

## What is special education?

Special education programs in Wyoming are governed by **both federal and state law**. State law cannot limit the protections of federal law.

Under both federal and state law, school districts must provide each a **free appropriate public education ("FAPE")** to every student with a disability. 20 U.S.C.A. § 1401(9).

## Who is eligible for special education?

Children with a **disability** who need special educational services in order to benefit from their education are entitled to those services. Eligible disabilities include:

- Intellectual disabilities,
- Hearing impairments (including deafness),
- Speech or language impairments,
- Visual impairments (including blindness),
- Serious emotional disturbance,
- Orthopedic impairments,
- Autism,
- Cognitive disability,
- Emotional disability,
- Traumatic brain injury,
- Other health impairments, or
- Specific learning disabilities.

20 U.S.C. § 1401(3); 7 WYO. DEPT. OF ED. R. 4(d).

For children between the ages of 3 and 9, the State and the local educational agency (the "**LEA**") can decide that a child experiencing certain developmental delays has a disability **if the delays cause the child to need special education and related services**. The delays **must involve** physical development, cognitive development, communication development, social or emotional development, or adaptive development. 20 U.S.C. § 1401(3)(B); 7 Wyo. Dept. of Ed. R. 4(d).

Children may be eligible for special education from age 3 to age 21. Any child with a disability who turns 21 during the school year will have the opportunity to complete that school year with special educational services. 34 C.F.R. § 300.101(a); WYO. STAT. ANN. § 21-2-502(b).

Regional developmental preschool systems must provide **developmental preschool services** to "preschool children with disabilities." "Preschool children with disabilities" are children

aged 3 through 5 with a mental, physical, or psychological disability that impairs learning. A regional developmental preschool system is any regional developmental program that the state or Local Education Agency (LEA) contracts with to provide services to preschool children with disabilities. WYO. STAT. ANN. §§ 21-2-701(a), 21-2-703(b)(i).

## What type of education are children with a disability entitled to? What is a "free appropriate public education"?

Under both state and federal law, school districts must provide each child with a disability with a **free and appropriate education** ("FAPE") in accordance with the child's abilities. 20 U.S.C. § 1412(a)(1); WYO. STAT. ANN. § 21-2-501.

"FAPE" means **special education** and related services that (1) are paid for publicly, supervised and directed publicly, and provided without charge; (2) meet appropriate educational standards; (3) include preschool through secondary school; and (4) conform to an **Individualized Education Program** ("IEP"). 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.

"Special education" means **specialty designed instruction**, at no cost to the parents, to meet the unique needs of a child with a disability. 20 U.S.C. § 1401(29).

In turn, "**Specialty designed instruction**" means changing according to the child's needs, the content, methodology, or delivery of instruction: (1) to address the child's unique needs that result from the child's disability; and (2) to ensure the child's access to the general curriculum, so that the child can meet the relevant educational standards that apply to all children. 34 C.F.R. § 300.39(b)(3).

## In addition to a free appropriate public education, are there other services a child with a disability is entitled to? What are "related services"?

As part of a free appropriate public education, school districts must provide certain "**related services**." These services allow a student to benefit from their special education program at no cost to the parents. To qualify for "related services," the child must (1) fit a disability category and (2) the disability must negatively affect the student's education performance to a point where the student needs special education. 20 U.S.C. § 1401(3)(ii); WYO. STAT. ANN. § 21-2-502(a); 7 WYO. DEPT. OF ED. R. 4(a), 4(c).

In Wyoming, related services may include any of the following:

- Transportation,
- Speech-language pathology and audiology services,

- Interpreting services,
- Psychological services,
- Physical and occupational therapy,
- Recreation, including therapeutic recreation,
- Early identification and assessment of disabilities in children,
- Counseling services, including rehabilitation counseling,
- Orientation and mobility services,
- Medical services for diagnostic or evaluation purposes,
- School health and school nurse services,
- Social work services, and
- Parent counseling and training.

34 C.F.R. § 300.34(a), (c); 7 WYO. DEPT. OF ED. R. 4(c).

## Who provides special education?

The **regional development preschool system** is responsible for providing appropriate special education services to children between the ages 3 to 5. A regional developmental preschool system is any regional developmental program that the state or Local Education Agency (LEA) contracts with to provide services to preschool children with disabilities. WYO. STAT. ANN. § 21-2-701(a).

The **local school district** is responsible for providing appropriate special education services to children of school age. WYO. STAT. ANN. §§ 21-2-502(a), 21-2-704.

In Wyoming, each school district shall provide each school age child with a disability with the "appropriate diagnosis, evaluation, education or training and necessary related services." These services may include, but are not limited to, room and board. WYO. STAT. ANN. § 21-2-502(a).

If a school district cannot provide these programs or services, it shall contract with another school district or agency to obtain them. WYO. STAT. ANN. § 21-2-502(a).

If the programs and services cannot reasonably be provided by the district or through contracts with other school districts, the state superintendent shall assist the local board of trustees in arranging for the appropriate education programs and services either in Wyoming or another state. 20 U.S.C. § 1412(a)(1); 34 C.F.R. § 300.114; WYO. STAT. ANN. § 21-2-502.

## Where should a child receive his/her special education and related services? What is a "least restrictive environment"?

Special education must be provided in a **least restrictive environment**. To the maximum extent possible, children with disabilities must be educated with their non-disabled peers. 20 U.S.C. § 1412(a)(5); 34 C.F.R. § 300.114(a); 7 WYO. DEPT. OF ED. R. 5(b).

A student with a disability may be removed from the regular education environment only when the disability is such that the student cannot be reasonably educated in the regular environment with the use of supplementary aids and services. 20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a); 7 WYO. DEPT. OF ED. R. 5(b).

## Who determines if a child is eligible for special education? Is there an assessment or evaluation?

A **parent, school district, or public agency** may request a full and initial evaluation of the child according to the local school district or public agency's rules. 34 C.F.R. § 300.301(b); 7 WYO. DEPT. OF ED. R. 4(b). A "public agency" is any state or local education agency. 34 C.F.R. § 300.33.

If the local school district or public agency decides that an initial evaluation is necessary, it must make reasonable efforts to get permission from the parents for the evaluation. If the school district or public agency does not believe that the child has a disability and refuses a parent's request for an initial evaluation, the school district or public agency must provide written notice to the parent. The parent may then challenge the refusal to provide an evaluation. 34 C.F.R. § 300.300(a); 7 WYO. DEPT. OF ED. R. 4(b).

The evaluation must be conducted within **60 days** of receiving parental consent for the evaluation. 34 C.F.R. § 300.301(c). An evaluation uses a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent. It may include a medical evaluation. 34 C.F.R. § 300.304(b); 7 WYO. DEPT. OF ED. R. 4(b)(i).

## Once a child is identified as being eligible for special education, what are the next steps? What is an "IEP" (individualized education program)? Do parents have any say so in the IEP?

If a child is eligible for special education, a written **Individualized Education Program** is developed for that child. School districts and public agencies are responsible for developing, implementing, reviewing, and revising IEPs. 7 WYO. DEPT. OF ED. R. 5(d).

An IEP must include:

- The student's current levels of educational performance,

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- Measurable annual goals,
- A description of how the child's progress toward these annual goals will be measured and reported,
- The special education, related services, and supplementary aids and services that will be provided,
- The date the services and modifications will begin and their anticipated duration, frequency, and location,
- The extent to which the child will be separated from non-disabled children in regular education classes as well as extracurricular and nonacademic activities,
- A description of any individual accommodations needed to measure the child's academic and functional performance,
- Transition services for students 16 years or older,
- Extended school year services, if needed,
- Beginning a year before the child reaches age 18, a statement that the child has been informed of the rights that he or she might have under the Individuals with Disabilities Education Act.

34 C.F.R. § 300.320; 7 WYO. DEPT. OF ED. R. 5(d).

To the extent possible, parents are to be involved with the IEP process. At a minimum, parents must receive advance notice of meetings of the IEP Team and a free copy of their child's IEP. Also, the school district should take steps to schedule the IEP Team meeting with the parents at a mutually agreed upon time and place. 34 C.F.R. § 300.322; 7 WYO. DEPT. OF ED. R. 6(a), (d).

For a child with a disability who transfers between school districts or public agencies **within** Wyoming during the same school year, the new school district or public agency must provide a free appropriate public education to the child (including services comparable to those in the pre-existing IEP) until the new school district either adopts the preexisting IEP or develops, adopts, and implement a new IEP. 34 C.F.R. § 300.323(e); 7 WYO. DEPT. OF ED. R. 5(f)(i).

If a child with a disability transfers from a **different state** during the school year, the new school district or public agency must: (1) provide a free appropriate public education to the child (including services comparable to those in the pre-existing IEP); (2) conduct an evaluation (if the school district or public agency deems it necessary); and (3) develop, adopt, and implement a new IEP (if appropriate). 34 C.F.R. § 300.323(f); 7 WYO. DEPT. OF ED. R. 5(f)(ii).

## What options does a parent have if s/he disagrees with the proposed IEP placement or services? What are the procedures for due process?

Disputes between a child's parents (or a competent adult student) and the school district/public agency may be solved through mediation or a due process hearing. Mediation is a voluntary process; parents cannot be forced to mediate. 7 WYO. DEPT. OF ED. R. 7(a)-(c).

**Mediation** is available for all disputes arising under the federal special education regulations. 20 U.S.C. § 1414(b)(5). The Wyoming Department of Education pays the costs of the mediation. Wyoming Department of Education Special Programs Division, *Policy and Procedures Manual for Special Education 39* (July 1, 2010), [HTTPS://EDU.WYOMING.GOV/DOWNLOADS/SPECIAL-ED/SPECED POLICY AND PROCEDURE MANUAL\\_V\\_\\_1\\_1FINAL\\_8-20-2010.PDF](https://edu.wyoming.gov/downloads/special-ed/speced_policy_and_procedure_manual_v__1_1FINAL_8-20-2010.pdf).

After a party files a request for mediation with the state, the Wyoming Department of Education appoints a mediator. During the mediation, both parties may bring additional participants whom they believe may be helpful in resolving the dispute. The school district must bring an individual with authority to settle the dispute. Either party may be represented by an attorney during the mediation. The state will not necessarily pay for the family's attorney. Wyoming Department of Education Special Programs Division, *Policy and Procedures Manual for Special Education 39* (July 1, 2010), [HTTPS://EDU.WYOMING.GOV/DOWNLOADS/SPECIAL-ED/SPECED POLICY AND PROCEDURE MANUAL\\_V\\_\\_1\\_1FINAL\\_8-20-2010.PDF](https://edu.wyoming.gov/downloads/special-ed/speced_policy_and_procedure_manual_v__1_1FINAL_8-20-2010.pdf).

All mediations are **confidential**. If the mediation is successful, the parties will sign a binding settlement agreement. Wyoming Department of Education Special Programs Division, *Policy and Procedures Manual for Special Education 40* (July 1, 2010), [HTTPS://EDU.WYOMING.GOV/DOWNLOADS/SPECIAL-ED/SPECED POLICY AND PROCEDURE MANUAL\\_V\\_\\_1\\_1FINAL\\_8-20-2010.PDF](https://edu.wyoming.gov/downloads/special-ed/speced_policy_and_procedure_manual_v__1_1FINAL_8-20-2010.pdf).

Parents may file a **complaint** against a school district or public agency for violating the federal special education regulations. Within **10 days** of receiving the complaint, the Wyoming Department of Education shall (1) notify the parents and the school district or public agency of the complaint, (2) provide the parents with a procedural rights notice, and (3) request documentation from the school district or public agency necessary to commence the investigation. Within 60 days of receiving the complaint, the Wyoming Department of Education shall:

- Carry out an on-site investigation (if necessary),
- Provide parents with an opportunity to submit additional information,

- Provide the school district or public agency an opportunity to respond to the complaint and to resolve the complaint,
- Review all relevant information and make a determination on the merits, and
- Issue a written decision.

Wyoming Department of Education Special Programs Division, *Policy and Procedures Manual for Special Education 41-42* (July 1, 2010),

[HTTPS://EDU.WYOMING.GOV/DOWNLOADS/SPECIAL-ED/SPECED\\_POLICY\\_AND\\_PROCEDURE  
MANUAL V 1 1FINAL 8-20-2010.PDF.](https://edu.wyoming.gov/downloads/special-ed/speced_policy_and_procedure_manual_v_1_1final_8-20-2010.pdf)

If the Department of Education concludes that the school district or public agency **violated the law**, the Department shall address the failure to provide appropriate services, issue a corrective action plan, and address appropriate future services for all children with disabilities. The decision of the Wyoming Department of Education is final, but a party may request a due process hearing. Wyoming Department of Education Special Programs Division, *Policy and Procedures Manual for Special Education 41-42* (July 1, 2010), [HTTPS://EDU.WYOMING.GOV/DOWNLOADS/SPECIAL-ED/SPECED\\_POLICY\\_AND\\_PROCEDURE  
MANUAL V 1 1FINAL 8-20-2010.PDF.](https://edu.wyoming.gov/downloads/special-ed/speced_policy_and_procedure_manual_v_1_1final_8-20-2010.pdf)

## Can a special education child be disciplined?

A child with a disability **may** be disciplined. School personnel may consider unique circumstances on a case-by-case basis when deciding if a change in placement is appropriate. 34 C.F.R. §§ 300.530-536; 7 WYO. DEPT. OF ED. R. 6(e).

The discipline can include suspension or having the child go to another location instead of the regular classroom. 34 C.F.R. § 300.530(b).

In general, a child with a disability may be suspended or removed from the regular classroom for no more than **10 consecutive school days** for each separate incident of misconduct. 34 C.F.R. § 300.530(b).

If it is determined through a manifestation determination review that the behavior is **not** a manifestation of the student's disability, the student can be disciplined as any general education student would be. This includes suspensions for longer than 10 days. 34 C.F.R. § 300.530(c), (e).

After a child is removed from the classroom for a total of more than 10 school days during the school year, the child must continue to receive educational services so that they can progress towards meeting the IEP's goals. The child must also receive, as appropriate, functional behavioral assessments and behavioral intervention services and modifications designed to prevent a repeat of misconduct. 34 C.F.R. § 300.530(b), (d).

The school does not have to provide educational or behavioral services to a child with a disability during the first 10 days of removal, **unless** the school would provide those services to a child without disabilities who faced the same punishment. 34 C.F.R. § 300.530(d)(3).

In the following circumstances a child with a disability may be placed in a setting other than the classroom for up to **45 consecutive school days** even if the misconduct resulted from the child's disability:

- (1) The child carried a weapon or possessed a weapon at school, on school premises, or at a school function,
- (2) knowingly possessed or used illegal drugs, or sold or solicited the sale of a control substance, while at school, on school premises, or at a school function; or
- (3) inflicted serious bodily harm upon another person while at school, on school premises, or at a school function. 34 C.F.R. § 300.530(g).

If a child has been removed for more than 10 days during the school year without a change in placement occurring, the school (in consultation with at least one of the child's teachers) must decide what services the child needs to continue to participate in the general education curriculum and progress towards meeting their IEP goals. 34 C.F.R. § 300.530(d)(4).

## When does a change in placement occur as part of the discipline process?

A school may change the placement of a child with a disability if (1) the school removes the child from the normal classroom for more than 10 consecutive days, or (2) the child has been subjected to a pattern of removals. If a change in placement occurs, the IEP Team must determine the appropriate services for the child. The parents have the right to challenge the placement change through a due process hearing or lawsuit. 34 C.F.R. § 300.530(d)(5); 34 C.F.R. § 300.536.

For changes in placement that exceed 10 consecutive school days, the school can discipline the student in the same manner as a student without disabilities **if** the school determines that the disability did not cause the misconduct. Even here, however, the student will still be entitled to educational and behavioral services after they have been removed from their original placement for more than 10 school days during the school year. 34 C.F.R. § 300.530(c).

If the school decides that a change in placement is occurring, it must provide written notice to the parents. 34 C.F.R. § 300.530(h).

If a change in placement occurs, within 10 school days the LEA, parents, and relevant members of the IEP Team must review both all relevant information in the school files and any information provided by the parents to determine whether the misconduct (1) was caused by, or related to, the child's disability, or (2) resulted from the LEA's failure to implement the IEP. If the misconduct was caused by, or related to, the disability or the LEA's failure to implement the IEP, the IEP Team must take steps to address the behavior and return the child to the original placement (unless the misconduct involved weapons, drugs or the serious bodily harm discussed above). In this situation, the child cannot be removed from the original educational setting unless the parent and LEA both agree. In addition, if the misconduct resulted from the LEA's failure to implement the IEP, the LEA must immediately correct that failure. 34 C.F.R. § 300.530(e), (f).

State and local discipline policies may also provide guidance about disciplining a child with a disability. 7 WYO. DEPT. OF ED. R. 6(e).

## Can parents see the school records of their special education child?

Under Wyoming state and federal law, the parents of a child with a disability are entitled to examine their child's educational records. 34 C.F.R. § 300.501(a); 7 WYO. DEPT. OF ED. R. 6(a). These educational records include the identification, evaluation, and educational placement of the child and the provision of a free appropriate public education to the child. 34 C.F.R. § 300.501(a).

## Where to go for more information:

### **Parent to Parent Wyoming**

500 W. Lott St Suite A  
Buffalo, WY 82834  
(307) 684-2277

### **Wyoming Department of Education**

<http://edu.wyoming.gov/>  
[http://edu.wyoming.gov/programs/special\\_education.aspx](http://edu.wyoming.gov/programs/special_education.aspx)

Leslie Bechtel Van Orman  
(307) 857-9267  
[leslie.vanorman@wyo.gov](mailto:leslie.vanorman@wyo.gov)

Cheyenne Office  
2300 Capitol Avenue



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Hathaway Building, 2nd Floor  
Cheyenne, WY 82002-0050  
(307) 777-7690  
(307) 777-6234 fax

Riverton Office  
320 West Main  
Riverton, WY 82501  
(307) 857-9250  
(307) 857-9256 fax

**Additional resources:** Contact the Special Education Director for your school system.