

**WYOMING DEPARTMENT OF EDUCATION**  
**SPECIAL PROGRAMS DIVISION**  
**POLICY AND PROCEDURE MANUAL FOR SPECIAL EDUCATION**

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**WYOMING DEPARTMENT OF EDUCATION**  
**SPECIAL PROGRAMS DIVISION**  
**POLICY AND PROCEDURES FOR SPECIAL EDUCATION**  
**CHILD FIND**  
**ADOPTED: JULY 1, 2010**

**I. General**

- A. A school district or public agency must implement an ongoing system to locate, identify and evaluate all children birth to 21 residing within its jurisdiction who have disabilities and need early intervention under Part C or special education under Part B.
- B. A school district or public agency must identify all children with disabilities, regardless of the severity of their disabilities, including children who are:
  - 1. Highly mobile, such as migrant and homeless children;
  - 2. Wards of the State;
  - 3. Suspected of having a disability even though they advance from grade to grade;
  - 4. Home schooled;
  - 5. Attending a private (religious or secular) school located within the boundaries of the school district or public agency;
  - 6. Attending a charter or virtual school;
  - 7. Below the age of compulsory school attendance;
  - 8. Above the age of compulsory school attendance who have not graduated from high school with a regular diploma and have not completed the school year in which they reach their twenty-first birthday; or
  - 9. Dropped out or disenrolled from public or private school.

Citations:

34 C.F.R. §300.111      *Child find*  
34 C.F.R. §300.131      *Child find for parentally-placed private school children with disabilities*  
W.S. §21-2-502(b)      *Education of Children With Disabilities*  
*Wyoming Department of Education Rules, Chapter 7, Section 4(a) Child Find*

**II. Child Find Activities**

- A. The school district's or public agency's child find efforts must include:

1. Public awareness. Child find activities may involve local media resources and direct contact activities, such as presentations at community meetings, business group meetings, service agencies, or advocacy organizations to:
  - a. Provide information about special education services in the school district or public agency and the special education referral process to public and private facilities located within the boundaries of the school district or public agency, including day care centers, homeless shelters, group homes, county jails, hospitals, medical offices, and other facilities that serve children birth to 21 years old.
  - b. Provide information about developmental and/or academic screening opportunities occurring throughout the jurisdiction of the school district or public agency, including screening opportunities coordinated with other providers or agencies.
2. Notice. Before any major child find activity, the school district or public agency must publish notices in newspapers or other media informing parents of the activity. Circulation of this notice must be adequate to inform parents within the school district's or public agency's jurisdiction.
3. Staff awareness. The school district or public agency must ensure that staff members are knowledgeable about the characteristics of children with disabilities and in need of special education, and the referral process for all children, including infants or preschool children, suspected of having disabilities.
4. Communication to parents. School district or public agency staff must inform parents about the availability of special education and related services and provide them with information about initiating a referral for a special education evaluation, including information about early intervention under Part C and special education under Part B.

Citations:

34 C.F.R. §300.111

*Child find*

34 C.F.R. §300.612

*Notice to parents*

*Wyoming Department of Education Rules, Chapter 7, Section 4(a) Child Find*

### **III. Child Find and Private School Students with Disabilities**

- A. Each school district or public agency must locate, identify, and evaluate all children with disabilities who are enrolled by their parents in private, including religious, elementary and secondary schools located within the boundaries of the school district or public agency, including children who reside in a state other than Wyoming.
- B. In meeting the child find obligation with regard to children with disabilities attending private schools within the school district's or public agency's boundaries, the school district or public agency must consult with appropriate representatives of private schools and parents of private school children with

disabilities to determine how best to conduct child find activities. The methods chosen to locate, identify, and evaluate must be comparable to methods used for children in school districts or public agencies.

- C. If the parents of a child who is voluntarily placed in a private school does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to a request to provide consent, the school may not use the consent override procedures of mediation or due process, and the school is not required to consider the child as eligible for special education services.
- D. If a child is enrolled, or is going to enroll in a private school that is not located in the parents' school district of residence, parental consent must be obtained before any personally identifiable information about the child is released between officials in the school district where the private school is located and officials in the school district of the parents' residence.
- E. Disagreements regarding child find for students placed in private school by a parent shall be subject to the due process procedures in the IDEA and the state complaint procedures in the Federal regulations implementing the IDEA. Due process hearing requests shall be filed with the school district or public agency where the private school is located.
- F. The school district's or public agency's child find activities for private school students enrolled by their parents in private schools must be similar to, and completed within a comparable time period, as child find activities for students in the school district's or public agency's schools.
- G. The school district or public agency must not include the cost of conducting child find activities for private school students, including individual evaluations, in determining whether it has spent a proportionate share of its federal IDEA funds on parentally-placed private school students with disabilities.
- H. The school district or public agency must consult with private school representatives and parents of private school students with disabilities about how to carry out these child find activities, including:
  - 1. How private school children suspected of having a disability can participate equitably, and
  - 2. How parents, teachers, and private school officials will be informed of the process.
- I. The child find process for parentally-placed private school students shall ensure the equitable participation of parentally-placed private school students with disabilities and an accurate count of such children.

Citations:

34 C.F.R. §300.131 *Child find for parentally-placed private school children with disabilities*  
Wyoming Department of Education Rules, Chapter 7, Section 4(a) *Child Find*

#### **IV. Child Find and Home-Schooled Children with Disabilities**

A school district or public agency must direct child find activities to any home-school child in the same manner as a private school student, consistent with paragraph III above.

Citations:

*34 C.F.R. §300.131*      *Child find for parentally-placed private school children with disabilities*

*W.S. §21-4-101(a)(iii)*      *Definitions*

*Wyoming Department of Education Rules, Chapter 7, Section 4(a) Child Find*

**WYOMING DEPARTMENT OF EDUCATION**  
**SPECIAL PROGRAMS DIVISION**  
**POLICY AND PROCEDURES FOR SPECIAL EDUCATION**  
**CONFIDENTIALITY**  
**STUDENT EDUCATION RECORDS AND ACCESS**  
**ADOPTED: JULY 1, 2010**

**I. Definitions**

- A. Adult Student: A student who has reached 18 years of age (unless under court-ordered guardianship) acting in the place of a parent.
- B. Educational Records: The term means those records that are:
  - 1. Directly related to a student; and
  - 2. Maintained by an educational agency or institution or by a party acting for the agency or institution.
  - 3. The term does not include any of the following:
    - a. Records that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record.
    - b. Records of the law enforcement unit of an educational agency or institution.
    - c. Grades on peer-graded papers before they are collected and recorded by a teacher.
- C. Directory Information: Personally identifiable information that would not generally be considered private, such as: the student's name, address, telephone listing, email address, photograph, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous school attended.
- D. Disclosure: Permit access to or the release, transfer, or other communication of personally identifiable information contained in education records by any means, including oral, written, or electronic means, to any party except the party identified as the party that provided or created the record.
- E. Parent: A parent of a student, including a natural parent, a foster parent, a guardian, an individual acting as a parent in the absence of a parent or a guardian, or any individual meeting the definition of 34 C.F.R. §.300.30.
- F. Personally Identifiable Information: The term includes, but is not limited to:
  - 1. The student's name;
  - 2. The name of the student's parent or other family members;

3. The address of the student or student's family;
  4. A personal identifier, such as the student's social security number, student number, or biometric record;
  5. Other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name;
  6. Other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or
  7. Information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.
- G. Record: Any information recorded in any way, including, but not limited to, handwriting, print, computer media, video or audiotape, film, microfilm, and microfiche.

*Citations:*

34 C.F.R. Part 99	<i>FERPA</i>
34 C.F.R. §300.123	<i>Confidentiality of personally identifiable information</i>
34 C.F.R. §§300.610 – 300.626	<i>Confidentiality of information</i>

**II. Confidentiality of Student Records**

- A. The school district or public agency must keep confidential any personally identifiable data, information and records collected or maintained on a child with a disability, protecting the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.
- B. The school district or public agency must designate one official to assume responsibility for ensuring the confidentiality of any personally identifiable information.
- C. All persons collecting or using personally identifiable information shall receive training or instruction regarding the policies and procedures governing records and confidentiality of personally identifiable information in accordance with applicable laws and regulations.
- D. The school district or public 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.
- E. The school district or public agency must provide parents on request a list of the types and locations of education records collected, maintained, or used by the school district or public agency.

*Citations:*

34 C.F.R. Part 99	<i>FERPA</i>
34 C.F.R. §300.610	<i>Confidentiality</i>
34 C.F.R. §300.616	<i>List of types and locations of information</i>
34 C.F.R. §300.623	<i>Safeguards</i>

**III. Annual Notification to All Parents and Adult Students**

- A. The school district or public agency must annually notify parents of all students currently in attendance, and adult students currently in attendance that they have the right to:



1. Inspect and review the student's education records;
  2. Request the amendment of the student's education records to ensure that they are not inaccurate, misleading, or otherwise in violation of the student's privacy or other rights;
  3. Consent to disclosures of personally identifiable information contained in the student's education records, except to the extent that the student education record rules authorize disclosure without consent;
  4. File with the U.S. Department of Education a complaint concerning alleged failures by the school district or public agency to comply with the requirements of the Family Educational Rights and Privacy Act; and
  5. Obtain a copy of the school district's or public agency's Student Education Records Policy.
- B. The school district or public agency must annually notify parents and adult students of what it considers to be directory information and the conditions for disclosure of such.
- C. The school district or public agency must annually notify parents or adult students that it forwards education records requested by an educational agency or institution in which the student seeks to enroll or receive services, including special education services.
- D. The school district's or public agency's notice must include all of the following:
1. The procedure for exercising the right to inspect and review education records;
  2. The procedure for requesting amendment of records; and
  3. If the educational agency or institution has a policy of disclosing education records to other school officials without consent, a specification of criteria for determining who constitutes a school official and what constitutes a legitimate educational interest.
- E. A school district or public agency may provide this notice by any means that are reasonably likely to inform the parents or eligible students of their rights.
1. An educational agency or institution shall effectively notify parents or eligible students who are disabled.
  2. An agency or institution shall effectively notify parents who have a primary or home language other than English.

*Citations:*

34 C.F.R. Part 99

*FERPA*

34 C.F.R. §300.612

*Notice to parents*

#### **IV. Access Rights**

- A. The school district or public agency must provide to the parents of a student with a disability or to an adult student with a disability the opportunity at any reasonable time to inspect and review all of the records of the school district or public agency pertaining to the student.
- B. The school district or public agency must comply with a request without unnecessary delay and before any IEP meeting, due process hearing, or resolution session, and in no case more than 45 days after the request has been made.
- C. The right to inspect and review education records includes:

1. Test protocols containing personally identifiable information are education records to which parents must have access. *See Letter to Thomas*, 211 IDELR 420 (FPCO 1986).
  2. The right to a response from the school district or public agency to reasonable requests for explanations and interpretations of the records;
  3. The right to request that the agency provide copies of the records if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and
  4. The right to have a representative of the parent inspect and review the records.
- D. A school district or public agency may presume that the parent has the authority to inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under state law.
- E. If any education record includes information on more than one child, the parents of those children have the right to inspect, review, or receive only the information regarding their child.

*Citations:*

34 C.F.R. Part 99	<i>FERPA</i>
34 C.F.R. §300.613	<i>Access rights</i>
34 C.F.R. §300.615	<i>Records on more than one child</i>

**V. Record of Access**

- A. The school district or public agency must keep a record of parties obtaining access to education records collected, maintained, or used under Part B of the IDEA. The record must include:
1. Name of the party accessing the confidential educational record;
  2. The date access was given; and
  3. The purpose for which the party is authorized to use the records.
- B. Exception: Access by parents and other authorized employees of the school district or public agency does not need to be recorded.

*Citations:*

34 C.F.R. Part 99	<i>FERPA</i>
34 C.F.R. §300.613	<i>Access rights</i>

**VI. Prior Consent to Disclose Information**

- A. The school district or public agency must obtain signed and dated written consent from the parent or adult student before permitting personally identifiable information to be disclosed to anyone other than officials of participating agencies collecting or using information for the purposes of the activities described in these procedures and only where the disclosure is consistent with all applicable federal statutes.
- B. The school district or public agency must obtain written consent before personally identifiable information is disclosed to officials of participating agencies providing or paying for transition services.

- C. If a child is enrolled in a private school that is not located in the child’s resident school district or public agency, parental consent must be obtained before any personally identifiable information is released between the resident school district or public agency and the school district or public agency in which the private school is located.
- D. The school district or public agency must obtain written consent from the parent or adult student before permitting personally identifiable information to be used for any purpose other than meeting a requirement under these procedures.
- E. The written consent must specify the records to be disclosed, the purpose of the disclosure, and the person or persons to whom the disclosure may be made.
- F. When a disclosure is made, the school district or public agency must provide a parent or adult student a copy of the disclosed record upon request.
- G. The school district or public agency does not release information from education records without parent consent unless permitted under an authorized exception.

*Citations:*

34 C.F.R. Part 99                      *FERPA*  
 34 C.F.R. §300.622                  *Consent*

**VII. Exceptions to Consent to Disclose Personally Identifiable Information**

- A. The school district or public agency will disclose personally identifiable information from a student’s educational record if the disclosure is:
  - 1. To school officials and teachers within the school district or public agency who have legitimate educational interests in the student as described in the school district’s or public agency’s records policy;
    - a. A contractor, consultant, volunteer, or other party to whom a school district or public agency has outsourced services or functions may be considered a school official under this paragraph provided that the outside party:
      - i. Performs an institutional service or function for which the school district or public agency would otherwise use employees;
      - ii. Is under the direct control of the school district or public agency with respect to the use and maintenance of education records; and
      - iii. Is subject to the requirements of 34 C.F.R. §99.33(a) governing the use and redisclosure of personally identifiable information from education records.
  - 2. To school board members during executive session;
  - 3. To officials of another school, school system, institution of postsecondary education, education service district, state regional program, or other educational agency that has requested the records and in which the student seeks or intends to enroll, or is enrolled in or receives services from this agency. The term “receives services” includes, but is not limited to, an evaluation or reevaluation for purposes of determining whether a student has a disability;
  - 4. To authorized representatives of government agencies;
  - 5. To accrediting organizations to carry out their accrediting functions;

6. To parents of a dependent student, as defined in Section 152 of the Internal Revenue Code of 1986;
  7. Based on a judicial order or lawfully issued subpoena. The school district or public agency may disclose information under this section only if the school district or public agency makes a reasonable effort to notify the parent or adult student of the order or subpoena in advance of compliance;
  8. In connection with a health or safety emergency to law enforcement, child protective services, and health care professionals, and other appropriate parties if knowledge of the information is necessary to protect the health and safety of the student or other individuals. A "health or safety emergency" includes, but is not limited to, law enforcement efforts to locate a student who may be a victim of kidnap, abduction, or custodial interference and law enforcement or child protective services efforts to respond to a report of child abuse or neglect; or,
  9. Information the school district or public agency has designated as "directory information" in the school district's or public agency's record policy, if the school district or public agency has given annual public notice to parents of students in attendance and adult students in attendance of:
    - a. The types of personally identifiable information that the educational agency or institution has designated as directory information;
    - b. A parent or adult student's right to refuse to let the educational agency or institution designate any or all of those types of information about the student as directory information; and
    - c. The period of time within which a parent or adult student has to notify the educational agency or institution in writing that he or she does not want any or all of those types of information about the student designated as directory information.
- B. The school district or public agency discloses student records without consent to organizations conducting studies for, or on behalf of, educational agencies or institutions to develop, validate, or administer predictive tests, administer student aid programs, or improve instruction only if:
1. The study is conducted in a manner that does not permit personal identification of parents and students by individuals other than representatives of the organization; and,
  2. The information is destroyed when no longer needed for the purposes for which the study was conducted.
  3. For the purposes of this section, the term "organization" includes, but is not limited to, federal, state, and local agencies, and independent organizations.
  4. The disclosure is in connection with financial aid for which the student has applied or which the student has received, if the information is necessary to:
    - a. Determine eligibility for the aid;
    - b. Determine the amount of the aid;
    - c. Determine the conditions for the aid;
    - d. Enforce the terms and conditions of the aid.

*Citations:*

34 C.F.R. Part 99

FERPA

## **VIII. Fees**

- A. Unless the imposition of a fee effectively prevents a parent or eligible student from exercising the right to inspect and review the student's education records, the school district or public agency may charge a fee for a copy of educational records provided to parents or adult students.
- B. The school district or public agency shall not charge a fee to search for or to retrieve a student's education records for a parent or adult student.

### *Citations:*

34 C.F.R. Part 99                *FERPA*  
34 C.F.R. §300.617            *Fees*

## **IX. Children's Rights**

- A. A student who has not reached the age of majority must be permitted to access the student's own educational records unless specifically prohibited by the parent.
- B. The rights of parents transfer to the adult student at age 18, unless the student is under legal guardianship.
- C. The school district or public agency must continue to provide any notice required under the IDEA Part B Procedural Safeguards to the parents of an adult student.

### *Citations:*

34 C.F.R. Part 99                *FERPA*  
34 C.F.R. §300.625            *Children's rights*

## **X. Transfer of Student Education Records**

- A. Within ten days of a student's enrollment in a school district or public agency, the new school district or public agency must notify the school district or public agency in which the student was formerly enrolled, and request the student's education records.
- B. The former school district or public agency must transfer all requested student education records to the new school district or public agency no later than 10 days after receiving the request.
- C. The education records transferred to the new school district or public agency must include any special education records relating to the particular student retained by the former school district or public agency.
- D. The former school district or public agency must retain copies of student education records for the time periods and under the conditions described in the Wyoming School Districts Record Retention Schedule.

### *Citations:*

34 C.F.R. Part 99                *FERPA*  
34 C.F.R. §300.323(b)        *Transmittal of records*  
*Wyoming School Districts Record Retention Schedule*

## **XI. Retention of Special Education Records**

- A. The school district or public agency shall retain copies of the following documents for the prescribed time periods designated in State Archives Rules, including:
  - 1. The student's permanent record as defined in the school district's or public agency's records policy.
  - 2. The records of a student who has transferred to another school outside of the school district or public agency of attendance.
  - 3. Such special education records as are necessary to document compliance with state and federal regulations, including eligibility documents, IEPs, notices, and IEP progress reports for at least the previous five (5) years.
  - 4. Records documenting speech pathology, physical therapy, occupational therapy or other itinerant services until one (1) year after the student reaches age twenty-one (21) or (5) years after last seen, whichever is longer.
  - 5. Test protocols for at least three (3) years.

### *Citations:*

34 C.F.R. Part 99                      FERPA  
34 C.F.R. §300.625                  Children's rights  
*Wyoming School Districts Record Retention Schedule*

## **XII. Destruction of Information**

- A. The school district or public agency must send written notice to inform parents or adult students when personally identifiable information collected, maintained, or used by the school district or public agency is no longer needed to provide educational services to the student. This notice requirement applies only to information that would otherwise be retained under the State Archives Rules.
- B. The determination as to whether personally identifiable information is needed to provide educational services to a student is made by the school district or public agency after careful review of the information and consistent with Wyoming's Record Retention Schedule for school districts, if the student is currently enrolled in the school district or public agency.
- C. The written notice sent to the parent or adult student must describe the personally identifiable information that the school district or public agency intends to destroy and must inform the parents that the information will be destroyed no earlier than 60 days from the date of the notice. The notice also outlines the procedure that the parent or adult student may follow if they wish to formally object to the destruction of the records in question.
- D. Upon request of the parent or adult student, the school district or public agency will destroy such personally identifiable information provided that the school district or public agency may maintain a permanent record without time limitation of the student's name, address and phone number, grades, attendance records, classes attended, grade level completed, and year completed.
- E. The school district or public agency will not destroy any education records if there is an outstanding request to inspect and review the records.

Citations:  
34 C.F.R. Part 99                      FERPA  
34 C.F.R. §300.624                    Destruction of information  
W.S. §§9-2-405 – 413                Records  
Wyoming School Districts Record Retention Schedule

### **XIII. Amendment of Records at Parent Request**

- A. A parent or adult student who believes that information in the education records is inaccurate or misleading or violates the privacy or other rights of the student may request the school district or public agency amend the information.
- B. The school district or public agency, upon receiving a request from a parent or adult student, must decide whether to amend the information as requested within ten days from the date of receipt of the request.
- C. The school district or public agency must determine that information contained in an education record is "inaccurate" if the school district or public agency, after reviewing the information, concludes that it is untrue or cannot be substantiated.
- D. The school district or public agency must determine that information contained in an education record is "misleading" if the school district or public agency, after reviewing the information, concludes that a person reading the record would likely arrive at an inaccurate conclusion regarding the personal characteristics or history of the student who is the subject of the educational record.
- E. The school district or public agency must determine that the information contained in an education record "violates the privacy or other rights of the student" if the school district or public agency determines that the information contained in the education record concerning the personal characteristics or personal history of the student:
  - 1. If disclosed, would cause adverse consequences such as severe embarrassment for the student or the student's parents; or
  - 2. Need not be included in the education record in order for the education record to be appropriately used by the school district or public agency.
- F. If the school district or public agency refuses to amend the information, the school district or public agency must inform the parent or adult student of the refusal and advise the person of the right to a student records hearing.

Citations:  
34 C.F.R. Part 99                      FERPA  
34 C.F.R. §300.618                    Amendment of records at parent's request

### **XIV. Student Records Hearing**

- A. The school district or public agency must provide an opportunity for a student records hearing to the parent or adult student to challenge information in the education records.
- B. The hearing procedures shall provide the following:
  - 1. The school district or public agency must hold the hearing within a reasonable time after it has received a request for a student records hearing.

2. The school district or public agency must give the parent or adult student notice of the date, time, and place reasonably in advance of the hearing.
  3. The hearing may be conducted by any individual, including an official of the school district or public agency, who does not have a direct interest in the outcome of the hearing.
  4. The school district or public agency must give the parent or adult student a full and fair opportunity to present evidence relevant to the issues raised.
  5. The parent or adult student may, at their own expense, be assisted or represented by one or more individuals of his or her own choice, including an attorney.
  6. The school district or public agency must make its decision in writing within a reasonable period of time after the hearing. The decision will be based solely on the evidence presented at the hearing, and will include a summary of the evidence and the reasons for the decision.
- C. If, as a result of a student records hearing, it is determined that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, the school district or public agency must amend the information and provide written notice to the parent or adult student requesting the amendment.
- D. If, as a result of a student records hearing, it is determined that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, the school district or public agency must inform the parent or adult student of the decision and of the right to place in the student's records a statement commenting on the information or setting forth any reasons for disagreeing with the decision.
- E. The school district or public agency ensures that a statement placed in an education record meets the following requirements:
1. Is maintained by the school district or public agency as part of the records of the student as long as the record or contested portion is maintained; and
  2. Is disclosed by the school district or public agency to any person to whom the records of the student or the contested portion are disclosed.

*Citations:*

34 C.F.R. Part 99

*FERPA*

34 C.F.R. §§300.619 – 300.621

*Opportunity for hearing, Result of hearing, and Hearing procedures*

**XV. Disclosure of Student Records to Judicial Authorities**

- A. If the school district or public agency reports a crime committed by a student with a disability, the school district or public agency may transmit a copy of the student's special education and disciplinary records to the appropriate authorities for consideration, only if:
1. The disclosure is with consent of the parent or adult student; or
  2. The disclosure is permitted under one of the exceptions to consent listed in Section VII.

*Citations:*

34 C.F.R. Part 99

*FERPA*

34 C.F.R. §300.535

*Referral to and action by law enforcement and judicial authorities*



## **XVI. Enforcement**

- A. WDE shall enforce this policy and procedures consistent with the IDEA. School districts or public agencies found to be out of compliance by WDE with any of the provisions of this policy shall:
1. Be given an opportunity to come into immediate compliance without further sanctions;
  2. Demonstrate appropriate policies, procedures, or practices to ensure the future compliance with this policy;
  3. Be required to complete a Corrective Action Plan by WDE to ensure that its policies, procedures, or practices are consistent with this policy, and applicable federal and state laws; or
  4. Any other sanctions determined necessary and appropriate by WDE.

*Citations:*

34 C.F.R. Part 99

*FERPA*

34 C.F.R. §300.626

*Enforcement*

**WYOMING DEPARTMENT OF EDUCATION**  
**SPECIAL PROGRAMS DIVISION**  
**POLICY AND PROCEDURES FOR SPECIAL EDUCATION**  
**DISPROPORTIONALITY AND OVERIDENTIFICATION**  
**ADOPTED: JULY 1, 2010**

**I. Disproportionality and Overidentification**

Wyoming Department of Education (WDE) shall take affirmative steps to prevent the inappropriate overidentification or disproportionate representation by race and ethnicity of children as children with disabilities, including children with disabilities with a particular impairment described in 34 C.F.R. §300.8. Affirmative activities shall include, but not be limited to:

- Ongoing technical assistance and professional development;
- Data collection and reporting;
- Monitoring and continuous improvement activities;
- District risk-based self assessment; and/or
- WDE review of local policies, procedures and practices.

**II. Data Collection**

A. WDE shall provide for the collection and examination of data to determine if significant disproportionality based on race and ethnicity is occurring within the school districts and public agencies of the state with respect to:

1. The identification of children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in 34 C.F.R. §300.8;
2. The placement in particular educational settings of these children; and
3. The incidence, duration, and type of disciplinary actions, including suspensions and expulsions.

*Citations:*

34 C.F.R. §300.646

*Disproportionality*

**III. Correction of Disproportionality and Overidentification**

A. WDE shall use quantifiable indicators and such qualitative indicators as are needed to adequately measure overidentification and disproportionate representation.

B. Correction of noncompliance shall occur as soon as possible, but in no case later than one year from the date of notice of noncompliance.

- C. WDE shall use the enforcement mechanisms identified in the Federal Regulations and Wyoming Statutes and Rules to ensure compliance with Part B.
- D. In an effort to correct noncompliance, WDE may request that the state superintendent take appropriate administrative action with the state board, including but not limited to the changing of accreditation status against the school district or public agency for failure to come into compliance with any applicable laws.

*Citations:*

<i>34 C.F.R. §300.149</i>	<i>SEA responsibility for general supervision</i>
<i>34 C.F.R. §300.173</i>	<i>Overidentification and disproportionality</i>
<i>34 C.F.R. §300.604</i>	<i>Enforcement</i>
<i>34 C.F.R. §300.646</i>	<i>Disproportionality</i>
<i>W.S. §21-2-202(c)</i>	<i>Duties of state superintendent</i>
<i>W.S. §21-2-703</i>	<i>Superintendent duties; division duties</i>
<i>Wyoming Department of Education Rules, Chapter 7, Section 9, General Supervision</i>	

**WYOMING DEPARTMENT OF EDUCATION**  
**SPECIAL PROGRAMS DIVISION**  
**POLICY AND PROCEDURES FOR SPECIAL EDUCATION**  
**FULL EDUCATIONAL OPPORTUNITY GOAL**  
**ADOPTED: JULY 1, 2010**

**I. Full Educational Opportunity Goal**

Wyoming Department of Education (WDE) provides the following assurance to the U.S. Department of Education (USDOE), Office of Special Education Programs (OSEP) in conjunction with the annual federal application for funds under IDEA, Part B.

“The State has established a goal of providing a full educational opportunity to all children with disabilities residing in Wyoming.”

*Citations:*

34 C.F.R. §300.109      *Full educational opportunity goal*  
34 C.F.R. §300.110      *Program options*

**II. Explanation:**

- A. Wyoming currently requires a free appropriate public education (FAPE) for all children with disabilities, ages 3 to the end of the school year in which they reach the age of 21 through Part B and the Wyoming Department of Education Chapter 7 Rules. Wyoming also funds a developmental preschool system serving children with developmental disabilities age three (3) through five (5) years.
  
- B. Through its general supervisory authority, WDE requires that each school district or public agency takes steps to ensure that children with disabilities have available to them the variety of educational programs and services available to nondisabled children.

*Citations:*

34 C.F.R. §300.109      *Full educational opportunity goal (FEOG)*  
34 C.F.R. §300.110      *Program options*  
W.S. §21-2-501          *Children with disabilities entitled to free appropriate public education*  
W.S. §21-2-502          *Duties of school districts*  
W.S. §21-2-701          *Definitions*  
W.S. §21-2-706          *Developmental preschool funding*  
*Wyoming Department of Education Rules, Chapter 7, Section 5(a) Free Appropriate Public Education*

**WYOMING DEPARTMENT OF EDUCATION**

**SPECIAL PROGRAMS DIVISION**

**POLICY AND PROCEDURES FOR SPECIAL EDUCATION**

**WDE RESPONSIBILITY FOR GENERAL SUPERVISION**

**ADOPTED: JULY 1, 2010**

**I. General**

A. Wyoming Department of Education (WDE), under the direction of the State Superintendent, is identified as the State Educational Agency (SEA) within the state responsible for:

1. Compliance with the Part B of the IDEA, the Federal Regulations, Wyoming Statutes and Rules; and
2. Ensuring that each educational program for children with disabilities administered within the State, including each program administered by any other Wyoming agency –
  - a. Is under the general supervision of the SEA; and
  - b. Meets the educational standards of the SEA.
3. Ensuring that a free appropriate public education (FAPE) is available to any child age 3 through 21 residing in the state with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade, and is advancing from grade to grade, consistent with 34 C.F.R. §§300.101 through 300.113.

B. The Developmental Disabilities Division (DDD), as the lead agency responsible for serving preschool children with disabilities within Wyoming, is deemed an intermediate educational unit pursuant to W.S. §21-2-702. As such, DDD meets the federal definition of an Educational Service Agency, which is further defined as a Local Educational Agency (LEA) subject to the general supervision of and compliance monitoring by WDE.

*Citations:*

*34 C.F.R. §300.2(b)*

*34 C.F.R. §300.12*

*34 C.F.R. §300.28*

*34 C.F.R. §§300.101 – 300.113*

*34 C.F.R. §300.149*

*W.S. §21-2-201*

*W.S. §§21-2-701 – 703*

*Accountability of this part to State and local agencies*

*Educational service agency*

*Local educational agency*

*FAPE Requirements*

*SEA responsibility for general supervision*

*General supervision of public schools entrusted to state superintendent*

*Services to preschool children with disabilities*

## II. Monitoring and Compliance

- A. WDE shall monitor and enforce compliance with Part B of the IDEA, Federal Regulations, Wyoming Statutes and Rules, and WDE Policy in all school districts or public agencies, including the DDD as the lead agency serving preschool children with disabilities in Wyoming.
- B. WDE shall use quantifiable indicators and such qualitative indicators as are needed to adequately measure performance under Part B.
- C. WDE shall make determinations annually about the performance of each school district or public agency using the categories identified in 34 C.F.R. §603(b) as follows:
  - 1. Meets the requirements and purposes of Part B of the Act;
  - 2. Needs assistance in implementing the requirements of Part B of the Act;
  - 3. Needs intervention in implementing the requirements of Part B of the Act; and
  - 4. Needs substantial intervention in implementing the requirements of Part B of the Act.
- D. Correction of noncompliance shall occur as soon as possible, but in no case later than one year from the date of notice of noncompliance.
- E. WDE shall use the enforcement mechanisms identified in the Federal Regulations and Wyoming Statutes and Rules to ensure compliance with Part B.
- F. In an effort to correct noncompliance, WDE may request that the state superintendent take appropriate administrative action with the state board, including but not limited to the changing of accreditation status against the school district or public agency for failure to come into compliance with any applicable laws.

*Citations:*

34 C.F.R. §300.149

*SEA responsibility for general supervision*

34 C.F.R. §§300.600 – 300.609

*Monitoring, technical assistance and enforcement*

W.S. §21-2-202(c)

*Duties of the state superintendent*

W.S. §21-2-703

*Superintendent duties; division duties*

*Wyoming Department of Education Rules, Chapter 7, Section 9, General Supervision*

**WYOMING DEPARTMENT OF EDUCATION**  
**SPECIAL PROGRAMS DIVISION**  
**POLICY AND PROCEDURES FOR SPECIAL EDUCATION**  
**LEAST RESTRICTIVE ENVIRONMENT (LRE)**

**ADOPTED: JULY 1, 2010**

**I. Least Restrictive Environment**

- A. To the maximum extent appropriate, students with disabilities, including children in public or private institutions or other care facilities, are educated with students who are nondisabled; and
- B. Special classes, separate schooling, or other removal of students 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.

*Citations:*

*34 C.F.R. §300.114      LRE Requirements*  
*Wyoming Department of Education Rules, Chapter 7, Section 5(b)*

**II. Continuum of Alternative Placements**

- A. A continuum of alternative placements must be available to meet the needs of children with disabilities for special education and related services.
- B. The continuum must include placements in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions; and
- C. The continuum must make provision for supplementary services to be provided in conjunction with regular class placement.

*Citations:*

*34 C.F.R. §300.115      Continuum of alternative placements*  
*Wyoming Department of Education Rules, Chapter 7, Section 5(b)*

**III. Placement of the Student**

- A. The placement decision for each eligible student, including a preschool child with a disability must:
  - 1. Be made by a group of persons, including the parents, and other persons knowledgeable about the student, the meaning of the evaluation data, and the placement options;
  - 2. Be made in conformity with the LRE requirements;
  - 3. Be determined at least annually;

4. Be based on the student's IEP, including the need for specialized instruction, related services, supplementary aids and services, and program modifications and supports; and
  5. Be as close as possible to the student's home.
- B. The student must be educated in the school that he or she would attend if nondisabled unless the services identified in the IEP cannot feasibly be provided in this setting.
- C. Placement teams must select the least restrictive environment for each student, considering the following:
1. Determine the student's special education and related services, including supplementary aids and services, and the extent to which those services can be provided to the student in the regular class environment with nondisabled peers;
  2. If the student cannot be successful in the regular class environment with the use of supplementary aids and services, specify those services that must be provided outside the regular class;
  3. After determining that special education and related services, and supplementary aids and services cannot be provided in the regular class environment, determine the least restrictive alternative based on the needs of the student.
  4. In selecting the student's placement, the placement team shall consider and document the following:
    - a. All placement options, including placement options requested by the parent;
    - b. Potential benefits of placement options;
    - c. Any potential harmful effects on the student or on the quality of services that he or she needs; and
  5. The school district or public agency shall not remove a student from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum;
  6. If the selected placement is a change from the previous placement, the school district or public agency shall provide the parent with prior written notice of the change in placement; and
  7. If the parent requests a specific placement that the team rejects, the school district or public agency shall provide prior written notice of its refusal.

*Citations:*

34 C.F.R. §300.116      *Placements*  
 Wyoming Department of Education Rules, Chapter 7, Section 5(b)

#### **IV. Nonacademic Settings**

- A. The school district or public agency must provide opportunities for each child with a disability to participate with nondisabled children in nonacademic and extracurricular services and activities to the maximum extent appropriate based on the needs of that child.



- B. The school district or public agency must provide supplementary aids and services determined by the child's IEP team to be appropriate and necessary for the child to participate in nonacademic settings.

*Citations:*

34 C.F.R. §300.117      *Nonacademic settings*  
*Wyoming Department of Education Rules, Chapter 7, Section 5(b)*

**V. Nonacademic Services**

- A. Each school district or public agency must take steps, including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities.
- B. Nonacademic and extracurricular services and activities include all those available to nondisabled students, and may include:
  - 1. Counseling services;
  - 2. Athletics;
  - 3. Transportation;
  - 4. Health services;
  - 5. Recreational activities;
  - 6. Special interest groups or clubs;
  - 7. Referrals to agencies that provide assistance to individuals with disabilities; and
  - 8. Employment of students.

*Citations:*

34 C.F.R. §300.107      *Nonacademic services*  
*Wyoming Department of Education Rules, Chapter 7, Section 5(b)*

**VI. Children in Institutions**

- A. Placement decisions for children with disabilities in public or private institutions must be made in conformity with LRE requirements.

*Citations:*

34 C.F.R. §300.118      *Children in public or private institutions*  
*Wyoming Department of Education Rules, Chapter 7, Section 5(b)*

**WYOMING DEPARTMENT OF EDUCATION**  
**SPECIAL PROGRAMS DIVISION**  
**POLICY AND PROCEDURES FOR SPECIAL EDUCATION**  
**PART C TO PART B TRANSITION**  
**ADOPTED: JULY 1, 2010**

**I. General**

Wyoming Department of Education (WDE) must ensure that:

- A. Children participating in early intervention programs under Part C of the Act, and who will participate in preschool programs under Part B of the Act, experience a smooth and effective transition to preschool programs.
- B. Children participating in early intervention programs under Part C of the Act are evaluated to determine initial eligibility for special education under Part B of the Act in a timely manner sufficient to ensure that an IEP can be developed and implemented by the child's third birthday consistent with 34 C.F.R. §300.101(b) and 34 C.F.R. §300.124.
- C. Each affected school district or public agency must participate in transition planning conferences arranged by the designated lead agency.

*Citations:*

34 C.F.R. §300.101

*Free Appropriate Public Education (FAPE)*

34 C.F.R. §300.124

*Transition of children from the Part C program to preschool programs*

*Wyoming Department of Education Rules, Chapter 7, Sections 4 and 5*

**II. Transition Process**

- A. Consistent with the Confidentiality of Information requirements contained in 34 C.F.R. §§300.610 through 300.627, the Part C Lead Agency must timely notify the school district or public agency in which the child resides that a child who receives Part C services will turn three years old pursuant to 20 U.S.C. §1437(a)(9)(A)(ii)(I);
- B. The transition planning conference must occur between the ages of 2 years, 3 months and 2 years, 9 months pursuant to 20 U.S.C. § 1437(a)(9)(A)(ii)(II). Transition planning must address the need for an initial comprehensive evaluation in order to determine eligibility under Part B.
- C. The school district or public agency shall obtain parental consent for the evaluation consistent with 34 C.F.R. §300.300 and conduct an initial comprehensive evaluation consistent with 34 C.F.R. §§300.301 through 300.311.
- D. The IEP team must determine if the child is a child with a disability and eligible for Part B services by the child's third birthday.

- E. If eligible, the team must develop, consistent with 34 C.F.R. §§300.320 through 300.328, and implement, consistent with the consent requirements in 34 C.F.R. §300.300, an IEP by the child's third birthday.

*Citations:*

20 U.S.C. §1437(a)(9)(A)

34 C.F.R. §300.124

*Transition of children from the Part C program to preschool programs*

34 C.F.R. §§300.610 – 300.627

*Confidentiality of Information*

*Wyoming Department of Education Rules, Chapter 7, Sections 4 and 5*

### **III. Obligation to Make FAPE Available**

- A. The obligation under Part B of the Act to make a Free Appropriate Public Education (FAPE) available begins no later than the child's third birthday.
- B. An IEP must be in effect by the child's third birthday.
  - 1. If the child's third birthday occurs during the summer, the child's IEP Team shall determine the date when services under the IEP will begin.

*Citations:*

34 C.F.R. §300.101

*Free Appropriate Public Education (FAPE)*

**WYOMING DEPARTMENT OF EDUCATION**

**SPECIAL PROGRAMS DIVISION**

**POLICY AND PROCEDURES FOR SPECIAL EDUCATION**

**PERSONNEL QUALIFICATIONS**

**ADOPTED: JULY 1, 2010**

**I. Personnel Qualifications**

All special education and related services personnel in the state of Wyoming shall meet the educator licensing requirements for the positions in which they work, as described in the Professional Teaching Standards Board (PTSB) rules, or any other applicable statutes or rules. All personnel necessary to carry out Part B of the Individuals With Disabilities Education Act (IDEA), including preschool teachers and service providers, shall be appropriately and adequately prepared, subject to the requirements related to personnel qualifications in the IDEA and No Child Left Behind Act (NCLB) of the Elementary and Secondary Education Act (ESEA).

**II. Explanation:**

- A. The Professional Teaching Standards Board is responsible for developing and maintaining teacher certification and endorsements standards for teachers in the state of Wyoming.
- B. Wyoming statutes ensure that all teachers hired to teach students are qualified and hold the requisite licensure from the Professional Teaching Standards Board.
- C. Wyoming school districts or public agencies are responsible for ensuring that paraprofessionals are highly qualified pursuant to IDEA and NCLB of the ESEA.

*Citations:*

*20 U.S.C. §6319*

*34 C.F.R. §300.18*

*34 C.F.R. §300.156*

*W.S. §21-2-802(e)*

*W.S. §21-7-303*

*Professional Teaching Standards Board Rules, Chapters 1 through 6*

*NCLB, Qualifications for teachers and paraprofessionals*

*Highly qualified special education teachers*

*Personnel Qualifications*

*Powers and duties;*

*Certificate or permit required*

**WYOMING DEPARTMENT OF EDUCATION**

**SPECIAL PROGRAMS DIVISION**

**POLICY AND PROCEDURES FOR SPECIAL EDUCATION**

**RESPONSIBILITY FOR CHILDREN IN PRIVATE SCHOOLS**

**ADOPTED: JULY 1, 2010**

**I. Introduction**

Federal and State laws and regulations recognize that children with disabilities may be receiving their education in private elementary and secondary school settings for different reasons, including parental choice or placement by a school district or public agency. A school district's or public agency's obligation to provide special education services, pay for services provided to children in private schools, or fund the private school placement depends on factors including whether:

- The child with a disability is placed in the private school by the school district or public agency as a means of providing special education and related services;
- The child with a disability is enrolled in a private school by his or her parents because the provision of a free appropriate public education (FAPE) is at issue or in dispute; or
- The child with a disability is voluntarily enrolled in a private school by his or her parents to receive a private school education as a matter of choice.

**II. Children Placed in Private School By the School District or Public Agency**

A. When the school district or public agency determines, through the IEP process, that a child with a disability should be placed in a private school or facility in order to receive FAPE, the child's educational program, including special education and related services, must:

1. Be provided according to an appropriately developed IEP and at no cost to the parents;
2. Ensure the special education program is provided by staff who meet Wyoming personnel standards, although the private school teachers are not required to be highly qualified;
3. Ensure that the private school provides services consistent with IDEA requirements and other pertinent Federal and State laws and regulations (e.g., in accordance with IEP requirements); and
4. Ensure that the child has all rights of a child with a disability who is served by the school district or public agency.

- B. Before the school district or public agency places a child with a disability in a private school or facility, the school district or public agency must initiate and conduct a meeting to develop an IEP for the child. The school district or public agency must ensure that a representative of the private school or facility attends the meeting. If a representative cannot attend, the school district or public agency must use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.
- C. Disagreements about the provision of FAPE for students placed in private school by the school district or public agency shall be subject to the due process procedures in the Individuals with Disabilities Education Act (IDEA) and the state complaint procedures in the federal regulations implementing the IDEA.

*Citations:*

34 C.F.R. §§300.145 – 300.147      *Children With Disabilities in Private Schools Placed or Referred by Public Agencies.*

### **III. Children Enrolled in Private School By Their Parents when FAPE is at Issue**

- A. If the parents of a child with a disability, who previously received special education and related services from the school district or public agency, enroll their child without the consent or referral by the resident school district or public agency in a private preschool because the parents believe the child was not receiving FAPE, a court, special education due process hearing officer, or WDE (through the Complaint process in 34 C.F.R. §§300.151-300.153) may require the school district or public agency to reimburse the parents for the cost of the private school placement only if both of the following findings are made:
  - 1. The school district or public agency did not make FAPE available to the child in a timely manner before the private school enrollment; and
  - 2. The private school placement made by the parents was appropriate to meet the needs of the child.
- B. A private school placement by the parents may be found to be appropriate for the child even though that placement does not meet Wyoming standards that apply to special education and related services which are required by the school district or public agency.
- C. Reimbursement for a private school placement made by the parents may be reduced or denied if the court, special education due process hearing officer, or WDE make any of the following findings:
  - 1. At the most recent IEP meeting that the parents attended before making the private school placement, the parents did not inform the IEP team that they were rejecting the services or placements proposed by the school district or public agency to provide FAPE to their child, including a statement of their concerns and their intent to enroll their child in a private school at public expense;
  - 2. At least 10 business days before removal of the child from the school district

or public agency, the parents did not give written notification to the school district or public agency that they were rejecting the services or placements proposed by the school district or public agency to provide FAPE to their child, including a statement of their concerns and their intent to enroll their child in a private school at public expense;

3. Before the parents' removal of the child from the school district or public agency, the school district or public agency provided Prior Written Notice to the parents of its intent to evaluate the child, including a statement of the purpose of the evaluation that was appropriate and reasonable, but the parents did not make the child available for the evaluation; or
  4. The actions of the parents in removing the child from the school district or public agency are found to be unreasonable.
- D. Reimbursement of the cost of a private school placement for failure to provide the notification to the school district or public agency must not be reduced or denied if any of the following findings are made:
1. Compliance with the notification requirement would likely have resulted in physical harm to the child;
  2. The school district or public agency prevented the parents from providing the required notification; or
  3. The school district or public agency did not inform the parents of their requirement to notify the school of their intent to remove their child.
- E. Reimbursement of the cost of a private school placement for failure to provide the notification to the school district or public agency may, in the discretion of the court, hearing officer or WDE, not be reduced or denied for failure to provide the notice required in paragraph C above if:
1. The parents are not literate or cannot write in English; or
  2. Compliance with the notice requirements would likely result in serious emotional harm to the child.
- F. Disagreements about the provision of FAPE for students placed in a private school by a parent when FAPE is at issue shall be subject to the due process procedures in the IDEA and the state complaint procedures in the Federal regulations implementing the IDEA.

*Citations:*

34 C.F.R. §300.148

*Placement of children by parents when FAPE is at issue.*

#### **IV. Requirements for Children Voluntarily Enrolled in Private Schools By Their Parents**

- A. Parentally-placed private school children with disabilities means children with disabilities enrolled by their parents in private, including religious, schools or

facilities that meet the definition of elementary or secondary school. Children with disabilities in private elementary and secondary schools must be provided an opportunity for participation in special education services. A child with a disability enrolled by a parent in a private school has no individual right to special education or related services. The school district or public agency where the private school is located must ensure that a proportionate share of Federal special education funding is used to provide services to this population of children.

- B. In carrying out the obligation to provide services utilizing a proportionate share of Federal funds, each school district or public agency must annually consult with private school representatives and representatives of parents of parentally-placed private school children with disabilities attending private schools during the design and development of special education and related services for the children regarding each of the following:
1. The child find process, including:
    - a. How parentally-placed private school children suspected of having a disability can participate equitably; and
    - b. How parents, teachers, and private school officials will be informed of the process.
  2. The determination of the proportionate share of Federal funds available to serve parentally-placed private school children with disabilities including the determination of how the proportionate share of those funds was calculated.
  3. The consultation process among the school district or public agency, private school officials, and representatives of parents of parentally-placed private school children with disabilities, including how the process will operate throughout the school year to ensure that parentally-placed children with disabilities identified through the child find process can meaningfully participate in special education and related services.
  4. How, where, and by whom special education and related services will be provided for parentally-placed private school children with disabilities, including a discussion of:
    - a. The types of services, including direct services and alternate service delivery mechanisms;
    - b. How special education and related services will be apportioned if funds are insufficient to serve all parentally-placed private school children; and
    - c. How and when those decisions will be made.
  5. If the school district or public agency disagrees with the views of the private school officials on the provision of services or the types of services (whether provided directly or through a contract), the LEA must provide the private school officials with a written explanation of the reasons why the LEA chose



not to provide services directly or through a contract.

- C. Consultations with appropriate representatives of private schools and parents of private school children with disabilities should occur in a timely manner before decisions are made that affect the ability of children in a private school to participate in services. These representatives of private schools and parents of the private school children with disabilities must have genuine opportunity to express their views and have meaningful input into the decision-making process.
- D. After the school district or public agency determines the amount of funds that must be allocated for providing services to children with disabilities in private schools located within the school district, the school district or public agency, in consultation with appropriate representatives of private schools and representatives of parents of children with disabilities voluntarily enrolled in private schools, must determine how the funds will be allocated, how and where services will be provided and by whom. The school district or public agency, however, must ultimately determine the types and levels of services to be provided.
- E. If a child with a disability who is voluntarily enrolled by their parents in a private school receives services offered by the school district where the private school is located with its proportionate share of funds according to the agreement reached in the consultation, the school district or public agency must develop a Services Plan for the child. The parents of children served with a Services Plan do not have any due process rights, including any right to a free appropriate public education for their child, beyond issues related to child find, which includes evaluation/reevaluation.
- F. The Services Plan describes the specific special education and/or related services to be provided to the child as a result of the consultation with appropriate representatives of private schools and representatives of the parents of private school children. To the extent appropriate, the Services Plan includes all of the IEP components. The elements in each child's Services Plan may vary depending on the services to be provided. Like an IEP, the Services Plan must be reviewed and revised on an annual basis, and as necessary.
- G. The location where services will be provided should be determined in consultation with appropriate representatives of private schools and with representatives of parents of children with disabilities enrolled in private schools. The location of services will impact the amount to be expended to provide services to children with disabilities in private schools. Services to parentally-placed private school children with disabilities may, but are not required to be provided on the premises of the private school. An offer to provide services at the school district or public agency site generally meets a school district's obligations, even if parents refuse the services at that site.
- H. If necessary for the child to benefit from or participate in special education services, a parentally-placed private school child with a disability must be provided transportation from the child's school or home to a site other than the private school, and from the service site to the private school or child's home. School districts or public agencies are not required to provide transportation from the child's home to the private school. The school district or public agency is not

required to provide transportation outside of its boundaries. Transportation costs may be figured into the proportionate amount of funds expended for services.

- I. Disagreements about the provision of services for parentally-placed private school students when FAPE is NOT at issue are not subject to the due process procedures in the IDEA (except child find disputes). However, the state complaint procedures in the Federal regulations may be utilized to address disagreements regarding parentally-placed private school children.

*Citations:*

34 C.F.R. §§300.130 – 300.144      *Children with Disabilities Enrolled by Their Parents in Private Schools*

## **V. Child Find for Parentally-Placed Private School Children With Disabilities**

- A. Each school district or public agency must locate, identify, and evaluate all children with disabilities who are enrolled by their parents in private, including religious, elementary and secondary schools located within the boundaries of the school district or public agency, including children who reside in a state other than Wyoming.
- B. In meeting the child find obligation with regard to children with disabilities attending private schools within the school district boundaries, the school district or public agencies must consult with appropriate representatives of private schools and parents of private school children with disabilities to determine how best to conduct child find activities. The methods chosen to locate, identify, and evaluate must be comparable to methods used for children in the school district or public agencies.
- C. If the parents of a child who is voluntarily placed in a private school does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to a request to provide consent, the school may not use the consent override procedures of mediation or due process, and the school is not required to consider the child as eligible for special education services.
- D. If a child is enrolled, or is going to enroll in a private school that is not located in the parents' school district of residence, parental consent must be obtained before any personally identifiable information about the child is released between officials in the school district where the private school is located and officials in the school district of the parents' residence.
- E. Disagreements regarding child find for students placed in a private school by a parent shall be subject to the due process procedures in the IDEA and the state complaint procedures in the Federal regulations implementing the IDEA. Due process hearing requests shall be filed with the school district or public agency where the private school is located.
- F. The school district's or public agency's child find activities for private school students enrolled by their parents in private schools must be similar to, and completed within a comparable time period, as child find activities for students in the school district's or public agency's schools.

- G. The school district or public agency must not include the cost of conducting child find activities for private school students, including individual evaluations, in determining whether it has spent a proportionate share of its federal IDEA funds on parentally-placed private school students with disabilities.
- H. The school district or public agency must consult with private school representatives and parents of private school students with disabilities about how to carry out these child find activities, including:
  - 1. How private school children suspected of having a disability can participate equitably, and
  - 2. How parents, teachers, and private school officials will be informed of the process.
- I. The child find process for parentally-placed private school students shall ensure the equitable participation of parentally-placed private school students with disabilities and an accurate count of such children.

Citations:

34 C.F.R. §300.131 *Child find for parentally-placed private school children with disabilities*  
*Wyoming Department of Education Rules, Chapter 7, Section 4(a) Child Find*

# WYOMING DEPARTMENT OF EDUCATION

## SPECIAL PROGRAMS DIVISION

### POLICY AND PROCEDURES FOR SPECIAL EDUCATION

#### RTI IN SLD ELIGIBILITY DETERMINATIONS

ADOPTED: JULY 1, 2010

#### I. Definitions

- A. At-Risk Students: At-risk students are students whose initial performance level or characteristics predict poor learning outcomes unless intervention occurs to accelerate knowledge, skill, or ability development.
- B. Core Curriculum: The core curriculum is the course of study deemed critical and usually made mandatory for all students of a school or school system. Core curricula are often instituted at the elementary and secondary levels by local school boards, Departments of Education, or other administrative agencies charged with overseeing education. As mandated by No Child Left Behind, core curricula must represent scientifically-based practice, which means the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs.
- C. Criterion-Referenced Assessment: Criterion-referenced assessment measures what a student understands, knows, or can accomplish in relation to a specific performance objective. It is typically used to identify a student's specific strengths and weaknesses in relation to an age or grade level standard. It does not compare students to other students.
- D. Curriculum Based Assessment (CBA): CBA is a broader term than Curriculum-Based Measurement (CBM), as defined by Tucker (1987). CBM meets the three CBA requirements: (1) measurement materials are aligned with the school's curriculum; (2) measurement occurs frequently; and (3) assessment information is used to formulate instructional decisions.
- E. Curriculum-Based Measurement (CBM): CBM is an approach to measurement that is used to screen students or to monitor student progress in mathematics, reading, writing, and spelling. With CBM, teachers and schools can assess individual responsiveness to instruction. When a student proves unresponsive to the instructional program, CBM signals the teacher/school to revise that program. CBM is a distinctive form of CBA because of two additional properties: (1) Each CBM test is an alternate form of equivalent difficulty; and (2) CBM is standardized, with its reliability and validity well documented.
- F. Data Driven Decision Making: Data driven decision making is the process of basing instructional, educational, or evaluative decision making through ongoing progress monitoring and analysis of collected data.
- G. Interventions: Interventions are designed to help student(s) improve performance relative to specific, realistic and measurable goals. Interventions are based on data collected on current student(s) performance, and may include modifications and accommodations. Interventions are multi-tiered, research based, prescriptive, time limited, and parent inclusive. Intensive academic and/or behavioral interventions are characterized by their increased focus for students who fail to respond to less intensive forms of instruction. Intensity can be increased through many dimensions including length, frequency, and

duration of implementation. Within RTI, intensive is sometimes referred to as tertiary intervention.

- H. Multi-Tiered Intervention Model: The multi-tiered intervention model provides different levels of intensity (universal, strategic, intensive) based upon student response to intervention, with ongoing progress monitoring.
- I. Problem Solving Process: The problem solving process is an interdisciplinary, collaborative team process which is based on a multi-tiered model and includes data driven decision making, parent-school partnerships, progress monitoring, focused assessment, flexible service delivery, and prescriptive, research based interventions.
- J. Problem Solving Team: A problem-solving team, or at risk committee, is a collaborative team of general and special education staff members, including parents, which implements the problem solving process for students at risk for school underachievement.
- K. Progress Monitoring: Progress monitoring is brief, frequent, ongoing assessment that provides objective data to determine if students are responding well to an intervention.
- L. Response to Intervention (RTI): Response to intervention integrates assessment and intervention within a multi-level prevention system to maximize student achievement and reduce behavior problems. With RTI, schools identify students at risk for poor learning outcomes, monitor student progress, provide evidence-based interventions and adjust the intensity and nature of those interventions depending on a student's responsiveness, and identify students with learning disabilities.
- M. Screening or Universal Screening: Universal screening is conducted, usually as a first stage within a screening process, to identify or predict students who may be at risk for poor learning outcomes. Universal screening tests are typically brief; conducted with all students at a grade level; and followed by additional testing or short-term progress monitoring to corroborate students' risk status. Universal screening is an easy to administer school-wide assessment consisting of probes that are aligned to the curriculum and state academic standards.
- N. Standard Protocol Interventions: Standard protocol intervention relies on the same, empirically validated intervention for all students with similar academic or behavioral needs. Standard protocol interventions facilitate quality control.
- O. Tiered Instruction: Tiered instruction describes levels of instructional intensity within a multi-tiered prevention system.
  - 1. Tier 1 Intervention: Tier 1 Interventions are universal interventions provided to all students in the classroom, regardless of individual needs. These may be research based, but are not prescriptive.
  - 2. Tier 2 Intervention: Tier 2 Interventions are strategic, targeted interventions to be implemented when progress monitoring or assessment data indicates that a student is not making adequate gains from universal instruction. Tier 2 Interventions are smaller group interventions designed to meet the specific needs of a student and peers with similar needs.
  - 3. Tier 3 Intervention: Tier 3 Interventions are intensive, highly individualized, systematic and explicit instruction in an area of assessed need.

References:

National Center on Response to Intervention, [www.rti4success.org](http://www.rti4success.org)  
Response to Intervention, NICHCY, National Dissemination Center For Children with Disabilities  
Response to Intervention, RTI/Problem-Solving Process: Essentials, Cherry Creek School District, Student Achievement Services, July 2005

## II. Components of RTI

When using RTI as a method of determining SLD eligibility, school districts or public agencies must have an RTI process in place, including policies consistent with WDE's policy, comprised of the following minimum components:

- A. Problem solving processes and problem solving teams;
- B. Instructional changes driven by data based decision making;
- C. Parent notification regarding the amount and nature of student performance data collected; and
- D. Multi-tiered interventions, including:
  1. **Tier 1:** Universal Interventions. State content standards-aligned core instruction and school wide positive behavior interventions and supports are provided to all students in the general education core curriculum. Interventions include:
    - a. High quality, effective instruction designed to engage and challenge students;
    - b. Clear and high expectations for student learning and behavior;
    - c. Effective support to enhance student engagement in the learning process and to promote school completion; and
    - d. Periodic progress monitoring.
  2. **Tier 2:** Strategic Interventions. Academic and behavioral strategies, methodologies and practices designed for some students who are not making expected progress in the state content standards-aligned instructional system who are at risk for educational underachievement. Strategic interventions include:
    - a. State content standards-aligned instruction with supplemental, small group instruction;
    - b. Use of standard protocol interventions; and
    - c. Minimum of twice-monthly progress monitoring.
  3. **Tier 3:** Intensive Interventions. Academic and behavioral strategies, methodologies, and practices designed for students who are significantly below established grade-level benchmarks in the state content standards-aligned instruction. Intensive interventions are:
    - a. Determined and selected through an individual problem solving process;
    - b. Explicit and skill specific;
    - c. Individualized or provided in small group (3 to 5 students) instruction;

- d. Increased by frequency of intervention sessions and minutes per session; and
- e. Progress monitored at least weekly.

*Citations:*

34 C.F.R. §§300.307 – 300.311      *Additional Procedures for Identifying Children With Specific Learning Disabilities*  
Wyoming Department of Education Rules, Chapter 7, Section 4

### **III. The Decision-Making Process**

- A. In order to be identified as a student with a Specific Learning Disability, the data collected during the Response to Intervention process must demonstrate the following:
  - 1. The child does not achieve adequately for the child’s age or to meet state approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child’s age or state-approved grade-level standards:
    - a. Oral expression
    - b. Listening comprehension
    - c. Written expression
    - d. Basic reading skill
    - e. Reading fluency skills
    - f. Reading comprehension
    - g. Mathematics calculation
    - h. Mathematics problem solving; and
  - 2. The child does not make sufficient progress to meet age or state approved grade-level standards in one of the areas identified in paragraph A above when using a process based on the child’s response to scientific, research-based intervention.

*Citations:*

34 C.F.R. §§300.309      *Determining the existence of a specific learning disability*  
34 C.F.R. §300.311(a)      *Specific documentation for the eligibility determination*

### **IV. Exclusions**

- A. In order to determine the existence of a Specific Learning Disability, the team must confirm:
  - 1. That the child’s underachievement is not primarily the result of:
    - a. Cognitive impairment;
    - b. Emotional disability;
    - c. Cultural factors;
    - d. Environmental or economic disadvantage; or
    - e. Limited English proficiency.

2. That the child's underachievement is not due to lack of appropriate instruction in reading or math as verified by:
  - a. Data that demonstrate that prior to, or as part of, the special education referral process, the child was provided appropriate instruction in regular education settings, delivered by highly qualified personnel; and
  - b. Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction.

*Citations:*

34 C.F.R. §300.309      *Determining the existence of a specific learning disability*

**V. Limitations**

- A. RTI is only one component of the process to identify children as eligible for special education.
- B. RTI does not replace the need for a comprehensive evaluation.
- C. A child's eligibility for special education services cannot be changed solely on the basis of data from an RTI process.

*Citations:*

71 *Federal Register* 46648



**WYOMING DEPARTMENT OF EDUCATION**  
**SPECIAL PROGRAMS DIVISION**  
**POLICY AND PROCEDURES FOR SPECIAL EDUCATION**  
**DISPUTE RESOLUTION PROCEDURES**

**ADOPTED: JULY 1, 2010**

- I. Authority.** In accordance with 34 C.F.R. §§300.151, 300.506, and 300.508, and Chapter 7 of the Wyoming Rules Governing Children with Disabilities, the Wyoming Department of Education (WDE) adopts the following dispute resolution procedures. As authorized by Chapter 7, these procedures shall be enforced by WDE.
- II. Mediation Procedures.** WDE adopts the following mediation procedures to comply with 34 C.F.R. §300.506 and Chapter 7, Section 7 of the Wyoming Rules Governing Services for Children with Disabilities.
- A. **Availability.** WDE shall offer parties to disputes involving any matter arising under Part B of the IDEA, including disputes arising prior to a due process hearing request, an opportunity to resolve the dispute through mediation.
  - B. **Cost.** WDE shall bear the cost of the mediation process.
  - C. **Voluntary.** WDE shall ensure that participation in mediation is voluntary as evidenced by the parties' signed agreement to mediate. Mediation shall not be used to deny or delay a parent's right to a due process hearing or to deny any other rights under the IDEA.
  - D. **Requesting mediation.** Parties may request mediation regarding any matter under Part B of the IDEA, including matters arising prior to the filing of a due process complaint, by submitting a request to WDE at the Special Programs Division, Wyoming Department of Education, 320 West Main Street, Riverton, Wyoming 82501 or by contacting the Dispute Resolution Facilitator at (800) 228-6194. An optional mediation request form is available from the WDE website at: <http://www.k12.wy.us/se.asp>.
- After the receipt of a verbal or written request to mediate, WDE shall send to the parties an Agreement to Mediate. This Agreement shall explain the mediation process and contain a confidentiality pledge that must be signed by the parties and received by WDE prior to assigning a mediator.
- E. **Mediators.** WDE shall maintain a roster of qualified, impartial mediators who are trained in effective mediation techniques and knowledgeable in laws and regulations relating to the provision of special education and related services. The mediator:

1. Shall not be an employee of WDE or the school district or public agency involved in the education or care of the child;
  2. Must not have a personal or professional interest that conflicts with the person's objectivity; and
  3. Shall not be considered an employee of WDE solely because he or she is paid by WDE.
- F. Appointment. Upon receipt of a written Agreement to Mediate signed by all parties, WDE shall appoint a mediator based on a random, rotational, or other impartial basis. WDE shall utilize the following appointment process:
1. WDE shall maintain a list of qualified, trained mediators.
  2. WDE shall appoint the next available mediator on the list.
  3. Mediators shall reserve the right to decline an appointment based on workload or conflict of interest.
  4. If a mediator is unavailable or otherwise unable to accept the appointment, WDE shall appoint the next mediator on the list.
- G. Scheduling. Each session in the mediation process shall be scheduled in a timely manner, and each session shall be held in a location that is convenient to the parties to the dispute.
- H. Participants. Both parties are free to bring additional participants to the mediation in order to facilitate resolution of the dispute consistent with the following:
1. Parents are free to bring additional participants who may help or support the parents' efforts to resolve the dispute.
  2. An individual who has the authority to bind the school district or public agency in its efforts to settle the dispute shall represent the school district or public agency at the mediation.
  3. In addition, the school district or public agency is free to bring additional participants who may assist in resolving the dispute.
  4. Either party may choose to be represented by counsel during the mediation.
  5. The mediator shall have the authority to limit the participation of either party's representatives in a manner consistent with professional mediation practices and conducive to resolving the dispute.
- I. Confidentiality. Discussions that occur during the mediation process are confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding in any Federal or Wyoming court. In an effort to protect confidentiality, the mediator shall:

1. Review the confidentiality pledge prior to the commencement of the mediation session, reminding the parties to abide by the confidentiality pledge; and
  2. Destroy all notes taken by the mediator during the mediation at the conclusion of the mediation.
- J. Settlement. If the parties resolve a dispute through the mediation process, the parties shall execute a legally binding agreement setting forth its terms. The agreement shall:
1. State that all discussion 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
  2. Be signed by both the parent and a representative of the school district or public agency who has the authority to bind such school district or public agency.
  3. The settlement agreement shall be effective upon signing.
  4. The settlement agreement shall be admissible in any federal or state court of competent jurisdiction to enforce its terms.

**III. State Complaint Procedures.** WDE adopts the following state complaint procedures to comply with 34 C.F.R. §§300.151 through 300.153 and Chapter 7, Section 7 of the Wyoming Rules Governing Services for Children with Disabilities.

- A. The complaint. Individuals or organizations alleging that a school district or public agency has violated a requirement of Part B of the IDEA, the federal regulations, Wyoming statutes, or Wyoming rules may file a written complaint with WDE that includes the following:
1. A statement that a school district or public agency has violated a requirement of Part B of the IDEA, the federal regulations, or applicable Wyoming statutes and rules;
  2. The facts on which the statement is based;
  3. The signature and contact information of the complainant; and
  4. If alleging violations with respect to a specific child,
    - a. The name and address of the residence of the child;
    - b. The name of the school the child is attending;
    - c. In the case of a homeless child, available contact information for the child and the name of the school the child is attending;
    - d. A description of the nature of the problem of the child, including facts relating to the problem; and
    - e. A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

- B. Time limit. The complaint must allege a violation that occurred not more than one (1) year prior to the date that the complaint is received by the Special Programs Unit within WDE.
- C. Filing. The party filing the complaint must forward a copy of the complaint to the school district or public agency serving the child at the same time the party files the original complaint with WDE at the Special Programs Division, Wyoming Department of Education, 320 West Main Street, Riverton, Wyoming 82501, or by fax at (307) 857-9256. In the event that the complaint is filed by fax, the original request must be submitted to WDE at the above address. An optional model complaint form is available from the WDE website at: <http://www.k12.wy.us/se.asp>.
- D. Complaint process.
1. Within ten (10) days of WDE's receipt of the complaint by mail or fax, WDE shall:
    - a. Send written notification to the complainant and the school district or public agency providing notice that a complaint has been received by WDE and identifying the issues for investigation;
    - b. Provide the parent with a Procedural Rights notice (if the complainant is a parent); and
    - c. Request documentation from the school district or public agency necessary to commence the investigation. The school district or public agency shall be given ten (10) calendar days in which to provide the requested information.
  2. Complainant parents and the school district or public agency shall be given the opportunity to engage in mediation pursuant to 34 C.F.R. §300.506 in an effort to voluntarily resolve the dispute.
  3. All written submissions regarding the complaint or the investigation must be provided to WDE within the requested time frame.
  4. Within sixty (60) days after WDE receives the complaint, WDE shall:
    - a. Carry out an independent on-site investigation, if WDE determines that an on-site investigation is necessary;
    - b. Give the complainant the opportunity to submit additional information, either orally or in writing about the allegations in the complaint;
    - c. Provide the school district or public agency with an opportunity to respond to the complaint and an opportunity to resolve the complaint;
    - d. Review all relevant information and make an independent determination as to whether the school district or public agency violated relevant laws or rules; and
    - e. Issue a written decision to the complainant that addresses each allegation in the complaint identified by WDE as an issue for investigation. The written decision shall contain:
      - Findings of fact;
      - Conclusions;

- Reasons for the final decision; and
- Corrective action, if warranted.

E. Remedies. Consistent with 34 C.F.R. §300.151(b), in resolving a complaint in which WDE has found violations of law and pursuant to its general supervisory authority, WDE shall address:

1. The failure to provide appropriate services, including corrective action appropriate to address the needs of the child, such as compensatory services or monetary reimbursement; and
2. Appropriate future provision of services for all children with disabilities.

F. Corrective action plan.

1. In the event that WDE has found a failure to provide Free Appropriate Public Education (FAPE), WDE shall issue a corrective action plan, which shall include procedures for effective implementation of WDE's final decision and the specific corrective steps needed to achieve compliance with WDE's decision pursuant to 34 C.F.R. §300.152(b)(2).
2. Pursuant to 34 C.F.R. §300.600 (including the 2008 and any subsequent amendments), WDE must ensure correction of the compliance as soon as possible, but in no case later than one year after the identification of the noncompliance. As part of this process, the school district or public agency shall:
  - a. Submit all required documentation within the timeframes contained in the corrective action plan; and
  - b. Provide the complainant with a copy of all submissions at the same time the documentation is provided to WDE.
  - c. Consistent with its general supervisory authority in 34 C.F.R. §300.149 and its duty to enforce the requirements of the IDEA and Part B of the Federal Regulations, WDE has the authority to impose a range of sanctions on school districts or public agencies that fail to correct noncompliance as specified in any corrective action plan.
  - d. In an effort to correct noncompliance, WDE may request that the state superintendent take appropriate administrative action with the state board, including but not limited to the changing of accreditation status against the school district or public agency for failure to come into compliance with any applicable laws.

G. Finality of decision. The decision of WDE is final. However, if a party has the right to request a due process hearing (that is, the parent or the school district or public agency), and that party disagrees with WDE's state complaint decision, the party may initiate a due process hearing provided that the subject of the state complaint involved an issue about which a due process hearing can be filed (issues relating to the identification, evaluation, educational placement, or the provision of FAPE to a child with a disability). The request for a due process hearing shall comply with 34 C.F.R. §§300.507 and 300.508.

H. Time extensions. Consistent with 34 C.F.R. §300.152(b)(1), WDE shall permit an extension of time in which to conduct the investigation and issue a final decision only when:

1. Exceptional circumstances exist with respect to a particular complaint; or
2. The parent and the school district or public agency agree to engage in mediation.
  - a. Exceptional circumstances must be documented with respect to the particular complaint under investigation. Examples of exceptional circumstances may include, but are not limited to:
    - i. Unexpected unavailability of persons necessary to the investigation.
    - ii. Other unforeseen circumstances beyond the control of the parties that significantly impede the ability of the complaint investigator to investigate the complaint.
  - b. Exceptional circumstances do not typically include regularly scheduled vacations from school, as school breaks are normally occurring and are not unique with respect to any particular complaint.
  - c. If an extension is granted, WDE shall issue a letter informing the parties of an extension of the 60-day time limit for exceptional circumstances, including the basis for the extension and the new decision time limit.

I. Complaints and due process hearing requests.

1. If a written complaint is also the subject of a due process hearing under 34 C.F.R. §300.507 and §§300.530 through 300.532, or if it contains multiple issues of which one or more are part of that hearing, WDE shall set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing.
2. If the hearing officer's decision addresses the issue(s) that have been set aside, the hearing officer's decision is binding, and WDE is without authority to investigate that issue(s).
3. If the hearing officer's decision does not address the issue(s) set aside, WDE shall recommence the investigation and the 60-day timeline with respect to that issue(s).
4. If an issue raised in a complaint has previously been decided in a due process hearing involving the same parties:
  - a. The due process hearing decision is binding on that issue; and
  - b. WDE shall inform the complainant to that effect.
5. A complaint alleging a school district's or public agency's failure to implement a due process hearing decision shall be resolved by WDE.

- J. Public dissemination. WDE shall disseminate a copy of the complaint decision, in redacted form, by posting it on the WDE website at: <http://www.k12.wy.us/se.asp>. However, there may be instances when electronic posting is not appropriate due to the potential for inadvertent disclosure of confidential information in small, rural school districts or public agencies. WDE reserves the sole discretion whether to electronically post complaint decisions.
- K. Confidentiality of investigative records. The investigative records, including investigator notes, shall be kept confidential and protected from disclosure by WDE consistent with 34 C.F.R. §99.8.
- L. Link to general supervision. In order to fulfill its obligation under to 34 C.F.R. §300.152(b)(2) and pursuant to its general supervisory authority, WDE shall ensure that compliance concerns discovered during the course of an investigation that are beyond the scope of the original complaint are referred to the monitoring system for action consistent with WDE's general supervision procedures.

**IV. Due Process Hearing Procedures.** WDE adopts the following due process hearing procedures to comply with 34 C.F.R. §§300.507 through 300.518 and 300.532, and Chapter 7, Section 7 of the Wyoming Rules Governing Services for Children with Disabilities.

- A. WDE responsibility. WDE shall be responsible for conducting any due process hearings filed pursuant to 34 C.F.R. §§300.507 or 300.532.
  - 1. WDE shall maintain and annually update a roster of impartial hearing officers along with a statement of each hearing officer's qualifications, consistent with 34 C.F.R. §300.511(c). The roster shall be posted electronically at the WDE website at: <http://www.k12.wy.us/se.asp>. At a minimum, the hearing officer:
    - a. Must not be:
      - i. An employee of WDE or the school district or public agency that is involved in the education or care of the child; or
      - ii. A person having a personal or professional interest that conflicts with the person's objectivity in the hearing;
    - b. Must be licensed attorneys in good professional standing in the licensing state.
    - c. Must possess knowledge of, and the ability to understand, the provisions of the IDEA, Federal and Wyoming regulations pertaining to the IDEA, and legal interpretations of the Act by Federal and State courts;
    - d. Must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and
    - e. Must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

2. WDE shall develop a model form consistent with 34 C.F.R. §300.509 to assist parents, school districts, and public agencies in filing a request. Use of the WDE model form shall not be required.
  3. WDE shall only be responsible for the administrative costs of the hearing, including the costs for the hearing officer and the record of the hearing.
  4. At the conclusion of the due process hearing, WDE shall, after deleting any personally identifiable information, transmit the hearing officer's final decision to the Wyoming Special Education Advisory Panel and make the decision available to the general public in accordance with 34 C.F.R. §300.512(d).
- B. Due process hearing request. A parent or school district or public agency may request a due process hearing on any matter relating to the identification, evaluation, educational placement or the provision of FAPE to a child with a disability. An optional model due process hearing request form is available from the WDE website at: <http://www.k12.wy.us/se.asp>.
1. Consistent with 34 C.F.R. §300.508, the request for a due process hearing shall include:
    - a. The name of the child;
    - b. The address of the residence of the child;
    - c. The name of the school the child is attending;
    - d. In the case of a homeless child or youth, available contact information for the child, and the name of the school the child is attending;
    - e. A description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and
    - f. A proposed resolution of the problem, to the extent known and available to the party at the time.
- C. Time limit. The request for due process hearing must allege a violation that occurred not more than two (2) years before the date the parent, school district, or public agency knew or should have known about the alleged action that forms the basis of the request for due process hearing consistent with 34 C.F.R. §§300.508(a)(2) and 300.511(e). The time limit shall not apply to a parent if the parent was prevented from filing a due process complaint due to:
1. Specific misrepresentation by the school district or public agency that it had resolved the problems forming the basis of the due process complaint; or
  2. The school district's or public agency's withholding of information from the parent that was required to be provided to the parent.
- D. Filing.
1. The request for due process hearing must:
    - a. Be provided directly to the other party; and



- b. Be filed with WDE at the Special Programs Division, Wyoming Department of Education, 320 West Main Street, Riverton, Wyoming 82501 or by fax at (307) 857-9256. In the event that the due process hearing request is filed by fax, the original request must be submitted to WDE at the above address.
  2. Upon receipt of a due process hearing request, the school district or public agency shall inform the parent of any free or low-cost legal and other relevant services in the area.
  3. WDE shall provide the parties with an acknowledgment that a due process hearing request has been received and that a hearing officer will be appointed to address all future matters concerning the dispute.
  4. WDE shall provide the parents with a copy of the Procedural Safeguards notice.
  5. WDE shall offer the parties the opportunity to engage in mediation pursuant to 34 C.F.R. §300.506 in an effort to voluntarily resolve the dispute.
- E. Appointment. Within five (5) days of receipt of the due process hearing request, WDE shall appoint a due process hearing officer to hear all matters related to the request. The appointment shall be made from a list of hearing officers maintained by WDE. Hearing officers reserve the right to decline the appointment based on work load or conflict of interest.
- F. Response. The party receiving the due process hearing request must file a response consistent with 34 C.F.R. §300.508 within ten (10) days of receiving the due process hearing request.
- G. Sufficiency. A due process hearing request shall be deemed sufficient unless the party receiving the due process hearing request notifies the hearing officer assigned to the matter and the other party in writing, within fifteen (15) days of the receipt of the due process hearing request, that the receiving party believes the due process hearing request does not meet the requirements of section (b)(i) above. The sufficiency challenge shall be administered in accordance with 34 C.F.R. §300.508(d).
- H. Resolution process. Prior to convening the due process hearing timeline, the following resolution requirements must be met: (WDE shall make model forms available on its website at: <http://www.k12.wy.us/se.asp> to facilitate convening the resolution session and documenting the resolution process.)
  1. Within fifteen (15) days of receipt of the parents' due process hearing request, the school district or public agency must convene a resolution meeting in accordance with 34 C.F.R. §300.510; and
  2. Upon conclusion of the resolution process, the parties shall jointly notify WDE and the hearing officer in writing of the outcome of the resolution process by submitting the Resolution Session Mandatory Record form to WDE and the hearing officer.
  3. The 45-day hearing timeline commences the day after the parties conclude the resolution process.
- I. Due process hearing.

1. **Prehearing conference.** Within five (5) days after the completion of the resolution process conducted pursuant to 34 C.F.R. §300.510, the hearing officer shall issue a Notice of Prehearing Conference alerting the parties to the date upon which the hearing officer shall conduct a prehearing conference for the purpose of issuing a Scheduling Order. The hearing officer shall inform the parties of all future dates for all proceedings in the scheduling order, which shall include:
  - a. A schedule of the date(s), time, and place of the hearing;
  - b. A schedule for disclosure, discovery, prehearing motions and post-hearing briefs and/or proposed findings of fact, conclusions of law and order, as applicable;
  - c. The 45-day deadline for issuing a final hearing decision;
  - d. A statement advising the parties of their right to be represented by legal counsel at the hearing and any limitations placed on representation by a non-attorney advocate;
  - e. A statement advising the parties of all hearing rights pursuant to 34 C.F.R. §300.512; and
  - f. A statement of the issues to be addressed at the hearing and any limitation of issues pursuant to 34 C.F.R. §300.511(d).
2. **Discovery.** The hearing officer may direct, compel or limit discovery, including depositions, in accordance with the provisions of Rules 26, and 28 through 37 (excepting Rule 37(b)(1) and 37(b)(2)(D)) of the Wyoming Rules of Civil Procedure.
3. **Powers of the hearing officer.** In conducting a due process hearing consistent with this section, the hearing officer may:
  - a. Administer oaths;
  - b. Issue subpoenas;
  - c. Provide for the taking of testimony by depositions;
  - d. Rule on offers of proof and admit relevant evidence;
  - e. Regulate the course of the hearing;
  - f. Request the submission of briefs and proposed findings of facts and conclusions of law at the conclusion of the hearing; and
  - g. Issue any other orders necessary to provide for the orderly administration of the due process hearing.
4. **Limitations on the hearing officer.**
  - a. The hearing officer shall not communicate with any party in connection with any issue of fact or law relevant to the issues before the hearing officer except upon notice and opportunity for all parties to participate.
  - b. The hearing officer shall not issue advisory opinions.

**5. Duties of the hearing officer.**

- a. The hearing officer shall issue all decisions in a final, edited form free from typographical or other errors. The decision format shall be consistent with WDE captions and templates.
- b. The hearing officer shall schedule each hearing at a time and place that is reasonably convenient to the parents and the child involved in the due process hearing.
- c. The hearing officer shall provide for the written, verbatim recording of all hearings conducted pursuant to this section, unless the parties otherwise agree to an alternative form of electronic recording;
- d. The hearing officer shall be bound by, and issue rulings consistent with the Wyoming Rules of Evidence, and all objections shall be noted in the record;
- e. The hearing officer shall cause any offered exhibits to be marked as follows:
  - i. P-1, P-2, P-3, etc. for Petitioner's exhibits; and
  - ii. R-1, R-2, R-3, etc. for Respondent's exhibits.
- f. The hearing officer shall set the order of the hearing, including:
  - i. Opening statements;
  - ii. Presentation of evidence of the Petitioner, or the party requesting the due process hearing;
  - iii. Cross-examination;
  - iv. Presentation of evidence of the Respondent, or the party receiving the due process hearing request;
  - v. Cross-examination;
  - vi. Rebuttal evidence; and
  - vii. Closing arguments beginning with the Petitioner and concluding with the Respondent.
- g. The hearing officer shall issue additional scheduling orders permitting specific extensions of the 45-day hearing timeline only upon request of either party and by documenting the new decision deadline.

**6. The decision.** The hearing decision shall comply with the following:

- a. The decision of the hearing officer shall be based on substantive grounds in accordance with 34 C.F.R. §300.513.
- b. The hearing officer shall issue and mail a final decision to WDE and each of the parties within 45 days after the expiration of the 30-day resolution process, unless specific extensions of time were granted at the request of either party.

- c. The decision shall include findings of fact, conclusions of law, and order, including any remedy if applicable.
  - d. The decision of the hearing officer shall be binding upon both parties unless the decision is appealed in accordance with 34 C.F.R. §300.516.
  - e. A decision of a hearing officer that contains findings documenting noncompliance with the IDEA, federal regulations, or Wyoming rules shall be assigned to WDE Compliance and Monitoring staff to ensure correction and implementation of the hearing officer decision.
7. **The record.** The record in the due process hearing shall include:
- a. The request for due process hearing and any amendments;
  - b. All pleadings, motions, and non-dispositive rulings;
  - c. A statement of all matters officially noticed, including admitted exhibits;
  - d. Offers of proof, objections, and rulings thereon;
  - e. Proposed findings of fact and conclusions of law, if any; and
  - f. Findings of Fact, Conclusions of Law, and Order issued by the hearing officer.
8. **Appeal.** An aggrieved party may appeal the decision of the hearing officer consistent with 34 C.F.R. §300.516.
9. **Attorneys' fees.** The prevailing party in a due process hearing may seek attorneys' fees from a court of competent jurisdiction. A court may award reasonable attorneys' fees subject to the limitations in 34 C.F.R. §300.517.
10. **Expedited hearings.** An expedited due process hearing may be initiated consistent with 34 C.F.R. §300.532 and the above due process hearing procedures in paragraph (c) of this section. The expedited hearing shall be conducted pursuant to 34 C.F.R. §300.532.
11. **Child's status during proceedings.** Except as provided in 34 C.F.R. §300.533 (regarding disciplinary removals), during the pendency of any administrative or judicial proceeding regarding a due process hearing, unless the State, school district or public agency, and the parents of the child agree otherwise, the child that is the subject of the dispute must remain in his or her current educational placement consistent with 34 C.F.R. §300.518.
- J. The decision in redacted form shall be transmitted to the Wyoming Advisory Panel for Students with Disabilities and posted on the WDE website at: <http://www.k12.wy.us/se.asp> consistent with 34 C.F.R. §300.514(c).
- K. Link to general supervision. Pursuant to its general supervisory responsibility, WDE shall ensure that all hearing officer findings of noncompliance are referred to the monitoring system for action consistent with WDE's general supervision procedures.