

REQUIRED

Descriptor Code: FDE

EDUCATION OF SPECIAL EDUCATION STUDENTS/STUDENTS WITH DISABILITIES UNDER THE IDEA

The Ashley School District assures that all students with disabilities, ages 3 through 21, have the right to a free and appropriate public education in accordance with the Individuals with Disabilities Education Act (IDEA) and North Dakota law. In addition, the District complies with Section 504 of the Rehabilitation Act requirements as addressed separately under corresponding District policies and regulations. For compliance with state and federal laws concerning special education/disabled students and providing this assurance, the Ashley School District is a member of the South Central Prairie Special Education Unit and may additionally subscribe to its policies and procedures. For students eligible for services under IDEA, the District will follow the required procedures for identification, evaluation, placement, and delivery of services to children with disabilities.

Individuals with Disabilities Education Act (IDEA)

The IDEA makes available free and appropriate public education (FAPE) to eligible children with disabilities in the District and ensures special education and related services to those children. The three main purposes of the IDEA are:

1. To ensure all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living;
2. To ensure the rights of children with disabilities and parents of such children are protected; and
3. To assist states, localities, educational service agencies (including public school districts), and Federal agencies to provide for the education of all children with disabilities.

To this extent, eligible students with disabilities in the District who qualify for services under the IDEA will receive specially designed instruction and other services to meet their unique needs.

Students with Disabilities

To be covered under the IDEA, a District student with a disability must be in one of several categories of disabilities and require special education and related services because of the disability in order to benefit from public education.

District students meeting both the criteria will be eligible to receive specially designed instruction or special education in which the content or the delivery of the instruction is adapted to the specific needs of the student.

District students with disabilities who do not meet eligibility requirements under the IDEA and do not require special education to benefit from public education may not be covered under the IDEA, but they may be covered under Section 504

of the Rehabilitation Act and/or the Americans with Disabilities Act (ADA). Section 504 and the ADA provide broad nondiscrimination protection not limited to education and have similar functional definitions of "disability" (e.g., disabilities related to life functions such as seeing, hearing, walking, thinking), rather than the categorical definitions used under the IDEA.

Free Appropriate Public Education (FAPE)

All District students with disabilities receiving special education or related services under the IDEA between the ages of 3 and 21 are entitled to free and appropriate public education (FAPE). FAPE under the IDEA means special education and related services that:

1. Have been provided at public expense, under public supervision and direction, and without charge;
2. Meet the standards of the District;
3. Include an appropriate preschool, elementary school, or secondary school education in the state; and
4. Are provided in conformity with the individualized education program required under the student's individualized education program (IEP).

FAPE under the IDEA must be made available to all District students with disabilities who qualify for special education and related services, including children who have been suspended or expelled from school.

Identification and Evaluation under the IDEA

1. Identifying and Evaluating a Child with a Disability

The first step in providing FAPE to District students with disabilities is identifying those students and performing "child find" obligations. The District has policies and procedures in place to ensure that all District students with disabilities who are in need of special education and related services are identified, located, and evaluated under the IDEA. This includes locating those students with disabilities who are homeless or wards of the state; attending private schools; suspected of having a disability; and highly mobile children, including migrant children.

- Initial Evaluation

A child who has been identified as having (or is possibly having) a disability must be evaluated by the District before receiving special education and related services to determine whether a child is a child with a disability and to determine the educational needs of the child and qualifications for IDEA services. Either the parent or the District may request an initial evaluation. In general, the District must obtain informed consent from the parent before conducting an initial evaluation. Parental consent for an evaluation cannot be construed as consent for special education and related services. The initial evaluation must take place within sixty (60) days of receiving parental consent or within an alternative time

frame that may be established by the state.

In conducting the initial evaluation, the District must:

- i. use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parent;
- ii. use multiple measures or assessments as the criteria for determining whether a child is a child with a disability or determining an appropriate educational program for the child; and
- iii. use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors

In addition, assessments and other evaluation materials used to assess a District student must be selected and administered so as not to be discriminatory on a racial or cultural basis. They must also be provided and administered in the language and form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally.

b. Determination by IEP Team

Upon completion of the evaluation, the determination of whether the student is a child with a disability is made and the educational needs of the student are decided by the student's IEP team. A copy of the evaluation report and the documentation of determination of eligibility must be provided to the parent. In determining eligibility, a student shall not be determined to be a child with a disability if the determinant factor is lack of appropriate instruction in reading, lack of instruction in math, or limited English proficiency.

c. Re-evaluation

Re-evaluations are required if the student's teacher or parent makes a request or if the District determines that the student's educational and service needs, academic achievement, or functional performance warrant a reevaluation. For example, a re-evaluation might be warranted if the student's performance in school significantly improves, suggesting the student no longer requires special education and related services, or if the student is not making progress toward the goals in the IEP, indicating that changes are needed in the education or related services the District is providing. In general, parental consent is required for re-evaluations as well as for the initial evaluation.

The District cannot change the eligibility of a student until a re-evaluation is done, unless the student graduates from high school with a regular diploma or reaches the age at which state law no longer provides for FAPE.

A re-evaluation may not be done more than once a year unless the parent and District agree to an additional re-evaluation; and a reevaluation must be done at least once every three years, unless the parent and the District agree that a re-evaluation is not necessary.

2. Identifying and Evaluating a Child with a Specific Learning Disability (SLD)

a. State criteria

Because a number of students receiving special education and related services under the IDEA have specific learning disabilities (SLDs), the IDEA and supporting regulations allow additional procedures for determining whether a child has an SLD. The District will follow the state criteria available on the state [website](#) and/or in the state [guidelines](#). Criteria used to identify SLDs cannot require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has an SLD; must permit the use of a process based on the child's response to scientific, research-based intervention; and may permit the use of other alternative research-based procedures for determining whether a child has an SLD.

b. Group Determination

In general, the group members who determine whether a child has an SLD must include the student's parents, the student's regular education teacher, and at least one person qualified to conduct individual diagnostic examinations of children (e.g., a school psychologist, speech-language pathologist, or remedial reading teacher). The group may determine that a student has an SLD if three criteria are met:

- i. The student does not achieve adequately for the child's age or meet state-approved grade-level standards in one or more of eight areas when provided with learning experiences and instruction appropriate for the child's age or state-approved grade-level standards.
- ii. The student either does not make sufficient progress to meet age or state-approved grade-level standards in one or more of the eight areas when using a process based on the child's response to scientific, research-based intervention; or the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, state-approved grade-level standards, or intellectual development that is determined by the group to be relevant to the identification of an SLD.
- iii. If the student is found to have an SLD, it is not primarily the result of a visual, hearing, or motor disability; intellectual disability; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency.

To ensure that underachievement in a student suspected of having an SLD is not due to lack of appropriate instruction in reading or math, the group must consider, as part of the evaluation: data that demonstrate that prior to, or as a part of, the referral process, the student was provided appropriate instruction in regular education settings, delivered by qualified personnel; and data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the student's parents.

If prior to a referral for an evaluation, a student has not made adequate progress after an appropriate period of time when provided instruction, the District must promptly request parental consent to evaluate the student. The IDEA requires the student to be observed in the student's learning environment to document the student's academic performance and behavior in the areas of difficulty. The District will maintain specific documentation for determining eligibility for a student suspected of having an SLD in accordance with IDEA requirements.

Individualized Education Program (IEP)

The IDEA requires that an individualized education program (IEP) be developed for each eligible student with a disability that includes the following:

1. The student's present levels of academic achievement and functional performance;
2. Measurable annual goals, including academic and functional goals, designed to:
 - a. Meet the student's needs that result from disability to enable the student to be involved in and make progress in the general education curriculum; and
 - b. Meet each of the student's other educational needs that result from disability;
3. How the student's progress toward meeting the above annual goals will be measured and when periodic reports on the progress the student is making toward meeting the annual goals will be provided;
4. The special education and related services and supplementary aids and services, based on peer-reviewed research to an extent practicable, to be provided to the student, or on behalf of the student, and the program modifications or supports for school personnel that will be provided for the student to:
 - a. Advance appropriately toward attaining the annual goals;
 - b. Be involved in and make progress in the general education curriculum and participate in extracurricular and other nonacademic activities; and
 - c. Be educated and participate with other students with disabilities and nondisabled students;
5. The extent, if any, to which the student will not participate with nondisabled students in the regular class;
6. Any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the student on state and district-wide assessments; if the IEP team determines that the student will take an alternate assessment on a particular state or district-wide assessment of student achievement, the

IEP should detail why the student cannot participate in the regular assessment and why the particular alternate assessment selected is appropriate for the student; and

7. The projected date for the beginning of the assessments and their frequency, location, and duration.

In addition, beginning not later than when the first IEP is in effect when the student is 16 and updated annually thereafter, the IEP must include appropriate measurable postsecondary goals related to training, education, employment, and, where appropriate, independent living skills and the transition services needed to assist the student in reaching those goals.

IEP Team

Each district student identified as a child with a disability under the IDEA must have an individualized education program (IEP) developed by an IEP team. In general, the composition of the IEP team includes:

1. The parents of the student with a disability;
2. One or more regular education teachers, if the student is or may be participating in the regular education environment;
3. One or more special education teachers;
4. A representative of the District who is qualified to provide or supervise the provision of special education, knowledgeable about the general education curriculum, and knowledgeable about the availability of resources of the District;
5. An individual who can interpret the instructional implications of evaluation results;
6. At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the student, including related services personnel, as appropriate; and
7. Whenever appropriate, the student with a disability.

The District will follow requirements under the IDEA related to IEP meeting attendance, excusal, team communication and participation, and associated substantive and procedural requirements and safeguards. No one member of the IEP team can make unilateral decisions or changes to a student's IEP.

Parents will be provided a prior written notice (PWN) in accordance with IDEA regulations when the District proposes to initiate or change, or refuses to initiate or change, a student's IEP. PWNs will include a description of the action proposed or refused by the school; an explanation of why the school proposes or refuses to take the action; a description of each evaluation procedure, assessment, record, or report the school used as a basis for their decision; a statement that the parents of a child with a disability have protection under the procedural safeguards and, how the parents can obtain a copy of them; sources for parents to obtain assistance in understanding these provisions; a description of other options that the IEP team considered and the reasons why those options

were rejected; and a description of other factors relevant to the school's proposal or refusal.

Special Education and Related Services

"Related services" under the IDEA means transportation, and such developmental, corrective, and other supportive services as may be required to assist a District student with a disability to benefit from special education. This includes the early identification and assessment of disabling conditions in children. Supportive services may include speech-language pathology and audiology services; interpreting services; psychological services; physical and occupational therapy; recreation, including therapeutic recreation; social work services, school nurse services designed to enable a child with a disability to receive FAPE as described in the student's IEP; counseling services, including rehabilitation counseling; orientation and mobility services; and medical services, except that such medical services shall be for diagnostic and evaluation purposes only.

Related services identified by the IEP team must be necessary for the child to benefit from special education and must not fall within an IDEA exception, including medical services that can only be rendered by a physician and individually prescribed equipment.

Personnel Qualifications

The District will establish and maintain qualifications to ensure that personnel necessary to carry out the IDEA requirements are appropriately and adequately prepared and trained, including that personnel have the content knowledge and skills to service students with disabilities.

Special education teachers must: obtain full state special education teaching certification or pass the state special education teacher licensing examination, or fulfill requirements in a state's charter school law for teachers in charter schools; have not had any certification requirements waived on an emergency, temporary, or provisional basis; and have at least bachelor's degree.

Related services personnel must meet qualifications consistent with any state-approved or state-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services and have not had any certification requirements waived on an emergency, temporary, or provisional basis.

Paraprofessionals and assistants, who assist in the provision of special education and related services to children with disabilities, must be appropriately trained and supervised, in accordance with state law, regulation, or other written state policy, to meet IDEA regulations.

Least Restrictive Environment

The District will educate eligible students with disabilities in the least restrictive environment possible in accordance with the IDEA. This means that to the maximum extent appropriate, eligible students are to be educated with students

who are not disabled. Further, special classes, separate schooling, or other removal of students with disabilities from the regular educational environment can occur only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. Supplementary aids and services could include such things as additional time to take tests or complete assignments, slower-paced instruction, personal aides, peer tutors, and use of a computer.

The District must also ensure there is a continuum of alternate placements that includes instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions. The continuum of placements offered to each child with a disability served under the IDEA must include supplementary services (e.g., resource room or itinerant instruction) as part of a regular class placement.

The specific placement decision for each eligible student with a disability is made by that student's IEP team. The student's placement must be determined at least annually, based on the IEP, and as close to home as possible.

As with identification and evaluation, the child's parents must be notified in writing within a reasonable time before the placement. If the parents disagree with the placement decision, they may use the procedural safeguards, such as the mediation and due process complaints discussed in the "[Procedural Safeguards](#)" section of this policy.

Children with Disabilities in Private Schools

A child with a disability may be placed in a private elementary or secondary school by the District as part of a student's IEP if the IEP team determines that a private school placement is needed to fulfill the FAPE requirements for the student. When a District student is placed in private school under the student's IEP, then the private school placement is made at no cost to the parents, and the student has all rights of a child with a disability who is served in the District.

If an eligible student's parents unilaterally place their child in a private elementary or secondary school, then District student has been *parentally placed*. In this situation, the student is not entitled to FAPE, and the cost of the private school placement is not paid by the District. The District must, however, spend a share of its IDEA funds to provide services to children enrolled with disabilities by their parents in private schools located in the District based on the proportion of parentally placed children to the total number of children with disabilities in the District. Except where there is a court order, the District makes the final decision about the services to be provided to parentally placed private school children. In making these decisions, the District will engage in a consultation process with the private school officials and representatives of parents. The District will devise a service plan for every parentally placed child with a disability receiving special education or related services from the District.

Procedural Safeguards

The District will follow the procedural safeguards requirements under the IDEA. The various types of procedures include (but are not limited to) parental rights to:

1. Inspect and review educational records (with assurance that education records are maintained as confidential);
2. Participate in meetings related to the identification, evaluation, and educational placement of their child;
3. Obtain an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the District;
4. Receive prior written notice in the native language of the parents when the District proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or educational placement of the child or the provision of FAPE to the child;
5. Receive a procedural safeguards notice, which is a comprehensive written explanation of IDEA's legal rights and protections for children with disabilities and their parents;
6. Resolve disputes through a mediation process;
7. Present and resolve complaints through the due process complaint procedures, which include a right to file suit in federal district court; and
8. Present and resolve complaints through state complaint procedures.

Three of the procedural safeguards listed above pertain to dispute resolution between parents and the District. These are mediation, due process complaint procedures, and state complaint procedures, which are discussed below.

1. Mediation

The parties may choose to resolve disputes under the IDEA through a mediation process. Procedures shall ensure that mediation is:

- a. Voluntary on the part of the parties;
- b. Not used to deny or delay a parent's right to a due process hearing or deny any other rights afforded under the IDEA; and
- c. Conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

Either a parent or the District can initiate the mediation process. If a dispute is resolved through mediation, the parties will execute a legally binding agreement that is signed by the parent and a representative of the District. Discussions occurring during mediation are confidential and may not be used in any subsequent due process hearing or court proceeding.

A Request for Mediation form can be accessed from the North Dakota Department of Public Instruction: [SFN 58601](#).

2. State Complaint Procedures

The IDEA requires each state to adopt written procedures for resolving complaints. A State complaint alleging a violation of the IDEA can be filed by any organization or individual with the North Dakota Department of Public Instruction

(NDDPI). Complainants may submit concerns in a letter or complete a Request for a Complaint Investigation form through the Office for Specially Designed Services: [SFN 58618](#).

The incident related to the State complaint must have occurred within one year from the date the complaint is filed and meets the State complaint filing requirements. The District is allowed an opportunity to draft a formal response to the allegations and propose a resolution to the issues. State complaints will be resolved within 60 calendar days from the date the complaint is filed unless an extension is permitted.

3. [Due Process Complaint Procedures](#)

Either the parents or the District may request a due process hearing through filing a complaint on matters relating to the identification, evaluation, or educational placement of a child with a disability, or the provision of FAPE to the child. Generally, unless the District and the parents otherwise agree, the student must "stay put"/remain in their current educational placement pending the outcome of the due process complaint procedures or court proceeding.

The due process complaint must allege a violation that occurred not more than two years before the date the parent or District knew or should have known about the alleged action that forms the basis of the due process complaint.

Within 15 days of receiving the due process complaint, the District will convene a resolution session to attempt to resolve the issues unless the parents and District agree to waive the session. Either party may request a neutral facilitator from NDDPI. If the issues are not resolved, the due process hearing may occur.

Due process hearings are conducted by an impartial hearing officer, and the decision of the hearing officer is final. The parents and the District have the right to:

- a. Be represented by an attorney at the hearing;
- b. Bring one or more individuals who have knowledge or training about children with disabilities;
- c. Present evidence and confront, cross-examine, and require relevant witnesses to be present;
- d. A written, or electronic transcript of the hearing; and
- e. A written or electronic findings of fact and decisions.

The impartial hearing officer will issue a decision not later than 45 calendar days after the expiration of the 30 calendar day period for resolution meetings or not later than 45 calendar days after the expiration of an adjusted time period as determined by the hearing officer.

Discipline

The IDEA allows the District to maintain authority in [disciplining students with disabilities](#), but also provides procedural safeguards to protect the rights of those

students to receive FAPE. If an eligible student with a disability commits an action that would be subject to discipline in accordance with district policies, the District may:

1. Remove the student from his or her current placement to another setting or suspension for up to 10 school days (without having to conduct a manifestation determination);
2. Place the student in an interim alternative education setting for up to 45 school days for situations involving weapons or drugs, or if the student has inflicted serious bodily injury on another person while at school (regardless of the results of a manifestation determination);
3. Ask a hearing officer to order a child to be placed in an interim alternative educational setting for up to 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or others (regardless of the results of a manifestation determination).

If the District seeks to change the placement of a student with a disability for more than 10 school days under any circumstances, the District must hold a manifestation determination within those 10 days to determine:

1. If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
2. If the conduct in question was the direct result of the local educational agency's failure to implement the IEP.

If the student's behavior is not a manifestation as identified above, then long-term disciplinary action such as expulsion may occur in accordance with District policies and procedures, but educational services in accordance with the student's IEP will continue. If the behavior is a manifestation as identified above, the IEP team must conduct a functional behavior assessment and implement a behavior intervention plan for the child, if this has not been done before. If there was a behavioral intervention plan, it must be reviewed and modified as necessary to address the behavior.

Except for certain circumstances involving weapons, illegal drugs, or serious bodily injury, when the conduct is a manifestation of the disability, the child must return to the placement from which he or she was removed unless the parent and the District agree to a change of placement as part of the modification of the behavioral intervention plan. If the parent disagrees with any decision regarding placement or the manifestation determination, or a district believes that maintaining the current placement of the student is substantially likely to result in injury to the student or others, either party may request a due process hearing. The IDEA does not prohibit the District from reporting an alleged crime committed by a student with a disability to the appropriate authorities. The district reporting an alleged crime will ensure copies of special education and disciplinary records of the student are transmitted for consideration by appropriate authorities to whom the agency reports the crime in accordance with IDEA requirements.

Complementing NDSBA Templates (may contain items not adopted by the Board)

- AAC, Section 504 of the Rehabilitation Acct of 1973 Policy
- AAC-E2, Section 504 Eligibility Determination Form
- ACBC, Use of Animals in District Schools & Curricular Programs
- FF, Student Conduct and Discipline
- FF-AR, Student Conduct Standards and Disciplinary Procedures
- FF-E, Examples of Student Conduct Violations
- FFA, Student Alcohol and Other Drug Use
- FFD, Possessing Weapons
- FFK, Suspension and Expulsion
- FGA, Student Records and Privacy

Legal References

- [20 U.S.C. § 1400 et seq.](#), Individuals with Disabilities Education Act
- [34 C.F.R. § Assistance to States for Education of Children with Disabilities](#)
- [34 C.F.R. § 300.201](#), Consistency with State Policies
- [NDCC § 15.1-32, Special Education](#)
- [NDCC § 15.1-33, Multidistrict Special Education](#)
- [NDCC § 25-01.2, Developmentally Disability](#)

End of Ashley School District #9 Policy FDE..... Adopted: January 14, 2026