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Washington Office of Superintendent of
PUBLIC INSTRUCTION
Chris Reykdal, Superintendent

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BULLETIN NO. 039-23 SPECIAL EDUCATION/LEGAL AFFAIRS

TO: Educational Service District Superintendents
Educational Service District Special Education Directors
School District Superintendents
School District Business Managers
School District Special Education Directors

FROM: Chris Reykdal, Superintendent of Public Instruction

RE: Special Education and Local Bargaining Agreements

CONTACT: Dr. Tania May, Assistant Superintendent of Special Education
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Matt Schultz, Chief Legal & Civil Rights Officer
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PURPOSE/BACKGROUND

The Office of Superintendent of Public Instruction's (OSPI) vision for Washington state public schools is to increase academic achievement and close opportunity gaps for each and every student, and bring a more equitable education system for current and future generations of students. This vision and goals are supported through the state constitutional basic education program requirement available to all students.

To make significant progress towards serving all students, closing opportunity gaps, and supporting a more equitable education system, there is an ongoing need for attention, support, and resources addressing the instruction provided to students receiving special education services. Beyond that expressed above, Washington state students receiving special education services are entitled to a free appropriate public education (FAPE) under both the federal Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 *et seq.*), and state law (RCW 28A.155; [chapter WAC 392-172A](#)). The IDEA's specific purpose is to ensure that each student receiving special education services has a FAPE through an Individualized Education Program (IEP) emphasizing special education and related services designed to enable the student to be involved in and make progress in the general education curriculum while being educated with students without disabilities. A general education curriculum, as used in the IDEA, refers to grade-level learning standards set by the state.

Both the IDEA and WAC 392-172A require school districts to provide a FAPE to all eligible students through an individual IEP team decision-making process. Decisions impacting FAPE must be made by a complete IEP team of all required members and include the following:

- Specially designed instruction and related services to be provided to the student.
- Frequency of services.
- Participation to the maximum extent appropriate in the general education environment with nondisabled peers (i.e., Least Restrictive Environment (LRE)).
- Placement/instructional setting (where the student will receive special education services).

IEP team decisions are a critical component of the provision of a FAPE. Properly formulated IEPs designed to meet the unique needs of students with disabilities are the driver of the school district's special education funding. Special education funding supplements the basic education program provided to each student enrolled in Washington public schools with an opportunity to meet the state's education standards and can only be used to supplement basic education funds to pay for the excess costs of providing special education and related services.

The rights and protections of students with disabilities to supports needed to be successful and make meaningful progress in the general education curriculum must be considered during contract negotiations. Unless otherwise explicitly allowed under the IDEA or WAC 392-172A, district policy, procedures, and collectively bargained provisions must be consistent with federal and state law relating to serving students with disabilities. Examples of topics arising in school district discussions and questions posed to OSPI staff are provided below.

- **Student placement decisions/instructional setting decisions.** Each student's needs and IEP components are unique. Arbitrary, district-wide limits set on student participation within a general education classroom may deny students a FAPE. Avoid the following:
 - Using a predetermined ratio of students with a disability to regular education students.
 - Requesting or setting a limit on the number of students with an IEP in a general education classroom.
 - Establishing the need for increasing staffing levels, such as paraeducators, based only upon the number of students with disabilities served in the general education classroom, rather than with consideration of the specific needs of the individual students.
 - Building a school schedule that limits the access of students with disabilities to general education classes and electives.
- **Staffing assignments.** Students with an IEP have the same opportunities to receive grade-level content instruction from effective general educators with support from special educators, as needed, and without removal from the general education classroom, unless determined necessary by the IEP team. Avoid the following:
 - Assigning licensed and certificated staff without adequate preparation, training, content knowledge, and skills to provide special education services.

- Assigning paraeducators, technicians, or other staff roles to develop and provide specialized instruction, outside of the supervision of a certificated special education teacher or related service provider.

OSPI encourages ongoing conversations between school district directors, school district and school leaders, educators, educational staff associates (ESAs), and families, to identify and provide additional methods to support educators in meeting the needs of each and every student in their classroom and school.

INFORMATION AND ASSISTANCE

For questions regarding this bulletin, please contact Dr. Tania May, Assistant Superintendent, at 360-725-6075 or email tania.may@k12.wa.us or Matt Schultz, Chief Legal & Civil Rights Officer, at 360-764-6025 or email matt.schultz@k12.wa.us. The OSPI TTY number is 360-664-3631.

This bulletin is also available on the page [Bulletins](#) of the OSPI website.

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