



Idaho Special Education Manual

2017 - 2018 Revisions

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| vii | | | | Acknowledgments: On August 14, 2006, the Individuals with Disabilities Improvement Act (IDEA) was signed into law. Revisions to the IDEA regulations were issued in 2007, 2008, 2013 and 2014. The Idaho State Department of Education (SDE) published a first edition of this Manual in 2007, later revised in 2009. The original Manual Task Force members' efforts are recognized here for their work in creating the framework for this Manual.... | Acknowledgments: The update and revision of this Manual over the years has involved a number of people. Special thanks are extended to the Special Education Advisory Panel, the Director's Advisory Council, Idaho Parents Unlimited, the now more than 170 Special Education Directors, and other stakeholder groups who have contributed to this important work. |
| viii - x | | | | Acronyms and Abbreviations | Acronyms and Abbreviations were updated to reflect only the terms used in the Manual. |
| xii | | | | Alternate assessment. A specific assessment, developed by the state in lieu of statewide assessments or by the district in lieu of districtwide assessments, designed to measure functional skills within the same domains required by the regular statewide or district wide assessments. It is designed for students who are unable to demonstrate progress in the typical manner and who meet the state-established criteria. | Alternate assessment. An academic assessment based on alternate academic achievement standards that have been reduced in depth and complexity from the Idaho Content Standards. The alternate assessment (AA) is intended only for those students with the most significant cognitive impairments, representing about 1% of the total student population. |

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| xiv | | | | Charter school LEA. A publicly funded, nonprofit, nonsectarian public school that operates as its own local education agency or district. Charter LEAs do not have an agreement with the local school district within whose boundaries they operate. Charter LEAs must be authorized by the Idaho Public Charter School Commission and are required to provide services in accordance with IDEA, Section 504 and the ADA. | Charter school LEA. A publicly funded, nonprofit, nonsectarian public school that operates as its own local education agency (LEA) or district. Charter LEAs may be authorized by the local school district or the Idaho Public Charter School Commission. Charter LEAs are required to provide services in accordance with IDEA and, Section 504 of the ADA. |
| xv | | | | Cognitive academic language proficiency (CALP). A test to determine a student's appropriate language dominance/usage. | Cognitive academic language proficiency (CALP). CALP refers to language used during formal academic instruction and learning. CALP skills include listening, speaking, reading, and writing about subject area content material, and are essential to school success. It may take five to seven years for an English language learner to develop CALP. |
| xvi | | | | | Core Content Connectors. Alternate academic achievement standards in English/Language Art and Mathematics aligned with the Idaho Content Standards, which have been reduced in depth and complexity. The Idaho alternate assessment in English/Language Arts and Mathematics are based on these standards. |

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| xxxii | | | | | <p>Significant cognitive impairment. A designation given to a small number of students with disabilities for the purposes of their participation in AAs. Having a significant cognitive impairment is not solely determined by an IQ test score, nor based on a specific disability category, but rather a complete understanding of the complex needs of a student. Students with significant cognitive impairments have a disability or multiple disabilities that significantly impact their adaptive skills and intellectual functioning. These students have adaptive skills well below average in two or more skill areas and intellectual functioning well below average (typically associated with an IQ below 55).</p> |
| 15-16 | 2 | 3 | A | <p>The Rowley decision also states that, if a student is being educated in the general education classroom, the IEP should be reasonably calculated to enable the student to achieve passing marks and advance from grade to grade, although passing grades are not determinative that FAPE has been provided.</p> | <p>In March 2017, the Court in <i>Endrew F. v. Douglas County School District</i> applies the Rowley Standard, indicating that a school must offer an IEP that is specially designed and reasonably calculated to enable a child to “make progress appropriate in light of the child’s circumstances”, emphasizing the unique needs of the child. The educational program offered “must be appropriately ambitious in light” of [Endrew F’s] unique circumstances just as advancement from grade to grade is appropriately ambitious for most students in a regular classroom. They may differ [comparing</p> |

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| | | | | | <p>Amy Rowley to Endrew F] but every child should have a chance to meet challenging objectives.</p> <p>The Court expresses its confidence that school authorities will “be able to offer a cogent and responsive explanation for their decision”, demonstrating that the IEP is reasonable calculated to enable the student to make progress in light of the student’s individual circumstances.</p> |
| 31 | 4 | 7 | B | <p>5. Developmental Delay</p> <p>Definition: The term developmental delay may be used only for students’ ages three (3) until their tenth (10th) birthday who are experiencing developmental delays as measured by appropriate diagnostic instruments and procedures in one or more of the following areas:</p> <p>a. cognitive development – includes skills involving perceptual discrimination, memory, reasoning, academic skills, and conceptual development;</p> <p>b. physical development – includes skills involving coordination of both the large and small muscles of the body (i.e., gross, fine, and perceptual motor skills);</p> | <p>5. Developmental Delay</p> <p>Definition: The term developmental delay may be used only for students’ ages three (3) until their tenth (10th) birthday who are experiencing developmental delays as measured by appropriate diagnostic instruments and procedures in one or more of the following areas:</p> <p>a. cognitive development – includes skills involving perceptual discrimination, memory, reasoning, pre-academic/academic skills, and conceptual development;</p> <p>b. physical development – includes skills involving coordination of both the large and small muscles of the body (i.e., gross, fine, and perceptual motor skills);</p> |

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| | | | | <p>c. communication development – includes skills involving expressive and receptive communication abilities, both verbal and nonverbal;</p> <p>d. social or emotional development – includes skills involving meaningful social interactions with adults and other children including self-expression and coping skills; or</p> <p>e. adaptive development – includes daily living skills (e.g., eating, dressing, and ,toileting, etc.) as well as skills involving attention and personal responsibility.</p> | <p>c. communication development – includes skills involving expressive and receptive communication abilities, verbal and nonverbal;</p> <p>d. social or emotional development – includes skills involving meaningful social interactions with adults and other children as well as those involved in emotional/behavioral regulation; or</p> <p>e. adaptive development – includes skills involved in independent functioning in major life activities, as well as self-help/daily living skills (e.g., eating, dressing, toileting, etc.)</p> |
| 49 | 4 | 7 | B | 6. Emotional Disturbance | 6. Emotional Behavioral Disorder |

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| 62 | 4 | 7 | B | <p>14. Visual Impairment Including Blindness</p> <p>b. The student has documentation of a visual impairment, not primarily perceptual in nature, resulting in measured acuity of 20/70 or poorer in the better eye with correction, or a visual field restriction of 20 degrees as determined by an optometrist or ophthalmologist.</p> | <p>14. Visual Impairment Including Blindness</p> <p>b. The student has documentation of blindness or a visual impairment, as determined by a qualified professional, including one or more of the following:</p> <p>i. Blindness – visual acuity of 20/200 or less in the better eye with the best possible correction at distance and/or near, or visual field restriction of 20 degrees or less in the better eye;</p> <p>ii. Visual Impairment – visual acuity better than 20/200 but worse than 20/70 in the better eye with the best possible correction at distance and/or near, or visual field restriction of 70 degree or less but better than 20 degrees in the better eye;</p> <p>iii. Eye condition – including oculomotor apraxia, cortical visual impairment, convergence insufficiency, or other condition;iv. Progressive loss of vision which may affect a student’s educational performance in the future;</p> <p>i.v. Functional vision loss where acuity or visual field alone may not meet the criteria above.</p> |

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| 65 | 5 | - | - | In developing each student's IEP, the IEP team shall consider: 1) the strengths of the student; 2) the concerns of the parents for enhancing the education of their child; 3) the results of the initial or most recent evaluation of the student; and 4) the academic achievement, developmental, and functional needs of the student. | In developing each student's IEP, the IEP team shall consider: 1) the strengths of the student; 2) the concerns of the parents for enhancing the education of their child; 3) the results of the initial or most recent evaluation of the student; 4) the unique circumstances of the student; and 5) the academic achievement, developmental, and functional needs of the student. |
| 65 | 5 | 1 | A | The primary purpose of an IEP team meeting is to design an IEP that shall meet the unique needs of a student with a disability. | The primary purpose of an IEP team meeting is to design an appropriately ambitious IEP that meets the unique needs of a student with a disability. |
| 66 | 5 | 1 | A | The IEP team members should come prepared to discuss specific information about the student's individual needs and the type of services to be provided to address those needs. | The IEP team members should come prepared to discuss specific information about the student's unique circumstances and the type of services to be provided to address the student's unique circumstances. |
| 74 | 5 | 2 | C | 4. For students taking Alternate Assessments based on Alternate Achievement Standards a description of benchmarks or short-term objectives. The district has the discretion which benchmarks/objectives as described in this paragraph for all students eligible for IEP services to use. | 4. Objectives and benchmarks are required for students taking AAs. Objectives and benchmarks shall align with the PLAAFP and the annual goal, as a progression toward meeting the annual goal. |

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| 83 | 5 | 2 | G | <p>3. Regular Assessments with Adaptations A student may be unable to demonstrate what he or she knows or is able to do without using an adaptation. However, an adaptation inherently circumvents the underlying skills that the test is measuring; therefore, an adaptation always invalidates the assessment result. If an adaptation is included in the IEP for statewide and/or district wide assessments, it shall be one that the student uses in completing classroom assignments and assessment activities on a regular basis. Further, the use of an adaptation in statewide and district wide assessments shall be clearly coded on the student’s score sheet. The IEP team has the authority to make the decision that a student needs an adaptation in order to participate in statewide and district wide assessments, even though the adaptation will cause the student to score as “not proficient” and to be counted as NOT participating in the assessment under AYP determinations. All IEP team members, including the parent/adult student, shall understand (a) the possible consequences that could result from this decision and (b) its effect on diploma options and post school activities involving education, career opportunities, military service, and community participation.</p> | Removed |

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| 83 | 5 | 2 | G | <p>4. Alternative Assessments based on Alternate Achievement Standards</p> <p>The student cannot participate in some or all of the general assessments, the IEP shall contain a statement that includes the reason the student cannot participate in the general assessment and the alternate assessments— language arts, reading, math or science—in which the student will participate.</p> <p>a. Students Eligible to Take Alternative Assessments based on Alternate Achievement Standards</p> | <p>3. Alternate Assessments based on Alternate Academic Achievement Standards (AAs)</p> <p>AAs are a statewide testing option intended only for those students with the most significant cognitive impairments, in lieu of the general education assessment, with or without supports and accommodations. Participation in AAs reflects the pervasive nature of a significant cognitive impairment and requires that a student meet all participation eligibility criteria. Students with the most significant cognitive impairments represent about 1% of the total student population.</p> <p>The IEP team shall consider a student’s participation in AAs on an annual basis using the participation criteria listed below. The IEP team shall document the student’s testing status in the appropriate sections of the IEP.</p> <p>a. A student must meet all four of the following participation criteria to qualify for the AA.</p> |

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| 84 | 5 | 2 | G | <p>1) The student’s demonstrated cognitive ability and adaptive behavior prevent completion of the general academic curriculum even with program accommodations and/or adaptations;2) The student’s course of study is primarily functional-skill and living-skill oriented (typically not measured by State or district assessments); and3) The student is unable to acquire, maintain, or generalize skills in multiple settings and to demonstrate performance of these skills without intensive and frequent individualized instruction.</p> | <p>1) The student has a significant cognitive impairment.2) The student is receiving academic instruction that is aligned with the Idaho Extended Content Standards.a) The student’s instruction and IEP goals/objectives/benchmarks address knowledge and skills that are appropriate and challenging for the student.3) The student’s course of study is primarily adaptive skills oriented typically not measured by state or district assessments.a) Adaptive skills are essential to living independently and functioning safely in daily life, and include, but are not limited to motor skills, socialization, communication, personal care, self-direction, functional academics, and personal health and safety.</p> |

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| 84 | 5 | 2 | G | | <p>4) The student requires extensive direct individualized instruction and substantial supports to achieve measurable gains in the grade- and age-appropriate curriculum.</p> <p>a) The student consistently requires individualized instruction in core academic and adaptive skills at a substantially lower level relative to other peers with disabilities.</p> <p>b) It is extremely difficult for the student to acquire, maintain, generalize, and apply academic and adaptive skills in multiple settings, across all content areas, even with high-quality extensive/intensive pervasive, frequent, and individualized instruction.</p> <p>c) The student requires pervasive supports, substantially adapted materials, and individualized methods of accessing information in alternative ways to acquire, maintain, generalize, demonstrate, and transfer skills across multiple settings.</p> |

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| 85 | 5 | 2 | G | <p>b. Students Not Eligible to Take Alternative Assessments based on Alternate Achievement Standards.</p> <p>c. Students are not to be included in Alternative Assessments based on Alternate Achievement Standards for any of the following reasons:</p> <ol style="list-style-type: none"> 1) The only determining factor is that the student has an IEP; 2) The student is academically behind because of excessive absences or lack of instruction; or 3) The student is unable to complete the general academic curriculum because of socioeconomic or cultural differences. | <p>b. Students shall not qualify to participate in Alternate Assessments based on Alternate Achievement Standards solely based on any of the following reasons:</p> <ol style="list-style-type: none"> 1) Having a disability 2) Poor attendance or extended absences 3) Native language/social, cultural or economic differences 4) Expected poor performance or past basic/below basic performance on the regular education assessment 5) Academic and other services student receives 6) Educational environment or instructional setting 7) Percent of time receiving special education services 8) English Language Learner (ELL) status 9) Low reading level/achievement level 10) Anticipated disruptive behavior 11) Impact of student scores on the accountability system 12) Administrative decision 13) Anticipated emotional distress 14) Need for accommodations (e.g., assistive technology/AAC) to participate in the assessment |
| 88 | 5 | 2 | K | <p>a. present levels of academic and/or functional performance based on an average age appropriate transition evaluation;</p> | <p>a. present levels of academic and/or functional performance and a functional vocational evaluation where appropriate;</p> |

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| | | | | <p>b. appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills;</p> <p>c. transition services, including courses of study, that will reasonably enable the student in reaching postsecondary goals identified on the IEP;</p> | <p>b. appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills;</p> <p>c. transition services, including a course of study, that will reasonably enable the student in reaching postsecondary goals identified on the IEP which may include postsecondary education and training, employment and career counseling, community participation, independent living or adult services;</p> |
| 103 | 7 | 1 | A | <p>a. provide the parent/adult student with written notice of the district’s obligation to provide special education services ends when the student obtains a regular high school diploma; and</p> | <p>a. provide the parent/adult student with written notice of the district’s obligation to provide special education services ends when the student has met the Idaho High School Graduation and such applicable district requirements; and</p> |

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| 106 | 7 | 2 | A | <p>3) Adaptations of any district or State graduation requirement shall be stated on the student's IEP. The team shall discuss with the parents the effect of adaptations on regular education diploma and FAPE.</p> <p>5. Demonstration of Proficiency of State Content Standards State Board of Education rule (IDAPA 08.02.03.105.06) requires that each student achieve a proficient or advanced score on the Grade 10 Idaho Standards Achievement Test (ISAT) in math reading and language usage in order to graduate. Each student's IEP will include a statement of how the student will demonstrate proficiency on the Grade 10 Idaho Standards Achievement Test as a condition of graduation. If the method to demonstrate proficiency is different than meeting proficient or advanced scores on the high school ISAT or the ISAT-Alt, a student with an IEP may meet this requirement by:</p> <p>a. achieving the proficient or advanced score on the Idaho Standard Achievement Test (ISAT) or, for eligible students, on the Idaho Standard Achievement Test – Alternate (ISAT-Alt); or</p> <p>b. demonstrating proficiency on the content</p> | Removed |

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| | | | | <p>standards through some other locally established plan; or</p> <p>c. having an IEP that outlines alternate requirements for graduation or documents assessment adaptations (adaptations that will invalidate the assessment score).</p> | |

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| 123 | 9 | 2 | A | <p>a. If the private school official wishes to submit a complaint, the official will provide the basis of the complaint to the SDE.</p> <p>b. The district will forward the appropriate documentation to the SDE.</p> <p>c. The SDE will render a written decision whether the district complied with the consultation process requirements.</p> | <p>a. If the private school official wishes to submit a complaint, the official will provide the basis of the complaint to the SDE consistent with the procedures provided in Chapter 13.</p> <p>b. In response the district will forward the appropriate documentation to the SDE.</p> <p>c. The SDE will render a written decision determining whether the district complied with the consultation process requirements and provide the decision to the district and private school official.</p> |
| 137 | 10 | 1 | | <p>IDEA requires increased accountability for programs serving students with disabilities. Monitoring priorities include both performance and compliance goals. Accountability areas established by IDEA include a free appropriate public education (FAPE) in the least restrictive environment (LRE), Effective General Supervision, and Disproportionality. Each priority area encompasses specific performance indicators. These indicators include both performance and compliance components. Data on those indicators shall be collected, submitted to the State Department of Education (SDE), and publicly reported annually. That data shall be used to evaluate the effectiveness of programs</p> | <p>The Idaho State Department of Education (SDE) is responsible for the design and implementation of a system of general supervision that monitors the fulfillment of the Individuals with Disabilities Education Act (IDEA) of 2007. The activities under the Idaho Special Education Results Driven Accountability (RDA) Monitoring System monitor local education agencies (LEAs) for results and compliance. Based on stakeholder input, the monitoring system includes a focus on providing supports to LEAs to meet the requirements of IDEA. The Guiding Principles of the Results Driven Accountability Monitoring System are:</p> <p>A. Improving educational results and functional</p> |

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| | | | | and identify strategies to improve student outcomes. | <p>outcomes for all students with disabilities, and ensuring that Idaho meets the program required by IDEA, with a particular emphasis on those requirements that are most closely related to improving education results for students with disabilities.</p> <p>B. The RDA Monitoring System provides the framework for the SDE to partner with (LEAs to be mutually responsible for student outcomes and is designed to guide and support districts in their pursuit of preparing students with disabilities to persevere in life and be ready for college and careers. To meet the general supervision requirements, the SDE will conduct an annual review of each LEA's performance on a pre-identified set of results and compliance indicators and special conditions areas. Data from the annual review will be compiled into the RDA Determination Report.</p> |
| 142 | 10 | 3 | C | <p>A special education paraprofessional working in a Title I school-wide program shall be qualified as demonstrated by the competencies listed in the ESEA:</p> <p>1. All Title I paraprofessionals must have a secondary school diploma or its recognized equivalent.</p> | <p>A special education paraprofessional as follows:</p> <p>1. All paraprofessionals must have a secondary school diploma or its recognized equivalent.</p> <p>2. Additionally, except as noted below, paraprofessionals must have:</p> <p>a. Completed two years of study at an institution of higher education; or</p> |

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| | | | | 2. Additionally, except as noted below, paraprofessionals hired after January 8, 2002, and working in a program supported with Title I, Part A funds must have: a. Completed two years of study at an institution of higher education (In Idaho, this is thirty-two (32) credits from an accredited university or college); or | |
| 159 | 11 | 4 | F | 1. If the objection is postmarked or hand delivered within ten (10) calendar days of the date the parent/adult student received the written notice, the changes to which the parent/adult student objects cannot be implemented | 1. If the objection is postmarked or hand delivered within ten (10) calendar days of the date the parent/adult student received the written notice, the changes to which the parent/adult student objects cannot be implemented for fifteen (15) calendar days or as extended through mutual agreement by the district and parent/adult student while the parties work to resolve the dispute. |
| 214 | 12 | 2 | B | 2. In determining whether to grant a district's request to place a student in an IAES, the hearing officer must determine that the IAES proposed by district personnel in consultation with the student's special education teacher or the IEP team is appropriate. | 2. In determining whether to grant a district's request to place a student in an IAES, the hearing officer must determine that the IAES proposed by the IEP team is appropriate. |
| 227 | 13 | 1 | A | A. Definition of Facilitation Facilitation is a voluntary process during which dispute resolution contracted individual or individuals facilitate an IEP team meeting or other IDEA-related meeting. The role of the facilitator is to help team members, | A. Definition of Facilitation Facilitation is a voluntary process during which dispute resolution contracted individual or individuals facilitate an IEP team meeting or other IDEA-related meeting. The role of the facilitator is to help the IEP team members, |

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| | | | | <p>communicate more effectively and efficiently. Facilitation supports early dispute resolution by providing assistance to the team before a conflict develops into a formal dispute. A facilitator is trained to help teams focus on key issues and move toward productive outcomes. Because the facilitator is not a member of the team, he or she can act as a neutral and impartial third-party providing balance, offer an outsider’s perspective on the process, and help parties to be heard and understood by the rest of the team. Note: A facilitator will not be responsible for creating or documenting agreements made by the team.</p> | <p>including the parents/adult student and the student (when appropriate), communicate more effectively and efficiently. Facilitation supports early dispute resolution by providing assistance to the IEP team before a conflict develops into a formal dispute. A facilitator is trained to help IEP teams collaboratively plan for the IEP team meeting, focus on key issues and move toward productive outcomes. Because the facilitator is not a member of the IEP team, he or she can act as a neutral and impartial third-party providing balance, offer an outsider’s perspective on the process, and help parties to be heard and understood by the rest of the IEP team. Note: A facilitator will not be responsible for creating or documenting decisions made by the IEP team or in any other IDEA related meeting. Facilitation is offered at no charge to the district or the parent/adult student.</p> |
| 230 | 13 | 3 | B | <p>2. Mediation is automatically offered when a state complaint involving an individual student or a request for a due process hearing has been filed. Mediation cannot be used to delay the state complaint process or a due process hearing timelines</p> | <p>2. Mediation is automatically offered when a state complaint involving an individual student or a request for a due process hearing has been filed. Mediation cannot be used to delay the state complaint process or a due process hearing timelines unless the parent/adult child and the district agree in writing to extend the 60 day timeline. The complaint timeline cannot be extended beyond 90 days.</p> |

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| 233 | 13 | 3 | H | <p>H. Mediation Agreement An agreement reached by the parties through mediation shall be set forth in writing and is enforceable in state and federal courts.</p> | <p>H. Mediation Agreement An agreement reached by the parties through mediation shall be set forth in writing and is enforceable in state and federal courts. An effective mediation agreement should identify:</p> <ul style="list-style-type: none"> • What action(s) will be taken and when the action(s) will begin. • When the action(s) will be completed. • Who is responsible for taking the action(s) • Who is responsible for making sure the action(s) is taken. • The time period of the agreement. • A process for review when the actions are completed. • A plan for making changes to the agreement, if needed. • What to do if a participant thinks the terms of the agreement are not being completed. • Statement of confidentiality. • The date of the agreement and the signatures of the participants. |

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| 234 | 13 | 4 | C | <p>C. Methods of Resolving State Complaints</p> <p>1. Mediation will be offered in a case regarding an individual student. If mediation is not accepted by the parties or fails to resolve the allegation(s) that gave rise to the complaint, then resolution of a state complaint may be achieved through one or more of the following processes:</p> | <p>C. Methods of Resolving State Complaints</p> <p>1. Mediation will be offered by the DRC to the complainant and the district when the complaint involves an individual student.</p> <p>2. The complainant and the district may resolve all, part or none of the allegations in mediation. If an agreement is reached, the complainant must notify the DRC in writing of the parties agreement. When the DRC receives this notification, any resolved allegations will be dismissed from the state complaint. If all of the state complaint allegations are not resolved, the SDE will investigate the remaining allegations.</p> <p>3. If mediation is not accepted by the parties or fails to resolve the allegation(s) that gave rise to the complaint, then resolution of a state complaint may be achieved through one or more of the following processes:</p> |

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| 238 | 13 | 5 | C | | <p>If a parent/adult student disagrees with an IEP or placement change by the district and have filed a written objection to all or parts of the proposed IEP or change in placement in writing within ten (10) calendar days of receiving written notice of the proposed change, the district may not implement the amended IEP for 15 days, unless a request for a due process hearing is filed by the parent/student during which time the student shall remain in the current placement unless otherwise agreed by the district and parent/student. The written objection cannot be used to delay the district from placing a student in an Interim Alternative Educational Setting (IAES) or the implementation of an initial IEP.</p> |
| 247 | 13 | 8 | | <p>A district court will have jurisdiction in the awarding, determination, or prohibition of attorney fees. The court may: award reasonable attorney fees as part of the costs to the prevailing party; and determine the amount of attorney fees, using prevailing rates in the community in which the action occurred, for the kind and quality of services provided. No bonus or multiplier may be used in calculating the amount of fees awarded.</p> <p>Funds under Part B of the IDEA cannot be used</p> | <p>An IDEA hearing officer appointed by the DRC does not have the authority to consider or award attorney fees. Only a state or federal district court will have has jurisdiction in to consider an award the awarding, determination, or prohibition of attorney fees in and IDEA matter.</p> |

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| | | | | <p>by the district to pay any attorney fees or costs of a party related to an action or proceeding, such as deposition, expert witnesses, settlements, and other related costs. However, Part B funds may be used to pay hearing officer fees or the costs of a meeting room to conduct the hearing.</p> <p>A. Prohibition of Attorney Fees Attorney fees may not be awarded for legal representation at an IEP meeting, including a resolution session, unless such a meeting is convened as a result of a due process hearing or a judicial action; or for mediation that is conducted prior to a request for a due process hearing.</p> <p>Attorney fees may not be awarded and related costs may not be reimbursed in any action or proceeding for services performed subsequent to the time of a written offer of settlement to a parent/adult student if:</p> <ul style="list-style-type: none"> • the district makes an offer at least ten (10) calendar days before a due process hearing or a civil proceeding begins; the offer is not accepted by the parent/adult student within ten (10) calendar days after it is made; and • a court or due process hearing officer finds | |

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| | | | | <p>that the relief obtained by the parent/adult student is not more favorable to the parent/adult student than the offer of settlement.</p> <p>B. Exception to the Prohibition of Attorney Fees An award of attorney fees and related costs may be made to a parent/adult student who is a prevailing party and who was substantially justified in rejecting the district's settlement offer.</p> <p>C. Reduction in the Amount of Attorney Fees A court may reduce an award for attorney fees under any of the following circumstances: during the course of the action or proceeding, the parent/adult student or his or her attorney unreasonably extended the final resolution; the amount of the award unreasonably exceeds the prevailing rate in the community for similar services by attorneys of reasonably comparable skills, reputation, and experience; the time spent and legal services rendered were excessive considering the nature of the action; the attorney representing the parent/adult student did not provide the information required in a due process hearing request;</p> | |

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| | | | | <p>and/or a party represented him or herself, or his or her child.</p> <p>D. Exception to the Reduction of Attorney Fees The amount of attorney fees will not be reduced if the court finds that the district or SDE unreasonably extended the final resolution of the action or proceeding.</p> <p>E. Special Provisions Regarding Attorney Fees A district or SDE that prevails may seek attorney fees from a court against the parent's/adult student's attorney if the action is deemed frivolous, unreasonable, without foundation or prolongs the litigation. A district or SDE that prevails may seek attorney fees from a court against the parent's/adult student's attorney or the parent/adult student if the hearing request was presented for improper purposes such as to harass the district, cause unnecessary delay or needlessly increase the cost of litigation.</p> | |