (i) Limit extended school year services to particular categories of disability; or
  - (ii) Unilaterally limit the type, amount, or duration of those services.”

### **Program Exit**

Program exit is a **change in placement** that requires **written notice** describing the change (34 CFR § 300.503; adopted by 4 AAC 52.190). There is an example *Exit form* provided at the end of this chapter.

There are five major reasons students exit from special education programs:

#### **1. The parent (or student, at age 18) withdraws consent for special education services;**

Withdrawn consent requires program exit, and *cannot* be contested via mediation, due process, or civil action (34 CFR §300.300(4)) (bold added for emphasis):

“(4) If, at any time subsequent to the initial provision of special education and related services, the parent of a child **revokes consent in writing** for the continued provision of special education and related services, the public agency-

- (i) May **not continue to provide** special education and related services to the child, but must provide prior **written notice** in accordance with § 300.503 before ceasing the provision of special education and related services.”

*Note: In the case of parents who have equal legal authority to make educational decisions and one parent provides consent for IEP services and the other parent submits a written revocation, the LEA must provide written notice to both parents that IEP services will be terminated. After services are ceased due to the revocation of consent, either parent has the right to request an initial evaluation to determine if the child is IEP eligible.*

#### **2. The IEP team determines that the student is no longer eligible for special education;**

Under 34 CFR § 300.305(e), districts: “...must evaluate a child with a disability in accordance with §§ 300.304 through 300.311 before determining that the child is no longer a child with a disability.”

#### **3. The student graduates with an Alaska high school diploma;**

Under 34 CFR § 300.305(e), students graduating with a diploma are exempt from reevaluation requirements.

*Note: A GED is not the same as a high school diploma.*

#### **4. The student ages out;**

Students in Alaska are eligible for special education programs “... if less than 22 on July 1 of the school year (4 AAC 52.090).” Note: Under 34 CFR § 300.305(e), students who age out during the school year are exempt from reevaluation requirements.

*Note: A Summary of Student Academic Achievement and Functional Performance is **required** for students exiting special education due to **aging out** or **graduating** with a regular diploma. 34 CFR 300.305(e)(3)*

#### **5. The student transfers to another school.**

Under 4 AAC 52.530(c) (bold added for emphasis):

“(c) If a child with a disability transfers to another school, each district shall transmit with other student records, including the child's current IEP, all statements of current and previous disciplinary action regarding the child, to the same extent that disciplinary information would be included in and transmitted with the records of a child without a disability.”

## *Guidance for Special Education Personnel*

Under 4 AAC 52.530, districts do **not** need written parental **consent** prior to releasing special education records to other schools. Instead, they may transmit records to the following (bold added for emphasis):

- “(1) a school official, including a teacher or a contract service provider, who has a legitimate educational interest;
- (2) an official of a school or school system to which the student transfers enrollment or intends to enroll, upon condition that **a parent be notified of the disclosure**, offered a copy of the record, and notified of the parent's right to request amendment of the record under 4 AAC 52.520 [...].”

*Note: **Exiting students during disciplinary action** - Because program exit is considered a **change in placement**, districts cannot pursue program exit during disciplinary actions (34 CFR § 300.533) or during administrative or judicial due process proceedings (34 CFR § 300.518).*

*Note: **Compulsory Education** requires students age 7-16 to remain in school (AS 14.30.010). These students remain eligible for special education. **Do not exit these students**. Work with them actively and document your efforts to provide FAPE. Under compulsory attendance the student must remain in school, but it need not be a public school. If the parent enrolls them in a private school or provides home schooling (**without** state support), the school district is not obligated to provide IEP services.*

Students with active IEPs who withdraw from school, aged 17-21, are no longer covered by Alaska’s compulsory education law, but remain eligible for services under IDEA through age 21 (4 AAC 52.090). The district’s immediate obligation when students withdraw from school is to provide **written notice** that the student remains eligible for services through age 21 (assuming the student remains eligible for special education).

*Note: Districts should not confuse the use of the program exit form with meeting the requirements of a variety of exit scenarios.*

*Guidance for Special Education Personnel*

<b>Invitation to Attend a Meeting</b>	
<p><b>PURPOSE:</b> This invitation requests your attendance at a meeting to discuss this student’s educational program/needs. You have the opportunity to participate in any meeting regarding this student’s identification, evaluation, educational placement, and provision of a free appropriate public education.</p>	
<p>Student Name: _____ Date of Birth: _____ Date: _____</p>	
<p>Parent Name: _____</p>	

Method of Notification:	<input type="radio"/> Email	<input type="radio"/> Mail	<input type="radio"/> Telephonic	<input type="radio"/> Other:
This invitation is for the:	<input type="radio"/> Parent	<input type="radio"/> Student	<input type="radio"/> Both	<input type="radio"/> Other:

<b>PURPOSE OF THE MEETING</b>	
<input type="radio"/> IEP Development <input type="radio"/> Evaluation Planning <input type="radio"/> Eligibility Determination <input type="radio"/> Secondary Transition Planning <input type="radio"/> Consider Extended School Year (ESY)	<input type="radio"/> Functional Behavior Assessment <input type="radio"/> Develop/Review Behavior Intervention Plan <input type="radio"/> Manifestation Determination <input type="radio"/> IEP Amendment <input type="radio"/> Other:

The meeting is proposed for this date:	
At this time:	
At this location:	

If you are unable to attend this meeting or would like to propose a different meeting date/time, please contact:

District Personnel Name	Title	Phone Number

Meetings addressing IEPs and placement are scheduled at a mutually agreed upon place and time by you and the school district. If you are unable to attend this meeting you may request that the school consider other dates/times for the meeting or participation through other means. You may invite any individual to be present for the IEP meeting who has knowledge or special expertise about the educational needs of the student.

This is a list of the roles of those currently invited to attend the meeting:

***The district must obtain consent regarding Early Childhood/Secondary transition agency participation.***

<input type="radio"/>	This issue is not applicable to this student (no signature is required for this option).
<input type="radio"/>	<b>I give</b> my consent for agency participation.
<input type="radio"/>	<b>I do not give</b> consent for agency participation.

Parent Signature:	Date:
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Parents (or student when appropriate) were provided a copy of the Procedural Safeguards.

*The district must be informed if documentation translation is required in accordance with 34 CFR 300.029, 34 CFR 300-322(e) and 34 CFR 300.503(c).*



*Guidance for Special Education Personnel*

<b>Consent for Special Education Services</b>		
Student Name:	Date of Birth:	Date:

I, as parent or guardian of the above named student, give my consent for the provision of special education services for my student. I have been fully informed of all evaluative information relevant to my student’s educational needs. I understand that the granting of consent is voluntary and may be revoked at any time even after services have been provided.

I understand that if I refuse services I may not hold the local education agency responsible for providing a Free and Appropriate Public Education (FAPE) for my student and that the local education agency shall not be required to convene IEP meetings about my student.

I CONSENT       I DO NOT CONSENT

\_\_\_\_\_  
Parent Signature (guardian or surrogate)

**The *Notice of Procedural Safeguards* was provided.**



**SAMPLE INDIVIDUAL EDUCATION PROGRAM – IEP**

**SECTION 1 - General Information**

School Site:	IEP Meeting Date:	Last ESER Meeting Date:
Student Last Name:	First Name:	Middle Name:
Student ID:	Date of Birth:	Age:
Gender:	Grade:	Primary Language:
Disability Category:	Type of IEP:	

**SECTION 2 – Participants** *(Signature denotes attendance)*

Print (or type) Name	Title	Signature
Print (or type) Name	Title	Signature
Print (or type) Name	Title	Signature
Print (or type) Name	Title	Signature
Print (or type) Name	Title	Signature
Print (or type) Name	Title	Signature
Print (or type) Name	Title	Signature

**SECTION 3 – Present Levels**

<b>Student Strengths</b>
<b>Parent Comments</b>



*Guidance for Special Education Personnel*

SECTION 4 – Consideration of Special Factors	
<p><b>BEHAVIOR</b></p> <p>Does the student’s <b>behavior</b> impede the student’s learning or the learning of others to the extent the student may require positive behavioral interventions and supports?</p> <p>IF YES (Optional):</p> <ul style="list-style-type: none"> <li>- Is behavior listed as an educational need in the student’s current Evaluation Summary and Eligibility Report (ESER)? <span style="float: right;"><input type="radio"/> YES <input type="radio"/> NO</span></li> <li>- Does this IEP include measurable annual goals and objectives to address behavior? <span style="float: right;"><input type="radio"/> YES <input type="radio"/> NO</span></li> <li>- Can the student’s behaviors be addressed via Positive Behavior Intervention Supports and/or other strategies listed in the accommodations section of the IEP? (No formal Functional Behavior Assessment or Separate Behavior Intervention Plan is required) <span style="float: right;"><input type="radio"/> YES <input type="radio"/> NO</span></li> <li>- Are student’s behaviors addressed in an FBA and BIP that are separate documents from this IEP? <span style="float: right;"><input type="radio"/> YES <input type="radio"/> NO</span> <ul style="list-style-type: none"> <li>• An FBA (Functional Behavior Assessment) has been conducted <span style="float: right;"><input type="radio"/> YES <input type="radio"/> NO</span> DATE OF FBA: _____</li> <li>• A BIP (Behavior Intervention Plan) has been completed (Separated from this IEP) <span style="float: right;"><input type="radio"/> YES <input type="radio"/> NO</span> DATE OF BIP: _____</li> <li>• An FBA will be conducted. <span style="float: right;"><input type="radio"/> YES <input type="radio"/> NO</span></li> <li>• A BIP will be conducted. <span style="float: right;"><input type="radio"/> YES <input type="radio"/> NO</span></li> </ul> </li> <li>- An FBA and BIP (separate from this IEP) were in effect, but are no longer required at this time. <span style="float: right;"><input type="radio"/> YES <input type="radio"/> NO</span></li> </ul>	<p><input type="radio"/> YES <input type="radio"/> NO</p>
<p><b>COMMUNICATION</b></p> <p>Does the student have communication needs? <i>(For Example: unintelligible, non-verbal, or Deaf or Hard of Hearing)</i></p> <ul style="list-style-type: none"> <li>- Instruction in American Sign Language? <span style="float: right;"><input type="radio"/> YES <input type="radio"/> NO</span></li> <li>- Does the student require an interpreter? <span style="float: right;"><input type="radio"/> YES <input type="radio"/> NO</span></li> <li>- Does the student’s LRE include other students with hearing loss or deafness? <span style="float: right;"><input type="radio"/> YES <input type="radio"/> NO</span></li> </ul> <p>SPECIFY the communication need(s):</p>  	<p><input type="radio"/> YES <input type="radio"/> NO</p>
<p><b>VISUAL IMPAIRMENT</b></p> <p>Does the student require instruction in Braille or the use of Braille?</p> <p>SPECIFY the vision need(s):</p>  	<p><input type="radio"/> YES <input type="radio"/> NO</p>
<p><b>ASSISTIVE TECHNOLOGY</b></p> <p>Does the student require <b>Assistive Technology (AT)</b> devices, tools, implements or AT related services (includes “low-tech” items)?</p> <p>SPECIFY the assistive technology need(s):</p>  	<p><input type="radio"/> YES <input type="radio"/> NO</p>
<b>OTHER FACTORS</b>	
<p><b>PRINT DISABILITY</b></p> <p>Does the student require print services under the NIMAS (National Instructional Materials Access Standards)?</p>	<p><input type="radio"/> YES <input type="radio"/> NO</p>
<p><b>LANGUAGE</b> <i>(Limited English Proficiency)</i></p> <p>Does the student have language needs due to Limited English Proficiency?</p>	<p><input type="radio"/> YES <input type="radio"/> NO</p>
<p><b>MEDICAL</b></p> <p>Does the student have specific medical needs that must be met by the school district?</p> <p>Describe or attach the student’s medical plan to the IEP:</p>  	<p><input type="radio"/> YES <input type="radio"/> NO</p>

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<b>SECTION 5 – Secondary Transition (Must be in place before the student’s 16 birthday)</b>			
<b>STUDENT RESPONSES – Student responses should be incorporated into the activities planning</b>			
When I leave High School I will be employed as a...  When I leave High School I will live...  When I leave High School I will continue learning/training by...			
<b>CHECKLIST</b>			
<input type="radio"/> The following agencies were present and in agreement with the plan: <input type="radio"/> The student completed a transition assessment prior to developing this plan. <input type="radio"/> These activities promote movement from school to post-secondary activities. <input type="radio"/> Parents have consented to the participation of any outside agencies.			
<b>COURSE OF STUDY - List the specific courses of study for <u>the period of time covered by this IEP.</u></b>			
<u>School Year</u>	<u>Courses</u>		
<i>CURRENT</i>			
<i>NEXT YEAR</i>			
<b>SPECIFIC ACTIVITIES - All areas of Transition Service must be considered – Some activities may be combined.</b>			
<b>Activity 1 – Person/Agency Responsible:</b>		Transition Service	Service Dates
Needs and Activities:		<input type="radio"/> Instruction <input type="radio"/> Related Service <input type="radio"/> Community <input type="radio"/> Employment <input type="radio"/> Adult Living <input type="radio"/> Daily Living Skills <input type="radio"/> Vocational Eval	Starting Date:  Ending Date:
Report 1 Date:	Report 2 Date:	Report 3 Date:	Report 4 Date:
Progress:	Progress:	Progress:	Progress:
<b>Activity 2 – Person/Agency Responsible:</b>		Transition Service	Service Dates
Needs and Activities:		<input type="radio"/> Instruction <input type="radio"/> Related Service <input type="radio"/> Community <input type="radio"/> Employment <input type="radio"/> Adult Living <input type="radio"/> Daily Living Skills <input type="radio"/> Vocational Eval	Starting Date:  Ending Date:
Report 1 Date:	Report 2 Date:	Report 3 Date:	Report 4 Date:
Progress:	Progress:	Progress:	Progress:
<b>Activity 3 – Person/Agency Responsible:</b>		Transition Service	Service Dates
Needs and Activities:		<input type="radio"/> Instruction <input type="radio"/> Related Service <input type="radio"/> Community <input type="radio"/> Employment <input type="radio"/> Adult Living <input type="radio"/> Daily Living Skills <input type="radio"/> Vocational Eval	Starting Date:  Ending Date:
Report 1 Date:	Report 2 Date:	Report 3 Date:	Report 4 Date:
Progress:	Progress:	Progress:	Progress:

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<b>Activity 4 – Person/Agency Responsible:</b>		Transition Service	Service Dates
Needs and Activities:		<input type="radio"/> Instruction <input type="radio"/> Related Service <input type="radio"/> Community <input type="radio"/> Employment <input type="radio"/> Adult Living <input type="radio"/> Daily Living Skills <input type="radio"/> Vocational Eval	Starting Date:  Ending Date:
Report 1 Date:	Report 2 Date:	Report 3 Date:	Report 4 Date:
Progress:	Progress:	Progress:	Progress:
<b>Activity 5 – Person/Agency Responsible:</b>		Transition Service	Service Dates
Needs and Activities:		<input type="radio"/> Instruction <input type="radio"/> Related Service <input type="radio"/> Community <input type="radio"/> Employment <input type="radio"/> Adult Living <input type="radio"/> Daily Living Skills <input type="radio"/> Vocational Eval	Starting Date:  Ending Date:
Report 1 Date:	Report 2 Date:	Report 3 Date:	Report 4 Date:
Progress:	Progress:	Progress:	Progress:
<b>Activity 6 – Person/Agency Responsible:</b>		Transition Service	Service Dates
Needs and Activities:		<input type="radio"/> Instruction <input type="radio"/> Related Service <input type="radio"/> Community <input type="radio"/> Employment <input type="radio"/> Adult Living <input type="radio"/> Daily Living Skills <input type="radio"/> Vocational Eval	Starting Date:  Ending Date:
Report 1 Date:	Report 2 Date:	Report 3 Date:	Report 4 Date:
Progress:	Progress:	Progress:	Progress:
<b>Activity 7 – Person/Agency Responsible:</b>		Transition Service	Service Dates
Needs and Activities:		<input type="radio"/> Instruction <input type="radio"/> Related Service <input type="radio"/> Community <input type="radio"/> Employment <input type="radio"/> Adult Living <input type="radio"/> Daily Living Skills <input type="radio"/> Vocational Eval	Starting Date:  Ending Date:
Report 1 Date:	Report 2 Date:	Report 3 Date:	Report 4 Date:
Progress:	Progress:	Progress:	Progress:
<b>Secondary Transition Comments:</b>			





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<b>SECTION 7 – Program Modifications and Accommodations</b>
All accommodations used for assessments are in place in the classroom. <span style="float: right;"><input type="radio"/> N/A   <input type="radio"/> YES   <input type="radio"/> NO</span>
<b>ADVANCE APPROPRIATELY TOWARDS ANNUAL GOALS – Consider Special Factors</b>
Student Supports Needed <i>(Example: AT Devices, Specialists, Para-Support..)</i>
School Personnel Supports Needed <i>(Example: Training, Access to IEP, Scheduling Information, Behavior Plan Access-if applicable..)</i>
<b>GENERAL EDUCATION CURRICULUM</b>
Student Supports Needed <i>(Example: Reduced Workload, Learning Supports, Preferential Seating..)</i>
School Personnel Supports Needed <i>(Example: Collaboration Time, Strategy Training, Supervision of Regular Education Programs..)</i>
<b>EXTRA CURRICULAR ACTIVITIES AND OTHER NON-ACADEMIC ACTIVITIES</b>
Student Supports Needed <i>(Example: Para-Support-if appropriate, Parent Training, Access to IEP Information, Transportation support..)</i>
School Personnel Supports Needed <i>(Example: Knowledge of Student Needs or all staff working with the student, Training, Supports..)</i>

<b>SECTION 8 – Extended School Year (ESY)</b>
Extended School Year (ESY) services must be considered for each student with a disability. Select one option-
<input type="radio"/> A review of the student's educational needs indicate that ESY services <b>are not</b> required. <i>-may be reconsidered at <b>any time</b></i>
<input type="radio"/> A review of the student's educational needs indicate that ESY services <b>are</b> required. Identify ESY services (include dates, frequency, duration, supervision):

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SECTION 9 – Measurable Annual Goal(s)			
Baseline	Annual Goal	Person Responsible <i>(for the progress reporting):</i>	Goal #:
<input type="radio"/> The goal enables student to be involved in and progress in the general curriculum. <input type="radio"/> The goal addresses an identified educational need from the student’s ESER. <input type="radio"/> Progress reporting for this goal will be conducted: <input type="radio"/> Quarterly <input type="radio"/> Trimester <input type="radio"/> Other: <input type="radio"/> Secondary Transition: The goal addresses: <input type="radio"/> Education/Training <input type="radio"/> Employment <input type="radio"/> Independent Living			
Objective 1		Evaluation Method	Schedule
Short-Term Objective:		<input type="radio"/> Testing <input type="radio"/> Data Collection <input type="radio"/> Work Sample <input type="radio"/> Grade <input type="radio"/> Observation <input type="radio"/>	<input type="radio"/> Daily <input type="radio"/> Wkly <input type="radio"/> Mthly <input type="radio"/> Qtrly <input type="radio"/> Sem <input type="radio"/>
Report 1 Date:	Report 2 Date:	Report 3 Date:	Report 4 Date:
Progress:	Progress:	Progress:	Progress:
Objective 2		Evaluation Method	Schedule
Short-Term Objective:		<input type="radio"/> Testing <input type="radio"/> Data Collection <input type="radio"/> Work Sample <input type="radio"/> Grade <input type="radio"/> Observation <input type="radio"/>	<input type="radio"/> Daily <input type="radio"/> Wkly <input type="radio"/> Mthly <input type="radio"/> Qtrly <input type="radio"/> Sem <input type="radio"/>
Report 1 Date:	Report 2 Date:	Report 3 Date:	Report 4 Date:
Progress:	Progress:	Progress:	Progress:
Objective 3		Evaluation Method	Schedule
Short-Term Objective:		<input type="radio"/> Testing <input type="radio"/> Data Collection <input type="radio"/> Work Sample <input type="radio"/> Grade <input type="radio"/> Observation <input type="radio"/>	<input type="radio"/> Daily <input type="radio"/> Wkly <input type="radio"/> Mthly <input type="radio"/> Qtrly <input type="radio"/> Sem <input type="radio"/>
Report 1 Date:	Report 2 Date:	Report 3 Date:	Report 4 Date:
Progress:	Progress:	Progress:	Progress:
Objective 4		Evaluation Method	Schedule
Short-Term Objective:		<input type="radio"/> Testing <input type="radio"/> Data Collection <input type="radio"/> Work Sample <input type="radio"/> Grade <input type="radio"/> Observation <input type="radio"/>	<input type="radio"/> Daily <input type="radio"/> Wkly <input type="radio"/> Mthly <input type="radio"/> Qtrly <input type="radio"/> Sem <input type="radio"/>
Report 1 Date:	Report 2 Date	Report 3 Date	Report 4 Date
Progress:	Progress:	Progress:	Progress:
Goals and Objective Comments:			

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<b>SECTION 10 – Services: Special Education and Related Services</b>							
<b>Special Education</b>		<b>Location</b>	<b>Starts</b>	<b>Ends</b>	<b>Provider</b>		<b>Sessions</b>
<b>Goal#</b>	<b>Service Area</b>	<i>(Special or Regular)</i>	<i>mm/dd/yy</i>	<i>mm/dd/yy</i>	<i>The primary provider</i>	<b>Minutes</b>	<b>a Week</b>
<i>Supervised by:</i>				<i>Frequency of Supervision:</i>			
<i>Supervised by:</i>				<i>Frequency of Supervision:</i>			
<i>Supervised by:</i>				<i>Frequency of Supervision:</i>			
<i>Supervised by:</i>				<i>Frequency of Supervision:</i>			
<i>Supervised by:</i>				<i>Frequency of Supervision:</i>			
<i>Supervised by:</i>				<i>Frequency of Supervision:</i>			
<i>Supervised by:</i>				<i>Frequency of Supervision:</i>			
<i>Supervised by:</i>				<i>Frequency of Supervision:</i>			

<b>Related Services</b>		<b>Location</b>	<b>Starts</b>	<b>Ends</b>	<b>Provider</b>		<b>Sessions</b>
<b>Goal#</b>	<b>Service Area</b>	<i>(Special or Regular)</i>	<i>mm/dd/yy</i>	<i>mm/dd/yy</i>	<i>The primary provider</i>	<b>Minutes</b>	<b>a Week</b>
<i>Supervised by:</i>				<i>Frequency of Supervision:</i>			
<i>Supervised by:</i>				<i>Frequency of Supervision:</i>			
<i>Supervised by:</i>				<i>Frequency of Supervision:</i>			
<i>Supervised by:</i>				<i>Frequency of Supervision:</i>			
<i>Supervised by:</i>				<i>Frequency of Supervision:</i>			
<i>Supervised by:</i>				<i>Frequency of Supervision:</i>			

**SPECIAL TRANSPORTATION**  
 Does the student now or has the student ever required **special** (aide support, lift, etc.) transportation?  YES  NO

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**SECTION 11 – Justification and Placement in the Least Restrictive Environment**

Select the age range for this student:	<input type="radio"/> 3 to 5 year old	<input type="radio"/> 6 to 21 year old
Total hours in the school week for this student:		Total in Minutes:
Time <b>outside</b> of the regular education environment:		Special Ed Percentage:
Time <b>inside</b> the regular education environment*:		Regular Ed Percentage:

*\* even if special education services are being provided*

**6 to 21 year old** – (##) represents the OASIS reporting code

**3 to 5 year old** – (##) represents the OASIS reporting code

**PLACEMENT CONSIDERATIONS**

1. Is this placement based on the student’s educational needs documented in this IEP?	<input type="radio"/> YES <input type="radio"/> NO
2. Is the student able to be satisfactorily educated in the general education environment for the entire school day?	<input type="radio"/> YES <input type="radio"/> NO
3. If removal from the regular environment is necessary, is it based on the nature and severity of the student’s disability and not the need for modifications in the general curriculum?	<input type="radio"/> N/A <input type="radio"/> YES <input type="radio"/> NO
4. Is the educational placement as close as possible to the student’s home?	<input type="radio"/> YES <input type="radio"/> NO
5. Is the educational placement in the school the student would attend if the student did not have a disability?	<input type="radio"/> YES <input type="radio"/> NO
6. The IEP team considered potential harmful effects of the educational placement and none were identified.	<input type="radio"/> YES <input type="radio"/> NO
7. Does the student have the opportunity to participate in extracurricular and nonacademic events with nondisabled students?	<input type="radio"/> YES <input type="radio"/> NO

Justification for removing of the student from the regular education environment (address any “no” response):

**SECTION 12 – Final Considerations and Notes**

The parents were provided a copy of the IEP

The student was invited when secondary transition was addressed in the IEP

The parents were provided a Notice of Procedural Safeguards (Parent Rights)

Transfer of Rights notice must be sent at least one year **prior** to the student turning 18

The parent/student (when age of authority) were provided the opportunity to participate

NOTES:

*Guidance for Special Education Personnel*

IEP – WRITTEN NOTICE REQUIREMENTS AND PROCEDURAL SAFEGUARDS				
<p><b>WRITTEN NOTICE</b> - This form describes the information required in each of the components of written notice for an IEP meeting. The written notice includes the IEP as a description of the proposed action and a description of the procedures and factors used in determining the proposed action.</p>				
<p><b>Describe the proposed action and explain why the district has taken such action:</b></p>  				
<p>The attached IEP describes the proposed program and placement and was developed:</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; vertical-align: top;"> <input type="radio"/> as a result of an initial evaluation and eligibility determination.  <input type="radio"/> in response to a parental request.  <input type="radio"/> to review the behavioral intervention plan.  <input type="radio"/> other:                 </td> <td style="width: 50%; vertical-align: top;"> <input type="radio"/> as a result of an annual review.  <input type="radio"/> as a result of a reevaluation.  <input type="radio"/> to propose a change in placement.                 </td> </tr> </table>			<input type="radio"/> as a result of an initial evaluation and eligibility determination. <input type="radio"/> in response to a parental request. <input type="radio"/> to review the behavioral intervention plan. <input type="radio"/> other:	<input type="radio"/> as a result of an annual review. <input type="radio"/> as a result of a reevaluation. <input type="radio"/> to propose a change in placement.
<input type="radio"/> as a result of an initial evaluation and eligibility determination. <input type="radio"/> in response to a parental request. <input type="radio"/> to review the behavioral intervention plan. <input type="radio"/> other:	<input type="radio"/> as a result of an annual review. <input type="radio"/> as a result of a reevaluation. <input type="radio"/> to propose a change in placement.			
<p><b>Describe the evaluation procedure, test, record or report used in deciding the proposed or refused action:</b></p>  				
<p><b>Describe any other options considered, if any, and the reasons for accepting or rejecting them:</b></p>  				
<p><b>If applicable, describe any other factors that are relevant to the proposal or refusal:</b></p>  				
<p><b>PROCEDURAL SAFEGUARDS</b> - As the parent of a student (or an adult student) who is, or may be determined, eligible for special education services, you have rights regarding identification, evaluation, classification, development of an IEP, placement and the provision of a free and appropriate public education under the Alaska Administrative Code (4 AAC Chapter 52). A description of these rights, which are called procedural safeguards, is contained in the document, <i>Notice of Procedural Safeguards</i>. This document is published by the Alaska Department of Education. A copy may be obtained from the school district, the individual listed below, or can be found online at: <a href="https://education.alaska.gov/sped">https://education.alaska.gov/sped</a></p> <p><b>To obtain the <i>Notice of Procedural Safeguards</i>, your parental rights for special education, please contact:</b></p>  				
<p>_____</p> <p>School Representative's Name</p>		<p>_____</p> <p>Phone Number</p>		
<p><b>For help in understanding your rights, you may contact any of the following:</b></p>				
<p><b>STONE SOUP GROUP</b>                      307 E. Northern Lights Blvd, #100                      Anchorage, AK 99503                      (907) 561-3701 – In Anchorage                      (877) 786-7327 – Toll Free                      (907) 561-3702 – Fax  <a href="http://www.stonesoupgroup.org">www.stonesoupgroup.org</a></p>	<p><b>DISABILITY LAW CENTER</b>                      3330 Arctic Blvd., Ste. 103                      Anchorage, AK 99503                      (907) 565-1002 – In Anchorage                      (800) 478-1234 – Toll Free                      (907) 564-1000 – Fax  <a href="http://www.dlcak.org">www.dlcak.org</a></p>	<p><b>AK DEPARTMENT OF EDUCATION AND EARLY DEVELOPMENT</b>                      PO Box 110500                      Juneau. AK 99811-0500                      (907) 465-8693 – Phone                      (907) 465-2806 – Fax  <a href="https://education.alaska.gov/sped/">https://education.alaska.gov/sped/</a></p>		

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<b>Individualized Education Program (IEP) Amendment</b>	
Student's Name:	Date of Birth:
Date of this Amendment:	This plan amends the IEP developed on:
Start Date of Amendment:	IEP Expiration Date:
End Date of Amendment:	Eligibility Evaluation Date:

<b>Signatures of participants in attendance at IEP meeting or</b>		<input type="radio"/> <b>amended without a meeting (restrictions)</b>
<b>Parent:</b>	<b>Special Education Teacher:</b>	
<b>Parent:</b>	<b>Regular Education Teacher:</b>	
<b>Student:</b>	<b>District Representative:</b>	
<b>Other:</b>	<b>Other:</b>	

<b>AMENDMENT AND JUSTIFICATION</b>
<b>Amended IEP Area or Section:</b>
<b>Justification:</b>
<b>Notes:</b>

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IEP AMENDMENT - Written Notice		
Student Name:	Date of Birth:	Date:
The purpose of this letter is to notify you of the district’s proposal to make a change, or refusal to make a change in your student’s educational program. The details of the proposed action are indicated below.		
Description of the proposed or refused action:		
Reason for the proposed action:		
Description of evaluation procedure, test, record or report used in deciding to propose or refuse action:		
Description of other options considered, if any, and reason for accepting or rejecting them:		
Other factors relevant to the proposal or refusal:		
You have specific rights or procedural safeguards. A copy of those rights may be obtained from me or another school district representative. If you need an explanation of your rights or have any questions regarding this notice, please contact me.		
Name	Title	Phone Number
For further assistance in understanding your parental rights you may contact:		
<b>STONE SOUP GROUP</b> 307 E. Northern Lights Blvd, #100 Anchorage, AK 99503 (907) 561-3701 – In Anchorage (877) 786-7327 – Toll Free (907) 561-3702 – Fax <a href="http://www.stonesoupgroup.org">www.stonesoupgroup.org</a>	<b>DISABILITY LAW CENTER</b> 3330 Arctic Blvd., Ste. 103 Anchorage, AK 99503 (907) 565-1002– In Anchorage (800) 478-1234 – Toll Free (907) 564-1000 – Fax <a href="http://www.dlcak.org">www.dlcak.org</a>	<b>AK DEPARTMENT OF EDUCATION AND EARLY DEVELOPMENT</b> 801 W. 10 <sup>th</sup> St., Ste. 200 Juneau, AK 99801 (907) 465-8693 – Phone (907) 465-2806 – Fax <a href="http://education.alaska.gov/sped/">http://education.alaska.gov/sped/</a>

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<b>Program Exit Form</b>		
Student Name:	Date of Birth:	Date:
Parent(s) Name:		
Address:	Phone:	Date of Exit:

REASON FOR EXIT	
<input type="radio"/>	Parent (or student at age of majority) has withdrawn consent for special education and related services.
<input type="radio"/>	Student is no longer eligible for special education services based on a variety of assessments as documented in the Evaluation Summary and Eligibility Report (ESER).
<input type="radio"/>	Student graduated with a regular diploma (summary of performance required).
<input type="radio"/>	Student reached the end of the school year for the year they turned 22 years old (summary of performance required).
<input type="radio"/>	Student is deceased.
<input type="radio"/>	Student moved from the district.
<input type="radio"/>	

<b>Summary of the Student's Academic Achievement and Functional Performance:</b>

<b>Recommendations to assist the student to meet post-secondary goals:</b>

<p>STUDENT CONTINUES TO BE ELIGIBLE FOR SPECIAL EDUCATION SERVICES IF:</p> <ul style="list-style-type: none"> <li>- Student received a certificate of attendance.</li> <li>- Student moved from the district (records forwarded to the receiving district) known to be continuing in an education program.</li> <li>- Student dropped out of school.</li> <li>- Parent and student have been informed in writing that the student may continue to receive special education services (if re-enrolling before age 22).</li> </ul>
--

**NOTE: Use of this form may require a written notice of this action**



*Guidance for Special Education Personnel*

EXIT - Written Notice		
Student Name:	Date of Birth:	Date:
The purpose of this letter is to notify you of the district's proposal to make a change, or refusal to make a change in your student's educational program. The details of the proposed action are indicated below.		
Description of the proposed or refused action:		
Reason for the proposed action:		
Description of evaluation procedure, test, record or report used in deciding to propose or refuse action:		
Description of other options considered, if any, and reason for rejecting them:		
Other factors relevant to the proposal or refusal:		
You have specific rights or procedural safeguards. A copy of those rights may be obtained from me or another school district representative. If you need an explanation of your rights or have any questions regarding this notice, please contact me.		
Name	Title	Phone Number
For further assistance in understanding your parental rights you may contact:		
<b>STONE SOUP GROUP</b> 307 E. Northern Lights Blvd, #100 Anchorage, AK 99503 (907) 561-3701 – In Anchorage (877) 786-7327 – Toll Free (907) 561-3702 – Fax <a href="http://www.stonesoupgroup.org">www.stonesoupgroup.org</a>	<b>DISABILITY LAW CENTER</b> 3330 Arctic Blvd., Ste. 103 Anchorage, AK 99503 (907) 565-1002 – In Anchorage (800) 478-1234 – Toll Free (907) 564-1000 – Fax <a href="http://www.dlcak.org">www.dlcak.org</a>	<b>AK DEPARTMENT OF EDUCATION AND EARLY DEVELOPMENT</b> 801 West 10 <sup>th</sup> St., Ste. 200 Juneau, AK 99801 (907) 465-8693 – Phone (907) 465-2806 – Fax <a href="http://education.alaska.gov/sped/">http://education.alaska.gov/sped/</a>

**Student Notice of Transfer of Rights at Age of Majority**

To:

Date:

Dear

This letter is to inform you that when you reach your 18th birthday, you will reach the age of majority in Alaska and will be able to make binding decisions regarding your education. This is called the “Transfer of Rights” for the purposes of the Individual with Disabilities Education Act.

If you have any questions, please do not hesitate to contact me.

Sincerely,

**Parent Notice of Transfer of Rights at Age of Majority**

To:

Date:

Dear

This letter is to inform you that when your student reaches their 18th birthday, they will reach the age of majority in Alaska and will be able to make binding decisions regarding their education. This is called the “Transfer of Rights” for the purposes of the Individual with Disabilities Education Act.

If you have any questions, please do not hesitate to contact me.

Sincerely,

## Secondary Transition Planning

### ALTERNATE COURSES

Generally, IEP teams should focus on **access to the general education curriculum** (see AS 14.30.276, and 34 CFR § 300.320(4)(ii)). However, students who are not able to successfully complete general education classes, even with accommodations can earn a high school diploma.

As stated in 4 AAC 06.078:

“[i]f the disability of a student precludes the taking of regular curricular offerings, a substitute course in the same subject area may be designed and provided as determined by the team that develops the individualized education program (IEP) set out in 4 AAC 52.140. A substitute course may be noted on the student transcript by a number code known only to the IEP team and the institution offering the course...”

### Secondary Transition IEP Requirements

Under federal regulation, secondary transition services must be detailed on any IEP (34 CFR § 300.320(a)(7)(b) (bold added for emphasis);

“...**in effect when the child turns 16**, or younger if determined appropriate by the IEP Team, and updated annually, thereafter, the IEP must include-

- (1) Appropriate measurable **postsecondary goals** based upon **age appropriate transition assessments** related to training, education, employment, and, where appropriate, independent living skills; and
- (2) The **transition services** (including courses of study) needed to assist the child in reaching those goals.”

Secondary transition services are defined under Alaska regulation 4 AAC 52.145(a) as “...a coordinated set of activities, designed within an outcome-oriented process, that promotes movement from school to post-school activities.” Additionally, AS 14.30.278(b) states (bold added for emphasis);

“...a school district’s **primary objective and preferred outcome** is to help the child become **gainfully employed** in an integrated workplace where individuals with disabilities work with and alongside of individuals without disabilities, or become enrolled in postsecondary education.”

**Postsecondary goals** are outlined by Alaska regulation 4 AAC 52.145 (and federal regulation 34 CFR § 300.43(a)). This includes “...postsecondary education, vocational training, integrated employment such as supported employment, continuing and adult education, adult services, independent living, or community participation[.]”

To meet the regulatory requirements, an IEP for a student age 16 or older must contain at least one goal for training and education as well as one goal for employment. Districts are **not** held accountable for the attainment of postsecondary goals, but they must actively participate in helping the student set goals and must include these student-oriented goals in the IEP.

### Required Transition Services

Alaska regulation 4 AAC 52.145(b-c) states

“[t]he set of activities [...] must be based on that child’s needs, taking into account the child’s preferences and interests. Those activities must address the child’s needs in the areas of

instruction, related services, community experiences, the development of employment and other post-school adult-living objectives, and, if appropriate, acquisition of daily living skills and functional vocational evaluation.

(c) If the child does not attend the IEP meeting to plan for transition services, the district shall take other steps to ensure that the child's preferences and interests are considered in planning for those services."

A student whose disability makes it impossible for them to meaningfully participate in these IEP meetings must still have input in planning their lives. Districts must document how the student's preferences were assessed in the IEP.

### **Outside Agency Participation**

In addition to measurable postsecondary goals, IEPs for students 16 and older must include a **statement of transition services** needed (34 CFR § 300.320(b)). Federal regulation 34 CFR § 300.43 defines such services as including:

- “(i) Instruction;
- (ii) Related services;
- (iii) Community experiences;
- (iv) The development of employment and other post-school adult living objectives; and
- (v) If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.”

If transition planning includes non-school parties responsible for providing services (see 4 AAC 52.145(h)), the district must:

1. Obtain written **parental consent** to invite the agency to transition meetings (or obtain student consent at or beyond age 18 (see 4 AAC 52.145(e)), and
2. **Invite a representative** of the agency to the IEP meeting (4 AAC 52.145(e)). If the participating agency fails to provide transition services, **districts** are responsible for identifying alternate strategies to meet transition objectives, including revision of the IEP (4 AAC 52.145(f)).

School districts cannot write IEPs that incur legal or financial obligations for other agencies (4 AAC 52.145(h)). However, services are often available from other governmental agencies. The State Division of Vocational Rehabilitation (<http://labor.alaska.gov/dvr>) is required to provide 'vocational rehabilitation services' to eligible students with disabilities under the Rehabilitation Act of 1973 (29 USC § 701). Examples of Alaskan transition assessments can also be found on DVR's website.

The Alaska Department of Health & Social Services (<http://hss.state.ak.us/>) provides direct, medically necessary services to a student, reimbursed through Medicaid (see 42 CFR 440.110). These students often remain eligible for continued services after leaving school.

## CHAPTER 4: PLACEMENT

A primary responsibility for a special education director is to ensure that the district has a **continuum of placements** for students (34 CFR § 300.115, adopted by 4 AAC 52.150(a)). Specifically, the continuum must:

- “(1) Include the alternative placements listed in the definition of special education under § 300.38 [*Ed. note: the definition of special education is under § 300.39*] (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions); and
- (2) Make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.”

There is no specific formula for what a placement can or should look like. A ‘regular class’ in one school may be radically different than a ‘regular class’ in another. Placements must be constructed by IEPs, *not* driven by programs or classes in schools as they currently exist.

Districts must ensure IEP teams make placement decisions that follow the **least restrictive environment (LRE)** requirements under AS 14.30.276:

- “...[e]ach school district shall ensure that, to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not children with disabilities and that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the child's disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.”

*Note: **Least Restrictive Environment** depends on the student’s IEP, not the physical location. General classrooms are **not** always the LRE; they may be overly restrictive for some students.*

*Note: LRE also applies to nonacademic settings. 34 CFR 300.117*

*Note: IDEA ensures that the parent will be involved in the placement decision. Placement does not mean which school a student shall attend, but the general type of educational program in which the student is placed. D.Y. v. Matanuska-Susitna Borough School District Case No. 3:10-cv-0187-HRJ (United States District Court, Alaska (2011)).*

### Responsibility for Placement

Placement decisions are made by IEP Teams and incur district obligations no matter *where* special education and related services will be delivered. Districts are responsible for “children with disabilities ages 3-21...who reside in the district” (4 AAC 52.090). Physical placement of students beyond district (or state) boundaries, or in private schools, does not change the fundamental district responsibility (34 CFR § 300.145-147). For example, responsibility for a student receiving special education services from Newtok, placed in a private school in Anchorage by a Lower Kuskokwim School District IEP Team, is the responsibility of the Lower Kuskokwim School District.

### Placement Procedures

Student placement is described in 34 CFR § 300.116 (adopted by 4 AAC 52.150(a)):

“(b) The child's placement--

- (1) Is determined at least annually;
  - (2) Is based on the child's IEP; and
  - (3) Is as **close as possible to the child's home**;
- (c) Unless the IEP of a child with a disability requires some other arrangement, the child is educated **in the school that he or she would attend if nondisabled**;
- (d) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and
- (e) A child with a disability is **not** removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.”

The IEP must include an **explanation** of why the student will not participate in the general education classroom, extracurricular, and non-academic activities with nondisabled children (34 CFR 300.320(a)(5)). Placement decisions should be based on on the individual needs of the student. Additionally, placements in Alaska must meet a tiered-preference requirement under 4 AAC 52.150(b) (bold added for emphasis):

“If a district determines that the student's IEP cannot reasonably be implemented within the district, any out-of-district placement shall be determined in the following priority order:

- (1) **first**, to the in-state placement option that provides the most practicable access from the district;
- (2) **second**, to whatever in-state placement is available; and
- (3) out-of-state placement **only if** no in-state placement is available that can provide a FAPE for the child.”

*Note: Alaska Code 4 AAC 52.150(c) requires that a school obtain parental consent before a child is transferred by the school to a school outside the resident district.*

The IEP Team should consider the following information when determining the educational placement. The placement decision should be made after the IEP Team determines what special education services are required. Placement is based on the least restrictive method of providing services. Services are not based upon placement. The placement decision made by the IEP Team must consider all continuum of placement options.

*Note: The continuum of services need not be all within the district. The 9<sup>th</sup> Circuit has held that the geographic location of the district would be relevant in determining what continuum would look like.*

All placement options must be available for consideration (even if a school site or district has a policy of being fully inclusive). The IEP Team must draw on a variety of sources, especially, parent input. Harmful effects of the placement must also be considered. Removal of children with disabilities from the regular classroom environment may occur only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. To the greatest extent possible, involvement with peers who do not have disabilities should be the placement goal (this includes preschool children with disabilities).

Removal from the regular education environment due to curriculum modifications is not acceptable. Children with disabilities must be allowed to participate in non-academic and extracurricular services and activities to the maximum extent appropriate and the IEP Team shall recommend placement with similar age peers.

*Note: If the parent refuses to initial consent to services, the LEA shall not be allowed to provide special education services to the child.*

### Placements in Private Schools

There are requirements for districts educating students with disabilities in private schools (see AS 14.30.340). Districts who have students placed in private schools should be familiar with the following regulations:

- |   |                               |
|---|-------------------------------|
| a. <b>Child find</b>                                | (34 CFR § 300.131)            |
| b. <b>Record keeping</b>                            | (34 CFR § 300.132(b))         |
| c. <b>Expenditures</b>                              | (34 CFR § 300.133)            |
| d. <b>Consultation</b>                              | (34 CFR §§ 300.134 & 300.135) |
| e. <b>Complaints</b>                                | (34 CFR § 300.136)            |
| f. <b>Equitable services</b>                        | (34 CFR §§ 300.137 & 300.138) |
| g. <b>Location of services &amp; transportation</b> | (34 CFR § 300.139)            |
| h. <b>Due process &amp; state complaints</b>        | (34 CFR § 300.140)            |
| i. <b>Funds not benefitting a private school</b>    | (34 CFR § 300.141)            |
| j. <b>Personnel</b>                                 | (34 CFR § 300.142)            |
| k. <b>Separate classes prohibited</b>               | (34 CFR § 300.143)            |
| l. <b>Property, equipment &amp; supplies</b>        | (34 CFR § 300.144)            |

### Placing students in private schools

IEP teams consider placing a student with a disability in a private school should review the requirements in 34 CFR §§ 300.325 (adopted by 4 AAC 52.140(f); bold added for emphasis):

“(a)(1) Before a public agency places a child with a disability in, or refers a child to, a private school or facility, the agency must initiate and **conduct a meeting** to develop an IEP for the child in accordance with §§ 300.320 and 300.324.

(2) The agency must ensure that a **representative of the private school** or facility attends the meeting. If the representative cannot attend, the agency must use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.

(b) Reviewing and revising IEPs.

(1) After a child with a disability enters a private school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the public agency.

(2) If the private school or facility initiates and conducts these meetings, the public agency must ensure that the parents and an agency representative--

(i) Are involved in any decision about the child's IEP; and

(ii) Agree to any proposed changes in the IEP before those changes are implemented.

(c) Responsibility. Even if a private school or facility implements a child's IEP, **responsibility for compliance with this part remains with the public agency** and the SEA.”

Additionally, Alaska law clarifies the responsibilities of school districts serving students with disabilities in private schools (AS 14.30.340; bold added for emphasis):

“(a) If a parent of a child with a disability enrolls the child in a private school, including a religious school, at the parent's expense or teaches the child at home, **the school district in which the child resides shall make special education and related services available** in conformance with federal requirements, including 34 CFR §§ 300.130 - 148. A parent teaching the parent's child at home may refuse special education and related services for the child.”

*Note: A service plan may need to be developed (not an IEP). A sample service plan is available (contact [sped@alaska.gov](mailto:sped@alaska.gov))*

### **Providing services to students in private schools**

There are two key requirements for districts serving students with disabilities in private schools. First, develop a **service plan**. Second, address the provision of **equitable services**. Federal regulation 34 CFR § 300.132(b) (bold added for emphasis) requires that:

“...a **services plan** must be developed and implemented for each private school child with a disability who has been designated by the LEA in which the private school is located to receive special education and related services under this part.”

*Note: A service plan must be developed only if the school district, using a pro-rated amount of their federal IDEA funds, determines after a consultation process that the student will get any degree of services. There is no legal entitlement for every private school student to receive services, with or without a service plan.*

**Services plans** are described in 34 CFR § 300.138:

- “(2) The services plan must, to the extent appropriate--
- (i) Meet the requirements of § 300.320 [Ed.: *Definition of an individualized education program*], or for a child ages three through five, meet the requirements of § 300.323(b) [Ed.: *IEP or IFSP for children aged three through five*] with respect to the services provided; and
  - (ii) Be developed, reviewed, and revised consistent with §§ 300.321 through 300.324 [Ed.: *IEP Team; Parent participation; When IEPs must be in effect; & Development, review, and revision of IEP*].”

The **equitable services** requirement for the delivery of special education in private schools is quoted below (34 CFR § 300.138; bold added for emphasis):<sup>1</sup>

- “(1) The services provided to parentally-placed private school children with disabilities must be provided **by personnel meeting the same standards** as personnel providing services in the public schools, **except** that private elementary school and secondary school teachers who are providing equitable services to parentally-placed private school children with disabilities do **not** have to meet the highly qualified special education teacher requirements of § 300.18.
- (2) Parentally-placed private school children with disabilities may receive a **different amount** of services than children with disabilities in public schools.”

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<sup>1</sup> Requirements concerning **expenditures** are detailed in **Chapter 8: Funding**.



Further, 34 CFR § 300.138 requires that (bold added for emphasis):

“(1) The provision of services pursuant to this section and §§ 300.139 through 300.143 must be provided:

(i) By **employees of a public agency**; or

(ii) Through **contract** by the public agency with an individual, association, agency, organization, or other entity.

(2) Special education and related services provided to parentally-placed private school children with disabilities, including materials and equipment, must be **secular, neutral, and non-ideological.**”

### **Unilateral Placement**

Parents or custodian may make **unilateral placements** for students with disabilities in private schools. Districts may be responsible for paying private school costs under some circumstances; 4 AAC 52.155 (which also adopts 34 CFR § 300.148(c,d,e)) describes two scenarios (bold added for emphasis).

1. First, if a district has made an offer of FAPE whose appropriateness is **not** under dispute:

“(a) A district or a state educational agency responsible for providing education to children with disabilities is **not** responsible to pay for the cost of education and related services of a child with a disability who is enrolled at a private school or facility by a parent or other custodian of the child if

(1) the district or state education agency **made a FAPE available** to the child under an IEP process as provided in 4 AAC 52.140 and 4 AAC 52.150; and

(2) the parent or other custodian elects to **unilaterally place** the child in a private school or facility without complying with the placement requirements of 4 AAC 52.150.

(b) Notwithstanding the requirements in (a) of this section, the responsible district shall include all children with disabilities under AS 14.30.340.”

2. Second, when the unilateral placement stems from a **dispute** over “...whether the placement decision reached by the district under 4 AAC 52.150 offered an **appropriate education** for the child (4 AAC 52.155; see also 34 CFR § 300.148)”, the parents or custodian may file a due process hearing, and pursue reimbursement for private school costs. See 4 AAC 52.155 (c) which reads:

“(c) Disagreements between a parent or other custodian of a child with a disability and the district or state education agency regarding whether the placement decision reached by the district under 4 AAC 52.150 offered an appropriate education for the child, and regarding the financial responsibility for the alternative placement chosen by the parent or other custodian, are subject to the due process hearing procedures of 4 AAC 52.550.

(d) In determining the financial responsibility of a district or state education agency for an alternative educational placement under (c) of this section, a parent's or other custodian's entitlement to reimbursement shall be determined in accordance with the provisions and limitations of 34 CFR §§ 300.148(c)-(e), as revised as of October 13, 2006, and adopted by reference.”

## Placement Disputes<sup>1</sup>

IEP teams occasionally disagree about placement. Despite disagreement, districts *must* offer each eligible student with a disability an IEP that includes placement details (34 CFR §§ 300.320(4,5), adopted by 4 AAC 52.140). Districts must meet the *continuum of alternative placements* requirement under 34 CFR § 300.115. Districts that utilize out-of-state facilities to educate students with exceptional needs should refer to the Alaska Department of Health & Social Services' *Bring the Kids Home* page for history and current information:  
[www.hss.state.ak.us/commissioner/btkh/](http://www.hss.state.ak.us/commissioner/btkh/)

Parents in Alaska have unique rights if and when **placement disputes** happen under Alaska and federal law. When parents disagree with a placement offer, they have several rights in addition to standard procedural safeguards (such as mediation, administrative complaint, or due process requests):

1. Parents or guardians may **decline to offer consent** for the initial provision of special education services (and the placement detailed therein; 34 CFR § 300.300(b)). Districts *cannot* place, and *cannot* provide special education, without parent consent; they also *cannot* pursue mediation or due process proceedings to override parents who do not provide initial consent for services (34 CFR § 300.300(b)).
2. Parents may also **revoke given consent** for services (and the placement detailed therein) at any time after initial provision of services (34 CFR § 300.300(4); see also 4 AAC 52.200).
3. As well, parents may **decline to offer consent** for any placement physically **beyond** district boundaries (4 AAC 52.150(c)): “A district must obtain consent of a child's parent before a child may be transferred by the district to a school outside of the district in which the child resides.”
4. Finally, parents or guardians may opt for a **unilateral placement** under 4 AAC 52.155. When this happens, per 4 AAC 52.155 (see above), districts are **not** responsible for private school costs, **if** “... (1) the district or state education agency made a FAPE available to the child under an IEP process as provided in 4 AAC 52.140 and 4 AAC 52.150; and (2) the parent or other custodian elects to unilaterally place the child in a private school or facility without complying with the placement requirements of 4 AAC 52.150.”

## Other Placements

### Statewide Correspondence Programs

Districts operating statewide correspondence programs (per 4 AAC 52.090(b)), “...shall administer a program offering special education and related services to children enrolled in the program, and shall coordinate its provision of those services with the district of residence as specified in 4 AAC 33.432.”<sup>2</sup> Alaska regulation 4 AAC 33.432 specifically details the following (bold added for emphasis):

“(a) A district that offers a correspondence study program shall enroll a special education student **on the same basis** as any other student. The district must ensure that the student's program

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<sup>1</sup> **Note:** See **Chapter 6: Procedural Safeguards & Confidentiality**. It has extensive details on the rights and responsibilities of various participants, including parents, when disputes over special education arise.

<sup>2</sup> Most districts operating statewide correspondence programs offer special education programs through cooperative agreement with districts of residence. Districts lack the authority under 4 AAC 33.432 to *force* other districts to enter into agreements. Nonetheless, statewide correspondence programs (and the districts that operate them) **must** deliver special education programs with or without cooperation from districts of residence.

meets all requirements of AS 14.30 and 4 AAC 52.100 - 4 AAC 52.790, including child find, provision of special education and related services, procedural safeguards, and the development of the student's IEP. The district must meet all requirements of applicable state testing and assessment under 4 AAC 06.710 – 4 AAC 06.790 for the student.”

### Charter Schools

In Alaska, under AS 14.03.255 (bold added for emphasis):

“(a) A charter school operates **as a school in the local school district** except that the charter school [...] is exempt from the local school district's textbook, program, curriculum, and scheduling requirements[.]”

For the purposes of IDEA, charter schools in Alaska are the responsibility of districts, equivalent to any other schools within the district. Though charter schools may be relieved from some local administrative requirements (e.g. the hiring of administrators), there are **no exemptions** from the requirements of IDEA, ADA, or the Rehabilitation Act for districts operating programs for students with disabilities in charter schools. *Charter school special education programs must operate in the same manner, and with the same funding, as other district programs (20 USCS § 1413(a)(5)).*

### Juvenile & Adult Correctional Facilities

Under Alaska regulation 4 AAC 52.090, districts must “administer a program offering special education and related services in order to provide a free appropriate public education (FAPE) program for children with disabilities ages 3 - 21, if less than 22 on July 1 of the school year, who reside in the district, including [...] (C) educational programs in correctional facilities in the district, except for individuals 18 - 21 years of age who are incarcerated in an adult correctional facility unless 34 CFR § 300.102(a)(2) requires that those individuals be provided a FAPE[.]”

The exception identified above (34 CFR § 300.102(a)(2)) essentially exempts **adult** correctional facilities from **newly identifying** students aged 18-21 as students with disabilities (bold added for emphasis):

“(a) General. The obligation to make FAPE available to all children with disabilities does not apply with respect to the following: [...]

(2)(i) Children aged **18 through 21** to the extent that State law does not require that special education and related services under Part B of the Act be provided to students with disabilities who, in the last educational placement prior to their incarceration in an **adult correctional facility--**

(A) Were not actually identified as being a child with a disability under § 300.8; and

(B) Did not have an IEP under Part B of the Act.

(ii) The exception in paragraph (a)(2)(i) of this section does not apply to children with disabilities, aged 18 through 21, who--

(A) Had been identified as a child with a disability under § 300.8 and had received services in accordance with an IEP, but who left school prior to their incarceration; or

(B) Did not have an IEP in their last educational setting, but who had actually been identified as a child with a disability under § 300.8.”

## **CHAPTER 5: STUDENT DISCIPLINE**

***All students – including students with disabilities – have the right to a safe, orderly environment.***

Students with disabilities should be held to the same high behavioral expectations as students without disabilities. All students who do not follow rules should expect disciplinary action.

Requirements for discipline procedures are described in 34 CFR § 300.530-536. Also quite helpful is the Q&A on discipline published by the U.S. Department of Education, Office of Special Education and Rehabilitative Services (OSERS; June, 2009), archived here:

[idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CQaCorner%2C7%2C;](http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CQaCorner%2C7%2C;)

this Q&A includes questions about safeguards, definitions, interim alternative educational settings (IAES), hearings, FBAs, BIPs, and manifestation determinations. Notably, any student who has been **referred** for special education services or is in the **process of eligibility determination** – and is subject to discipline – “...is entitled to all of the IDEA protections afforded to a child with a disability.” Districts should treat such students as they would any student with an IEP. As well, *any* students subject to discipline may assert that the district had knowledge of a disability prior to the conduct violation; such knowledge would require that the student be given the same protections as any student with an IEP (see 34 CFR § 300.534 for details).

### **Routine Discipline & Suspensions**

Most disciplinary actions for students with and without disabilities will be identical; the majority of classroom and school-level disciplinary actions do not impact IEPs, and as such trigger no safeguards and create no additional requirements.

*Note: A student on an IEP can be disciplined including suspension for up to 10 school days in a school year without any special procedures required. However, if a student has a behavioral component in their IEP, responding to behaviors would be governed by the interventions in the behavioral component.*

### **Routine Discipline**

Routine disciplinary actions by districts (*e.g.* phone calls home, lectures, trips to the principal’s office, detentions, short-term suspensions-10 days total or less in a school year, *etc.*) are **not** changes in placement (34 CFR § 300.536), and do **not** trigger federal or state safeguards under IDEA or Alaska law. As such, for routine disciplinary actions, students with and without disabilities should be treated the same under district policies.

### **Short-Term Suspensions**

Short-term suspensions (10 days or less in a school year, total) also do **not** trigger requirements to assemble IEP teams, provide written notice, offer special education services, conduct manifestation determinations, conduct functional behavioral assessments, or write behavior intervention plans (34 CFR § 300.530); nor do short-term removals trigger stay-put requirements (which result from disputes, see 20 USC § 1415[j] and Chapter 7: Procedural Safeguards”.

*Note: There is nothing to prohibit the disciplinarian from considering the relationship, if any, between the student’s disability and misbehavior in determining the appropriate course of action.*

### Multiple Short-Term Suspensions

Districts must determine if **multiple short-term suspensions** that add up to 10+ days (in a school year, total) constitute a **pattern of removal**, which creates a *de facto* **change in placement** (for the IEP) under 34 CFR § 300.536. Specifically, a **pattern of removal** involves three criteria:

- “(2) The child has been subjected to a series of removals that constitute a pattern--
- (i) Because the series of removals total more than 10 school days in a school year;
  - (ii) Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and
  - (iii) Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.”

It is up to districts to decide whether the pattern of removals constitutes a change in placement (34 CFR § 300.536(b)); any such decision may be disputed via due process and/or judicial proceedings (a parent would need to file for a due process before initiating a judicial action). If a pattern is established which constitutes a change in placement, see below. If the district decides that the current suspension is **not** a change in placement, 34 CFR § 300.530(d)(4) requires that “...school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed, as provided in § 300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.”

*Note: IDEA regulations state that the school may consider any unique circumstances on a case-by-case basis when determining whether to order a change of placement. 34 CFR 300.530(a) In school suspensions are not counted if: the child is afforded the opportunity to continue to appropriately progress in the general curriculum, continue to receive the IEP services and continue to participate with non-disabled children to the extent they would in their current placement.*

*Note: Portions of a day that a child is suspended may be considered as a removal in determining whether a pattern of removals exists.*

*Note: Bus suspensions count if transportation is a part of the IEP and no alternative transportation is provided.*

### Long-Term Suspensions

Districts should record the total number of days during which students are removed from school; the trigger for additional safeguards, under federal regulation 34 CFR § 300.530(b), is disciplinary action which removes a student from school for **more than 10 consecutive school days or more than 10 cumulative school days** when school personnel have deemed it a change of placement in accord with the procedures in the Multiple Short-Term Suspension section of the Guidance for Special Education Personnel. 34 CFR § 300.530(b) reads:

- “(1) School personnel under this section may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than 10 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 § 300.536).

(2) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, during any subsequent days of removal the public agency must provide services to the extent required under paragraph (d) of this section.”

**Disciplinary Changes in Placement & Manifestation Determinations**

Once a suspension will extend beyond 10 days, whether via a single suspension or via multiple short-term suspensions, federal regulations require districts to take several actions (however, a student can be suspended on multiple occasions for a cumulative period of more than 10 school days -if not deemed a disciplinary change of placement- these provisions would not apply):

**Provide written notice (34 CFR § 300.530[h]):**

“On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the LEA must notify the parents of that decision, and provide the parents the procedural safeguards notice described in § 300.504.”

**Provide services, conduct an FBA & offer a BIP, as appropriate (34 CFR § 300.530[d]):**

“(1) A child with a disability who is removed from the child's current placement pursuant to paragraphs (c), or (g) of this section must--

- (i) Continue to receive educational services, as provided in § 300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and
- (ii) Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur.”

*Note: After taking disciplinary action involving a change of placement that is determined to be a manifestation of the student's disability, placement in an Interim Alternative Educational Setting (IAES) or a removal for more than 10 consecutive school days that is deemed not to be a manifestation, the IEP Team must, as appropriate, provide the child a functional behavioral assessment (FBA) and develop/review a behavior intervention plan. 34 CFR 300.530(d)(ii)*

**Conduct a manifestation determination 34 CFR § 300.530(e):**

The parent and relevant members of the IEP team must decide, within 10 school days of any decision to change a student's placement due to disciplinary removals, whether or not the violation is a **manifestation** of the student's disability.

*Note: A manifestation determination is required if the school is considering removing the child with a disability from their educational placement for more than 10 school days in a given school year when it is deemed a change in placement or placing the student in an Interim Alternative Educational Setting (IAES). If the student is placed in an IAES for weapons, drugs, or serious bodily injury, the student may remain in the IAES, as determined by the IEP Team, regardless of whether the violation was a manifestation of the student's disability. Questions and Answers on Discipline Procedures, Question F-4 (United States Department of Education, Office of Special Education and Rehabilitative Services (2009))*

This decision is called a **manifestation determination** 34 CFR § 300.530(e):

“(1) Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA) must review all relevant information in the student's file, including the child'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 child's disability; or

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

(2) The conduct must be determined to be a manifestation of the child's disability if the LEA, the parent, and relevant members of the child's IEP Team determine that a condition in either paragraph (e)(1)(i) or (1)(ii) of this section was met.

(3) If the LEA, the parent, and relevant members of the child's IEP Team determine the condition described in paragraph (e)(1)(ii) of this section was met, the LEA must take immediate steps to remedy those deficiencies.”<sup>1</sup>

Manifestation determinations, therefore, have **three** possible outcomes –

1. The violation was **caused** by (or directly related to) the disability;
2. The violation was a direct result of the district's **failure to implement** the IEP; or
3. The violation is **not** a manifestation of the disability.

**Districts cannot punish students for violations caused by either disability or failure to implement an IEP;** the next steps for a district in this situation are detailed in 34 CFR § 300.530(f) (bold added for emphasis):

“[...] the IEP Team must—

(1) Either--

(i) Conduct a **functional behavioral assessment**, unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or

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

(2) Except as provided in paragraph (g) of this section, **return the child to the placement** from which the child was removed, unless the parent and the LEA agree to a change of placement as part of the modification of the behavioral intervention plan.”

*Note: There is one exception to the return-to-previous-placement requirement, when IEP teams determine that a violation is due to either disability or failure to implement an IEP. For drug, weapon, or serious bodily harm violations, districts **may** remove the student to a 45-day Interim Alternative Educational Setting (IAES) (see below and 34 CFR § 300.530(g)).*

*Note: For a child with a disability whose behavior impedes his or her learning or that of others, and for whom the IEP Team has decided that a behavior intervention plan (BIP) is appropriate, or for a*

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<sup>1</sup> Importantly, as clarified by OSERS in the Q&A (June 2009), **each** removal that constitutes a change in placement requires a manifestation determination.

*child with a disability whose violation of the code of student conduct is a manifestation of the child's disability, the IEP Team must include a BIP in the child's IEP to address the behavioral needs of the child. Questions and Answers on Discipline Procedures, Question E-2 (United States Department of Education, Office of Special Education and Rehabilitative Services (2009)).*

When IEP teams determine that the violation is **not a manifestation of a disability** 34 CFR § 300.530(c) (bold added for emphasis):

“(c) [...] school personnel may apply the relevant disciplinary procedures to children with disabilities **in the same manner and for the same duration** as the procedures would be applied to children without disabilities[.]”

When districts determine that violations are **not** manifestations of a disability and students are removed from school, federal regulation 34 CFR § 300.530(d) requires districts to **continue providing special education services**, as determined by the IEP Team and to conduct “[...] as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.”<sup>1</sup>

### **IEPs Not Fully Implemented**

One key clause included in the regulations concerning manifestation determinations reads as follows 34 CFR § 300.530; (bold added for emphasis): “[...T]he child's IEP Team [...] must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine [...] (ii) If the conduct in question was the direct result of **the LEA's failure to implement the IEP.**”

Failure to implement is a two-part test:

- 1) the district must **fail to fully implement** the IEP, **and**
- 2) the conduct in question must be ‘the **direct result**’ of the failure to implement.

There are several ways to fail at implementation – for example, an expired IEP by definition cannot be implemented; an IEP could be missing required components; on-paper special education or related services could have remained undelivered. However, it is **not** a given that a failure to implement will necessarily **cause** specific student conduct. The IEP team must determine if there is a direct relationship between the failed implementation and the conduct in question; perhaps the most obvious case would be when an LEA fails to provide proper supervision for a student, whose conduct then violates school or district rules. Failed proper supervision could include, for example, when the behavioral component of the IEP is not implemented resulting in the student’s misconduct.

If an IEP team reviews the IEP and determines that student conduct is the ‘direct result of the LEA’s failure to implement the IEP,’ the district faces two requirements. Under 34 CFR § 300.530(e)(2): “(2) The conduct must be determined to be a manifestation of the child's disability [...] [and] (3) [...] the LEA must take immediate steps to remedy those deficiencies.”

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<sup>1</sup> For clarity: 34 CFR § 300.530(b) (adopted by 4 AAC 52.550(l)) requires that districts provide special education (and an FBA and a BIP) only once a disciplinary action reaches 10+ days (and hence, require a manifestation determination). There is **no requirement** that districts offer special education and related services for the first ten days of disciplinary action, unless it provides services to students who are not disabled who are also suspended. 34 CFR 300.530(d)(3)



When conduct is determined to be a manifestation of a students' disability, districts must follow the requirements of 34 CFR § 300.530(f) ; (*see above*) and conduct an FBA, write or update a BIP, and return the student to the placement from which the student was removed unless the parent and district agree to a change in placement as part of the BIP.

### **Weapons, Drugs, and Serious Bodily Injury**

Under 34 CFR § 300.530(g) (bold added for emphasis), students with disabilities who carry or possess weapons, knowingly possess or use illegal drugs or sell or solicit the sale of a controlled substance to school or a school functions, or inflict serious bodily injury upon another person at school or a school function, may be immediately removed for up to 45 school days:

“School personnel may remove a student to an interim alternative educational setting for not more than 45 school days **without regard to whether the behavior is determined to be a manifestation of the child's disability**<sup>1</sup>, if the child--

- (1) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of an SEA or an LEA;
- (2) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA; or
- (3) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA.”

IDEA defines weapons, drugs, and ‘serious bodily injury’ in 34 CFR § 300.530(i):

- “(1) Controlled substance means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 USC 812(c)).
- (2) Illegal drug means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.
- (3) Serious bodily injury has the meaning given the term "serious bodily injury" under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.<sup>2</sup>
- (4) Weapon has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code.<sup>3</sup>

An **interim alternative educational setting (IAES)** is a placement determined by the IEP team (34 CFR § 300.531). The selected IAES must, under 20 USCS § 1415(k):

- “(i) [...] enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP[.]”

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<sup>1</sup> Per OSERS' Q&A (June, 2009), IEP teams **must still** conduct a manifestation determination for drug, weapon, and serious bodily injury offenses.

<sup>2</sup> “(3) the term “serious bodily injury” means bodily injury which involves— (A) a substantial risk of death; (B) extreme physical pain; (C) protracted and obvious disfigurement; or (D) protracted loss or impairment of the function of a bodily member, organ, or mental faculty[.]”

<sup>3</sup> “(2) The term “dangerous weapon” means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 ½ inches in length.”

## Rights of Appeal

Federal regulation 34 CFR § 300.532 gives broad rights of appeal of disciplinary decisions to both parents and districts:

“(a) [...] The parent of a child with a disability who disagrees with any decision regarding placement under §§ 300.530 and 300.531, or the manifestation determination under § 300.530(e), or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to §§ 300.507 and 300.508(a) and (b).”

Hearing officers have several options when faced with appeals (34 CFR § 300.532(a)(2)):

- “(i) Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of § 300.530 or that the child's behavior was a manifestation of the child's disability; or
- (ii) Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.”

Under 34 CFR § 300.532(a)(3), hearing officers have the authority to repeat their 45-day placement orders “... if the LEA believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.”

Further, both parents and districts may request **expedited** due process hearings for disciplinary issues concerning placement or manifestation determinations under 34 CFR § 300.532 “...which must occur within 20 school days of the date the complaint requesting the hearing is filed. The hearing officer must make a determination within 10 school days after the hearing.”

*Note: OSEP's Letter to Cox addresses the timeline for an expedited hearing requested over the summer. Days of summer school when both student who are disabled and non-disabled count. In any event, the hearing must be completed within 45 days taking into account the adjustments in 34 CFR 300.510(c).*

Under 34 CFR § 300.533, during appeals by either parents or districts, “...the child must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period specified in § 300.530(c) or (g) [10- or 45-days], whichever occurs first, unless the parent and the SEA or LEA agree otherwise.” This so-called **stay-put** provision is technically generated by the appeal – not by the district’s disciplinary action.<sup>1</sup>

## Transfer of Discipline Records & Reporting Crimes

Under Alaska regulation 4 AAC 52.530(c-d) (bold added for emphasis):

- “(c) If a child with a disability transfers to another school, each district shall transmit with other student records, including the child's current IEP, all statements of current and previous

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<sup>1</sup> **Stay-put** applies only as long as the district and parents contest **placement** (which is the focus during long-term disciplinary removals). If the district and parent agree about placement, **stay-put** does not apply.

**disciplinary action** regarding the child, to the same extent that disciplinary information would be included in and transmitted with the records of a child without a disability.

(d) Statements of disciplinary action must include a description of

- (1) the **behavior** engaged in by the child that required the disciplinary action;
- (2) the **action taken**; and
- (3) any other information that is **relevant to the safety** of the child and other individuals involved with the child.”

Additionally, federal regulation 34 CFR § 300.535 specifically allows districts to **report crimes** committed by students with disabilities: “Nothing in this part prohibits an agency from reporting a crime committed by a child with a disability 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 child with a disability.” When reporting crimes, Alaska regulation 4 AAC 52.530(e) (in accordance with regulation 34 CFR § 300.535) requires that (bold added for emphasis):

“(e) To the extent permitted by 20 USC 1232g (the Family Educational Rights and Privacy Act), a district that reports a crime committed by a child with a disability shall ensure that **copies of the special education and disciplinary records of the child are transmitted** for consideration by the appropriate authorities to whom it reports the crime.”

*Note: The IDEA allows the transmission of the records only to the extent permitted by the Family Educational Rights and Privacy Act. Absent parent consent, FERPA allows disclosure if pursuant to a subpoena or court order, in connection with an emergency, or pursuant to a State statute concerning the juvenile justice system.*

### **Suspension and Expulsion Rates**

Districts should maintain good records of disciplinary action. Specifically, federal regulation 34 CFR § 300.646 requires DEED to collect and examine information from districts:

“...to determine if significant disproportionality based on race and ethnicity is occurring in the State and the LEAs of the State with respect to--  
[...] (3) The incidence, duration, and type of disciplinary actions, including suspensions and expulsions.”

DEED collects and examines disciplinary data as part of its monitoring procedures; see Chapter 10: Compliance Monitoring for more information.

<b>Consent for Functional Behavior Assessment (FBA) Evaluation</b>		
<b>PURPOSE:</b> The school district is requesting parental written consent for a Functional Behavior Assessment (FBA) of your student. This form asks for voluntary consent for the evaluation activities described below. This assessment is not for eligibility to special education services, it is specifically for the FBA process. Students undergoing this assessment must already be qualified for special education (and related) services. If you have questions regarding this request, please contact the district special education staff.		
Student Name:	Birthday:	Date:
Parent(s) Name:		
<b>TYPE OF ASSESSMENT:</b>	<input type="radio"/> Initial FBA	<input type="radio"/> Reevaluation or Revision of an FBA
<input type="radio"/>	<b>FUNCTIONAL BEHAVIOR ASSESSMENT</b> - To assess the cause or purpose of significant behavior concerns impacting the student's learning	
<input type="radio"/>	<b>OTHER:</b>	
I consent to the action(s) selected above.		
_____ Parent Signature		_____ Date Signed by Parent

*Guidance for Special Education Personnel*

**Functional Behavior Assessment – FBA**

*A Functional Behavioral Assessment (FBA) must be conducted when an IEP team determines that a student’s behavior(s) is interfering with his or her learning, or that of other students, or when an Evaluation or Manifestation Determination reveal behavioral needs which need to be addressed. It is the LEA’s responsibility to develop an FBA.*

Student Name:

Grade:

Date of Birth:

Date:

**Target Behavior(s):**

*Provide a description of the behavior in observable and measurable terms. Include a description of the intensity, frequency and duration of the problem behavior*

**Environmental Variables:** *Include a description of environmental factors which may contribute to the behavior (e.g., medical conditions, sleep, diet, scheduling, and social factors)*

**Setting:** *Describe the setting in which the behavior occurs (time of day, physical setting, persons involved). Include a description of any relevant events that preceded the target behavior (antecedents)*

**Consequences:** *Include a description of the consequences that resulted from the target behavior*

**Student Strengths:** *Include a description of the student’s strengths*

**Alternate Positive Behaviors:** *List appropriate behaviors that could help the student meet his/her needs in a more appropriate manner*

**Reinforcement:** *Identify items, activities, and events which the student would find rewarding and could be incorporated in the Behavior Intervention Plan to encourage appropriate behavior*

*What is the **function** of the student’s behavior? Why does the student engage in the behavior? Does the student require instruction of the specific skills to perform the expected behavior, or does the student lack motivation to perform?*

*Guidance for Special Education Personnel*

<b>Behavioral Intervention Plan - BIP</b>			
Student Name:	Grade:	Date of Birth:	Date:
Target Behavior:			
Appropriate behaviors to be reinforced – behavioral goal:			
Positive behavioral interventions – <i>Types of reinforcement, teaching strategies, activities, etc.:</i>			
Supports - <i>Token rewards, personnel, assistive technology, etc.:</i>			
Consequences - <i>If needed:</i>			
Who will facilitate and monitor implementation of the BIP?			
How will student performance be monitored and what data will be collected? - <i>Attach any charts/graphs/data collection forms and supporting documentation</i>			
<p><i>After the BIP has been implemented for an appropriate length of time, the team should meet and review the impact the plan is having. Part of this review should consider how successfully the BIP has been implemented and followed by staff members, as well as how successful the BIP has been in preventing or changing the target problem behavior. If the procedures and steps that have been taken are determined ineffective, a new FBA and BIP should be conducted. If interventions are repeatedly found to be ineffective, the IEP team may wish to consider further evaluation or a possible change in placement.</i></p>			

<b>Manifestation Determination Worksheet</b>			
Student Name:	Grade:	Date of Birth:	Date:
Behavior subject to disciplinary action:			
Relevant information pertaining to behavior subject to disciplinary action - Current Individual Education Program-IEP (including placement and implementation) details:			
Evaluations (including Functional Behavior Assessment-FBA if available):			
Teacher observations:			
Relevant information provided by the parents:			
Behavior Intervention Plan-BIP (if available):			
<b>Based upon the above information, the parent and relevant members of the IEP Team* has determined that:</b>			
<input type="radio"/> Yes <input type="radio"/> No	The behavior subject to disciplinary action was caused by or had a direct and substantial relationship to the student's disability.		
<input type="radio"/> Yes <input type="radio"/> No	The district failed to implement the special education services and behavior intervention strategies as written in the IEP which directly resulted in the student's conduct.		
<b>DETERMINATION</b> - <i>If the answer is YES to either question above, the behavior must be considered a manifestation of the student's disability. This determination is subject to appeal as a due process complaint.</i>			
<input type="radio"/>	The student's behavior <b>WAS</b> a manifestation of his/her disability. The IEP team must review and revise the student's IEP, FBA, and BIP. The student must remain in his/her current placement unless the district and parents agree to a change in placement as part of the revised IEP.		
<input type="radio"/>	The student's behavior <b>WAS NOT</b> a manifestation of his/her disability. The relevant disciplinary procedures applicable to students without disabilities may be applied.		

## CHAPTER 6: PROCEDURAL SAFEGUARDS

The subject of **procedural safeguards** is broad, and includes a range of procedural requirements for districts as well as individual rights for students and parents.

### Parent Defined

34 CFR 300.30 defines a parent as:

“(a) Parent means--

- (1) A biological or adoptive parent of a child;
  - (2) A foster parent, unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent;
  - (3) A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State);
  - (4) An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or
  - (5) A surrogate parent who has been appointed in accordance with Sec. 300.519 or section 639(a)(5) of the Act.
- (b) (1) Except as provided in paragraph (b)(2) of this section, the biological or adoptive parent, when attempting to act as the parent under this part and when more than one party is qualified under paragraph (a) of this section to act as a parent, must be presumed to be the parent for purposes of this section unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.
- (2) If a judicial decree or order identifies a specific person or persons under paragraphs (a)(1) through (4) of this section to act as the "parent" of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the "parent" for purposes of this section.”

The most comprehensive list of what procedural safeguards include can be found in 34 CFR § 300.504, which requires districts to provide parents with notice of their rights which include (bold added for emphasis):

- “(1) **Independent educational evaluations;**
- (2) **Prior written notice;**
- (3) **Parental consent;**
- (4) **Access to education records;**
- (5) Opportunity to present and resolve complaints through the **due process complaint** and **State complaint** procedures, including--
- (i) The time period in which to file a complaint;
  - (ii) The opportunity for the agency to resolve the complaint; and
  - (iii) The difference between the due process complaint and the State complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures;
- (6) The availability of **mediation;**
- (7) The child's **placement** during the pendency of any due process complaint;
- (8) Procedures for students who are subject to placement in an **interim alternative educational setting;**



- (9) Requirements for **unilateral placement by parents of children in private schools** at public expense;
- (10) **Hearings** on due process complaints, including requirements for disclosure of evaluation results and recommendations;
- (11) **State-level appeals** (if applicable in the State);<sup>[1]</sup>
- (12) **Civil actions**, including the time period in which to file those actions; and
- (13) **Attorneys' fees.**”

### **Notice of Procedural Safeguards**

Under Alaska statute AS 14.30.272, districts must notify parents of students with disabilities of the range of procedural safeguards available to them:

- “(a) A school district shall inform the parent of a child with a disability of the right
- (1) to review the child's educational record;
  - (2) to review evaluation tests and procedures;
  - (3) to refuse to permit evaluation or a change in the child's educational placement;
  - (4) to be informed of the results of evaluation;
  - (5) to obtain an independent evaluation by choosing a person from a list provided by the school district or by choosing a person by agreement between the parent and school district;
  - (6) to request a due process hearing;
  - (7) to appeal a hearing officer's decision; and
  - (8) to give consent or deny access to others to the child's educational record.”

Alaska regulation 4 AAC § 52.480 (which adopts the federal 34 CFR § 300.504) specifies **when** districts must provide notice of procedural safeguards to parents (bold added for emphasis):

- “(a) General. A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents only **one time a school year**, except that a copy also must be given to the parents--
- (1) Upon **initial referral** or **parent request for evaluation**;
  - (2) Upon receipt of the first **State complaint** under §§ 300.151 through 300.153 and upon receipt of the first **due process complaint** under § 300.507 in a school year;
  - (3) In accordance with the **discipline procedures** in § 300.530(h); and
  - (4) Upon **request by a parent.**”

A sample *Notice of Procedural Safeguards* that meets requirements can be found online at:

<https://education.alaska.gov/tls/sped/docs/ProSafeguards.docx>

### **Parent Participation**

Parents of students with disabilities in Alaska have robust rights; among the most basic are IEP meeting participation and involvement in placement decisions, but as the paragraph below states, parent participation goes beyond IEP and placement decisions. Alaska regulation 4 AAC 52.210 adopts the federal regulation 34 CFR § 300.501, which specifies (bold added for emphasis:

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<sup>1</sup> Alaska does **not** have (and is not required to have) a mechanism for ‘**state-level appeals**’ of hearings under 34 CFR § 300.514; Alaska is a ‘one-tier’ state wherein DEED conducts due process hearings (AS 14.30.193) that are then appealable directly to the superior court (AS 44.62.560).

**“(b) Parent participation in meetings.**

(1) The parents of a child with a disability must be afforded an opportunity to **participate in meetings** with respect to--

- (i) The identification, evaluation, and educational placement of the child; and
- (ii) The provision of FAPE to the child.

(2) Each public agency must provide **notice** consistent with § 300.322(a)(1) and (b)(1) to ensure that parents of children with disabilities have the opportunity to participate in meetings described in paragraph (b)(1) of this section.

(3) A meeting **does not include** informal or unscheduled conversations involving public agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision. A meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

**(c) Parent involvement in placement decisions.**

(1) Each public agency must ensure that a parent of each child with a disability is a **member of any group** that makes decisions on the educational placement of the parent's child.

(2) In implementing the requirements of paragraph (c)(1) of this section, the public agency must use procedures consistent with the procedures described in § 300.322(a) through (b)(1).

(3) If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the public agency must use **other methods to ensure their participation**, including individual or conference telephone calls, or video conferencing.

(4) A placement decision may be made by a group **without the involvement of a parent**, if the public agency is unable to obtain the parent's participation in the decision. In this case, the public agency must have a record of its attempt to ensure their involvement.”

*Note: IEP Teams should never conduct a “vote” at IEP meetings. There is **no** provision for IEP voting procedures under Alaska or federal law. Districts must offer a FAPE by providing an IEP, even if/when a team is divided. When there is a dispute in decision, the district representative will make final decisions.<sup>1</sup> This is subject to parent procedural safeguard rights.*

**Informed Written Consent**

Parents have the right to decide whether their students will be evaluated for, be placed in, or receive special education and related services; districts do **not** have the right to evaluate, place, or provide services without **informed written consent** (see 4 AAC 52.200). See Chapter 2: Evaluation & Eligibility, Chapter 3: IEPs, and Chapter 5: Placement for details on parent rights with respect to the provision of informed written consent in specific situations. Written consent is required for: the initial evaluation, any reevaluation consisting of more than a review of existing information, for the initial provision of special education, for participating transition agencies to participate at the IEP meeting,

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<sup>1</sup> Some district IEP forms feature checkboxes adjacent to signature lines, where members may indicate whether they ‘agree’ or ‘disagree’ with the contents of an IEP as offered: *the only person that has to ‘agree’ with an IEP is the district representative*. This is because the district representative is responsible to ensure the IEP as written offers a FAPE. There is no IEP-vote-down procedure; instead, there are the procedural safeguards listed in 34 CFR § 300.504.

for the use of public or private insurance, for placement outside of the school district of residence and for the excusal of a required IEP Team member whose area will be discussed at the IEP meeting.

### **Written Notice**

Districts must formally notify parents when they propose to take a variety of actions with respect to the provision of special education and related services; this notification is called **written notice**; see Chapter 2: Evaluation & Eligibility for details on contents of formal written notices (not to be confused with a notice of an IEP meeting).

A prior written notice is provided whenever the agency is proposing to change or refusing to change the evaluation, identification, educational placement or the provision of FAPE. For detailed information concerning the required components of a written notice, please see 34 CFR 300.503. Also, the IDEA regulations provide that a parent may elect to receive all notices by email if the school makes this option available. See 34 CFR 300.505.

### **Access to, Amendment of, Disclosure & Destruction of Records Confidentiality**

Under federal regulation 34 CFR § 300.623, special education records must be kept confidential. Specifically, (bold added for emphasis):

- “(b) **One official** at each participating agency must assume responsibility for ensuring the confidentiality of any personally identifiable information.
- (c) All persons collecting or using personally identifiable information must **receive training or instruction** regarding the State's policies and procedures under § 300.123 and **34 CFR part 99** [*Ed. note: FERPA*].
- (d) Each participating agency must maintain, for public inspection, **a current listing** of the names and positions of those employees within the agency who may have **access** to personally identifiable information.”

Alaska regulation 4 AAC 52.530 (bold added for emphasis) requires that districts obtain: “...**written consent** of a parent before disclosing, for any purpose other than meeting the requirements of this chapter, personally identifiable information relating to that parent's child, that is collected, maintained, or used by the district[.]” The regulation specifically **exempts** three classes of individuals from the written consent requirement:

- “(1) a **school official**, including a teacher or a contract service provider, who has a legitimate educational interest;
- (2) an **official of a school** or school system to which the student **transfers enrollment** or intends to enroll, upon condition that a parent be notified of the disclosure, offered a copy of the record, and notified of the parent's right to request amendment of the record under 4 AAC 52.520; and
- (3) a representative of the federal comptroller general, United States Department of Education, or the department.”

Parents who disagree with district actions concerning access, amendments or release of records may request hearings under the *Family Educational Rights and Privacy Act* (20 USC § 1232g; 34 CFR Part 99).

*Note: 4 AAC 52.530(b) allows the **district** (not the parent) to initiate a due process hearing if the parent fails to provide consent for the release of records.*

Sample *Record of Access & Authorization for Release of Confidential Information* forms that meet requirements can be found at the end of this chapter.

### **Parental Inspection of Records**

Under Alaska regulation 4 AAC 52.510 (and federal regulation 34 CFR § 300.613), districts must (bold added for emphasis): "...permit a parent to inspect and review all educational records with respect to the identification, evaluation, and educational placement of the parent's child and the provision of a FAPE to the parent's child." The regulation further specifies that:

"(b) A district shall

- (1) provide a parent, upon request, a **list of types and locations** of records collected, maintained, or used by the district;
- (2) **respond to any reasonable request** of a parent for explanation and interpretation of a record;
- (3) provide a parent with a **copy of a record** upon request;
- (4) permit a **representative of the parent** to inspect and review a record; and
- (5) comply with a request to inspect, review, or obtain a copy of a record within a reasonable period not to exceed **10 business days** and, in any case, before any meeting or hearing relating to the identification, evaluation, placement, or program of a child in which the parent may participate."

*Note: See 4 AAC 52.510 (e) addressing copying fees*

### **Amendment/Correction of Records**

Additionally, under federal regulation 34 CFR § 300.618 and Alaska regulation 4 AAC 52.520 (bold added for emphasis):

"...[a] parent who believes that information in a record relating to the parent's child that is collected, maintained, or used by a district under this chapter is **inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child** may request that the district amend the record."

If the district refuses, the district shall inform the parent of their right to a hearing conducted under FERPA. 4 AAC 52.520b). If the district does not agree with the parent that the record is inaccurate, misleading or otherwise in violation of the rights of the child, the parent shall be informed of their right to make a statement of their position disagreeing with the district. The parent's statement shall be disclosed along with any disclosure of the disputed record.

### **Destruction of Records**

Under 34 CFR § 300.624 (bold added for emphasis):

- (a) The public agency must inform parents when personally identifiable information collected, maintained, or used under this part is **no longer needed** to provide educational services to the child.
- (b) The information **must be destroyed** at the request of the parents. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation."

Alaska regulations expand the minimum retention of records as noted in 4 AAC 52.760 (c) which reads:  
“(c) A district shall maintain records required under (a) of this section until no longer needed to provide educational services, but not less than five years[...].”

### **Independent Educational Evaluations (IEE)**

Under federal regulation 34 CFR 300.502 (adopted by reference in Alaska regulation 4 AAC 52.540) (bold added for emphasis):

“(1) The parents of a child with a disability have the right under this part to obtain an **independent educational evaluation** of the child, subject to paragraphs (b) through (e) of this section.

(2) Each public agency must provide to parents, upon request for an independent educational evaluation, **information about where an independent educational evaluation may be obtained** [...].

(b) Parent right to evaluation at public expense.

(1) A parent has the right to an independent educational evaluation **at public expense** if the parent disagrees with an evaluation obtained by the public agency, subject to the conditions in paragraphs (b)(2) through (4) of this section.

(2) If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either--

(i) File a **due process complaint** to request a hearing to show that its evaluation is appropriate; or

(ii) Ensure that an independent educational evaluation is **provided at public expense**, unless the agency demonstrates in a hearing pursuant to §§ 300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria.”

*Note: Alaska statute AS 14.30.191(e) states that a parent may obtain an IEE by choosing a person from a list provided by the district or by choosing a person by agreement with the district.*

Further, the regulation specifies that parents are “...entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees,” that districts must “consider” parent-initiated evaluations “in any decision made with respect to the provision of FAPE to the child,” and that IEEs must follow the same “criteria” as other evaluations. Parents seeking additional details concerning independent educational evaluations, including information about disputes and parentally-obtained evaluations should access the full text of regulation 34 CFR 300.502.

### **Unilateral Placement by Parents of Students in Private Schools**

Parents or custodians occasionally make **unilateral placements** of students with disabilities in private schools. Sometimes districts must pay for such unilateral placements; see Chapter 5: Placement for details.

## Mediations, IEP Facilitations, Administrative Complaints, & Due Process Hearings

### Mediation

Mediation is a voluntary process described at length in federal regulation 34 CFR 300.506 (adopted by 4 AAC 52.490). Mediation is a dispute resolution process available to the parents and school at any point of the special education process. A due process hearing need not be requested before mediation is available. Mediation brings together a trained, impartial mediator and the parties to a dispute, in an attempt to have the parties reach a mutually agreeable resolution of the disagreement through a structured, but informal, meeting. Federal regulation 34 CFR 300.506 requires that (bold added for emphasis):

“(4) The State [of Alaska] must bear the **cost** of the mediation process, including the costs of meetings described in paragraph (b)(2) of this section.

(5) Each session in the mediation process must be scheduled in a **timely manner** and must be held in a **location that is convenient to the parties** to the dispute.

(6) 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--

(i) 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

(ii) Is **signed** by both the parent and a representative of the agency who has the authority to bind such agency.

(7) A written, signed mediation agreement under this paragraph is enforceable in any State court of competent jurisdiction or in a district court of the United States. 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 court or State court of a State receiving assistance under this part.

(c) Impartiality of mediator.

(1) An individual who serves as a mediator under this part--

(i) May not be an employee of the SEA or the LEA that is involved in the education or care of the child; and

(ii) Must not have a personal or professional interest that conflicts with the person's objectivity.”

Mediation is an alternative, but **not** a prerequisite to a due process hearing or the filing of a written complaint. Districts can request mediation at any time; if a parent requests a due process hearing (see below), the district **must** allow for mediation. Although mediation cannot be used to delay a due process hearing, both parties may request the hearing officer to postpone the hearing pending mediation efforts.

*Note: If mediation is pursued after a due process hearing request is filed by a parent both parties have 30 days to mediate and may agree to extend the mediation period beyond the 30 days. The 45 day hearing timeline would not start unless the parties agree in writing that an agreement is not possible. 34 CFR 300.510(c)(2) The parties do not need to make a request to the hearing officer to continue the mediation process.*

A telephone or written request for mediation should be made to:

Alaska Special Education Mediation Services

c/o Dave Thomas

P.O. Box 4750

Whitefish, Montana 59937

*Phone:* (800) 580-2209

*Fax:* (406) 863-9229

**Requests for IEP Facilitations**

Individualized Education Program (IEP) facilitation is a voluntary process that can be used when all parties to an IEP meeting agree that the presence of a neutral third party would help to facilitate communication to encourage the successful drafting of the student's IEP. This process is not necessary for most IEP meetings, but can be helpful for teams that are experiencing difficulties in communicating effectively.

An IEP facilitator has a thorough understanding of special education law and procedures. They are not advocates for either party. They help members of the IEP team to focus on the issues at hand during the IEP meeting. The facilitator's role is to ensure that the participants interact respectfully, that the perspectives of all the participants are heard, and that the participants focus on the issues and future actions regarding the student's program.

If you would like to find out more information or to request an IEP facilitation, contact:

Alaska Special Education Mediation Services

c/o Dave Thomas

P.O. Box 4750

Whitefish, Montana 59937

*Phone:* (800) 580-2209

*Fax:* (406) 863-9229

**Administrative Complaints**

Anyone (districts, parents, and other individuals) may file an **administrative complaint** with the *State of Alaska, Department of Education & Early Development* alleging that a district, DEED or other public agency has violated state or federal laws or regulations with respect to the provision of special education and related services within the previous year. A parent may file an administrative complaint alleging that a hearing officer's decision is not being complied with as required. See 4 AAC 52.500. The regulation further allows for the allegation of a "...systemic violation, a violation of the rights of a specific child, or both." Administrative complaints are assigned by DEED to a trained complaint investigator, who will investigate the allegations and submit a written report **within 60 days** which will include corrective actions to be taken should the investigation find that the agency has violated a legal requirement.

The elements of a complaint are as follow (34 CFR 300.153(b)):

“(a) An organization or individual may file a signed written complaint under the procedures described in Sec. Sec. 300.151 through 300.152.

(b) The complaint must include--

- (1) A statement that a public agency has violated a requirement of Part B of the Act or of this part;
- (2) The facts on which the statement is based;
- (3) The signature and contact information for the complainant; and

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- (4) If alleging violations with respect to a specific child--
- (i) The name and address of the residence of the child;
  - (ii) The name of the school the child is attending;
  - (iii) In the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 USC 11434a(2)), available contact information for the child, and the name of the school the child is attending;
  - (iv) A description of the nature of the problem of the child, including facts relating to the problem; and
  - (v) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.
- (c) The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with Sec. 300.151.
- (d) The party filing the complaint must forward a copy of the complaint to the LEA or public agency serving the child at the same time the party files the complaint with the SEA.”

An optional, sample *Notice of Administrative Complaint* form that meets requirements can be found at the end of this chapter; administrative complaints should be sent to:

**State of Alaska, Department of Education & Early Development**

Office of Special Education Programs  
Division of Teaching and Learning Support  
801 W. 10th Street, Suite 200  
P.O. Box 110500  
Juneau, AK 99811-0500

*Telephone:* (907)465-8693  
*Confidential Fax:* (907)465-2806  
*Email:* [sped@alaska.gov](mailto:sped@alaska.gov)

Administrative complaints must be provided to both DEED *and* the district simultaneously, and must include all required components listed on the form (4 AAC 52.500[b]). DEED has a variety of obligations on receipt of administrative complaints. Under Alaska regulation 4 AAC 52.500(c):

- “(1) assist the complainant to **clarify the allegations** in the complaint, and give the complainant the opportunity to submit additional information; and
- (2) **advise the complainant and the respondent** of the opportunity to resolve the issues in a non-adversarial manner, including an opportunity for the
- (A) respondent to offer a proposal to **resolve** the complaint; and
  - (B) complainant and respondent to voluntarily resolve the complaint through **mediation** under 4 AAC 52.490.”

Once an **administrative complaint** is received and clarified, the *Department of Education & Early Development* will conduct an independent investigation within 60 days, and will issue to the complainant and respondent a written decision. Under 4 AAC 52.500(e), the department may extend the 60-day period (with documentation stating the reasons) if it determines that exceptional circumstances exist, or if the complainant and the respondent have agreed to **mediate** the dispute under



4 AAC 52.490. The written decision issued by the department will include the following (4 AAC 52.500(e), (bold added for emphasis):

- “(1) a summary of the administrative **complaint**;
- (2) a summary of the **investigation**;
- (3) **findings of fact**;
- (4) **conclusions** that address each allegation in the administrative complaint, including the reasons for the decision; and
- (5) if a **violation** has been found, an **order** requiring cessation and remediation of the violation; under this paragraph, “remediation” may include compensatory education, monetary reimbursement, or corrective action, including corrective action and future provision of services for a systemic violation discovered in the investigation of a complaint regarding a specific child.”

If an administrative complaint substantially overlaps with the “...subject of a pending due process hearing under AS 14.30.193 or 4 AAC 52.550, the department will set aside any part of the administrative complaint that is being addressed in the due process hearing, until the conclusion of that hearing.” Individuals who disagree with the findings of an administrative complaint investigation retain the right to request a **due process hearing** (*below*).

### **Due Process Hearings**

Parents or districts may file requests for **due process hearings** with DEED under Alaska statute AS 14.30.193 and Alaska regulation 4 AAC 52.550. ***Due process hearing costs are the responsibility of the district.*** Further, due process hearings, conducted by trained hearing officers (lawyers), are tightly bound by law and regulation; interested parties are encouraged to access the full statutory and regulatory text.

Requests for **due process hearings** may concern: “...any issue related to identification, evaluation, or educational placement of the child, or the provision of a free, appropriate, public education to the child (AS 14.30.193).” Parents or districts may request **expedited** due process hearings when the issue concerns student discipline under 4 AAC 52.550(l).

The due process hearing complaint must include a description of the nature of the problem with the proposed or refused action, including the facts and a proposed resolution of the problem to the extent known and available to the party filing the complaint. It also must be signed. See 4 AAC 52.550(a)(5). Also, a party cannot raise issues at the hearing that were not part of the initial complaint unless the complaint is amended (4 AAC 52.550(d)) .

*Note: It is a requirement to file the request for a due process hearing with DEED and the other party.*

*Note: It is a right of the receiving party to file a sufficiency challenge within 15 days and the responsibility of the party who is the recipient of the complaint to file a response within 10 days. (4 AAC 52.550(b) and (e))*

An optional, sample *Notice of Due Process Hearing Request* form that meets requirements can be found at the end of this chapter; requests should be sent to:

**State of Alaska, Department of Education & Early Development**

Office of Special Education Programs  
Division of Teaching and Learning Support  
801 W. 10th Street, Suite 200  
P.O. Box 110500  
Juneau, AK 99811-0500

*Telephone:* (907)465-8693  
*Confidential Fax:* (907)465-2806  
*Email:* [sped@alaska.gov](mailto:sped@alaska.gov)

**Parents** must request due process hearings in Alaska “...not later than **12 months** after the date that the school district provides the parent with written notice of the decision with which the parent disagrees (AS 14.30.193).” **Districts** must request due process hearings “**within 60 days** after a parent takes the action or inaction that is the subject of the complaint (4 AAC 52.550[a]).”

*Note: There are two exceptions to the statute of limitations period: 1. If the parent was given specific misrepresentation by the school district that the problems had been resolved; and 2. If the school withheld information from the parent that is required by the IDEA to be provided. See 34 CFR 300.511(f).*

Once a request for a due process hearing is received by DEED, it assigns the request to a trained hearing officer appointed under AS 14.30.193, who will schedule and conduct a hearing “...to be reasonably convenient to the parent and the district.” Hearing officers in Alaska have knowledge of the law pertaining to students with disabilities, and have been trained by DEED. The hearing officer will be appointed through a random selection process from a list maintained by DEED; **within 5 business days** after receipt of the request, the department will provide you and the parent a notice of appointment, including the name and a statement of the qualifications of the hearing officer the department has determined available to conduct the hearing. Individual Hearing Officer qualifications are available from the department upon request.

Districts and parents each have the **right to reject**, without stating a reason, one hearing officer appointed by the department. The district or the parent must send written notice of the rejection to the department within 5 days after receiving the department’s notice of appointment. The department will, within 5 business days after receipt of the written rejection, provide a notice of appointment of another hearing officer to conduct the hearing. Each appointment is subject to a right of rejection by a party who has not previously rejected an appointment.

A due process hearing itself has a number of scripted components under 4 AAC 52.550:

1. The hearing officer may hold a **pre-hearing conference** or a settlement conference if requested by the parties;
2. The hearing officer must provide at least **10 days notice** of the scheduled hearing to both parties;
3. The district must conduct a **resolution meeting** within 15 days of notification, unless the complainant and district agree in writing to **waive** the resolution meeting, or the complainant and district agree to pursue **mediation**;

4. The hearing officer may proceed with the hearing if resolution or mediation is waived or fails **within 30 days**, or within **15 days** for an **expedited** due process hearing.
5. The hearing officer shall issue a final written decision **not later than 45 days** after one of the following events (4 AAC 52.550[k]):
  - “(1) the complainant and the district agree in writing to **waive the resolution meeting**;
  - (2) during either the mediation or resolution meeting process, the complainant and the district agree in writing that an **agreement is not possible**;
  - (3) the complainant or the district **withdraws from the mediation process** after the district and the complainant had agreed in writing to continue the mediation at the end of the 30-day resolution period; or
  - (4) the thirty-day timeline for the resolution meeting has expired without the complainant and the respondent resolving the complaint or agreeing in writing to continue mediation.”
5. If a parent or district requests an **expedited hearing on a disciplinary issue** (see 4 AAC 52.550[l]), the timelines for a decision are considerably reduced. The resolution meeting must be held by the district (or waived by the parties) within **seven days**; the hearing officer must hold an expedited due process hearing **within 20 school days**, and a final written decision must be issued **within 10 school days after the hearing**.

See Chapter 6: Student Discipline for more information about disciplinary matters.

A **resolution meeting** is convened by districts as part of any due process hearing, unless the parties agree in writing to waive it (a resolution meeting is not required under the IDEA if the school district is the party requesting the hearing); resolution meetings must:

- Occur within 15 days of receiving notice of the parent’s due process hearing request;
- Include the parent, relevant members of the IEP Team who have knowledge of the facts in the due process complaint and a representative of the agency who has decision-making authority on behalf of such agency;
- Not include an attorney of the district unless the parents are accompanied by an attorney;
- Discuss the due process hearing request, and the facts that form the basis of the due process hearing request; and
- Provide the district the opportunity to resolve the due process hearing request.

In the case that a resolution is reached that resolves the request for the due process hearing, the parties will sign a legally binding agreement; if the parties have **not** resolved the issues that are the subject of the due process hearing **within 30 days**, the due process hearing will proceed. The resolution agreement is enforceable in a state court of competent jurisdiction or the United States District Court.

*Note: The agreement can be voided by either party within 3 business days. See 34 CFR 300.510(e). The Alaskan code uses 3 school days. See 4 AAC 52.555(f).*

A sample *Resolution Session* form that meets requirements can be found at the end of this chapter.

### **Due Process Hearing Rights**

Parties to **due process hearings** have several rights under 34 CFR 300.512 (bold added for emphasis):

- “(1) Be **accompanied and advised** by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities, except that whether parties have the right to be represented by non-attorneys at due process hearings is determined under State law;
- (2) **Present evidence and confront, cross-examine, and compel the attendance of witnesses;**
- (3) **Prohibit the introduction of any evidence** at the hearing that has not been disclosed to that party at least five business days before the hearing;
- (4) Obtain a written, or, at the option of the parents, electronic, verbatim **record of the hearing;** and
- (5) Obtain written, or, at the option of the parents, electronic **findings of fact and decisions.**

(b) Additional disclosure of information.

- (1) **At least five business days prior to a hearing** conducted pursuant to Sec. 300.511(a), each party must disclose to all other parties **all evaluations** completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing.
- (2) A hearing officer may bar any party that fails to comply with paragraph (b)(1) of this section from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

(c) Parental rights at hearings. Parents involved in hearings must be given the right to--

- (1) Have the **child who is the subject of the hearing present;**
- (2) **Open the hearing to the public;** and
- (3) Have the **record of the hearing and the findings of fact** and decisions described in paragraphs (a)(4) and (a)(5) of this section provided at **no cost to parents.**”

### **Student Placement During Due Process Hearings & Appeals**

Alaska regulation 4 AAC 52.580 (in compliance with federal regulation 34 CFR 300.518) requires that (bold added for emphasis): “...during the pendency of an administrative or judicial proceeding concerning the identification, evaluation, or educational placement of a child, unless the parties agree otherwise, the child **shall remain in the educational placement** that preceded the placement change that gave rise to the administrative or judicial proceeding.”

### **Appeals of Due Process Hearings**

The written decision by the impartial hearing officer is final under federal regulation 34 CFR 300.514, and becomes (in redacted format) a public record after hearing officer submission to the *Department of Education & Early Development*. All due process hearing decisions may be appealed to Alaska superior courts under AS 44.62.560; Alaska Appellate Rule 602 requires that appeals be made **within 30 days** of the final order. Due process hearing decisions may also be appealed to federal district courts (see 34 CFR 300.516).

### Attorney Fees

Under federal regulation 34 CFR § 300.517, parties represented by an attorney who substantially prevail in any hearing or lawsuit may be entitled to recover attorney's fees from the other party. However, entitlement to attorney's fees can be a difficult determination and is made by a court; not by the hearing officer. Districts are **prohibited** from using IDEA Part B monies for attorney fees 34 CFR § 300.517(b), but may use them to pay for the costs related to the hearing itself (e.g. hearing officer's fees).

### Due Process Hearings Conduct

The conduct of due process hearings is scripted by Alaska regulation 4 AAC 52.550; many aspects of the process are technical. The **hearing officer** is responsible for the conduct of the hearing and will be in direct contact with both parties, and DEED, during the hearing. Parties should ask any and all questions of the hearing officer; they are experienced and trained in special education legal matters, and are helpful throughout the process.

### Surrogate Parents

Districts should have, at all times, trained and available **surrogate parents**, even if no students with disabilities currently require them, to ensure that districts can move quickly anytime entitled students are identified. Students in Alaska ages 3-17 (or 18-21 when "adjudicated incompetent by a court") are **entitled to a surrogate parent** under Alaska regulation 4 AAC 52.590 (bold added for emphasis) **if:**

- “(1) the district **cannot identify a parent** of the child;
- (2) the district, exercising reasonable diligence cannot locate at least one person **acting as a parent** of the child;
- (3) the district locates one or more persons acting as a parent of the child, but each person affirmatively **disclaims responsibility** for the child's educational program and **relinquishes it in writing to a surrogate parent**; or
- (4) the child is **committed to the custody of the Department of Health and Social Services** under AS 47.10.080 or AS 47.12.120.”

Districts must appoint surrogate parents, and ensure they meet all qualifications set out in 4 AAC 52.600; in addition, 4 AAC 52.590(d) states that "...a district shall give preference to a member of the child's immediate or extended family, or family friend over a person having no prior involvement with the child." Districts **may compensate** surrogate parents for services; such compensation does not change their employment status for the purposes of 4 AAC 52.600.

4 AAC 52.600 details surrogate parent requirements (bold added for emphasis):

- “(a) A surrogate parent must
  - (1) have no personal or professional interests that could **conflict** with the interests of the child;
  - (2) **not be employed by the department or by a public agency** that is involved in the education or care of the child; however, a district may select as a surrogate parent an individual who is an employee of an entity that is not a public agency, that only provides non-educational care for the child, and that meets the standards listed in this section;
  - (3) have **knowledge and skills** that assure adequate representation of the child; and

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- (4) have **participated in a training program** for surrogate parents developed by the department and conducted by the department or the district.
- (b) A person who otherwise qualifies as a surrogate parent is **not** considered an employee of a public agency solely because the person is paid by the district to serve as a surrogate parent.
- (c) A surrogate parent may represent the child in all matters relating to the identification, evaluation, and educational placement of the child, and the provision of a FAPE to the child.
- (d) The appointment of a surrogate parent is **not required** for a child who lives with a **foster parent**, if the foster parent affirms in writing that the foster parent is able and willing to serve as the parent of the child for purposes of special education, and that the foster parent expects the child to continue living with the foster parent on an ongoing basis.”

*Note: The educational placement of a student who has been identified by the district as entitled to a surrogate parent **cannot** be changed until 10 days after appointment of a surrogate parent (4 AAC 52.590[f]).*

*Sample forms for surrogate parents that meet requirements can be found at the end of this chapter. Notice of appointment to serve as a surrogate parent; Notice of end of appointment as surrogate parent; & Affirmation for foster parent.*



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**2. PROBLEM AND RELATED FACTS**

SECTION 2 INSTRUCTIONS:

- *REQUIRED FOR ALL COMPLAINTS*

*Describe the problem with the student's special education program, including any known violation of Alaska or federal law or regulation. Describe any relevant, specific actions the district or public agency has taken or refused to take. If not related to a specific child, describe the problem with the public agency, including any known violation of Alaska or federal law or regulation and the fact(s) on which the statement is based.*

**3. PROPOSED SOLUTION**

SECTION 3 INSTRUCTIONS:

- *REQUIRED FOR A CHILD SPECIFIC COMPLAINT*

*Describe what you think needs to be done to solve the problem, if you know or have any specific ideas at this time.*

SIGNATURE (*REQUIRED*): \_\_\_\_\_ DATE: \_\_\_\_\_





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**2. PROBLEM AND RELATED FACTS**

*Describe the nature of the problem of the child relating to the proposed or refused initiation or change that is the basis of the complaint, including facts relating to the problem.*

**3. PROPOSED SOLUTION**

*Describe what you think needs to be done to solve the problem, to the extent known and available at this time.*

SIGNATURE (REQUIRED): \_\_\_\_\_ DATE: \_\_\_\_\_

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<b>Resolution Session</b>		
Student Initials:	Due Process Hearing Number:	
School District:		
Attending School:		
<b>A. Waiver of the Resolution Session:</b>		
<i>Having received the Resolution Session Information Sheet, check applicable boxes below, sign and date</i>		
<input type="radio"/>	We agree to <b>waive</b> the resolution session; or	
<input type="radio"/>	We agree to <b>participate in mediation</b> instead of a resolution session.	
<b>For the parent(s) or adult student:</b>		
Print Name:	Signature:	Date:
Print Name:	Signature:	Date:
<b>For the district program:</b>		
Print Name:	Signature (Authorized district representative):	Date:
<b>OUTCOME:</b>		
<input type="radio"/>	Agreement reached (see below).	
<input type="radio"/>	No Agreement reached.	
	(Parent Signature)	(District Representative Signature)
<b>B. Resolution Session Participants:</b>		
<i>List all resolution session participants, whether or not an agreement is reached.</i>		
Name	Position/Agency	Dates of Participation:
<b>C. Resolution Agreement:</b>		
<i>Complete if the parent(s) and district/program reach an agreement.</i>		
_____ and _____ agree to the attached document.		
(Parent or Adult Student)	(District)	
<b>The parties understand that:</b>		
1. The agreement is voluntary, legally binding and enforceable in any state court of competent jurisdiction or in a district court of the United States.		
2. Any party signing below may void this agreement by sending a written, signed, dated, statement which is received by the other party within three business days of the last date signed below.		
<b>For the parent(s) or adult student:</b>		
Print Name: _____	Signature: _____	Date: _____
Print Name: _____	Signature: _____	Date: _____
<b>For the district program:</b>		
Print Name: _____	Signature: _____	Date: _____
	(Authorized District Representative)	



**Notice of Appointment to Serve as a Surrogate Parent**

TO:

Date of Appointment:

Dear

The *school district* appoints you to serve as a surrogate parent in accordance with both federal (34 CFR § 300.519) and Alaska (4 AAC 52.590-610) regulations. In accordance with regulations, you, as a surrogate parent, will have all the rights and responsibilities of parents in matters relating to the special education process. The criteria for surrogate parents includes that you are not an employee of the State Education Agency, the local school district, or any other agency that is involved in the education or care of the child; that you have no personal or professional interest that conflicts with the interest of the child you are selected to represent; that you have the knowledge and skills that ensure adequate representation of the child; and that you are not a surrogate parent solely to be paid by the agency.

In accepting terms, you acknowledge you are in compliance with the requirements.

The term of your appointment is:

The student you will represent is:

This student is currently placed in an educational program at:

If you have any questions about your appointment or your rights and responsibilities as a surrogate parent, please call me.

Sincerely,

**Notice of End of Appointment of a Surrogate Parent**

TO:

Date of Appointment: \_\_\_\_\_

Dear \_\_\_\_\_,

The School District has made a determination regarding the continuation of your appointment as a surrogate parent for \_\_\_\_\_.

Our determination is as follows:

- Your appointment has been terminated as you requested.
- Your appointment has been terminated because you no longer meet the criteria for a 'qualified' surrogate parent.
- Your appointment has been terminated because the student no longer resides in the district.
- Your appointment is discontinued.

If your appointment has been terminated by the district, you have the right to request an impartial review from the school district regarding the district's determination.

Thank you for your assistance.

Sincerely,

**Affirmation that the Foster Parent Will Serve as Parent**

Date: \_\_\_\_\_

Dear \_\_\_\_\_,

Based on your affirmation, the school district appoints you to act as a parent for special education purposes, in accordance with federal (34 CFR § 300.519) and Alaska regulations (4 AAC 52.600(d)).

We confirm that you, as a foster parent, have all the rights and responsibilities of parents in matters relating to the special education process for student \_\_\_\_\_.

The term of your appointment is ongoing; please notify the district immediately should your foster parent status change.

This student is currently placed in an educational program at:

*[School & principal contact information]*

If you have any questions about your appointment or your rights and responsibilities, please call me.

Sincerely,

## **CHAPTER 7: PERSONNEL**

In general, personnel requirements under Alaska statute and regulation are handled by Human Resources personnel within districts or by DEED's Teacher Certification department:

*Alaska Department of Education & Early Development*

ATTN: Teacher Certification  
801 West 10<sup>th</sup> Street, Suite 200  
Juneau, AK 99811

*Voice:* (907) 465-2831  
*Fax:* (907) 465-2441  
*E-mail:* [tcwebmail@alaska.gov](mailto:tcwebmail@alaska.gov)  
<http://education.alaska.gov/TeacherCertification/>

However, there are some requirements unique to the administration of special education programs with which directors should be familiar.

### **Special Education Administrators**

Alaska statute AS 14.30.255 specifies that: "A person may not be employed as an administrator of a program of special education and related services unless that person possesses a valid administrative certificate and, in addition, such training as the department may require by regulation." Further, under 4 AAC 12.350, "[e]ach person employed solely to administer a special education program must possess

- (1) both a Type B certificate issued under 4 AAC 12.345 and a teacher certificate issued under 4 AAC 12.305 endorsed for special education or for a related services specialty; or
- (2) a Type B certificate issued under 4 AAC 12.345 endorsed for special education or a related services specialty.
- (3) a Type F certificate issued under 4 AAC 12.347."

### **Special Education Teachers**

Importantly, there are **no** requirements that students with disabilities be **taught** by special education teachers (exclusively, or at all). There are requirements that special education teachers be **IEP team members** (34 CFR § 300.321(a)[3]), but the teachers working with students with disabilities should, in the vast majority of cases, be **the same** general education teachers to which all district students have access. The creation of separate classes, or removing students with disabilities from general education placements may be done only with justification explicitly stated on the IEP (see Chapter 5: Placement).

*Note: The IEP Team needs to have at least one special education teacher OR special education service provider.*

Specifically, 34 CFR § 300.114 requires that:

"Each public agency must ensure that--

- (i) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and
- (ii) Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily."



General education teachers are the default option for providing *content instruction* to students with disabilities; 34 CFR § 300.320(5) reiterates that it is the obligation of districts to ensure that all IEPs state why any deviation from this default is necessary: “(5) An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in paragraph (a)(4) of this section[.]” IEP teams should be **cautious** in making any decision about instructional arrangements that reduce the access of students with disabilities to general education teachers; IEP teams should, on the whole, seek to **maximize access** of students with disabilities to the general curriculum (through general education teachers), while **minimizing impact** that disability may have on a student’s learning. Students with a disability have a right to an IEP that focuses on access and progress in the general education curriculum with placement. The focus on instruction in the general education curriculum applies regardless of the placement.

Special education teachers are certificated under 4 AAC 12.330; directors should assign them tasks that take advantage of their extensive preparation in evaluating, planning, teaching, or training other professionals to work with students with disabilities. Directors and IEP teams should be similarly cautious about assigning students with disabilities to general education teachers without adequate training in the unique challenges presented by the evaluation, planning, and teaching of students with disabilities.

### **Certification**

Special education teachers must be **certified** to teach in the State of Alaska; certification status of all teachers is searchable here:

<http://education.alaska.gov/TeacherCertification/CertificationsSearch.cfm>

Alaska statute AS 14.30.250 further specifies that (bold added for emphasis): “A person may not be employed as a teacher of children with disabilities unless that person possesses a valid teacher certificate and, in addition, the **training** that the department requires by regulation. For additional information about teacher certification and training requirements, see Alaska regulations 4 AAC 12.300 ‘Certification of teachers,’ and 4 AAC 12.305 ‘Teacher certificate (initial, professional, master)’. For specific requirements concerning endorsements for special education teachers see 4 AAC 12.330.

There is also a route for directors (through superintendents & local school boards) to request a ‘special education alternate program certificate’ under 4 AAC 12.340:

“(a) If a school district superintendent is unable to recruit and hire a new-to-the-district teacher who holds a valid teacher certificate under 4 AAC 12.305 with a special education endorsement, or a related services specialist who holds a special services certificate (Type C) with an endorsement in speech language pathology, the superintendent may request the commissioner to grant a special education alternate program certificate for the hiring of a person who does not have the required endorsement.”

### **Teachers of Students Who Are Visually Impaired or Deaf**

Per 4 AAC 12.330(b), “A person who has the primary responsibility for the evaluation of, the planning of educational programs for, or the teaching of or training of staff to teach children who are visually impaired or deaf must have an endorsement in the education of children with the relevant

impairment.” Districts struggling to locate teachers who meet this requirement should contact the Special Education Service Agency; [sesa.org](http://sesa.org).

### **Interpreters for Deaf Students**

Under Alaska Regulation [4 AAC 52.255](#):

“an interpreter provided as part of a program of special education and related services for a child with a disability who is deaf must be certified by the national registry of interpreters for the deaf, or must be enrolled and progressing in a program that meets the standards developed by the board of education and early development's advisory board for the deaf and hard of hearing.”

This regulation empowers the Board of Education and Early Development's Advisory Board for the Deaf and Hard of Hearing (also referred to as the Deaf Education Board - DEB) to create program standards. The standards created in November 2018 are as follow:

1. An Educational Interpreter must demonstrate a score of 4.0 or above on the Educational Interpreter Performance Assessment (EIPA) of American Sign Language/Pidgin Signed English (ASL/PSE) skills, obtain a passing score on the EIPA Written Test, and comply with all tenets of the Registry of Interpreters of the Deaf - National Association of Deaf (RID-NAD) Code of Professional Conduct.
2. An Educational interpreter who is certified by the national Registry of Interpreters for the Deaf (RID) as specified in [4 AAC 52.255](#) must demonstrate a score of 4.0 or above on the EIPA Performance Assessment of ASL/PSE skills and passing score on the EIPA Written Test no later than two years after the initial hire or contract date.
3. If a district cannot obtain an interpreter as described above, an interpreter may work in the state of Alaska on a temporary basis of up to two years, if the interpreter
  - (a) demonstrates a score of 3.8 or above on the Educational Interpreter Performance Assessment (EIPA) of ASL/PSE skills, and
  - (b) is actively participating in an Educational Interpreter Mentoring program as approved by the Department of Education & Early Development (DEED), and
  - (c) complies with all tenets of the RID-NAD Code of Professional Conduct.
4. If an interpreter has no EIPA rating score, the interpreter may work in the state of Alaska on a temporary basis for up to two years, if the interpreter
  - (a) attains a safe hire category rating on the EIPA Pre-Hire screening in the ASL/PSE model that shows skills at least at a minimum standard, and
  - (b) holds appropriate educational interpreting credentials approved by DEED, and
  - (c) completes an initial EIPA Performance Assessment of ASL/PSE skills within six months of the initial hire or contract date, and
  - (d) is actively participating in an Educational Interpreter Mentoring program as approved by DEED, and
  - (e) complies with all tenets of the RID-NAD Code of Professional Conduct.

The Alaska State School for Deaf and Hard of Hearing (ASSDHH), also known as the Alaska School for the Deaf (AKSD) is the statewide resource for current standards and practices regarding the qualifications and hiring of sign language interpreters. DEED and AKSD will work in tandem to establish the requirements for an approved Educational Interpreter Mentoring program, and to evaluate the educational interpreting credentials under section 4(b) to determine if an interpreter has an adequate knowledge and skill set for the educational environment.

For the most recent standards and practices regarding the qualifications and hiring of sign language interpreters, please contact the Alaska State School for Deaf and Hard of Hearing (ASSDHH) located within the Anchorage School District;

<http://www.asdk12.org/sped/services/> (*select the appropriate grade level for specific program*)

### **Preschool Special Education Teachers**

Per 4 AAC 12.330(c) (bold added for emphasis): “(c) A person employed by or on behalf of a school district to teach special education to a preschool child with a disability, who does not hold an endorsement in early childhood special education, must have completed **six semester hours in early childhood special education** in addition to the requirements in (a) of this section.”

A sample *Documentation of Early Childhood Special Education Credits* form can be found at the end of this chapter.

### **Related Services Providers**

Alaska regulation 4 AAC 12.365 specifies that (bold added for emphasis):

“A person employed to provide **related services**, as defined in 4 AAC 52.790, including speech or language pathology, school psychology, counseling, orientation and mobility, adaptive physical education, recreation therapy, social work, and psychometry must possess a (1) **teacher certificate** issued under 4 AAC 12.305 endorsed in the field of employment; or (2) **special services certificate** (Type C) issued under 4 AAC 12.355 in the field of employment.”

### **Paraprofessional Training**

Under Alaska regulation 4 AAC 52.250, paraprofessionals (or, per the regulation, ‘special education aides,’ must be trained by districts in a variety of skills (bold added for emphasis):

“(a) A person employed as a special education aide shall be **trained** by a special education teacher or specialist certificated under 4 AAC 12.330 or 4 AAC 12.365, or licensed under AS 08.11, AS 08.84, or AS 08.86 to provide the services with which the aide will assist.

(b) Before a special education aide assists in providing direct special education or related services to a child or children, or concurrent with providing direct special education or related services to a child or children, the district must provide and document a **minimum of six hours of annual training**, in the aggregate, to the aide regarding

- (1) the child's or children's disabilities;
- (2) the content of the IEPs;
- (3) the instructional and safety procedures to be used; and
- (4) confidentiality procedures.”

A sample *Documentation of Paraprofessional Training* form can be found at the end of this chapter.

### Program Supervision

4 AAC 52.252 requires that *programs* be supervised, on site, at least every three months, by certificated professionals (bold added for emphasis):

“(a) Each **special education program** provided to a child through the assistance of a certificated regular education teacher must be reviewed on-site by **the certificated special education teacher responsible for the child's program**. The child's IEP team shall make an individualized determination of the frequency of on-site supervision for each program. A district must provide for on-site supervision **at least once every month** unless the IEP team, after consideration of all the evidence, determines that less frequent on-site supervision for that program is sufficient to provide a FAPE to the child. However, a district may not provide on-site supervision under this subsection less frequently than **once every three months**.

(b) Each **related services program** provided to a child through the assistance of a certificated regular or special education teacher must be reviewed on-site by **the certificated or licensed related services provider responsible for the child's program**. The child's IEP team shall make an individualized determination of the frequency of on-site supervision for each related service. A district must provide for on-site supervision at least **once every month** unless the IEP team, after consideration of all the evidence, determines that less frequent on-site supervision for that related service is sufficient to provide a FAPE to the child. However, a district may not provide on-site supervision less frequently than **once even** [*Ed note: ‘even’ in regulation text, but no doubt they meant ‘every’*] **three months.**”

“**Program supervision**” is also Alaska’s regulatory term concerning the ‘supervision’ of paraprofessionals/special education aides 4 AAC 52.250 (bold added for emphasis):

“(c) Each special education aide employed by the district to assist in providing special education to a child must be **supervised** on-site by the certificated special education teacher responsible for the child's program. [...]

(d) Each special education aide employed by the district to assist in providing related services to a child must be **supervised** on-site by the certificated or licensed related services provider responsible for the child's program. [...]

### Special Education Endorsement Removal

Per 4 AAC 12.330(d-e):

“(d) The holder of a teacher certificate with a special education endorsement may have the endorsement removed from the certificate by filing a form developed by the department and paying a fee of \$125 to the department, except that a special education endorsement may not be removed during

(1) the term of a certificate holder's first initial or professional teacher certificate issued under 4 AAC 12.305(a) or (b); or

(2) a school term in which the certificate holder is assigned to a position requiring a special education endorsement.

(e) At the request of a certificate holder whose special education endorsement was removed under (d) of this section, the endorsement shall be reinstated, without payment of a fee, if the certificate holder meets the endorsement requirements in effect at the time of the request for reinstatement.”



**Documentation of Paraprofessional Training**

Name of paraprofessional:

Date(s) of Training:

Person Conducting Training (Name/Title):

Length of Training (*in hours*):

Topics covered:

- Disability-specific training
- IEP contents
- Instructional and safety procedures to be used
- Confidentiality procedures
- Other:

\_\_\_\_\_  
Signature of Paraprofessional

\_\_\_\_\_  
Signature of Supervisor

## CHAPTER 8: FUNDING

Some districts supplement special education funding with local funds; however, special education in all districts in Alaska are largely funded by federal and state dollars. Districts must apply for *federal* funding annually through DEED, while most *state* funds are allocated directly to districts by formula. *Remember:* ‘Fiscal years / FY’ are typically **not** the same as calendar years; the State of Alaska’s fiscal year runs July 1<sup>st</sup> - June 30<sup>th</sup>, while the federal fiscal year runs October 1<sup>st</sup> - September 30<sup>th</sup>.

### Federal Grants

Federal special education funds in Alaska flow through DEED; directors must apply to DEED annually to receive them. There are two separate grants available to districts that provide the bulk of federal special education funds, distinguished by the age of students served:

- **Title VI-B**, a.k.a. **Part B**, a.k.a. **Section 611**: federal funding made available under the *Individuals with Disabilities Education Act*, Part B, § 611 for **students aged 6-21**.
- **Section 619**: federal funding made available under the *Individuals with Disabilities Education Act*, § 619 for **students aged 3-5**.

The department utilizes an online Grants Management System (GMS) in which districts have assigned personnel to enter, review and approve submissions to the department. The department in turn reviews and approves the budget and budget narratives (including elements of the application such as administrative assurances, DUNS and SAM expiration date). Both applications are due to be entered and complete for DEED review at the **end of April (April 30)**. District personnel may find the log on information and specific instructions concerning the GMS at the entry site address:

<https://gms.education.alaska.gov/>

The department annually conducts a Risk Assessment to evaluate potential harm to the states interests. The special education staff review assigned districts and other grantees/sub-grantees in the following risk factor areas:

- Timely and accurate performance reports
- Key staff turnover
- Attending program training/meetings provided by the government (State/Federal)
- Significant findings during previous monitoring(s) (State/Federal)

Ratings are combined with the risk assessments conducted through the grants/fiscal office for a combined score. Scores indicate a risk assessment level with the following actions possible based on the rating:

- 0 to 1 – No action required
- 2 to 4 – Technical assistance (Telephonic or Web Based)
- 5 to 6 – Technical assistance – Individualized
- 7 to 7+ - On site monitoring and/or training (may impose high-risk conditions)

This rating system is implemented once all district grant applications are completed. If a district would like to review the district rating, the document will be made available upon request.

Funds are typically available immediately on commencement of the upcoming fiscal year. Districts may appeal unfavorable grant award decisions to DEED, to the Alaska superior court, or to the U.S. Department of Education, as appropriate. For appeal details, see 4 AAC 52.710(g). DEED’s Special

Education Grants Administrator's job duties include guiding special education directors through federal grant applications and administration; call (907) 465-8694; see also DEED's [contacts](#) page online.

### **Administrative Assurances**

In association with the federal grants application, the department has implemented administrative assurances that must be adhered to in all school districts receiving federal funds. These assurances are subject to state monitoring for compliance and it is the responsibility of the district to maintain documentation demonstrating compliance. A copy of the administrative standards is available online through the GMS or from DEED upon request. The current listing of the administrative assurances as of the release date of this document are as follow:

1. The district will maintain documentation of a written administrative guideline for documenting and attempting interventions for a reasonable length of time before referral. 34 CFR 300.309
2. The district will maintain documentation that procedures for screening include: vision, hearing, health, motor, language and social development, general basic skills and general development and primary language and culture. 4 AAC 52.100
3. The district will maintain documentation of completed screenings for children who were determined eligible and ineligible. 34 CFR 300.111
4. The district will maintain documentation of a Child Find plan for children ages 3-21 that identifies the Child Find Coordinator, and there is documentation that staff have been trained in child find referral procedures. 34 CFR 300.111, 4 AAC 52.100
5. The district will maintain documentation that verifies contact is made to private schools, charter schools, and correspondence schools to identify children with disabilities who need services. 34 CFR 300.131
6. The district will maintain documentation that verifies child find activities are coordinated with Part C child find activities. 34 CFR 300.124
7. The district will maintain documentation that the child find annual public notice includes the types of disabilities that qualify as disabling conditions, educational needs of children with disabilities, right to FAPE and special services available through the district. 34 CFR 300.111
8. The district will maintain documentation that the child find annual public notice is available in English and each language in which the district has a bilingual program and is posted in several areas throughout the community (TV spots, newspaper announcements and/or other forms of media). 34 CFR 300.111
9. The district will maintain documentation of a surrogate parent plan and a current list of surrogates who received training. 34 CFR 300.519
10. The district will maintain documentation that student files demonstrate that the surrogate parent represents the child in all matters related to identification, evaluation, educational placement, and provision of FAPE. 34 CFR 300.519
11. The district will maintain documentation that if a surrogate parent is removed, documentation shows reason(s) for removal (based on surrogate parent plan) and documents proper procedures were followed. 34 CFR 300.519
12. The district will maintain documentation that a continuum of placements is available and used in recommending placement. 34 CFR 300.115
13. The district will maintain documentation that a continuum of alternative placements is available to students with disabilities at each school site or there is a plan to provide alternative placement if necessary. 34 CFR 300.115



*Guidance for Special Education Personnel*

14. The district will maintain written affirmation(s) with private school representatives regarding child find and special education services for parentally placed private school children with disabilities. 34 CFR 300.134, 300.135
15. The district will maintain documentation that services are being provided to eligible students in private schools, correspondence schools, and charter schools. 34 CFR 300.118
16. The district will maintain documentation that shows ESY services are provided beyond the regular school year at no cost to parents. 34 CFR 300.106
17. The district will maintain documentation of criteria for determining eligibility as Learning Disabled. 34 CFR 300.7, 34 CFR 300.309-311
18. The district will maintain a list of places parents may obtain independent evaluations and process the district allows when providing an evaluation. 34 CFR 300.502
19. The district will maintain documentation that the district periodically inspects hearing aids worn by students who are deaf or hearing impaired to ensure proper functioning. 34 CFR 300.113
20. The district will maintain interagency agreements with juvenile corrections facilities and adult corrections facilities, when applicable. 34 CFR 300.2, 34 CFR 300.118
21. The district will maintain interagency agreements with community mental health providers, when applicable. 34 CFR 300.2
22. The district will maintain interagency agreements with private schools, when applicable. 34 CFR 300.2
23. The district will maintain interagency agreements with the local infant learning program. 34 CFR 300.2
24. The district will maintain interagency agreements with the local Head Start program, when applicable. 34 CFR 300.2
25. The district will maintain interagency agreements with community agencies involved in providing transition services for secondary transition, including, but not limited to, vocational rehabilitation. 34 CFR 300.2
26. The district will maintain documentation that written notice is made available in all languages for which the district has a bilingual program, when applicable. 34 CFR 300.503
27. The district will maintain documentation that if native language is not a written language, a taped version of written notice is available as are other alternative methods of communication (eg. Braille, interpreter), when applicable. 34 CFR 300.503
28. The district will maintain documentation that a written notice and Procedural Safeguards were provided to parents initiating a due process hearing. 34 CFR 300.504
29. The district will maintain documentation that the district informs parents of their rights to have copies of hearing transcripts, keeps transcripts on file and shares them with parents when requested. 34 CFR 300.512
30. The district will maintain documentation that the student remained in educational placement ("stay put") that preceded a proceeding (unless agree otherwise). 34 CFR 30.518
31. The district will maintain documentation that district complied with parental requests to review records. 34 CFR 300.613
32. The district will maintain documentation that one district employee has received training on district's responsibility regarding confidentiality of information and is designated to oversee confidential records. 34 CFR 300.623
33. The district will maintain a record of confidentiality training for personnel who will be collecting or using personally identifiable information. 34 CFR 300.623
34. The district will maintain documentation of training that includes: dates of training, who

*Guidance for Special Education Personnel*

- conducted training, subjects covered and participants attending. 4 AAC 52.765
35. The district will maintain documentation of a current list of employee names/positions that may have access to personally identifiable information and the list is posted on or near the confidential special education files. 34 CFR 300.623
  36. The district will maintain documentation that, upon request, the district will provide parents with a list of the types and locations of education records collected, maintained or used. 34 CFR 300.616
  37. The district will maintain documentation that parents have been informed when personally identifiable information collected, maintained or used is no longer needed. 34 CFR 300.624
  38. The district will maintain documentation that they have a written procedure for destroying personally identifiable information. 34 CFR 300.624
  39. The district will maintain procedures to responding to parental requests to amend student records. 34 CFR 300.618
  40. The district will maintain documentation that all education staff, including service providers, are properly certified/ endorsed. 4 AAC 12.305, 4 AAC 12.365, 4 AAC 12.345
  41. The district will maintain documentation that Interpreters for the Deaf comply with regulatory requirements. 4 AAC 52.255
  42. The district will maintain documentation that verifies paraeducators have received 6 hours of training on child's disability, content of IEP, instructional and safety procedures and maintaining confidentiality annually. 4 AAC 52.250
  43. The district will maintain documentation that they have a personnel development plan. 4 AAC 52.260
  44. The district will maintain documentation that verifies preschool teachers have the appropriate certification. 4 AAC 12.330
  45. The district will maintain documentation that persons making final determinations regarding disciplinary actions have access to special education and disciplinary records. 4 AAC 52.530
  46. The district will maintain documentation that shows school records containing information concerning violent or disruptive behavior or disciplinary action, are transferred to the student's new school. 4AAC 52.530
  47. The district will maintain documentation that Special Education and disciplinary records are provided to appropriate agencies (including law enforcement) to the extent permitted by FERPA. 34 CFR 300.535, 34 CFR 300.622
  48. The district will maintain documentation that it takes all reasonable steps to provide print instructional materials in accessible formats to students with disabilities (who need those materials) at the same time as other students receive print instructional materials. 4 AAC 52.148, 34 CFR 300.172
  49. When purchasing core instructional print materials the district will make every attempt to ensure that the publisher send (at no additional cost) electronic files containing the contents of the print instructional materials using the NIMAS standard to the National Instructional Materials Center (NIMAC). 34 CFR 300.210(a)
  50. The district has submitted documentation that the substantiates compliance with the excess cost requirements under 34 CFR 300.202. 34 CFR 300.202, 34 CFR 300.16, 34 CFR 300 Appendix A

### Use of Federal Funds

The use of federal education dollars for special education is limited in three important ways (20 USCS § 1413; bold added for emphasis):

- “(A) In general.--Amounts provided to the local educational agency under this part [IDEA] shall be expended in accordance with the applicable provisions of this part and--
- (i) shall be used only to pay the **excess costs** of providing special education and related services to children with disabilities;
  - (ii) shall be used to **supplement** State, local, and other Federal funds and **not to supplant** such funds; and
  - (iii) shall not be used, except as provided in subparagraphs (B) and (C), to **reduce the level of expenditures** for the education of children with disabilities made by the local educational agency from local funds below the level of those expenditures for the preceding fiscal year.”

Together, these restrictions are known as **excess cost, supplement not supplant, and maintenance of effort**.

**Excess cost** restrictions are **met** under 34 CFR 300.202 when a district “...has spent at least a minimum average amount for the education of its children with disabilities before funds under Part B of the Act are used.” **Excess cost** restrictions are **waived** under 34 CFR § 300.202(1)(ii) “...for all of the costs directly attributable to the education of a child with a disability in any of the ages 3, 4, 5, 18, 19, 20, or 21, if no local or State funds are available for nondisabled children of these ages.”

*Note: Excess Cost worksheets must be completed and uploaded into the GMS due April 30<sup>th</sup> of the application year*

**Supplement not supplant** restrictions are met when districts use federal education dollars for special education programs only once local and state sources have been exhausted.

### Maintenance of Effort (MoE)

MoE restrictions are met by keeping current expenditures on special education and related services the same or higher than during the previous fiscal year. However, there are three circumstances that allow districts to meet MoE requirements while reducing overall expenditures (20 USCS § 1413[2](B); bold added for emphasis):<sup>1</sup>

- “[A] local educational agency may reduce the level of expenditures where such reduction is attributable to--
- (i) the voluntary **departure**, by retirement or otherwise, or departure for just cause, of **special education personnel**;
  - (ii) a **decrease in the enrollment** of children with disabilities;
  - (iii) the termination of the obligation of the agency, consistent with this part, to provide a program of special education to a particular child with a disability that is an

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<sup>1</sup> Additionally, districts may reduce some local expenditures on special education under certain conditions (*e.g.* when federal allocations increase); directors may access details in 20 USCS § 1413[2](C), but are encouraged to contact DEED school finance personnel before doing so.

**exceptionally costly program**, as determined by the State educational agency, because the child--

- (I) has left the jurisdiction of the agency;
- (II) has reached the age at which the obligation of the agency to provide a free appropriate public education to the child has terminated; or
- (III) no longer needs such program of special education; or
- (iv) the termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities.”

Concerning grants, 20 USCS § 1413(4) allows the use of federal special education funds on the following (bold added for emphasis):

“(i) Services and aids that **also benefit nondisabled children**--For the costs of special education and related services, and supplementary aids and services, provided in a regular class or other education-related setting to a child with a disability in accordance with the individualized education program of the child, even if 1 or more nondisabled children benefit from such services.

(ii) **Early intervening services**--To develop and implement coordinated, early intervening educational services in accordance with subsection (f).

(iii) **High cost education and related services**--To establish and implement cost or risk sharing funds, consortia, or cooperatives for the local educational agency itself, or for local educational agencies working in a consortium of which the local educational agency is a part, to pay for high cost special education and related services.

(B) **Administrative case management**--A local educational agency may use funds received under this part to purchase appropriate technology for recordkeeping, data collection, and related case management activities of teachers and related services personnel providing services described in the individualized education program of children with disabilities, that is needed for the implementation of such case management activities.”

### **Adoption of Guidance for Special Education Personnel**

Alaska regulation 4 AAC 52.710 specifies that (bold added for emphasis): “[A federal grant] application must include documentation that the district has adopted special education and related services' **policies and procedures** that are consistent with all state policies and procedures as set out in this chapter.”

This ‘policies and procedures’ requirement is often met when districts formally adopt this guidance (the *Guidance for Special Education Personnel*) – but districts are at all times free to adopt their own policies and procedures, as long as they comply with all federal and Alaska state special education statutes and regulations.<sup>1</sup>

### **State Funding**

The State of Alaska also directs funding to districts for special education programs – but it does **not** restrict funds or tell districts how to spend the money; State of Alaska special education program funds

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<sup>1</sup> This policies-and-procedures requirement – derived from federal grant funding requirements – is what provides the bulk of the authority exercised by the *Department of Education & Early Development* in overseeing district special education programs. Districts that fail to adopt policies and procedures meeting federal and state requirements risk becoming ineligible for state and federal grant funding.

are included with overall state aid money. The amount allocated to each district is derived by an algorithm outlined in Alaska statute AS 14.17.420, essentially based on the district's Average Daily Membership (ADM) (bold added for emphasis):

“(1) special needs funding is available to a district to assist the district in providing special education, gifted and talented education, vocational education, and bilingual education services to its students; a **special needs funding factor of 1.20** shall be applied as set out in AS 14.17.410 (b)(1); [...]

(b) If a district offers special education, gifted and talented education, vocational education, or bilingual education services, in order to receive funding under (a)(1) of this section, the district must file with the department a plan that indicates the services that will be provided to students who receive these services.”

The funding factor mentioned in section (1) increases the dollar amount provided to each district by 20%, based on a district's average daily membership (ADM) under AS 14.17.410. The funding factor increase does not depend on numbers of students served, and districts do not need to demonstrate they serve any particular number or percentage of 'special needs' students to receive the 20% increase – but they do need to file a plan for service provision with DEED.

### Intensive Funding

**Intensive services funding** (AS 14.17.420[2]) is allocated to districts on an individual-claims basis. Alaska statute AS 14.17.420, specifies (bold added for emphasis):

“(2) in addition to the special needs funding for which a district is eligible under (1) of this subsection, a district is eligible for **intensive services funding** for each special education student who needs and receives intensive services and is enrolled on the last day of the count period; for each such student, intensive services funding is equal to the intensive student count **multiplied by 13.**”

Districts claiming eligibility for intensive services funding for any student(s) must provide documentation to DEED that they are providing intensive services *to each individual student for whom funding is provided*, on the fourth Friday in October (Alaska's student count date; AS 14.17.600) of each year.<sup>1</sup>

**NOTE: TO CLAIM A STUDENT AS INTENSIVE DISTRICTS MUST REPORT THE STUDENT'S STATUS AS “INTENSIVE = YES” ON THE REQUIRED OASIS REPORTING FOR THE OCTOBER COUNT - IF THE STUDENT IS NOT REPORTED AS INTENSIVE, NO FILE WILL BE REVIEWED FOR THE STUDENT. THIS INCLUDES NEW INTENSIVE CLAIMS.**

DEED verifies annually the intensive services funding claims submitted by districts across the state; funding provided on the basis of insufficient or improper documentation must be repaid by districts to the State of Alaska.

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<sup>1</sup> Importantly, though intensive services dollars are allocated to districts via an individual student count (and ongoing file review) – there is **no requirement or expectation** that intensive services funding be held and accounted for separately by districts, or directed to the benefit of any individual student.

Specifically, 4 AAC 52.700 outlines the eligibility requirements for intensive services funding (bold added for emphasis):

“(c) A student is eligible for funding as an intensive student if the student has been identified for special education and the student **needs and receives individual attention and services that are significantly more complex and frequent, and require significantly more resources to provide, than the services received by other special education students.** The services received by an intensive student will include services necessary to meet a critical medical need, services necessary to provide for the student's health, safety, and educational needs, and special education and related services provided by qualified staff for the entire school day both in and out of the classroom setting. A student who is able to function independently, with limited or no supervision, for a substantial period of time, inside or outside the classroom setting, is not an intensive student. Intensive services do not include new services due to discipline, alcohol or illegal drug use, or criminal activity that were not already provided to the student for educational purposes. For funding purposes under AS 14.17.420 , a student will not be counted as receiving intensive services unless the student needs and receives intensive services and the

(1) student's **IEP provides for the following:**

(A) **direct daily instruction** by a certified special education teacher with an endorsement under 4 AAC 12.330 or special education alternate program certificate under 4 AAC 12.340;

(B) **multiple services**, including related services;

(C) that all services not provided by a certified special education teacher be **supervised** by at least one certified special education teacher or related service provider;

(D) **continuous** special education programming;

(E) beginning in the school year that commences July 1, 2010, **assistance and training in two or more basic adaptive skills**, appropriate to the age of the student;

(F) that **individual care** will be provided to the student for the student's entire school day by staff who are trained to meet the student's individual needs;

(G) **special transportation** when the student needs transportation, except that this transportation requirement does not apply in the case of a student who has received special transportation for at least a year and no longer needs it; or

(2) student experiences **deaf-blindness<sup>1</sup>** must **read Braille**, or needs and receives full-time the services of a **deaf education interpreter or tutor**;

(3) student's IEP team determines that **out-of-state residential placement** is necessary; or

(4) student has a disability that prevents the student from attending a regular or special education program even with the aid of special transportation, and the IEP team's evaluation and the IEP, itself, indicate that a **home-based or health-care-facility-based instructional program** is appropriate to meet the student's needs; however, a student may not be counted under this paragraph as receiving intensive services if the student is placed in a detention facility, or is receiving home-based or health-care-facility-based instruction solely because of a disciplinary problem.

(d) A district may seek a **department waiver**, for one year, from one or more of the requirements of (c) of this section if the district needs additional money for a student whose IEP team has determined that the student's educational program includes high-cost services that do not meet the

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<sup>1</sup> It is likely the published regulation is missing an intended comma, and was meant to read "...deaf-blindness, must read Braille, or needs and receives..."

funding criteria in (c) of this section. The department will grant the waiver if the requested funding is consistent with AS 14.17.420 and this section and in the public interest. An application for a waiver must be in writing and include

- (1) a statement of the component or components to be waived and the reason why the waiver is sought;
- (2) the student's IEP; and
- (3) any additional information that the department determines is necessary to address a particular student's needs.

(e) The department will notify a district of the action taken on a public school foundation report after receipt of the report.

(f) A district may not receive state financial aid under this section for special education or related services provided by the department.

(g) If, after an entitlement review under 4 AAC 52.780, or otherwise, the department determines that an overpayment has occurred, the department may require repayment or withhold all or part of one or more future payments. The decision to do so is subject to appeal under 4 AAC 52.750."

Importantly, one required component for verification of intensive services funding eligibility is "... assistance and training in two or more **basic adaptive skills**, appropriate to the age of the student[.]" The definition of '**basic adaptive skills**' under Alaska regulation 4 AAC 52.790, reads as follows (bold added for emphasis):

"(20) "basic adaptive skills" means, beginning in the school year that commences July 1, 2010, **rudimentary facility**, as appropriate to the age of the student, in

- (A) communication;
- (B) social or emotional development;
- (C) motor development;
- (D) cognitive functioning;
- (E) behavior; and
- (F) daily living or self help skill[.]"

'**Rudimentary facility**' is defined under the same regulation as (bold added for emphasis):

"(A) scoring **two standard deviations below the mean** on a standardized adaptive measure approved by the department; or

(B) if no standard measure is available, documentation that demonstrates a level of skill or performance that is two standard deviations below the mean."

Directors who anticipate using standardized adaptive measures for verification of intensive services funding eligibility should contact DEED for the latest list of approved measures.

For additional assistance with Intensive Funding, the document, "Intensive Needs Training Materials" is available from the department. This document will be addressed in the Special Education Director's Training annually.

Under 4 AAC 52.750, districts may appeal DEED's intensive funding decisions: " A district may appeal a decision of the department concerning its eligibility for, or the amount of, financial aid for intensive services under 4 AAC 52.700 and 4 AAC 52.730 in accordance with 4 AAC 40.010 - 4 AAC 40.050."

### Transportation Funding

Under Alaska statute AS 14.30.347 (bold added for emphasis):

“...[A] child with a disability shall be transported **with children who are not children with disabilities** if the district provides transportation to children in the district, except when the nature of the physical or mental disability is such that it is in the best interest of the child with a disability, as provided in the child's individualized education program, that the child be transported separately. State **reimbursement for transportation** of children with disabilities shall be **as provided for transportation of all other pupils** except that eligibility for reimbursement is **not subject to restriction** based on the minimum distance between the school and the residence of the child with a disability.”

### Private Schools & Special Education Funding

The core responsibilities for districts with respect to parentally-placed students with disabilities attending private schools may be found in 34 CFR §§ 300.130-148; see **Chapter 4: Placement**.

*Reminder:* Districts themselves are responsible for expenditures related to all students placed in private schools **by district IEP teams**. For *parentally-placed students attending private schools*, the core requirement is that districts provide special education (34 CFR §§ 300.132; bold added for emphasis):

“To the extent consistent with the number and location of children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, provision is made for the participation of those children in the program assisted or carried out under Part B of the Act by **providing them with special education and related services**, including direct services determined in accordance with § 300.137[...]”.

The amount of special education and related services is an individualized issue. There is **no individual right** to special education and related services for parentally placed students attending private school (34 CFR § 300.137):

“(a) No individual right to special education and related services. No parentally-placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school.”

Districts *do* have an obligation to spend what is called a ‘proportionate share’ of *federal* money on special education and related services for parentally-placed students with disabilities attending private schools. Specifically, 34 CFR § 300.133 requires districts to spend (bold added for emphasis):

“(1) For children aged **3 through 21**, an amount that is the **same proportion of the LEA's total sub-grant under section 611(f)** of the Act as the **number of private school children** with disabilities aged 3 through 21 who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, is to the **total number of children** with disabilities in its jurisdiction aged 3 through 21.

(2)(i) For children aged **three through five**, an amount that is the **same proportion of the LEA's total sub-grant under section 619(g)** of the Act as **the number of parentally-placed private school children** with disabilities aged three through five who are enrolled by their parents in a private, including religious, elementary school located in the school district served by the LEA, is to the **total number of children** with disabilities in its jurisdiction aged three through five.”



There are several other restrictions on the use of federal special education dollars for special education and related services for parentally-placed students with disabilities attending private schools. Specifically, federal special education funds **may** be spent on:

- **Materials and equipment** that are “secular, neutral, and non-ideological;” 34 CFR § 300.138;
- **Services provided on site** at the private school, including religious schools; 34 CFR § 300.139;
- **Student transportation**; 34 CFR § 300.139;
- Public school personnel **wages**; 34 CFR § 300.142 (*see restrictions*); or
- Private school personnel **wages**; 34 CFR § 300.142 (*see restrictions*).

Federal special education funds **may not** be spent:

1. To **benefit a private school** or its students in general; 34 CFR § 300.141.
2. To establish **separate classes** (at either public or private school sites); 34 CFR § 300.143.

Finally, all **property, equipment, and supplies** paid for by federal special education dollars must remain the property of the district, and must remain under district control (34 CFR § 300.144).

### **Health Insurance & Reimbursement for Services**

Districts are financially liable for all costs of special education and related services; this is a core requirement of providing a free and appropriate public education (see 4 AAC 52.240). It *is* permissible as part of that requirement to use federal special education funds to pay some or all private or public insurance costs otherwise the responsibility of the parents as part of a district’s IEP (see 34 CFR § 300.154); it is also permissible under 20 USCS 1412(a)(12)(i) for school districts to pursue reimbursement for the costs of health-related services that are provided in school.<sup>1</sup> For details concerning Medicaid or other public (or private) insurance reimbursement, refer to the State of Alaska, Department of Health & Social Services Medicaid page: [hss.state.ak.us/dpa/programs/medicaid](https://hss.state.ak.us/dpa/programs/medicaid).

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<sup>1</sup> The relevant language in 20 USCS 1412(a)(12)(i) is that (bold added for emphasis): “...the **financial responsibility** of each public agency described in subparagraph (B), including the State Medicaid agency and other public insurers of children with disabilities, shall **precede** the financial responsibility of the local educational agency (or the State agency responsible for developing the child's IEP).”

## **CHAPTER 9: COMPLIANCE MONITORING**

DEED is required by federal statute 20 USCS § 1416 and regulation 34 CFR § 300.600 to continuously monitor the performance of special education programs throughout the state. In accordance with FERPA §99.31(a)(3)(iv), department special education monitoring team members are authorized access to student files for compliance monitoring. The goal of compliance monitoring is to identify districts struggling to implement successful special education programs and to direct resources and support accordingly.

Districts throughout Alaska are monitored as a minimum, on a four year rotation. The schedule for monitoring is available from the department by contacting (907) 465-8693 or [sped@alaska.gov](mailto:sped@alaska.gov). The rotation schedule is located in this document at Calendar and Monitoring Schedule.

Alaska regulation 4 AAC 52.770 details the overall features of this monitoring process (bold added for emphasis):

“(b) Upon request by the department, a district shall provide

(1) a **list of students** receiving services under this chapter, including each student's name, age, disability category, whether the student receives intensive services, related services, entry date, exit date, and placement;

(2) a **list of all administrators, teachers, teacher aides, and related services personnel** who provide special education services in the district, including, for certificated staff, the teacher certificate numbers; and

(3) **any other information** required by the department.

(c) At least **30 days before visiting** a district for a scheduled program review, the department will provide written notice to the district of the date and purpose of the visit.

(d) The department will submit written results of program monitoring to the district within **60 days after completion** of a visit under (a) of this section. The written results must include a statement of necessary **corrective action**.

(e) If the department determines that a district is substantially out of compliance with the requirements of this chapter, application requirements for state financial aid, or with assurances given for federal financial aid, it will conduct an **entitlement review** under 4 AAC 52.780.”

### **Information Needed Prior to Review**

Prior to an on-site visit, DEED will pull relevant student and school information from OASIS<sup>1</sup> and its dispute resolution database, and will inform districts of the specific student profiles to be monitored. Districts should send the following information to DEED **in advance of the review**:

**1. Personnel Information:** A list of all administrators, teachers, teacher aides, and related services personnel who provide special education services in the district, including, for certificated staff, the teacher certificate numbers.

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<sup>1</sup> OASIS is Alaska's comprehensive 'On-line Alaska School Information System,' including statewide student IDs; more details are here: <http://education.alaska.gov/OASIS/faqs.html>. Since DEED pulls student data from the previous year's OASIS, occasionally it will request files of students that are no longer enrolled in the district. In such cases, DEED will continue to request other student files until it has a reasonable number for review.

2. **Student files:** DEED will determine if the monitoring will be conducted on-site or remotely monitored (desk monitoring). In the event of desk monitoring, files should be submitted via electronic means whenever possible. A desk audit may still have an on-site student profile monitoring component. This determination will be detailed in a DEED letter sent to the district.
3. **Student Discipline Information** (if requested): A list of students who have been through any of the following: in-school suspensions, out-of-school suspensions, expulsions, manifestation determination meetings, and/or referrals to law enforcement.

### **Review Instruments**

DEED reviews only those components of district operations and student files required by federal or Alaska statute or regulation. A copy of the monitoring review standards is available from DEED upon request. DEED may modify this at any time to ensure compliance focus areas are met. The monitoring standards list is not consider a comprehensive list of district requirements.

### **Post-Monitoring Activity**

Per Alaska regulation 4 AAC 52.770 (bold added for emphasis), DEED will produce reports, “within 60 days after completion of a visit under (a) of this section. The written results must include a statement of necessary **corrective action**[.]” Superintendents and special education directors will receive a variety of reports.

**Corrective action** (including training) is required any time there are findings of non-compliance. The goal of all corrective action is to help the district meet standards; working with districts to complete corrective actions is a core function of DEED.

Directors will be provided a minimum **plan of improvement**, which the district has the option to work with DEED staff to develop a more comprehensive plan of improvement within 60 days of notification. Plans of improvement are expected to be completed within 6 months, however; districts may request an extension up to (but no longer than) one calendar year. Typical plans of improvement include: the submission of additional documentation, staff training and submission of missing or incomplete student file records. DEED staff will work with directors to clarify the plan, including the types of documentation that will provide acceptable evidence of meeting standards.

Districts will receive a written notice from DEED once all corrective actions and monitoring requirements are completed.

## **CHAPTER 10: AGENCIES AND RESOURCES**

### **Accessible Instructional Materials (AIM)**

Accessible instructional materials (AIM) are print materials that have been transformed into specialized formats of braille, large print, audio, or digital text to meet the needs of students with print disabilities. Timely provision of AIM is a basic component of the obligation of states and local districts to provide a free appropriate public education and to ensure that students with disabilities participate in the general education curriculum as specified in their Individualized Education Programs (IEPs). Consideration of student use of AIM should be incorporated into the evaluation process, IEP development and review, and transition planning. Attention should also be given to the assistive technology and other supports that can help the student use AIM.

Districts **must** provide qualifying students (students with blindness, visual impairments, or print disabilities) materials that comply with the National Instructional Materials Accessibility Standard (NIMAS); see 34 CFR § 300.172; see also the National Center on Accessible Instructional Materials ([aim.cast.org](http://aim.cast.org)). Districts may purchase compliant materials or may develop their own, provided they meet the NIMAS. All instructional materials must be provided to students in a timely manner (34 CFR § 300.210(b)).

IEP Teams must ensure that assistive technology required to access instructional materials is available at no cost to any student with a disability "...who needs devices or services for supplementary aids and services in regular classes or in the child's home or other setting in order to receive a FAPE." (4 AAC 52.148; for a federal definition of assistive technology, see § 602[1]). Districts own (and must maintain) equipment they purchase.

Alaska provides NIMAS support through the Alaska Center for Accessible Media ([www.akcam.org](http://www.akcam.org)) project at Assistive Technology of Alaska ([www.atlaak.org](http://www.atlaak.org)). Upon request, ATLA will search for (or may be contracted to generate) materials in NIMAS approved format and make these materials available for purchase by districts. Districts need to provide ATLA with an Eligibility Form, and a Textbook Request Form. ATLA can also provide staff AIM trainings and support to LEAs.

### **Electronic Communication**

Under 34 CFR 300.505, "A parent of a child with a disability may elect to receive notices required by §§ 300.503 [written notices], 300.504 [procedural safeguards], and 300.508 [due process complaints] by an electronic mail communication, if the public agency makes that option available."

### **Prohibition on Mandatory Medication**

School district personnel cannot require that students be medicated. Specifically, 34 CFR § 300.174 (adopted by Alaska regulation 4 AAC 52.630) prohibits: "...personnel from requiring parents to obtain a prescription for substances identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 USC 812(c)) for a child as a condition of attending school, receiving an evaluation under §§ 300.300 through 300.311, or receiving services under this part."

This prohibition most commonly arises over concerns presented by students perceived or diagnosed as having Other Health Impairments such as Attention deficit hyperactivity disorder (ADHD); the most commonly diagnosed behavioral disorder of childhood. While it would be inappropriate for school personnel to make medical suggestions (of any nature) to parents or students, there is no gag rule

preventing school personnel from discussing educationally relevant observations of students in school. Specifically, 34 CFR § 300.174 continues (bold added for emphasis):

“[...]. Nothing in paragraph (a) of this section shall be construed to create a Federal prohibition against teachers and other school personnel consulting or sharing classroom-based observations with parents or guardians regarding a student's academic and functional performance, or behavior in the classroom or school, or regarding the need for evaluation for special education or related services under § 300.111 (related to child find).”

### **Student Self-Management of a Medical Condition**

A student with a medical condition, may (with written consent of the student's parent and written authorization from the student's physician) be permitted by the school to perform any required checks, administration of medication and otherwise attend to the care and management of the student's condition in the classroom or school grounds. The school is also authorized (with the written permissions) to permit the possession of all necessary supplies and equipment to perform monitoring and treatment functions.

For example, a student with diabetes, with the appropriate written permissions would be permitted to perform blood glucose checks, administer insulin through the insulin delivery system the student uses, and treat hypoglycemia and hyperglycemia in any area of the school/school grounds. The student would be allowed to have on their person at all times all the necessary diabetes testing and treatment supplies and equipment.

### **Governor's Council on Disabilities & Special Education**

Under federal regulation 34 C.F.R. § 300.167, Alaska is required to (bold added for emphasis): “... establish and maintain an advisory panel for the purpose of providing **policy guidance** with respect to special education and related services for children with disabilities in the State.” Alaska's advisory panel, the Governor's Council on Disabilities & Special Education, was created under AS 47.80, is housed in the Alaska Department of Health and Social Services, and is designated under AS 14.30.231 as the state advisory panel for the purposes of IDEA. The Governor's Council's statutory function under AS 14.30.231 is (bold added for emphasis):

“...is to provide information and guidance for the development of appropriate programs of special education and related services for children with disabilities.”

The Governor's Council includes 28 members appointed by the Governor of Alaska, and regularly meets throughout the state to assemble and disseminate information under its statutory mandate. Additional details about organization, membership, meetings, and current work of the Governor's Council on Disabilities & Special Education can be found at:

[www.hss.state.ak.us/gcdse](http://www.hss.state.ak.us/gcdse).

### **Special Education Service Agency (SESA)**

The Special Education Service Agency (SESA) is a public agency, created under Alaska statute AS 14.30.600, and governed by the Governor's Council on Disabilities & Special Education. SESA is funded in part by the Department of Education & Early Development, and is available to assist districts serve children with low incidence disabilities. Technical assistance, provided by specialists with advanced training and specialized disability experience, in the area of low incidence disabilities, is provided at no cost to the district. For more details, see: [sesa.org](http://sesa.org)

SESA focuses on providing special education itinerant services and technical assistance for students with low-incidence disabilities, and the professionals that serve them. Alaska statute AS 14.30.630 defines the scope of SESA's work as (bold added for emphasis):

- “(b) The agency shall (1) provide special education services including
- (A) **itinerant outreach services** to students who are deaf, deaf-blind, mentally retarded, hearing impaired, blind and visually impaired, orthopedically disabled, health-impaired in other ways, and severely emotionally disturbed, and to students with multiple disabilities;
  - (B) **special education instructional support and training** of local school district special education personnel; and
  - (C) **other services** appropriate to special education needs;[...]

### **Division of Vocational Rehabilitation (DVR)**

Authorized under the Workforce Innovation and Opportunity Act (WIOA) (see: <https://www.doleta.gov/WIOA/>), DVR's goal is to assist students with disabilities to successfully transition from school into integrated employment. DVR may begin the transition planning process in conjunction with the initiation of postsecondary transition services by the IEP team, depending on the students' individual circumstances and needs. Services can include supported employment, postsecondary education/ vocational training, work readiness/pre-employment training services (Pre-ETS), community participation and referral to independent living.

School districts can find out more about DVR services, including contact information and how to make a referral to DVR at [www.labor.alaska.gov/dvr/transition.htm](http://www.labor.alaska.gov/dvr/transition.htm)

### **Alaska Tribal Vocation Rehabilitation (TVR) Programs**

AK TVR Programs assist eligible Alaska Native / American Indian students with disabilities transition from school into integrated, unsubsidized employment or viable self-employment activities, including subsistence activities, postsecondary education or vocational school through the provision of culturally relevant services. Alaska Native / American Indian students who are members of a federally recognized tribe (see <https://www.bia.gov/index.htm>) who experience physical or mental impairments that results in barriers to obtaining or maintaining employment may be eligible for services. It is important to note that eligible Alaska Native / American Indian students can possibly receive vocation rehabilitation assistance from TVR and DVR simultaneously. To reach the appropriate TVR program, please contact the local/regional tribal organization for specific referral requirements. Contact information for Alaska's TVRs is listed at: <http://canar.org/Map/Alaska>

### **Stone Soup Group**

Alaska currently directs state and federal funding to a parent training and information center known as Stone Soup Group. The Stone Soup Group is required to conduct a variety of activities on behalf of Alaska's parents under 20 USCS § 1471(b) (bold added for emphasis):

- “(1) [P]rovide **training and information** that meets the needs of parents of children with disabilities living in the area served by the center, [...]
- (2) serve the parents of infants, toddlers, and children with the **full range of disabilities** described in section 602(3);
  - (3) ensure that the training and information provided meets the needs of **low-income parents** and parents of **limited English proficient children**[.]”

*Guidance for Special Education Personnel*

Directors may refer parents to Stone Soup Group at: [www.stonesoupgroup.org](http://www.stonesoupgroup.org), or by telephone at (907) 561-3701 / (877) 786-7327 or by mail/ in person at:

Stone Soup Group  
307 E. Northern Lights Blvd, #100  
Anchorage, Alaska 99503

**Annual Performance Report & (APR) State Performance Plan (SPP)**

The terms of Alaska’s federal special education funding under 34 CFR § 300.600 (and §§ 640-646), require that the state: “[r]eport annually on the performance of the State and of each LEA under this part, as provided in § 300.602(b)(1)(i)(A) and (b)(2).” This required report is known as the **Annual Performance Report (APR)**; data from districts are collected by DEED throughout the school year, including via OASIS (See: [http://education.alaska.gov/tls/Assessment/data\\_mgmt.html](http://education.alaska.gov/tls/Assessment/data_mgmt.html)) and the yearly Supplemental Workbook. The most recent version of Alaska’s APR can be found here: <https://osep.grads360.org/#program/idea-part-b-profiles> Special education directors **must** submit accurate, timely, and valid data each year – and they potentially face program interventions if DEED determines that district special education programs are not meeting requirements or goals.

The APR includes data on 17 ‘indicators’:

- Indicator 1: Graduation Rates
- Indicator 2: Drop-Out Rates
- Indicator 3: Assessments
- Indicator 4: Suspension/Expulsion
- Indicator 5: School Age Least Restrictive Environment
- Indicator 6: Preschool LRE
- Indicator 7: Early Childhood Outcomes
- Indicator 8: Parent Involvement
- Indicator 9: Disproportionality - Child with a disability
- Indicator 10: Disproportionality - Eligibility categories
- Indicator 11: Initial Evaluation Timelines
- Indicator 12: Early Childhood Transition
- Indicator 13: Secondary Transition
- Indicator 14: Post School Outcomes
- Indicator 15: Resolution Sessions
- Indicator 16: Mediations
- Indicator 17: State Systemic Improvement Plan (SSIP)

Data collected for the APR are used to create (and update) **Alaska’s State Performance Plan (SPP)**, a multiyear improvement plan required under 34 CFR § 300.601; Alaska’s current SPP can be located here: <https://osep.grads360.org/#program/idea-part-b-profiles>. Districts may be asked by DEED to help provide input to various components of the SPP (Workgroup/Stakeholders); please consider doing so when possible.

### LEA Determinations

DEED is required under 20 USCS § 1416 to: “...report annually to the public on the performance of each local educational agency located in the State on the targets in the State's performance plan.” DEED is also required under 34 CFR § 300.600(2) to make an annual ‘**determination**’ of the performance of each district special education program.

The annual performance of each district is determined to fit one of the following categories (from 34 CFR § 300.603; bold added for emphasis):

- “(i) **Meets the requirements** and purposes of Part B of the Act;
- (ii) **Needs assistance** in implementing the requirements of Part B of the Act;
- (iii) **Needs intervention** in implementing the requirements of Part B of the Act; or
- (iv) **Needs substantial intervention** in implementing the requirements of Part B of the Act.”

These four determination levels can have enforcement implications for districts, including restrictions on fund use and requirements to implement improvement or corrective action plans.

All Special Education Directors, (especially those new to the position) should review their district’s current determination status, and their district’s most recent data (<https://education.alaska.gov/rcsped/>) on the 17 indicators. Directors are encouraged to work with DEED staff at any time to address questions or concerns raised by indicator data, determination status, or enforcement actions.

### Over-Identification and Disproportionality

Under federal regulation 34 CFR § 300.646, the Department of Education & Early Development is required to (bold added for emphasis):

“...provide for the collection and examination of data to determine if **significant disproportionality based on race and ethnicity** is occurring in the State and the LEAs of the State with respect to--

- (1) The **identification** of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in section 602(3) of the Act;
- (2) The **placement** in particular educational settings of these children; and
- (3) The incidence, duration, and type of **disciplinary actions**, including suspensions and expulsions.”

In the case of a determination of **significant disproportionality** by State of Alaska DEED with respect to the identification, placement, or discipline of students with disabilities within a district, in accordance with 34 CFR 300.646(a), districts *must* reserve 15% of IDEA Part B 611/619 funding to provide Comprehensive Coordinated Early Intervening Services (CCEIS) to serve students in the district, particularly, but not exclusively, students in those groups that were significantly over identified. Districts using federal special education funds to provide CCEIS activities must follow the same expenditure and reporting requirements The CCEIS Expenditure Plan may be downloaded from: <http://education.alaska.gov/forms/> and search for the keyword “CEIS”.



**Coordinated Early Intervening Educational Services (CEIS)**

There are two type of “CEIS”, voluntary and mandated. Voluntary CEIS is subject to department approval, and mandatory CEIS (known as “CCEIS”) requires the department approval of the plan and data tracking system for the students affected for three years.

Under 34 CFR § 300.226, and subject to approval, districts may use up to 15% of federal special education dollars on coordinated early intervening services (CEIS) “for students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade three) who are not currently identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment.” This is subject to DEED approval. In some situations, a district may be required to participate with CEIS. Federal regulation 34 CFR § 300.226 clarifies what it means by CEIS (bold added for emphasis):

“(b) Activities. In implementing coordinated, early intervening services under this section, an LEA may carry out activities that include--

- (1) **Professional development** (which may be provided by entities other than LEAs) for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software; and
- (2) Providing **educational and behavioral evaluations, services, and supports**, including scientifically based literacy instruction.”

Districts that use federal special education dollars for CEIS activities have specific annual reporting requirements (34 CFR § 300.226[d]; bold added for emphasis): “(1) The **number of children served** under this section who received early intervening services; and (2) The number of children served under this section who received early intervening services and **subsequently receive special education** and related services under Part B of the Act during the preceding two year period.” Importantly, students provided CEIS under 34 CFR 300.226 have **not** been identified as students eligible for special education services; such service provision does **not** create or limit a right to FAPE, nor should it delay appropriate evaluation of a child suspected of having a disability.