



# AMERICAN SAMOA DEPARTMENT OF EDUCATION SPECIAL EDUCATION DIVISION

POLICIES AND PROCEDURES TO IMPLEMENT

PART B OF THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT, AS AMENDED

*TALAEUGA DR. SAMASONI ASAELI*

*Director of Education*

*DR. HERBERT BOAT*

*Assistant Director Special Education Division*

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ASDOE Special Education Division Policies and Procedures 2023

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## SECTION I: FREE APPROPRIATE PUBLIC EDUCATION

Consistent with the American Samoa Special Education Act of 1977, amended in 2000, the American Samoa Department of Education (ASDOE), has adopted a policy that a free, appropriate, public education (FAPE) will be made available to all children residing in American Samoa (AS) between the ages of 3 through 21, inclusive, including children with disabilities who have been suspended or expelled from school (see: *Suspension/Expulsion*, Section XVI, and *Procedural Safeguards - Discipline*, Section VI).

Eligible children and youth include those children who are determined to have intellectual disabilities, hearing impairments including deafness, speech or language impairments, visual impairments including blindness, emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, specific learning disabilities, deaf-blindness or multiple disabilities, and who because of those impairments need special education and related services.

These procedures refer to both “student” and “child,” which have the same meaning for purposes of these procedures.

“Special education” is defined as specially designed instruction at no cost to the parents, to meet the unique needs of a child with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and instruction in physical education (to the extent that physical education is provided to children without disabilities in the same grade). The term includes speech pathology, or any other related service, if the service is considered special education rather than a related service under AS standards. The term also includes travel training and vocational education.

Terms are defined as follows:

- A. **“At no cost”** means that all specially designed instruction is provided without charge but does not preclude incidental fees that are normally charged to students without disabilities or their parents as a part of the regular education program.
- B. **“Parent”** means (1) A biological or adoptive parent of a child; (2) A foster parent, unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent; (3) A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State); (4) An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or A surrogate parent who has been appointed in accordance with §300.519 or section 639(a)(5) of the Act.
- C. **“Physical education”** is defined as follows: the term means the development of physical and motor fitness; fundamental motor skills and patterns; and skills in aquatics, dance,

and individual and group games and sports (including intramural and lifetime sports); and the term includes special physical education, adaptive physical education, movement education, and motor development.

- D. **“Specially designed instruction”** means adapting, as appropriate to the needs of an eligible child under this Part, the content, methodology or delivery of instruction to address the unique needs of the child that result from the child’s disability and to ensure access of the child to the general curriculum so that he or she can meet the educational standards within AS that apply to all children.
- E. **“Travel training”** means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to develop an awareness of the environment in which they live, and learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).
- F. **“Vocational education”** means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career not requiring a baccalaureate or advanced degree.
- G. **“Related Services”** means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education. These related services include 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, and medical services for diagnostic or evaluation purposes. The term also includes school health services and school nurse services, social work services in schools, and parent counseling and training. The related services are defined as defined under 34 CFR §300.34.
1. ASDOE Special Education Division ensures that hearing aids worn in school by students with hearing impairments, including deafness, are functioning properly.
  2. ASDOE Special Education Division ensures that the external components of surgically implanted medical devices are functioning properly. However, the ASDOE Special Education Division is not responsible for the post- surgical maintenance, programming, or replacement of the medical device that has been surgically implanted (or of an external component of the surgically implanted medical device).
- H. **“Child with a Disability.”** A child becomes eligible for special education and related services no later than the child’s third birthday. An individualized education program (IEP) will be in effect for the child by that date, including if the child’s third birthday occurs during the summer; if the child turns three during the summer, then the IEP Team determines the date by which services under the IEP will begin. A child with an active

individual family services plan (IFSP) who is determined eligible for Part B services may have an IEP developed using the data from the IFSP. A child with a disability who is 21 years of age on or after the first day of the school year is entitled to a free appropriate public education for the entire school year.

1. Children with disabilities who have been suspended or expelled from school will not be denied a free appropriate public education. See *Procedural Safeguards*, Section VI, for specific procedures to ensure FAPE according to the Individuals with Disabilities Education Act (IDEA).
2. The ASDOE Special Education Division provides FAPE to all eligible incarcerated individuals up through the age of 18. Students with disabilities between the ages of 18 and 21 who are incarcerated in adult correctional facilities are provided FAPE if they were identified as having a disability prior to age 18, or had an IEP in their last educational setting (see also *IEPs*, Section IV). See 34 CFR §300.102.
3. Free appropriate public education is made available to any child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade and is advancing from grade to grade. Students with disabilities continue to be eligible for FAPE until 21, unless they graduate from high school with a regular diploma.
4. Graduation from high school with a regular diploma constitutes a change in placement and requires written prior notice (see also *Evaluation & Determination of Eligibility*, Section III, *IEPs*, Section IV, *Procedural Safeguards*, Section VI). The term regular high school diploma does not include an alternative degree that is not fully aligned with the territory's academic standards, such as a certificate or a general educational development credential (GED). Students with IEPs who do not meet full requirements of a regular education diploma and are of maximum age to graduate are issued certificates of completion.

## **SECTION II: CHILD FIND**

### Policy Statement

The ASDOE Special Education Division has adopted and used the procedures set forth below to identify, locate and evaluate children and youth with disabilities ages 3 to 21 including those attending private schools, homeless children, wards of the territory, and children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services.

ASDOE Special Education Division's definition of Developmental Delay (applies to ages 3-9 years) is children who are functioning 1.5 or more standard deviations below the mean in one or more developmental areas (listed below); or 25% delay in one or more areas.

1. Cognitive Development
2. Physical Development (gross motor and fine motor functioning)
3. Communication Development (articulation, expressive and receptive language)
4. Social or Emotional Development
5. Adaptive Development (Self-help skills)

All categories will be subsumed under Developmental Delay unless a student clearly meets the criteria of another disability category.

### Implementation Procedures

- A. **Responsible Agency:** Child identification (Child Find) in AS is a continuous effort to identify, locate, and evaluate each child suspected of needing special education and related services from 3 through 21 years of age which is the responsibility of ASDOE.
- B. **Nature and Extent of Participation by Other Agencies:** In addition to the work of ASDOE Special Education Division, the implementation of Child Find activities involves the cooperative efforts of several agencies in American Samoa.
  1. **Child Find activities for children of ages birth - 3 suspected of having disabilities:** American Samoa Department of Health (ASDOH) - Part C.
    - i. ASDOH operates well-baby clinics in outlying health centers.
    - ii. ASDOH provides physical and occupational therapy services.
    - iii. ASDOH conducts health, hearing and vision screening in the early childhood centers, and in public and private schools.
  2. **Department of Human and Social Services (DHSS):** provides child protection and

counseling services to children and their families and refers children deemed in need of special services.

3. Developmental Disabilities Planning Council (DDPC): (1) advocates for the needs of developmentally disabled populations; (2) coordinates efforts with Developmental Disability caseworkers; and (3) works with ASDOE Special Education Division on public awareness activities.
4. Vocational Rehabilitation: cooperates with ASDOE Special Education Division on public awareness activities and works cooperatively with ASDOE Special Education Division on transitional services for secondary students.
5. Office of Protection and Advocacy (OPAD): is composed of Protection and Advocacy for the Developmentally Disabled, a program for students who are chronically disabled, Protection and Advocacy for Individual Rights, a program for students who are not chronically disabled but who are under the target special education population, and Protection and Advocacy for Assistive Technology, a program for students who are in need of assistive technology devices. OPAD coordinates with other agencies on public awareness activities and advocates for the rights of individuals with disabilities.

#### C. Description of Primary Child Identification Activities

Primary child identification activities include: (1) public awareness, (2) referral for evaluation, and (3) Child Find for parentally-placed private school children with disabilities. Each is described below.

1. **Public Awareness.** Awareness campaigns are organized to disseminate information to public and professional sectors concerning: services available; the nature of disabling conditions; normal growth and development; who to contact for information or assistance; the value of early identification; the provisions of Federal and AS laws; and the benefits of specially designed instruction.
  - i. Methods used to increase public awareness include: speeches to local service organizations and public meetings; articles in the ASDOE Special Education Division website; articles in local newspapers and television interviews; video presentations for public presentations; involvement in community disability awareness activities including interagency programs and conferences to promote public awareness on disability issues; development of communication linkages and collaboration with various public and private agencies which provide services to persons with disabilities within the community; and projects to train parents to work with other parents.
  - ii. Disability Awareness is an ongoing effort among ASDOE Special Education Division and these agencies to increase public awareness of (1) the needs of individuals with disabilities, and (2) services available in AS

to support individuals with disabilities.

2. **Referral for Evaluation.** The referral procedures established by ASDOE Special Education Division reflect a collaborative effort between special and general educators.
  - i. ASDOE Special Education Division has assigned an Education Specialist (ES) for each school including private schools. When there is reason to suspect the child may have a disability under IDEA, the ES is notified and assists in determining the need to complete a referral for evaluation, and to establish the IEP Team for the purposes of evaluation planning.
    1. If a decision is made to evaluate a student, the ES is responsible for notifying parents of the referral and for setting up the evaluation planning meeting.
    2. If a decision is made not to evaluate a student, the ES will provide both the child's parent(s) and the person who made the referral for evaluation a Prior Written Notice (PWN). The PWN to the parents will meet all the requirements (see Procedural Safeguards, Section VI) and parents are provided with their procedural safeguards notice.
3. **Child Find for Parentally-Placed Private School Children with Disabilities.** ASDOE Special Education Division locates, identifies, and evaluates all children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools. ASDOE undertakes activities similar to the activities undertaken for the agency's public school children and the Child Find process must be completed in a time period comparable to that for students attending public schools.

#### D. Accountability

ASDOE Special Education Division has the responsibility for ensuring the implementation of Child Find procedures for children and youth with disabilities from ages 3 through 21. The data management system stores information on the numbers of children with disabilities that have been (1) identified, (2) evaluated, and (3) receive special education and related services. ASDOE Special Education Division analyzes this information to ensure that all children have been provided FAPE according to IDEA and AS requirements.

Each child who has a disability as defined in IDEA and who, by reason of that disability, needs special education and related services, receives such services in accordance with the IEP Team decisions. Confidentiality requirements for child find activities are described in Confidentiality, Section VIII.



### **SECTION III: EVALUATION AND ELIGIBILITY DETERMINATION**

#### Policy Statement

It is the policy of ASDOE Special Education Division that schools adopt and use the procedures set forth below to evaluate children who are suspected of having a disability and who may be in need of special education and related services.

Before any action is taken with respect to the initial provision of services for a child with a disability, ASDOE's Division of Special Education will conduct a full and individual evaluation of the child's educational needs. The evaluation will be sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category and will determine whether the child is eligible for special education and related services. Evaluation information contributes to the content of the child's IEP, including how the child will participate and progress in the general curriculum.

#### Implementation Procedures

##### A. Responsible Person

After determining the need to refer a child for an individual evaluation, the appropriate ES from the school serves as the liaison. This person is responsible to oversee the evaluation process from referral for evaluation through eligibility determination.

##### B. Request for Initial Evaluation

Either a parent of a child or a public agency may initiate a request for an initial evaluation to determine if the child is a child with a disability. The ES on site (with principal support) will provide notice and request the parent's signature indicating consent to conduct the initial evaluation. At this time parent participation in the evaluation process is explained and parents are provided with a written copy of their procedural safeguards (see detail in Procedural Safeguards, Section VI).

ASDOE Special Education Division will provide notice to the parents of a child with a disability, in accordance with notice requirements detailed in Procedural Safeguards (Section VI) that describes any evaluation procedures that ASDOE Special Education Division proposes to conduct.

The initial evaluation—

1. will be conducted within 60 business days of receiving parental consent for the evaluation;
2. will consist of procedures—
  - i. to determine if the child is a child with a disability as defined in IDEA; and
  - ii. to determine the educational needs of the child.

The 60 business day timeline does not apply if the parent repeatedly refuses to bring the child for the evaluation, or if the child enrolls in a school in another agency before the timeline elapses and prior to a determination by the child's previous public agency as to whether the child is a child with a disability under 34 C.F.R. § 300.8.

The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation is not considered to be an evaluation for eligibility for special education and related services.

C. Parental Consent (34 CFR §300.300)

1. ASDOE Special Education Division will document that written parental consent is obtained prior to:
  - a. conducting an initial evaluation;
  - b. initial provision of special education and related services;
  - c. conducting a reevaluation, except that if the parents fail to respond to requests for reevaluation, ASDOE Special Education Division will document its repeated attempts to obtain that consent and proceed with the reevaluation (34 CFR §300.300(c)(2)).
2. Except as required in 1, above, ASDOE Special Education Division will not use a parent's refusal to consent to one service or activity to deny the parent or child any other service, benefit or activity.
3. Consent for initial evaluation will not be construed as consent for initial placement.
4. Parental consent is not required before reviewing existing data as part of an evaluation or a reevaluation; or administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.
5. If the parents of a child with a disability refuse consent for initial evaluation, ASDOE Special Education Division may, but is not required to continue to pursue the evaluation using due process procedures, or the mediation procedures (34 CFR §300.300(a)(3)).
6. ASDOE Special Education Division's repeated attempts in 1.c, above (reasonable measures), are consistent with those for parent participation described in IEPs, Section IV.
7. If a child is a ward of the Territory and not residing with the child's parent, the ASDOE Special Education Division may proceed without parental consent after

reasonable efforts to discover the whereabouts of the parent(s), or if the rights of the parents have been terminated or assigned by a court to a legal representative.

#### D. Evaluation Plan

The special education assessment team, with teachers' and parents' input, develops an evaluation plan which includes the following three components and obtains parental consent to evaluate.

1. Summary of available information: The ES, general education teacher, and special education teacher gather and summarize information presently available in school records, such as:
  - a. existing evaluation data, including records of school performance (e.g., past test scores, grades, current classroom assessments and observations, from teachers and related services providers),
  - b. information from the child's parent(s) including any evaluation information.
2. Areas identified for evaluation: The team reviews the information and determines what additional evaluation information is needed, if any. All areas related to the suspected disability are evaluated, including, as appropriate:
  - a. health (including substance abuse);
  - b. vision;
  - c. hearing;
  - d. motor ability;
  - e. general intelligence;
  - f. communicative status;
  - g. social and emotional status;
  - h. academic performance;
  - i. home and community living skills;
  - j. vocational skills (for student of secondary age). (34 CFR 300.304(c)(4))
3. Additional Data Determination: On the basis of that review and input from the child's parents, the team will identify what additional data, if any, are needed to determine:
  - a. On initial evaluation:

1. whether the child is a child with a disability as defined in IDEA and the educational needs of the child; the present levels of academic achievement and developmental needs of the child; whether the child needs special education and related services; and whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IIEP of the child and to participate, as appropriate, in the general education curriculum.
- b. On re-evaluation:
  1. Whether the child continues to have such a disability and the educational needs of the child; the present levels of academic achievement and related developmental needs of the child; whether the child continues to need special education and related services; and whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.
4. If the IEP Team and other qualified professionals, as appropriate, conclude that no additional data are needed, ASDOE Special Education Division will notify the student's parents of
  - a. that determination and its reasons; and
  - b. their right to request an assessment to determine whether the student continues to be a student with a disability, and to determine the student's educational needs.

#### E. Individual Evaluation Procedures

The comprehensive evaluation provides descriptive and prescriptive relevant information that directly assists in determining whether the child is a child with a disability as per IDEA and the educational needs of the child. ASDOE Special Education Division ensures that evaluation materials and procedures meet the following requirements:

1. No single evaluation material or procedure is used to determine whether a child has a disability, or to determine an appropriate educational program for a child. The evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.
2. A variety of assessment tools and strategies are used to gather relevant functional, developmental and academic information about the child, including information provided by the parent, and information related to enabling the child to be

involved in and progress in the general curriculum (or for a preschool child, to participate in appropriate activities), that may assist in determining whether the child is a child with a disability and the content of the child's IEP.

3. Evaluation materials and procedures are in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer:
  - a. Materials and procedures used to assess a child with limited English proficiency are selected and administered to ensure that they measure the extent to which the child has a disability and needs special education rather than measuring the child's English language skills.
  - b. Evaluation materials and procedures are selected to ensure that, when administered to a child with impaired sensory, manual or speaking skills, the evaluation materials and procedures accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual or speaking skills.
4. Evaluation materials and procedures must be validated for the specific purpose for which they are to be used and must be administered in adherence to the developer's instructions and by appropriately trained personnel. If an assessment is not conducted under standard conditions, a description of the extent to which it varied will be included in the report.
5. Evaluation materials and procedures must include those tailored to assess specific areas of educational need and not merely those designed to provide a single general intelligence quotient.
6. Evaluation materials and procedures must be selected and administered so as not to be discriminatory on a racial or cultural basis.
7. Assessment tools and strategies that are used will provide relevant information that directly assists in determining the educational needs of child.
8. Technically sound instruments will be used to assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.
9. Since ASDOE Special Education Division is a unitary SEA/LEA, issues of coordination in cases of school transfers do not apply.

#### F. Evaluation Report

A written integrated report that summarizes the results of individual evaluations is prepared by the Assessment Officers. ASDOE Special Education Division maintains a current evaluation report, any individual evaluation reports, observation records, test booklets and

other information obtained during the evaluation process. A copy of the evaluation report and the documentation of determination of eligibility will be provided at no cost to the parent.

#### G. Eligibility Determination

The members of the IEP team are responsible for determining eligibility within 30 business days of receiving the assessment evaluation report, deciding whether the child has a disability and by reason thereof needs special education and related services. The IEP team carefully considers and documents information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, physical condition, social or cultural background and adaptive behavior. A child will not be determined to be a child with a disability, if the determinant factor is lack of appropriate instruction in reading, including the essential components of reading instruction (as defined in ESSA); or lack of appropriate instruction in math or limited English proficiency; and if the child does not otherwise meet the eligibility criteria.

If the child is determined to be eligible, an IEP will be developed within 30 days of the eligibility determination (see IEPs, Section IV). If the child is determined not eligible, the ES shall provide the PWN to the principal and to parents (see Procedural Safeguards, Section VI).

Before determining that a student is no longer a child with a disability, ASDOE Special Education Division will conduct a reevaluation as previously described unless the student is aging out or graduates with a regular high school diploma.

#### **Disproportionality (34 CFR §300.646)**

A majority of American Samoan students are a single race-ethnicity as classified by the United States Federal Government (Native Hawaiian and other Pacific Islander), as verified by the annual special education child count data and the student enrollment data for the current year and for the last several years. The IDEA significant disproportionality requirements include allowable exceptions as explained in 34 CFR § 300.647(c)(1) and (2). These exceptions state that AS is not required to calculate significant disproportionality by the required methodology (risk ratio or alternate risk ratio), if its special education child count does not have more than 10 students (as recommended by the legislation and ratified by AS Policies and Procedures) of a race/ethnicity group outside of Native Hawaiian and other Pacific Islanders. If AS reaches a special education child count of more than 10 students in another race/ethnic category, it will calculate significant disproportionality as required.

#### H. Exiting from Special Education

A student shall no longer be eligible to receive special education and related services if:

1. the evaluation team determines the student is no longer eligible and the student transfers to regular education;
2. the student graduates from high school with a regular diploma (an evaluation is not

required before terminating the eligibility of a student who graduates from secondary school with a regular diploma);

3. the student drops out of school;
4. the student moves from AS and is known to be continuing school;
5. the student dies; or
6. the student reaches age 21 and receives a certificate of completion. If the student reaches his or her 21st birthday during the school year, he or she is entitled to continue through that school year (an evaluation is not required if the student exceeds the age eligibility for FAPE under AS Code annotated Chapter 16 (Special Education)).

#### I. Re-evaluation

1. ASDOE Special Education Division ensures that a reevaluation of each child with a disability is conducted in accordance with 34 CFR §§ 300.304 through 300.311:
  - a. If the school determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or
  - b. If the child's parent or teacher requests a reevaluation.
2. Limitation. A reevaluation conducted under paragraph (a) of this section –
  - a. May occur not more than once a year, unless the parent and the public agency agree otherwise; and
  - b. Must occur at least once every 3 years, unless the parent and the public agency agree that a reevaluation is unnecessary.
3. The ES will provide a PWN to the parents regarding an upcoming re-evaluation and an ASDOE Special Education Division AO's report will be completed for each re-evaluation.
4. During the reevaluation, the IEP Team will review existing information and identify additional data, if any, needed to determine whether the child continues to have a disability, the present levels of academic achievement and related developmental needs of the child, whether the child continues to need special education and related services and whether any additions or modifications to the special education and related services are needed to enable the child to meet the goals in the IEP and to participate, as appropriate, in the general curriculum.
5. If the IEP Team determines that additional data are not needed to establish

continued eligibility, the IEP team notes on the reevaluation referral form that collecting additional data for the reevaluation is not necessary and the parent is provided with the PWN.

6. If the team determines additional information is needed, the ES will obtain informed written consent from the parent. Once all requested information has been gathered, the team will review all information and determine continued eligibility and educational needs of the child.
7. PWN will be provided to the parent as to the results of the reevaluation.



## **SECTION IV: INDIVIDUALIZED EDUCATION PROGRAMS**

### Policy Statement

The ASDOE shall ensure that students with disabilities are not treated differently than non-disabled students with respect to instructional time, unless based on the individual needs of the disabled student. For the avoidance of doubt, it is not appropriate to provide a shorter academic year for students receiving special education and related services for reasons that are not based on the students' needs and supported by data. The ASDOE shall ensure that students with disabilities do not receive less instructional time than students without disabilities for reasons unrelated to the student's individual needs. In the event that a temporary change in scheduling is unavoidable, the ASDOE will take steps to ensure that it provides instructional time for the affected students with disabilities that is equivalent to students without disabilities, such as providing instruction in a temporary alternative appropriate setting, or providing recovery or compensatory education, as appropriate, to students with disabilities to make up for the missed instructional time.

It is the policy of the ASDOE Special Education Division that every student with a disability in AS who is eligible for special education and related services will be served in accordance with an IEP that meets the requirements of IDEA and ASDOE Special Education Division procedures.

As a unitary SEA/LEA, the ASDOE Special Education Division is responsible for ensuring that IEPs are developed and implemented for each student receiving special education services and related services from the ASDOE Special Education Division. Students with disabilities voluntarily enrolled by their parents in a private school may be entitled to receive equitable services through a "service plan" developed by ASDOE Special Education Division but are not entitled to FAPE.

ASDOE Special Education Division monitors all educational agencies and programs providing special education and related services to students with disabilities in AS regularly, to ensure that IEPs are developed, reviewed and revised according to both local and federal requirements. ASDOE Special Education Division retains responsibility for enforcement, and actions on any noncompliant areas. Monitoring procedures are reviewed annually and revised to respond to changes in local and federal requirements as needed, as well as to necessary refinements of the overall improvement system.

### Implementation Procedures

#### A. IEP Timelines

1. Within 60 business days of reception of parents' consent to an initial evaluation, a student will be evaluated. If determined eligible, an IEP will be developed within 30 business days.
2. Usually, the eligibility determination and the student's initial IEP occur in consecutive sessions of the same meeting. However, if the eligibility

determination meeting occurs separately, the meeting to develop the IEP must be held within 30 business days of the eligibility determination.

3. At the beginning of each school year, an IEP will be in effect for every student who is receiving special education and/or related services. A meeting to review a student's IEP is held at least once each calendar year.
4. As soon as possible following development of the IEP, special education and related services are made available to the student in accordance with the IEP.

#### B. IEP General Information

1. An IEP must be in effect before special education and related services are provided to a student. Appropriate placement for an eligible student cannot be determined until after decisions have been made about what the student's needs are and what services will be provided. Since these decisions are made at the IEP meeting, a student will not be placed before development of the IEP.
2. It is the policy of the ASDOE Special Education Division that all students with disabilities are served according to an IEP. Eligible students with disabilities ages 3 - 5 who have previously received services under an IFSP will have an IEP developed using the data from the IFSP.
3. Each student's IEP is made accessible to each general education teacher, special education teacher, related service provider, and other service provider who is responsible for its implementation. Each such teacher or provider is informed of his/her specific responsibilities related to implementing the student's IEP, and of the specific accommodations, modifications and supports that are to be provided for the student in accordance with the student's IEP.
4. ASDOE Special Education Division coordinates with the National Instructional Materials Access Center (NIMAC), and ensures that all public agencies in AS take reasonable steps to provide instructional materials in accessible formats to students with disabilities who need such materials at the same time as other students receive instructional materials.
  - a. As part of any print instructional materials adoption process, ASDOE Special Education Division will enter into written contracts with publishers of print materials to:
    - i. require the publisher to prepare and, on or before delivery of the print instructional materials, provide to NIMAC electronic files containing the contents of the print instructional materials using the NIMAS; or
    - ii. purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats.

- b. ASDOE Special Education Division will provide instructional materials in a timely manner to those students served under this part who may qualify to receive books and other publications produced in specialized formats in accordance with “An Act to provide books for adult blind,” (2 U.S.C 135a).
- c. ASDOE Special Education Division, to the maximum extent possible, works collaboratively with the AS agency responsible for assistive technology programs.

#### C. IEP Meetings

1. A meeting can be requested by any person responsible for the education of the student, and at any time in addition to those required by Federal law. If the parents of an eligible student believe that the student is not progressing satisfactorily or that there is a problem with the student’s current IEP, parents should request an IEP meeting. If a student’s teacher(s) feels that the student’s placement or program are not appropriate to the student, the teacher should request an IEP meeting.
2. An IEP meeting must be held prior to making any changes in the content of the IEP.
3. IEP meetings may be held any time during the school year.
4. The meeting to review a student’s IEP is to determine whether the student’s annual goals are being achieved and to revise the IEP as appropriate to address: any lack of expected progress toward those goals and within the general curriculum; results of any reevaluation; information about the student provided to or by the parents; and the student’s anticipated needs.

#### D. Participants in IEP Meetings

1. Every IEP Team includes the following members:
  - a. one or both of the student’s parents. One or both parents attend the IEP meeting unless ASDOE Special Education Division is unable to convince them to attend.
  - b. at least one general education teacher of the student and at least one special education teacher (or special education provider) of the student.
  - c. a representative of ASDOE Special Education Division. The representative may be a school principal, education specialist, or other designated official, other than the student’s teacher, who is: qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of the student; knowledgeable about the general curriculum; and knowledgeable about the availability of resources of ASDOE Special

Education Division.

- d. an individual who can interpret the instructional implications of the student's evaluation results. This person may be one of the members described above.
  - e. individuals who have knowledge or special expertise about the student, including related services personnel as appropriate. The determination of knowledge or special expertise of any individual is made by the party (parents or ASDOE Special Education Division) who invited the individual to be a member of the IEP Team.
  - f. the student, when appropriate.
2. In a meeting for the initial IEP of a student served under Part C, an invitation is also sent, at the request of the parent, to a representative of the Part C system.
  3. If the purpose of the meeting is to consider postsecondary goals for a student age 16 or older and the transition services needed to assist the student in reaching those goals,
    - a. the ES or special education teacher contacts both the parents and the student to explain the purpose of the transition IEP meeting and to strongly urge both parents and student to attend. If the student does not attend his/her transition IEP meeting, the ES or special education teacher shares the results of the transition meeting, solicits the student's input and ensures that the student's preferences and interests are considered in the transition plan and activities; and
    - b. with the consent of the parents (or of a student who has reached the age of majority) the ES also will invite a representative of any agency likely to be responsible for providing or paying for transition services.

[See G.7 (below) for detailed requirements for transition IEPs.]

4. Teachers, the representative of ASDOE Special Education Division, and/or an individual who can interpret the instructional implications of the student's evaluation results (Team members in 1b through 1d, above) are not required to attend an IEP Team meeting, in whole or in part, if the parent of a student with a disability and ASDOE Special Education Division agree in writing that their attendance is not necessary because their area of the curriculum or related services is not being modified or discussed in the meeting.

Those same Team members (1b through 1d, above) may be excused from attending an IEP Team meeting, in whole or in part, when that meeting will modify the member's area of the curriculum or related services, if

- a. the parent, in writing, and ASDOE Special Education Division consent to the excusal; and
- b. the specific member submits prior to the meeting to the parent and the IEP Team written input into the development of the IEP.

#### E. Ensuring Parent Participation

The parents of an eligible student are expected to be active, equal participants in the process of developing, reviewing and revising the IEP. To ensure that parents have an opportunity to attend the IEP meeting and actively participate, the ES follows the procedures described below:

1. Provide notice of the meeting.
  - a. Parents are notified of the need for an IEP meeting 10 business days before the meeting to increase their opportunity to participate.
  - b. Every effort is made to accommodate parent schedules. If the proposed time, date and place are inconvenient for the parents, another time, date and place will be scheduled which is mutually agreeable.
  - c. Notification may be by phone, in person, through a written invitation sent home by the student, or some combination of these methods as long the notification contains all required components. The ES documents at least two separate attempts to notify the parents.
  - d. The notice includes:
    - i. the purpose of meeting
    - ii. a suggested date, time and place for the meeting
    - iii. who will attend the meeting
    - iv. a statement that the parents have the right to bring other people to the meeting who may have knowledge or special expertise about the student
2. Prior to any transition IEP meeting, the ES contacts both the parents and the student to explain what transition services are and the purpose of the transition IEP meeting and to strongly urge parents and student to attend. A written notice of the meeting is also delivered to the parents and the student, which indicates:
  - a. that the purpose of the meeting is, for a student age 16 (or younger if the IEP Team determines it appropriate), the consideration of post-secondary goals and transition services and a statement of interagency responsibilities

- and needed linkages;
- b. that the student is invited and urged to come to the meeting. If the student does not attend his/her transition IEP meeting, the ES or special education teacher shares the results of the transition meeting, solicits the student's input and ensures that the student's preferences and interests are considered in the transition plan and activities; and
  - c. that any agencies (usually the Division of Vocational Rehabilitation) that may be providing services will also be invited to send a representative. With the consent of the parents (or of a student who has reached the age of majority) the ES also will invite a representative of any agency likely to be responsible for providing or paying for transition services.
3. If the parents are unable to attend the IEP meeting after at least three meaningful attempts to schedule the meeting when the parents can attend, the ES uses the following procedures to provide meaningful alternative opportunity for parental participation:
- a. The IEP Team will hold the meeting as scheduled, without the parents.
  - b. The ES records all relevant information discussed at the meeting and meets with the parents to share results of the initial meeting, solicit parent input, and secure parent approval for the final plan. For this meeting, the ES may invite the parents to the school at a later date, conduct the meeting by phone, or visit the parents at home or work.
  - c. If this is the initial IEP meeting, the ES will also obtain written parental consent for initial provision of services at this time.
4. The ES will document all attempts to include the parents. Documentation will include:
- a. dated copies of correspondence sent to the parents and any responses received;
  - b. detailed records of telephone calls, including the date, time, name of person who placed the call, and the results; detailed records of visits made to the parent's home or place of employment, and the results of those visits.
5. The ES ensures that parents are able to understand the procedures for IEP development and are able to actively participate in decision-making. Committee members speak clearly, and refrain from using educational and medical jargon. Parent(s) are encouraged to ask questions and offer information.

In addition, all communication with parents, whether oral or written, is in the parents' preferred language. In the cases of parents who need an interpreter or

other facilitator to participate (e.g., a parent who is deaf or whose native language is other than English or Samoan), such services will be provided to parents at no cost.

The ES will give parents a copy of the completed IEP at no cost to the parents.

6. Following an IEP Team meeting that decides on changes to the IEP, the parent(s) of a student with a disability and ASDOE Special Education Division may agree to make those changes in a written document instead of in a second meeting. If such an agreement is reached, ASDOE Special Education Division ensures that the IEP Team members are informed of those changes. The IEP may be changed through amendment, either at a full IEP Team meeting, or in written document, instead of redrafting the entire IEP. Parents will always be provided with a revised copy of the IEP that includes such amendments.

#### F. Developing, Reviewing and Revising the IEP

In the initial IEP meeting and in subsequent reviews and revisions, the IEP Team considers:

1. In general:
  - a. the strengths of the student;
  - b. The concerns of the parents for enhancing the education of their child
  - c. the results of the initial or most recent evaluation of the student; and,
  - d. the academic, developmental and functional needs of the student.
2. Special factors: The IEP team must:
  - a. in the case of a student whose behavior impedes his or her learning or that of others, consider, as appropriate, strategies including positive behavioral interventions and supports and other strategies to address that behavior.
  - b. in the case of a student with limited English proficiency, consider the language needs of the student as such needs relate to the student's IEP.
  - c. in the case of a student who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP Team determines that instruction in Braille is not appropriate for the student. Such a decision could only be made after an evaluation of the student's reading and writing skills, needs, and appropriate reading and writing media options (including an evaluation of the student's future needs for instruction in Braille or the use of Braille).
  - d. consider the communication needs of the student. In the case of a student

who is deaf or hearing impaired, consider the student's language and communication needs, opportunities for direct communications with peers and school personnel (in the student's language and communication mode), academic level and full range of needs including opportunities for direct instruction in the student's language and communication mode.

- e. consider whether the student requires assistive technology devices and services. If the IEP Team determines that a student needs a particular device or service (including an intervention, accommodation, or other program modification), in order for the student to receive FAPE, the IEP Team will include a statement to that effect in the student's IEP.
  - f. consider whether the student requires ESY services to ensure the provision of FAPE. If the IEP Team determines that a student is eligible for ESY services, an ESY Addendum will be completed. For more information see Appendix C.
  - g. The general education teacher of a student with a disability participates as a member of the IEP Team in the development, review and revision of the IEP. This includes assisting in determining appropriate positive behavioral interventions and strategies for the student and any supplementary aids and services, program modifications and supports for school personnel that will be provided for the student.
3. The ASDOE Special Education Division ensures that no personnel will require parents of eligible students with disabilities to obtain a prescription for substances identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act as a condition of attending school, receiving an evaluation (Evaluation & Determination of Eligibility, Section III), or receiving services. This does not prevent ASDOE Special Education Division personnel from consulting or sharing classroom-based observations with parents or guardians regarding a student's academic and functional performance, or behavior, classroom or school, or regarding the need for evaluation for special education or related services.

G. Content of the IEP. Each IEP includes:

1. A statement of the student's present levels of academic achievement and functional performance. These include a description of how the disability affects involvement and progress in the general education curriculum and, for pre-school students as appropriate, how the disability affects the student's participation in appropriate activities.
2. A statement of measurable annual goals including academic and functional goals. These goals focus on meeting the instructional needs of the student that result from the student's disability to enable the student to be involved in and make progress in the general education curriculum; and meeting each of the



student's other educational needs that result from the student's disability.

3. The IEP also contains a description of how the student's progress toward his/her annual goals will be measured. Short-term objectives or benchmarks include appropriate and objective criteria, evaluation procedures and schedules for determining whether the objectives are being achieved and progress is being made toward annual goals.
4. A statement of the specific special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the student or on behalf of the student, and a statement of the program modifications or supports for school personnel that will be provided to the student. The statement of services contained in the IEP will include the following information:
  - a. all of the special education and related services and supplementary aids and services needed by the student to advance appropriately toward attaining the annual goals;
  - b. what will be provided for the student to be involved and progress in the general education curriculum; and to participate in extracurricular and other nonacademic activities;
  - c. ASDOE Special Education Division will take steps, including the provision of supplementary aids and services determined appropriate and necessary by the student's IEP Team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford students with disabilities an equal opportunity for participation in those services and activities.
    - i. Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the public agencies and assistance in making outside employment available.
  - d. the projected starting date for services and modifications and the anticipated duration for each service;
  - e. clear specification of the frequency (e.g. number of times per week) and intensity (e.g. number of hours per session) and location of each service
5. The IEP will include all special education and related services, and supplementary aids and services needed by the student. All educational services are provided by ASDOE Special Education Division or through other

agencies, as identified by ASDOE.

6. The extent, if any, to which the student will not participate with nondisabled students in the general education classroom.
7. A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the student on ASDOE Special Education Division assessments.
  - a. In general, students with disabilities are included in the ASDOE Special Education Division assessment program, with appropriate accommodations where necessary. Each IEP contains a statement of any individual modifications that are needed for that student to participate in these assessments of achievement.
  - b. If the IEP Team determines that the student must take an alternate assessment instead of a particular regular ASDOE Special Education Division assessment of student achievement, then the IEP will contain a statement of why:
    - i. the student cannot participate in the regular assessment; and
    - ii. the particular alternate assessment selected is appropriate for the student.
  - c. The IEP will contain a description of benchmarks or short-term objectives for students with disabilities who take alternate assessments that are aligned to alternate achievement standards.
8. A statement of how parents will be regularly informed of the progress of their student with disabilities, and the extent to which that progress is sufficient to enable the student to achieve the goals by the end of the year. The IEP will contain a description of how the student's parents will be regularly informed (by such means as periodic report cards) of the progress of their student toward meeting his or her annual goals. Parents of students with disabilities will be informed of their student's progress at least as frequently as parents of nondisabled students.

A description of transition services:

- a. Beginning not later than the first IEP to be in effect when the student turns 16 (or younger if determined appropriate by the IEP Team), and updated annually thereafter, the IEP includes:
  - i. appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and

- ii. a statement of transition services (including courses of study) needed to assist the student in reaching those goals, including, when appropriate, a statement of each public agency's responsibilities and any needed linkages, before the student leaves the school setting.
  - b. Transition services are a coordinated set of activities for a student with a disability, and designed within a results-oriented process that is focused on improving the academic and functional achievement of the student with a disability to facilitate the student's movement from school to post-school activities, including:
    - i. instruction
    - ii. community experiences
    - iii. employment
    - iv. related services
    - v. adult living
    - vi. if appropriate, acquisition of daily living skills and provision of a functional vocational evaluation
  - c. If a participating agency responsible for transition services fails to provide agreed-upon transition services contained in the IEP, ASDOE Special Education Division will, as soon as possible, initiate a meeting for the purpose of identifying alternative strategies to meet the transition objectives and, if necessary, revise the student's IEP. Nothing in this part relieves any participating agency, including the vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to students with disabilities who meet their eligibility criteria.
  - d. Beginning not later than one year before the student reaches the age of majority under AS Code annotated Chapter 16 (Special Education), the IEP will contain a statement that the student has been informed of his or her rights that will transfer to the student on reaching the age of majority (see Procedural Safeguards, Section VI, for more information).
- 9. No information is required for the IEP beyond that explicitly required in IDEA statute for evaluations, eligibility determinations, IEPs, and educational placements. If information is included under one component of a student's IEP, it does not have to be repeated in another component.

#### H. Students in Private Schools

ASDOE Special Education Division is responsible for locating, identifying, and

evaluating all children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in American Samoa. See Section X: Private Schools for requirements related to Parentally-Placed Private School Student Procedures including Proportionate Share.

Students Referred to or Placed in Private Schools. Currently, all of the private schools on the island provide a general education. Students placed by their parents in private schools may receive equitable services from ASDOE Special Education Division in accordance with the Services Plan negotiated for individual students attending private schools (see full description of private school policies and procedures, as well as details of Services Plans, in Private Schools, Section X).

1. If this status were to change, a student to be placed by the ASDOE Special Education Division in a private school would have an IEP developed prior to placement in accordance with all of the regulations pertaining to IEPs: ASDOE Special Education Division would initiate and conduct an IEP meeting for any eligible student before referring that student to a private school or facility. ASDOE Special Education Division would ensure the participation of a representative of the private school or facility, but if the representative cannot attend, ASDOE Special Education Division would use other methods to ensure private school or facility participation such as individual or conference telephone calls.
2. If this status were to change and ASDOE Special Education Division elected to place a student in a private school, ASDOE Special Education Division may permit the private school to conduct meetings to review and revise the IEP. ASDOE Special Education Division would ensure that parents and a representative of ASDOE Special Education Division would be present at all meetings in which decisions about the IEP are to be made. Further, parents and a representative of ASDOE Special Education Division would have to agree to any proposed changes before such changes are implemented. ASDOE remains responsible for FAPE.
3. Even if a private school implements a student's IEP, responsibility for compliance remains with the ASDOE Special Education Division.

#### I. IEPs for Youth with Disabilities in Adult Prisons

1. It is the policy of ASDOE Special Education Division, with respect to youth 18 to 21 incarcerated as adults in adult correctional facilities, that special education services will not be provided to those individuals if they:
  - a. were not actually identified as being a student with a disability in their last educational placement, and
  - b. did not have an IEP under Part B of the Act.

2. With respect to youth 18 to 21 incarcerated as adults in adult correctional facilities who did have an IEP in their last educational placement, and did not receive a regular diploma, special education and related services will be provided with the following exceptions:
  - a. the requirement for participation in general assessments does not apply.
  - b. transition planning and transition services do not apply if the student's eligibility would cease before she/he would be eligible to be released from prison, based on consideration of the individual's sentence and eligibility for early release.
3. The IEP Team of a youth with a disability convicted as an adult under the AS Code of Law and incarcerated in an adult prison, may modify the student's IEP or placement if ASDOE Special Education Division has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated. The requirements for IEP meetings, consideration of progress in the general curriculum and least restrictive environment (LRE) do not apply.

#### J. Monitoring/Accountability

ASDOE Special Education Division provides special education and related services to each eligible student with a disability in accordance with the student's IEP and makes a good faith effort to assist the student to achieve the goals and objectives or benchmarks listed in that IEP.

1. Inclusion of Duration of Services in the IEP:
  - a. Procedures for Compliance Monitoring Team: Prior to visiting selected schools for monitoring, the monitoring team uses an IEP Review Checklist to conduct the reviews of files. On the specific requirement that IEPs include the duration of special education and related services, the team will seek the following evidence in the files before making a decision:
    - i. Beginning Date: date(s) indicating when each service identified in the IEP will begin;
    - ii. Frequency of services: a statement indicating how often each service identified in the IEP will be provided;
    - iii. Location of services: the location where each service identified in the IEP will be provided;
    - iv. Duration of services: a time frame indicating how long each service identified in the IEP will be provided.

If any of these items are not clearly expressed in the IEP, the Compliance

monitoring team will identify this specific requirement of the law as a noncompliance.

- b. Procedures for IEP Team: All special education and related services included in the IEP will state:
  - i. Beginning Date (Refers to the date when each service indicated in the IEP will begin): Clearly indicate the beginning date of each service indicated in the IEP.
  - ii. Frequency of services (Refers to how often each service indicated in the IEP will be provided): Include in the IEP how often each service will be provided and the duration of each session. Examples of how to document frequency of services: 2 sessions a week for 30 minutes a session; 4 sessions a month for 30 minutes a session; 5 times weekly, 600 minutes a week; etc.
  - iii. Location of services: (Refers to where the student will be receiving each service indicated in the IEP): Indicate where each service will be provided. Examples of location are regular class, special class, across all environments, separate facility (describe separate facility), etc.
  - iv. Duration of services: (Refers to how long the school will continue providing each service): Indicate how long each service will be provided. Examples of duration are six- week period, a semester, the duration of the school year, etc.

If any of these items are not clearly expressed in the IEP, the monitoring team will identify this specific requirement of the law as noncompliance.

## **SECTION V: PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT**

### Policy Statement

Section 2 of the American Samoa Special Education Act of 1977 was amended in 2000 to read:

“To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, shall be educated with children who do not have disabilities and that special classes, separate schooling or other removal of children with disabilities from the regular classroom environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplemental aids and services cannot be achieved satisfactorily. Special education and related services shall be provided to a child with a disability in accordance with the child’s Individualized Education Plan (IEP). An IEP shall be developed, reviewed and revised at least annually in accordance with all Federal mandates.”

It is the policy of the American Samoa Department of Education that public agencies adopt and use the procedures set forth below to place students, including preschool children with disabilities, in special education programs. Services will be age-appropriate, occur close to home, preferably within the environment or school of the student if not disabled unless the IEP requires some other arrangement, and involve maximum integration with non-disabled peers. The integration shall occur across academic, social, extra-curricular and community aspects of the school program. ASDOE Special Education Division is a unitary SEA/LEA and does not distribute funds based on the type of setting where a student is served.

### Implementation Procedures

#### A. Responsibility for Placement

The placement decision is made at the conclusion of the IEP meeting. This decision will be made by the IEP Team, which is a group of people including the parents who are knowledgeable about the child, the meaning of the evaluation data and the placement options.

The Education Specialist (ES) requests the parents’ signature on the IEP Team recommendation for initial provision of services. If there is a disagreement between the parents and ASDOE Special Education Division over the provision of services, a due process hearing may be requested. The due process hearing is initiated by either the parent or ASDOE Special Education Division. ASDOE Special Education Division will not change the student’s placement, until the disagreement is resolved, unless both parties agree (see detail in Procedural Safeguards, Section VI).

#### B. General Placement Procedures

1. Placement on individual basis: Placement decisions are made at least annually and based on the student’s IEP.
2. Consideration of harmful effects: In selecting the placement, consideration is

given to any potential harmful effect on the student or on the quality of services which he or she needs.

3. Removal from general education environment: Special classes, separate schooling, or other removal of eligible students from the general educational environment occurs only when the nature or severity of the disability is such that education in the general education environment with the use of supplementary aids and services cannot be achieved satisfactorily. A student with a disability is not removed from education in an age-appropriate general education classroom solely because of needed modifications in the general curriculum.
4. Participation in non-academic and extra-curricular activities: Eligible students participate with other students in non-academic and extracurricular services and activities (including meals and recess periods; counseling services, athletics, transportation, etc.) to the maximum extent appropriate to each student's needs. The ASDOE Special Education Division ensures that each student with a disability has the supplementary aids and services determined by the student's IEP Team to be appropriate and necessary for the student to participate in nonacademic settings.
5. The IEP Team will justify on the IEP the need for special education services which are more restrictive than full-time services within the general education classroom.

#### C. Continuum of Program Options

Unless the IEP requires some other arrangement, the student is educated in the school that she or he would attend if nondisabled.

1. General education classroom with support from the special education teachers: all instruction is provided by the general education teacher.
2. General education classroom with instruction provided by both the general education teacher and the special education teacher; co-teaching as prescribed by the IEP but no pull-out.
3. General education classroom with instruction provided by both the general education teacher and the special education teacher; pull-out is less than 20% of the school day.
4. General education classroom with instruction provided by both the general education teacher and the special education teacher; pull-out is 20 - 60% of the school day.
5. General education classroom with instruction provided by the general education teacher, but pull-out by the special education teacher occurs more than 60% of the school day.



6. General education school with instruction in a special education classroom and participation in nonacademic programs as prescribed by the IEP.
7. Home/hospital instruction.

D. Public or Private Institutions

American Samoa has no public or private institutions. [IDEA’s definition of “institutions” places of education that are not public or private schools, and not jail in the case of a student with a disability who is incarcerated stateside, educational programs may be set up in hospitals, mental institutions, or specialized schools not under the jurisdiction of the SEA.]

E. Information and Technical Assistance

The ASDOE Special Education Division carries out activities to ensure that teachers and administrators in all schools are fully informed regarding their responsibilities in ensuring placement in the least restrictive environment. Training and technical assistance are provided to assist each school’s personnel in complying with the LRE requirements.

F. Monitoring

The ASDOE Special Education Division collects data (e.g., placement justifications) to ensure that each school serving students with disabilities is in compliance with the procedures outlined in this section regarding placement in the least restrictive environment. The ASDOE Special Education Division will also assist any school in planning and implementing any necessary corrective actions resulting from the monitoring activities.

## SECTION VI: PROCEDURAL SAFEGUARDS

### Policy Statement

American Samoa has in effect procedural safeguards that guarantee the rights of students with disabilities and their parents to decide regarding the identification, evaluation, education placement and the provision of a free appropriate public education to students with disabilities. The ASDOE Special Education Division ensures that these rights are protected by each public agency involved in the provision of special education and related services, through Interagency Agreements with the Department of Health, Department of Human and Social Services, and the LBJ Tropical Medical Center. ASDOE Special Education Division monitors those agencies' implementation of procedural safeguards through exercise of its general supervisory responsibilities.

Model forms are available for parents, public agencies and the public to log and report complaints. Implementation Procedures

#### A. Parent Opportunity to Examine Records and Participate in Meetings

The parents of a student with a disability have the opportunity to inspect and review all education records and to participate in meetings with respect to the identification, evaluation and educational placement of the student, and the provision of a free appropriate public education to the student. This right of access is discussed in greater detail in Confidentiality (Section VIII).

Parents are members of the teams that make decisions on the identification, evaluation and educational placement of their student, and on the provision of FAPE to their student. ASDOE Special Education Division makes reasonable efforts to ensure that the parents understand, and are able to participate in, any group discussions relating to the educational placement of their child, including arranging for an interpreter for parents with deafness, or whose native language is other than English or Samoan.

Notice and procedures, described in detail in IEPs, Section IV, are provided to parents to ensure they are included as members of teams, and have the opportunity to participate in meetings and decisions. If parents cannot participate in a meeting in which a decision is to be made relating to the educational placement of their child, ASDOE Special Education Division uses other methods to ensure their participation, including telephone calls, electronic mails and home visits. A placement decision may be made without the involvement of the parents, if ASDOE Special Education Division was unable to obtain the parents' participation. In this case, ASDOE Special Education Division will maintain a record of its attempts to involve the parents (see IEPs, Section IV, and LRE, Section III, for more detail).

#### B. Independent Educational Evaluation

1. ASDOE Special Education Division provides parents upon request for an independent evaluation, information about where an independent evaluation may

be obtained and the agency criteria applicable for independent evaluation. An independent educational evaluation is an assessment conducted by a qualified examiner who is not employed by the ASDOE Special Education Division.

2. A parent is entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees:
  - a. if the parent provides written disagreement with the evaluation provided by ASDOE Special Education Division and if ASDOE Special Education Division agrees with the parent; or
  - b. if the parent gives written notice of disagreement with the evaluation provided by ASDOE Special Education Division; ASDOE Special Education Division disagrees with the parent and files a due process complaint to request a hearing within 10 days of the written notice; and the hearing officer decides that the parent was correct.
3. If ASDOE Special Education Division files a due process complaint notice to request a hearing and the final decision is that ASDOE Special Education Division's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.
4. If a parent requests an independent educational evaluation, ASDOE Special Education Division may ask the parent why he or she objects to the public evaluation. However, the explanation by the parent is not required and ASDOE Special Education Division will not unreasonably delay either providing the independent educational evaluation at public expense or filing a due process complaint to request a due process hearing to defend the public evaluation.
5. Whenever the independent educational evaluation is conducted at public expense, the independent educational assessment will be conducted consistent with the criteria which governed the original assessment, including the location of the assessment and the qualifications of the examiner(s), to the extent those criteria are consistent with the parent's right to an independent educational evaluation.
6. If a hearing officer requests an independent educational evaluation as part of a hearing on a due process complaint, the cost of the evaluation will be at public expense.
7. A parent has the right to obtain a private educational assessment at his or her own expense. If the parent obtains an independent educational evaluation at public expense or shares with the public agency the results of any independent or private assessment, these results:
  - a. will be considered by ASDOE Special Education Division in regard to any decision made with respect to the provision of a free appropriate public

education; and

- b. may be presented as evidence at a due process hearing.

C. Notice to Parents: Written Prior Notice

- 1. ASDOE Special Education Division provides prior written notice to parents, guardians, or surrogate parents of a student with a disability or suspected of having a disability prior to any of the following occasions:

- a. when ASDOE Special Education Division proposes to initiate or change the identification, assessment, or educational placement of the student, or proposes to initiate or change the provision of a free appropriate public education to the student;
- b. when ASDOE Special Education Division refuses to initiate or change the identification, assessment, or educational placement of the student or refuses the provision of a free appropriate public education to the student. (Graduation from high school with a regular diploma constitutes a change in placement.)

- 2. The notice is:

- a. given to parents a reasonable time prior to ASDOE Special Education Division taking the proposed action;
- b. written in both Samoan and English and provided in the native language or other mode of communication used by the parents whenever necessary to ensure full and effective communication of the content of the notice;
- c. if the native language or other mode of communication of the parent is not a written language, ASDOE Special Education Division ensures that the notice is translated orally or by other means to the parent in his or her native language or other mode of communication; that the parent understands the content of the notice; and that there is written evidence that these requirements have been met; and
- d. made available electronically to parents who elect that option, when ASDOE Special Education Division has electronic options available.

- 3. The notice includes:

- a. a description of the action proposed or refused by ASDOE Special Education Division, and an explanation of why ASDOE Special Education Division proposes or refuses to take the action;
- b. a description of each evaluation procedure, test, record or report used as a basis for the action;

- c. a description of other options that the IEP Team considered and the reasons why those options were rejected; and a description of other factors that are relevant to the agency's proposal or refusal;
- d. a full explanation of all the procedural safeguards available to the parents under the IDEA, including, if this is not an initial referral for evaluation, how they can obtain a copy of the description of those procedural safeguards; and
- e. sources for parents to contact to obtain assistance in understanding the procedural safeguards provisions.

D. Notice to Parents: Procedural Safeguards Notice

1. A copy of the procedural safeguards is given to the parents only one time a school year, except that a copy also will be given to the parents;
  - a. upon initial referral for evaluation;
  - b. upon each notification of an individualized education program meeting;
  - c. upon reevaluation of the student;
  - d. upon receipt of a request for due process hearing;
  - e. in accordance with the discipline procedures;
  - f. upon request by a parent.
2. The notice is written in both Samoan and English and provided in the native language or other mode of communication used by the parents whenever necessary to ensure full and effective communication of the content of the notice, and contains a full explanation of the procedural safeguards available to parents, relating to:
  - a. independent educational evaluation
  - b. parental consent
  - c. opportunity to present and resolve complaints through the due process complaint and AS complaint procedures, including—
    - i. how to file a complaint
    - ii. the time period in which to file a complaint
    - iii. the opportunity for ASDOE Special Education Division to resolve the complaint;

- iv. resolution meetings; and
  - v. the difference between the due process complaint and the AS complaint procedures, including jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures
- d. access to educational records
  - e. prior written notice
  - f. student's placement during pendency of due process proceedings
  - g. requirements for placement by parents of students in private schools at public expense
  - h. civil actions including the time period in which to file those actions
  - i. attorney's fees
  - j. procedures for students who are subject to placement in an interim alternative educational setting
  - k. hearing on due process complaints, including requirements for disclosure of evaluation results and recommendations
  - l. availability of mediation

#### E. Parental Consent

1. ASDOE Special Education Division documents when written parental consent is obtained prior to:
  - a. conducting an initial evaluation;
  - b. the initial provision of special education and related services; and
  - c. when conducting a reevaluation, except that if the parents fail to respond to requests for reevaluation, ASDOE Special Education Division documents its repeated attempts to obtain that consent and proceeds with the reevaluation.
2. Except as required in 1, above, ASDOE Special Education Division will not use a parent's refusal to consent to one service or activity as the basis for denying the parent or student any other service, benefit or activity.
3. Consent for initial evaluation will not be construed as consent for initial placement.

4. Parental consent is not required before reviewing existing data as part of an evaluation or a reevaluation; or before administering a test or other evaluation that is administered to all students unless prior consent is required of parents of all students.
5. If the parents of a student with a disability refuse consent or fail to respond to a request for initial evaluation or reevaluation, ASDOE Special Education Division may, but is not required to, pursue those evaluations using procedural safeguards procedures, if appropriate, except to the extent inconsistent with ASDOE Special Education Division policies relating to parental consent. ASDOE Special Education Division does not fail to meet its obligations if it decides not to pursue the evaluation in such an instance.
6. ASDOE Special Education Division pursues an evaluation for a student who is a ward of the court, if parents cannot be found after reasonable attempts to find them. If a court has assigned the responsibility for such consent to another individual, ASDOE Special Education Division will request consent from that individual in keeping with this section.
7. ASDOE Special Education Division's repeated attempts to obtain parental consent for reevaluation (1c above) are consistent with those for parent participation described in IEPs, Section IV.

#### F. Mediation

ASDOE ensures that procedures are established and implemented to allow parties to disputes involving any matter under this part, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process.

ASDOE Special Education Division's mediation system is available to parties in disputes involving any matter in the identification, evaluation or educational placement of a student, or the provision of a free appropriate public education to such student.

1. Mediation is voluntary on the part of the parties, and is not used to deny or delay a parent's right to a due process hearing on the parent's due process complaint, or to deny any other rights afforded under this part, and the cost of the mediation process, including any costs of meeting(s), will be borne by ASDOE Special Education Division.
2. ASDOE Special Education Division maintains procedures to offer, to parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party—
  - a. who is under contract with an appropriate alternative dispute resolution entity, or from a parent training and information center or community parent resource center; and
  - b. who would explain the benefits of, and encourage the use of, the mediation

process to the parents.

3. Mediations are conducted by qualified and impartial mediators trained in effective mediation techniques, and ASDOE Special Education Division maintains a list of qualified mediators knowledgeable in laws and regulations relating to the provision of special education and related services. ASDOE Special Education Division selects mediators on a random, rotational, or other impartial basis.
4. Each mediation session is scheduled in a timely manner and held in a location convenient to both parties; both parties are involved in selecting the mediator and agree with the selection. If the parties resolve a dispute through the mediation process, the parties execute a legally binding agreement that
  - a. sets forth that resolution;
  - b. states that all discussions that occurred during the mediation process are confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any Federal court or State court of a State receiving assistance under this part;
  - c. is signed by both the parent and a representative of the agency who has the authority to bind such agency; and
  - d. is enforceable in the AS courts.
5. Any individual who serves as a mediator is not an employee of ASDOE Special Education Division involved in the education or care of the student and does not have a personal or professional interest that conflicts with the person's objectivity.

#### G. ASDOE Special Education Division Complaint Procedures

1. ASDOE Special Education Division has in place written procedures for resolving any complaint, including one from an organization or individual that asserts that a public agency serving students with disabilities under IDEA has violated a requirement.
2. ASDOE Special Education Division ensures awareness of complaint procedures by widely disseminating them to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, and other appropriate entities.
  - a. An organization or individual may file a complaint. The complaint must be written and signed, and include
    - i. a statement that a public agency has violated a requirement of Part B of the Act or of this part;
    - ii. the facts on which the statement is based;



- iii. the signature and contact information for the complainant; and
  - iv. if alleging violations with respect to a specific child—
    - a. the name and address of the residence of the child;
    - b. the name of the school the child is attending;
    - c. a description of the nature of the problem of the child, including facts relating to the problem; and
    - d. a proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed
3. The written, signed complaint must be received by ASDOE Special Education Division no more than one year after a violation is alleged, and the party filing the complaint must forward a copy of the complaint to the public agency serving the child at the same time the party files the complaint with ASDOE Special Education Division.
4. To respond to a complaint, within 60 days after a complaint is filed, ASDOE Special Education Division will:
- a. Carry out an independent on-site investigation, if ASDOE Special Education Division determines that an investigation is necessary.
  - b. Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint.
  - c. Provide the public agency with the opportunity to respond to the complaint, including, at a minimum—
    - i. at the discretion of ASDOE Special Education Division, a proposal to resolve the complaint; and
    - ii. an opportunity for a parent who has filed a complaint and ASDOE Special Education Division to voluntarily engage in mediation.
  - d. Review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part B of IDEA.
  - e. Issue a written decision to the complainant that addresses each allegation in the complaint. This written decision will contain:
    - i. findings of fact and conclusions;
    - ii. the reasons for ASDOE Special Education Division’s final decision; and

- iii. will include procedures, if needed, for effective implementation of ASDOE Special Education Division’s final decision, including technical assistance activities; negotiations; and corrective actions to achieve compliance.
- 5. ASDOE Special Education Division’s complaint procedures permit an extension of the time limit only if—
  - a. exceptional circumstances exist with respect to a particular complaint; or
  - b. the parent and ASDOE Special Education Division agree to extend the time to engage in mediation
- 6. In resolving a complaint in which ASDOE Special Education Division has found a failure to provide appropriate services, ASDOE Special Education Division will address
  - a. the failure to provide appropriate services, including corrective action appropriate to address the needs of the child; and
  - b. appropriate future provision of services for all children with disabilities.
- 7. If a written complaint is received that is also the subject of a due process hearing under filing a due process complaint or discipline procedures, or contains multiple issues of which one or more are part of that hearing, ASDOE Special Education Division will set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action will be resolved using the time limit and procedures described in B, above.
  - a. If an issue raised in a complaint filed under this section has previously been decided in a due process hearing involving the same parties—
    - i. the due process hearing decision is binding on that issue; and
    - ii. ASDOE Special Education Division will inform the complainant to that effect.
  - b. A complaint alleging a public agency’s failure to implement a due process hearing decision must be resolved by ASDOE Special Education Division.

#### H. Due Process Complaint Procedures

- 1. Parents or a public education agency may file a due process complaint
  - a. after either party proposes to initiate or change the identification, evaluation, or educational placement of the student, or the provision of a free appropriate public education to the student; or

- b. after either party refuses to initiate or change the identification, evaluation, or educational placement of the student, or the provision of a free appropriate public education to the student.
2. The due process complaint alleges a violation that occurred not more than two years before the date the parent or ASDOE Special Education Division knew or should have known about the alleged action.
3. Exceptions to the timeline: The timeline does not apply to a parent if the parent was prevented from filing a due process because—
  - a. ASDOE Special Education Division or its agents said the issue had been resolved when it had not; or
  - b. information was withheld from the parent that was required to be provided to the parent.
4. At parents' request or when a hearing is initiated, ASDOE Special Education Division will inform parents of the availability of mediation and any free or low-cost legal or other relevant services available in AS.
5. Parents of a student with a disability, or the attorney representing that student, must provide written notice to file a due process complaint, including information on the student (name, address, school), description of problem (including important relevant facts), and a proposed resolution of the problem. A copy of this complaint must be forwarded to ASDOE Special Education Division.
6. Within five (5) days of receipt of the due process complaint the hearing officer must make a determination on the face of the due process complaint of whether it meets the requirements of paragraph G.5 (above), and will immediately notify the parties in writing of that determination.
7. The due process complaint will be deemed sufficient unless the party receiving the due process complaint notifies the hearing officer and the other party in writing, within 15 days of receipt of the due process complaint, that the receiving party believes the due process complaint does not meet the requirements.
8. A party may amend its due process complaint only if –
  - a. the other party consents in writing to the amendment and is given the opportunity to resolve the due process complaint through a resolution meeting as described below; or
  - b. the hearing officer grants permission not later than five (5) days before the due process hearing begins.
9. If the request for a due process hearing is amended, timelines for setting and completing (another) resolution meeting begin again with the date the amended

request is filed.

10. If ASDOE Special Education Division has not sent a prior written notice to the parent regarding the subject matter contained in the parent's due process complaint, ASDOE Special Education Division will, within 10 days of receiving the due process complaint, send to the parent a response that contains an explanation of why the agency proposed or refused to take the action raised in the due process complaint, including:
  - a. a description of other options that the IEP Team considered and the reasons why those options were rejected;
  - b. a description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and
  - c. a description of the other factors that are relevant to the agency's proposed or refused action.
11. A response by ASDOE Special Education Division does not preclude ASDOE Special Education Division from asserting that the parent's due process complaint was insufficient, where appropriate.
12. The party receiving a due process complaint must, within 10 days of receiving the due process complaint, send to the other party a response that specifically addresses the issues raised in the due process complaint.
13. Resolution Meeting
  - a. Within 15 days of receiving notice of the parent's due process complaint, and prior to the initiation of a due process hearing, ASDOE Special Education Division will convene a meeting with the parent and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the due process complaint.
  - b. The parent and ASDOE Special Education Division determine the relevant members of the IEP Team who will attend the meeting.
  - c. This meeting includes a representative of the ASDOE Special Education Division who has decision-making authority on behalf of that agency, and will not include an attorney of ASDOE Special Education Division unless the parent is accompanied by an attorney.
  - d. The purpose of the meeting is for the parent of the student to discuss the due process complaint, and the facts that form the basis of the due process complaint, so that ASDOE Special Education Division has the opportunity to resolve the dispute that is the basis for the due process complaint.
  - e. The meeting need not be held if—

- i. the parent and ASDOE Special Education Division agree in writing to waive the meeting; or
  - ii. the parent and ASDOE Special Education Division agree to use the mediation process
- f. A resolution meeting is not an administrative hearing or a judicial action.

14. Resolution period.

- a. If ASDOE Special Education Division has not resolved the due process complaint to the satisfaction of the parent within 30 days of the receipt of the due process complaint, the due process hearing may occur.
- b. The timeline for issuing a final decision under the resolution process begins at the expiration of this 30-day period.
- c. Except where the parties have jointly agreed to waive the resolution process or to use mediation, the failure of the parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.
- d. If ASDOE Special Education Division is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented using the procedures in IEPs, Section IV), ASDOE Special Education Division may, at the conclusion of the 30-day period, request that a hearing officer dismiss the parent's due process complaint.
- e. If ASDOE Special Education Division fails to hold the resolution meeting within 15 days of receiving notice of a parent's due process complaint, or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline.
- f. Adjustments to 30-day resolution period. The 45-day timeline for the due process hearing starts the day after one of the following events:
  - i. both parties agree in writing to waive the resolution meeting;
  - ii. either the mediation or resolution meeting starts, but before the end of the 30-day period the parties agree in writing that no agreement is possible;
  - iii. if both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later the parent or public agency withdraws from the mediation process.
- g. If a resolution to the dispute is reached at the meeting, the parties will

execute a legally binding written agreement that is signed by both the parent and a representative of the ASDOE Special Education Division with the authority to bind the agency and is enforceable in court. If the parties execute an agreement either party may void the agreement within three (3) business days.

#### 15. Impartial due process hearing

- a. Whenever a due process complaint is received, the parents or ASDOE Special Education Division involved in the dispute has an opportunity for an impartial due process hearing.
- b. The hearing must be conducted by ASDOE Special Education Division as determined under written policy of ASDOE Special Education Division and AS law.
- c. All hearings requested in AS by either parents or public agencies will be conducted by an independent and impartial hearing officer appointed by the ASDOE Special Education Division.
- d. An impartial hearing officer will be appointed by the Assistant Director of the ASDOE Special Education Division from a list of qualified persons established and routinely updated which includes a statement of the qualifications of each such person.
- e. An impartial hearing officer in American Samoa must possess knowledge of, and the ability to understand, the provisions of the Act, Federal and State regulations pertaining to the Act, and legal interpretations of the Act by Federal and State courts; must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.
- f. The following persons will be deemed by the Director as unqualified for appointment as an impartial hearing officer:
  - i. a person who is an employee of the public agency that is involved in the education or care of the student;
  - ii. a person having a personal or professional interest that would conflict with his or her objectivity in the hearing.
- g. A person who is qualified to conduct a hearing is not an employee of ASDOE Special Education Division solely because he or she is paid by the agency to serve as a hearing officer.
- h. The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint,

unless the other party agrees otherwise.

16. Hearing Rights.

- a. The hearing officer will preside at the hearing and will conduct the proceedings in a fair and impartial manner so that all parties involved in the hearing have an opportunity and be encouraged to present their evidence and testimony.
- b. Hearings will be held at a place and time convenient to the parents and the student involved and will be conducted in the primary language of the parent.
- c. The parents and ASDOE Special Education Division may be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of the student with a disability to the hearing.
- d. Each party has the right to present evidence and testimony, (confront, cross-examine, compel the attendance of witnesses) and has the right to a full and complete listing of persons the other party will have at the hearing.
- e. Either party has the right to prohibit evidence not disclosed at least five (5) business days prior to the hearing. Each party has the opportunity to confront and question all witnesses at the hearing and to compel attendance.
- f. At least five (5) business days prior to a due process hearing, each party will disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing. A hearing officer may bar any party that fails to comply with this section from introducing such evaluations and recommendations at the hearing without the consent of the other party.
- g. An electronic transcript will be made of the hearing and a written or, at the option of the parents, electronic verbatim record of the hearing and findings of fact and decisions. Both the electronic and written transcript will be made available to the parents at no cost.
- h. If the student has not reached the age of majority, the parents have the right to determine if the student will attend the hearing.
- i. The parents have the right to open or close the hearing to the public.
- j. After deleting personally identifiable information, ASDOE Special Education Division will transmit the findings and decisions to the ASDOE Special Education Division Advisory Panel and make the findings and

decisions available to the public.

17. Hearing decisions/Appeal.

The hearing officer renders a final decision. The findings of facts and the final decision will be sent to all parties to the hearing within 45 days after the expiration of the 30-day period or the adjusted time periods.

- a. When the hearing is delayed by uncontrollable circumstances, the hearing officer can grant extensions (for a reasonable number of additional days) after either party to the hearing requests the extension.
- b. Any party aggrieved by the final hearing decision may appeal it to the High Court of American Samoa. In any action brought under this section, the Court will receive the records of the administrative proceedings; hear additional evidence at the request of a party; and, basing its decision on the preponderance of the evidence, will grant the relief that the court determines to be appropriate.
- c. A hearing officer's determination of whether a student received FAPE will be based on substantive grounds.
- d. In matters alleging a procedural violation, a hearing officer may find that a student did not receive a FAPE only if the procedural inadequacies—
  - i. impeded the student's right to a FAPE;
  - ii. significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or
  - iii. caused a deprivation of educational benefit.
- e. Nothing in the procedural safeguards will be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed.

18. Attorney's fees, prohibitions, reductions.

- a. In AS, requests for attorneys' fees under IDEA must be made to the High Court of American Samoa.
- b. Part B funds may not be used to pay attorneys' fees or costs of a party related to an action or proceeding under the procedural safeguards in IDEA.
- c. The High Court of American Samoa awards attorneys' fees as part of the costs—



- i. to the prevailing party who is the parent of a student with a disability;
- ii. to a prevailing party who is the ASDOE Special Education Division.

19. Student's status during proceedings.

- a. Unless otherwise agreed upon by the parents and the ASDOE Special Education Division, the following procedures will apply:
  - i. During the pendency of any administrative or judicial proceeding regarding a due process complaint notice requesting a due process hearing, the student involved in the complaint will remain in his or her current educational placement.
  - ii. If the complaint involves an application for initial admission to public school, the student, with the consent of the parents, must be placed in the public school program until the completion of the proceedings.
  - iii. If the complaint involves an application for initial services from a student who is transitioning from Part C of the Act to Part B and is no longer eligible for Part C services because the student has turned three, ASDOE Special Education Division is not required to provide the Part C services that the student had been receiving. If the student is found eligible for special education and related services under Part B and the parent consents to the initial provision of special education and related services then ASDOE Special Education Division must provide those special education and related services that are not in dispute between the parent and the public agency.
  - iv. If the decision of a hearing officer in a due process hearing agrees with the student's parents that a change of placement is appropriate, that placement must be treated as an agreement between ASDOE Special Education Division and the parents.

I. Policy for Surrogate Parents

1. In AS, "parent" is the natural or adoptive parent or guardian of a student, or a person from the extended family of a student who is acting as a parent. If the parents are not available or known, the ASDOE Special Education Division will determine and assign an individual to act as a surrogate as necessary. In the case of a student who is a ward of the AS, the surrogate parent alternatively may be appointed by the judge overseeing the student's case, provided that that surrogate meets the requirements.

2. When a student is determined to be in need of special education and related services, the parents or guardian or family member(s) acting as parents will be informed that the ASDOE Special Education Division wishes to conduct an individual evaluation of the student. If consent is not forthcoming for initial evaluation, and there is reason to suspect that this is due to the unavailability of the parents or guardian or family member acting as a parent, ASDOE Special Education Division will make written inquiry to the adult in charge of the student's place of residence, as well as to the parents or guardian or family member at their last known address. If as a result of these efforts it is determined that the student is without a parent or guardian or family member acting as a parent, then the Director of ASDOE Special Education Division will file a request for appointment of a surrogate parent with the Director of the ASDOE Special Education Division.
3. Students who are wards of AS have legally assigned surrogate parents. Case management (selection, remuneration and supervision) is delegated by the Court to the Office of the Attorney General and to Family Services of the Department of Human and Social Services. A surrogate parent selected as permitted by law:
  - a. has no personal or professional interest that conflicts with the interest of the student the surrogate parent represents;
  - b. has knowledge and skills that ensure adequate representation of the student, including a functional understanding of the educational rights of students with disabilities; and
  - c. cannot be an employee of a public agency, which is involved in the education or care of the student. (A person who otherwise qualifies to be a surrogate parent is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.)
4. A surrogate parent will represent the student in all matters, meetings and procedures relating to the identification, assessment, educational placement, and the provision of a free appropriate public education.
5. ASDOE Special Education Division will make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after it determines that the student needs a surrogate parent.

J. Transfer of Parental Rights.

When a student with a disability reaches the age of majority on the 18th birthday, parental rights transfer to the student in accordance with AS law, including to those students incarcerated in an adult or juvenile correctional facility, unless the student has been determined under AS law to be incompetent. ASDOE Special Education Division will provide notice of this transfer of parental rights, and of any notice required under Part B, to the student with a disability and the parents.

ASDOE Special Education Division will continue to inform and include both the student and the parents throughout the student's eligibility for special education and related services.

## **SECTION VII: DISCIPLINE PROCEDURES**

### Policy Statement

For students with disabilities whose behavior impedes their learning or the learning of others, strategies, including positive behavioral interventions and supports to address that behavior, will be considered in the development of their IEPs. Students with disabilities may be disciplined for violating a school code of conduct in the same manner as their non-disabled peers. When students with disabilities are removed from the educational setting for disciplinary purposes these removals may also constitute a change in placement for the student.

### Implementation Procedures

- A. Case-by-case determination. School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this section, is appropriate for a child with a disability who violates a code of student conduct.
- B. School personnel under this section may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under 34 CFR § 300.536).
  1. After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, during any subsequent days of removal the public agency must provide services to the extent required under paragraph (D) of this section.
- C. For disciplinary changes in placement that would exceed 10 consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to paragraph (E) of this section, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, except as provided in paragraph (D) of this section.
- D. Services.
  1. A child with a disability who is removed from the child's current placement pursuant to paragraphs (C), or (G) of this section must –
    - a. Continue to receive educational services, as provided in 34 CFR § 300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and

- b. (ii) Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.
2. The services required by paragraph (D)(1), (D)(3), (D)(4), and (D)(5) of this section may be provided in an interim alternative educational setting.
3. A public agency is only required to provide services during periods of removal to a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if it provides services to a child without disabilities who is similarly removed.
4. After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, if the current removal is for not more than 10 consecutive school days and is not a change of placement under 34 CFR § 300.536, school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed, as provided in § 300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.
5. If the removal is a change of placement under 34 CFR § 300.536, the child's IEP Team determines appropriate services under paragraph (D)(1) of this section.

E. Manifestation determination.

1. Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine –
  - a. If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
  - b. If the conduct in question was the direct result of the LEA's failure to implement the IEP.
2. The conduct must be determined to be a manifestation of the child's disability if the LEA, the parent, and relevant members of the child's IEP Team determine that a condition in either paragraph (E)(1)(a) or (1)(b) of this section was met.
3. If the LEA, the parent, and relevant members of the child's IEP Team determine the condition described in paragraph (E)(1)(b) of this section was met, the LEA must take immediate steps to remedy those deficiencies.

F. Determination that behavior was a manifestation. If the LEA, the parent, and relevant

members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team must –

1. Either –
    - a. Conduct a functional behavioral assessment, unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or
    - b. If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and
  2. Except as provided in paragraph (G) of this section, return the child to the placement from which the child was removed, unless the parent and the LEA agree to a change of placement as part of the modification of the behavioral intervention plan.
- G. Special circumstances. School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child –
1. Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of an SEA or an LEA;
  2. Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA; or
  3. Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA.
- H. On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the LEA must notify the parents of that decision, and provide the parents the procedural safeguards notice described in 34 CFR § 300.504.
- I. Definitions. For purposes of this section, the following definitions apply:
1. Controlled substance means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).
  2. Illegal drug means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

3. Serious bodily injury has the meaning given the term “serious bodily injury” under paragraph (3) of subsection (H) of section 1365 of title 18, United States Code.
4. Weapon has the meaning given the term “dangerous weapon” under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code.

J. Determination of setting.

1. The child's IEP Team determines the interim alternative educational setting for services under 34 CFR 34 CFR § 300.530(c), (d)(5), and (g).

K. Appeal.

1. The parent of a child with a disability who disagrees with any decision regarding placement under 34 CFR §§ 300.530 and 300.531, or the manifestation determination under 34 CFR § 300.530(e), or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to §§ 300.507 and 300.508(a) and (b).
2. A hearing officer under § 300.511 hears, and makes a determination regarding an appeal under paragraph (1) of this section.
3. In making the determination under, the hearing officer may –
  - a. Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of 34 CFR § 300.530 or that the child's behavior was a manifestation of the child's disability; or
  - b. Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 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 to others.
4. The procedures under paragraphs (2) and (3) of this section may be repeated, if the school believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.
5. Expedited due process hearing.
  - a. Whenever a hearing is requested under this section, the parents or the school involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements of 34 CFR §§ 300.507 and 300.508(a) through (c) and 34 CFR §§ 300.510 through

300.514, except as provided in paragraph (5)(b) through (d) of this section.

- b. ASDOE is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed. The hearing officer must make a determination within 10 school days after the hearing.
  - c. Unless the parents and school agree in writing to waive the resolution meeting described in paragraph (5)(c)(i) of this section, or agree to use the mediation process described in 34 CFR § 300.506 –
    - i. A resolution meeting must occur within seven days of receiving notice of the due process complaint; and
    - ii. The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint.
  - d. ASDOE must ensure that the timelines as modified in paragraph (5)(c) of this section, ASDOE must ensure that the requirements in 34 CFR §§ 300.510 through 300.514 are met.
  - e. The decisions on expedited due process hearings are appealable consistent with 34 CFR § 300.514.
6. When an appeal under 34 CFR § 300.532 has been made by either the parent or the school, the child must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period specified in 34 CFR § 300.530(c) or (g), whichever occurs first, unless the parent and the ASDOE agree otherwise.

L. Protections for children not determined eligible for special education and related services.

1. A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for in this part if the public agency had knowledge (as determined in accordance with paragraph (2) of this section) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.
2. ASDOE or the school must be deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred –
  - a. The parent of the child expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;



- b. The parent of the child requested an evaluation of the child pursuant to 34 CFR §§ 300.300 through 300.311; or
    - c. The teacher of the child, or other personnel of the LEA, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the agency or to other supervisory personnel of the agency.
  3. ASDOE would not be deemed to have knowledge under paragraph (2) of this section if –
    - a. The parent of the child –
      - i. Has not allowed an evaluation of the child pursuant to 34 CFR §§ 300.300 through 300.311; or
      - ii. Has refused services under special education; or
    - b. The child has been evaluated in accordance with 34 CFR §§ 300.300 through 300.311 and determined to not be a child with a disability under this part.
  4. Conditions that apply if no basis of knowledge.
    - a. If ASDOE does not have knowledge that a child is a child with a disability prior to taking disciplinary measures against the child, the child may be subjected to the disciplinary measures applied to children without disabilities who engage in comparable behaviors consistent with paragraph (4)(b)-(d) of this section.
    - b. If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under § 300.530, the evaluation must be conducted in an expedited manner.
    - c. Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.
    - d. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency must provide special education and related services in accordance with this part, including the requirements of §§ 300.530 through 300.536 and section 612(a)(1)(A) of the Act.

M. Referral to and action by law enforcement and judicial authorities.

1. Nothing in this part prohibits an agency from reporting a crime committed by a

child with a disability to appropriate authorities or prevents ASDOE law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and ASDOE law to crimes committed by a child with a disability.

2. Transmittal of records

- a. An agency reporting a crime committed by a child with a disability must ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.
- b. An agency reporting a crime under this section may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

N. Change of placement because of disciplinary removals

1. For purposes of removals of a child with a disability from the child's current educational placement under 34 CFR §§ 300.530 through 300.535, a change of placement occurs if –
  - a. The removal is for more than 10 consecutive school days; or
  - b. The child has been subjected to a series of removals that constitute a pattern –
    - i. Because the series of removals total more than 10 school days in a school year;
    - ii. Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and
    - iii. Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.
  - c. The public agency determines on a case-by-case basis whether a pattern of removals constitutes a change of placement.
  - d. This determination is subject to review through due process and judicial proceedings.

O. ASDOE enforcement mechanisms

1. Notwithstanding 34 CFR §§ 300.506(b)(7) and 300.510(d)(2), which provide for

judicial enforcement of a written agreement reached as a result of mediation or a resolution meeting, there is nothing in this part that would prevent ASDOE from using other mechanisms to seek enforcement of that agreement, provided that use of those mechanisms is not mandatory and does not delay or deny a party the right to seek enforcement of the written agreement in a AS court of competent jurisdiction or in a district court of the United States.

## **SECTION VIII: CONFIDENTIALITY**

### Policy Statement

American Samoa has policies and procedures in effect to ensure that public agencies comply with protecting the confidentiality of personally identifiable information (including educational records) pertaining to students with disabilities. The American Samoa Department of Education (ASDOE) is a unitary SEA/LEA, which informs public schools and other agencies of these procedural safeguard requirements and ensures that they are met.

ASDOE Special Education Division adopts the definitions for the terms “consent,” “evaluation” and “personally identifiable” from those in the implementing regulations for IDEA. ASDOE Special Education Division applies this policy and these procedures to all actions and data relating to child find, identification, evaluation, and services for students with disabilities in American Samoa.

### Implementation Procedures

#### A. Disclosure of Information

ASDOE Special Education Division provides notice that is adequate to fully inform parents about these confidentiality requirements. If the primary language of the parents is not English, ASDOE Special Education Division will provide parents the notice in their native language. The notice will include:

1. the description of the students on whom personally identifiable information is maintained, the types of information sought, the methods ASDOE Special Education Division intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;
2. a summary of the policies and procedures to store, disclose, retain and destroy personally identifiable information; and
3. a full description of the rights of parents and students regarding this information, including those under the implementing regulations of the Family Educational Rights and Privacy Act (FERPA).

The notice will be published and announced throughout AS prior to any major identification, location or evaluation activity.

#### B. Access Rights

1. Parents are granted full and free access to information relating to their child in compliance with Section 444 of the General Education Provisions Act and Part 99 of Title 34 of the Code of Federal Regulations. Where a direct conflict exists relating to educational rights and privacy between AS law and Federal law, Federal law will be followed. The law that gives the greatest protection to the rights and privacy of

parents and students takes precedence in all other cases.

2. ASDOE Special Education Division and each participating agency will permit parents or representatives of the parents to inspect and review any personally identifiable data relating to their student which is collected, maintained, or used. Each participating agency will comply with a parent request to review or inspect personally identifiable data without unnecessary delay and prior to any meeting regarding an IEP, or resolution session, or any hearing relating to the identification, evaluation, and placement of their student, and in no case more than 45 days after the request has been made.
3. The right to inspect and review these records includes: a) the right to a response from each participating agency to reasonable requests for explanations and interpretations of records; b) the right to request that each participating agency provide copies of the records containing the records; and c) the right to have a representative of the parent inspect and review records. If any record includes data on more than one student, parents will have the right to inspect and review only the data relating to their child or to be informed of that specific data.
4. Each participating agency may presume that a parent has authority to inspect and review records relating to his or her student unless the agency has been advised that the parent does not have the authority under applicable AS law governing such matters as guardianship, separation and divorce.
5. Each participating agency will keep a record of parties (excepting parents and authorized agency employees) obtaining access to educational records collected, maintained, or used. These records include the name of the party, the date access was given, and the purpose for which the party was authorized to use the records.
6. Each participating agency will provide parents or representatives of the parents, on request, a list of the types and locations of educational records maintained, or used.
7. Participating agencies will not charge a fee for copies of records made for parents, and will not charge a fee to search for or to retrieve any data collected or maintained for activities described in ASDOE Special Education Division's eligibility documentation.

#### C. Amendment of Student Records

1. Parents who believe that information in the educational records collected, maintained or used under this part is inaccurate or misleading or violates the privacy or other rights of the student may request that the participating agency that maintains the information to amend the information.
2. Upon receiving such a request from a parent, the agency will decide whether to amend the information as requested within a reasonable period of time following receipt of the request. If the agency decides to refuse to amend the information, it

will inform the parent of the refusal and advise the parent of the right to a hearing.

3. ASDOE Special Education Division will, on request, provide an opportunity for a hearing to challenge information in the education records to ensure that it is not inaccurate, misleading or otherwise in violation of the privacy or other rights of the student. Such a hearing will be in accordance with the rules and procedures for due process hearings (see Procedural Safeguards, Section VI).
  - a. If, as a result of that hearing, ASDOE Special Education Division decides that the data are inaccurate, misleading or otherwise in violation of the privacy or other rights of the student, it will amend the data accordingly and inform the parent in writing.
  - b. If, as a result of the hearing, ASDOE Special Education Division decides that the data are not inaccurate, misleading or otherwise in violation of the privacy or other rights of the student, it will inform the parent of the right to place in the records it maintains on the student a statement commenting on the data and setting forth any reasons for disagreeing with the decision of ASDOE Special Education Division.
  - c. Any explanation placed in the record of the student will be maintained by ASDOE Special Education Division as long as the record or contested portion thereof is maintained by ASDOE Special Education Division; and if the records of the student or the contested portion thereof is disclosed by ASDOE Special Education Division to any party, the explanation will also be disclosed to that party.

D. Parent consent

1. Parental consent is obtained before personally identifiable information is disclosed to parties other than officials of participating agencies, unless the information is contained in education records, and the disclosure is authorized without parental consent under FERPA regulations.
2. Parental consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of this part, except that:
  - a. parental consent, or the consent of an eligible student who has reached the age of majority under AS law, is obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services; or
  - b. if a student is enrolled, or is going to enroll, in a private school, parental consent is obtained before any personally identifiable information about the student is released between ASDOE Special Education Division and private school officials.

E. Safeguards

Each participating agency will protect the confidentiality of personally identifiable information at collection, storage, disclosure and destruction stages.

Each participating agency will designate one person to be responsible to ensure the confidentiality of personally identifiable information. Any person collecting or using personally identifiable information will receive training or instruction regarding the ASDOE Special Education Division's policies and procedures set forth in this section. Each participating agency will maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

F. Destruction of Information

Parents will be notified when personally identifiable information collected under this part is no longer needed for instruction. The parents will also be notified that the records will be maintained for five years for compliance reasons. After five years the parents may request destruction of the personally identifiable information, and ASDOE Special Education Division will comply except that a permanent record of a student's name, address, phone number, his/her grades, attendance record, classes attended, grade level completed and year completed may be maintained without time limitation. ASDOE Special Education Division will make a reasonable effort to notify the parents that they have the right to be provided with a copy of any data collected prior to being destroyed.

G. Students' Rights

When a student reaches age 18, the permission or consent required of (and the rights conferred upon) parents regarding educational records will be required of (and conferred upon) the student, except where a physical or mental impairment is determined by law to preclude the transfer of such rights. Notice of this transfer will be made to both parents and student by ASDOE Special Education Division.

H. Enforcement

If a violation of the confidentiality policies set forth in this plan occurs, the participating agency will notify ASDOE Special Education Division at once of such violation(s) and ASDOE Special Education Division will ask the agency for a written plan of correction. Such persons will also be subject to disciplinary action by ASDOE Special Education Division.

I. Disciplinary Information

All personally identifiable information on students with or without disabilities is maintained directly by ASDOE Special Education Division.

ASDOE Special Education Division may require that schools include in the records of

a student with a disability a statement of any current or previous disciplinary action that has been taken against the student and transmit the statement to the same extent that disciplinary information is included in, and transmitted with, the student records of nondisabled students. Such information will be provided only to the extent permitted by FERPA.



## **SECTION IX: TRANSITION FROM PART C**

### Policy Statement

ASDOE Special Education Division has in effect policies and procedures to ensure the smooth transition of children from Part C to Part B programs.

### Implementation Procedures

- A. The ASDOE Special Education Division receives notifications from the Part C officials from the American Samoa Department of Health (Helping Hands office) at least 90 days before the students' third birthdays. This process is managed by the Early Childhood Coordinator (ECC) at the Division of Special Education. The ECC works in partnership with Part C officials to guarantee all students are notified in a timely fashion, so all students transitioning from Part C to Part B have an IEP by their third birthday. This partnership follows the Part C to Part B Transition Interagency Agreement. The ECC works with the Division Assessment team (through the Assessment Coordinator, AC) to ensure the referral, with the parental consent, goes to an Assessment Officer (AO) and then follows the appropriate assessment procedures. The ECC, parent, AC and AO meet to develop an assessment plan.
- B. Process Steps
  1. Part C/Helping Hands sends an invitation to the Part B ECE coordinator for the transition meeting.
  2. The invitation has the child's name, date of birth, parent's names, village, phone numbers and child's disability.
  3. Transition meeting is held at the Part C/Helping Hands office or the child's home.
  4. At the transition meeting, Part C/Helping Hands introduce the parents and child to Part B.
  5. Part C/Helping Hands released the file to Part B.
  6. The file has the copy of the invitation, IFSP and evaluations done by Part C.
  7. Part B's role during transition meeting:
    - a. Give the parents their procedural safeguards
    - b. Explain the Part B ECE program
    - c. Explain the program is 100% full-inclusion
    - d. Explain the placement is the ECE/Head Start Centers
    - e. Explain what to take to ECE/Head Start office to register their child in the

ECE/Head Start program – child’s birth certificate, immunization card, one check stub and parent ID card.

- f. Explain child will most likely be placed at a center in their district near their home
  - i. Explain the three different available ECE/Head Start Centers: Single session centers (Morning 7:15 – 10:45am), Double session centers (Morning session 7:15 – 10:45am), (Afternoon session 10:45 – 2:00pm), and Duration Centers (8am – 2pm)
- g. Give the parent the **Part B consent form** to sign to allowed Part B to evaluate the child for eligibility purposes
8. Once the parent signed the consent form, the Part B ECE coordinator fills out the Referral form and attached the child’s birth certificate and evaluations from Part C/Helping Hands and sent it to assessment.
9. After the transition meeting, the Part B ECE coordinator will enter the data in the transition from C Excel template.
10. The Part B ECE coordinator will call the Eligibility/IEP meeting once the evaluation results are received.
  - a. Send out the written invitations to the initial IEP meeting
11. The Part B ECE Coordinator will facilitate and conduct the initial IEP meeting.

#### C. Data Collection

ECE Coordinator manages the data for Indicator B12. This includes data collection throughout the process and entering the data on the SIS PowerSchool database. Once the school year starts in late August or early September, the IEP data will be entered in the SIS Power School AS DOE IDS Data System.

#### D. Accountability

1. The Division of Special Education and the Helping Hands office maintain constant contact throughout the school year, so that the ECC knows all Part C students who will turn three during the school year (and during the summer).
2. At the Division of Special Education, the DM and the MT meet regularly with the AC and the ECC to provide any assistance and ensure each transitioning child will have an IEP by their third birthday. Steps are taken to ensure the Interagency Agreement process is implemented correctly.
3. If the monitoring identifies noncompliance, the ECC and the ASDOE Special Education Division evaluation team will receive a written notice that contains the monitoring team’s conclusion that the school (or the evaluation team is in

noncompliance, and that includes the citation of the statute or regulation and a description of the quantitative and/or qualitative data supporting the monitoring team's conclusion that there is noncompliance with that statute or regulation.

4. If noncompliance is identified, the correction will take place as soon as possible (and no longer than one year from the notification of noncompliance). Correction will be verified as explained in the General Supervision manual. The compliance team uses a two-prong approach to verify each instance of noncompliance is corrected and collects subsequent data on new students (if available) to ensure all involved correctly implement the process to prevent subsequent noncompliance.

## **SECTION X: PRIVATE SCHOOLS**

### Policy Statement

American Samoa Department of Education is a unitary SEA/LEA, which means the SEA both administers and implements the programs, so all actions and responsibilities under IDEA rest with the ASDOE Special Education Division.

Privately-enrolled students include students at secular, non-secular and independent schools, and home-schooled students.

### Implementation Procedures

#### A. Placement in private schools by ASDOE Special Education Division

Placement decisions are made by the IEP team. ASDOE Special Education Division has in effect the following policies and procedures assuring that students with disabilities placed by the IEP team in private schools or facilities are afforded all of the rights of a student with a disability enrolled in a public school. Students with disabilities placed by their parents in a private school do not have the rights of a student with a disability.

1. ASDOE Special Education Division monitors both the placement process and the provision of services after placement to ensure that each student placed by ASDOE Special Education Division is provided special education and related services that are:
  - a. in conformance with their IEPs;
  - b. at no cost to their parents;
  - c. in conformance with IDEA and ASDOE Special Education Division policies; and
  - d. at a school or facility which meets all of the standards applicable to schools operated by ASDOE Special Education Division.

ASDOE Special Education Division monitors this compliance through procedures such as written reports, on-site visits, and parent questionnaires.

2. Disagreements between a parent and ASDOE Special Education Division regarding the availability of a FAPE for the student, and the question of financial responsibility, are subject to due process procedures established by ASDOE Special Education Division (and described in Procedural Safeguards, Section VI).
3. If the parents of a student with a disability, who previously received special education and related services through ASDOE Special Education Division, enroll the student in a private school without the consent of ASDOE Special Education

Division, and seek reimbursement from ASDOE Special Education Division for that enrollment, they have a right to due process. A hearing officer or a court may require ASDOE Special Education Division to reimburse the parents for the cost of that enrollment if the hearing officer or court finds that ASDOE Special Education Division did not make a FAPE available to the student in a timely manner prior to the private school enrollment, and that the private placement is appropriate. A court or hearing officer may find a parental placement appropriate even if it does not meet AS standards that apply to education programs provided by ASDOE Special Education Division.

4. ASDOE Special Education Division has no obligation to pay for the cost of education, including special education and related services, of a student with a disability placed in a private school or facility if a FAPE was offered in a public school for the student and the parents still elected to place the student in a private school or facility. However, ASDOE Special Education Division will include such students in its child count and in consideration for receiving equitable services.

B. Parentally placed students with disabilities in private schools

1. Child Find. (34 CFR §300.131) ASDOE Special Education Division will locate, identify, and evaluate all students with disabilities residing in AS who are enrolled by their parents in any private (including religious) elementary and secondary schools in AS, in accordance with its child find procedures (see Child Find, Section II). Child find activities for privately-enrolled students are conducted by ASDOE Special Education Division and are comparable to those conducted for public school students. ASDOE Special Education Division provides all private schools and privately-enrolled students with information describing how students can access publicly-funded evaluations and special education services. For preschool-aged students (3-5), students who attend a private preschool program meeting the definition of an elementary school under the law must be included.
  - a. ASDOE Special Education Division's child find process ensures:
    - i. the equitable participation of parentally placed private school students; and
    - ii. that an accurate count of those students, as conducted every fall of each year consistent with procedures for locating, identifying and evaluating students with disabilities in public schools.
2. Expenditures. American Samoa is a unitary SEA/LEA, which means there are no LEAs to which the SEA subgrants. IDEA requires each LEA that receives IDEA funds to spend a proportionate share of their federal IDEA dollars on equitable services for private school students. (34 CFR §§300.129-300.144 and Appendix B to the regulations).

As the LEA for special education students in American Samoa, ASDOE Special Education Division has an obligation to locate and evaluate students with disabilities enrolled by their parents in private schools located in American Samoa, and to calculate and spend a proportionate share of IDEA grant funds providing equitable services for these students.

- a. ASDOE Special Education Division determines the number of eligible students who are privately-enrolled and educated in American Samoa. The child count (conducted between October 1 and December 1) is the number of *eligible* students, not the number of such students receiving services.
  - b. To calculate proportionate share, ASDOE Special Education Division completes the following steps:
    - i. Determines the proportion of eligible special education students who are privately- enrolled:
      - a. Determines the total number of eligible special education students who are privately- enrolled or homeschooled
      - b. Divides that number by the total number of eligible special education students
    - ii. Reduces the amount of the IDEA section 611 grant by 5% to account for state-level activities and IDEA administration:
      - a. Multiplies the total IDEA section 611 grant by 0.95
    - iii. Determines the proportionate share to be expended on equitable services for private school students by multiplying the reduced amounts of each grant by the proportion of students who are privately-enrolled.
  - c. Proportionate Share Expenditure. (34 CFR §300.138) ASDOE Special Education Division determines which services to provide following the consultation with representatives of the private schools and parent representatives of eligible private school and/or home-schooled students. IDEA allowability rules apply to proportionate share funds. ASDOE Special Education Division must document expenditures and other activities related to IDEA and proportionate share.
3. In order to provide equitable services, ASDOE Special Education Division complies with the following procedures:
- a. Timely and Meaningful Consultation. (34 CFR §300.134) Annually, ASDOE Special Education Division invites private school and home school representatives (when there are children with disabilities participating in home school), and representatives of parents of eligible

privately-enrolled students educated in American Samoa to a consultation meeting. During that meeting, topics that must be discussed are: child find process, determination of proportionate share, consultation process, provision of special education and related services, and provision of a written explanation by the district regarding services (in the event of disagreement between the district and private school officials). Although the initial consultation must occur prior to other required activities, additional consultation may occur subsequently and be an ongoing process. Ongoing consultation may be with individuals or groups of private school representatives. Meaningful consultation includes consultation on:

- i. the child find process, including
    - a. how parentally placed private school students suspected of having a disability can participate equitably, and
    - b. how parents, teachers and private school officials will be informed of the process.
  - ii. the consultation process, including how the process will operate throughout the school year to ensure that parentally placed private school students with disabilities identified through the child find process can meaningfully participate in special education and related services.
  - iii. provision of equitable services. The determination of the number and types of students with disabilities who will participate in the programs and services to be provided will be made after consultation with appropriate representatives of parentally placed private school students with disabilities to decide:
    - a. the types of services, including direct services and alternate service delivery mechanisms;
    - b. how equitable services will be apportioned if funds are not sufficient to serve all parentally placed private school students;
    - c. how and when those decisions will be made; and
    - d. how the services will be evaluated.
  - iv. funding. The funding for services to parentally placed private school students with disabilities.
- b. Written Affirmation Following Consultation. (34 CFR §300.135) After the annual meeting, ASDOE Special Education Division obtains written

affirmation confirming that timely and meaningful consultation has occurred, signed by the private school representatives and home school representatives. The written affirmation is confirmation that consultation has occurred—not that there is agreement among meeting participants. See Sample Written Affirmation in Section XIX, Appendix A.

- i. If ASDOE Special Education Division disagrees with the views of the private school officials on the provision of services or the types of services (whether provided directly or through a contract), ASDOE Special Education Division will provide to the private school officials a written explanation of the reasons why ASDOE Special Education Division chose not to provide services directly or through a contract.
    - ii. ASDOE Special Education Division makes the final decisions with respect to the services to be provided to eligible parentally placed private school students.
  - c. Evaluation and Determination of Eligibility. ASDOE Special Education Division evaluates and determines whether privately-enrolled students are eligible for special education services. ASDOE Special Education Division may accept a prior evaluation if the information is comprehensive and current.
  - d. Development of Services Plans. (34 CFR §300.138) ASDOE Special Education Division is responsible for ensuring that each parentally-placed private school student with a disability who has been designated to receive proportionate share services has a services plan describing the specific special education services that ASDOE Special Education Division will provide, including where and when the district will provide services to the student. See Sample Services Plan in Section XIX, Appendix B.
    - i. ASDOE Special Education Division will initiate and conduct meetings to develop, review, and revise a services plan for the student that describes the specific equitable services to be provided.
    - ii. ASDOE Special Education Division will invite a representative of the religious or other private school attends each meeting. If a representative cannot attend, ASDOE Special Education Division will use other methods to ensure participation, such as individual or conference calls.
    - iii. ASDOE Special Education Division will develop a services plan to the extent appropriate, that meets the requirements in place for development of IEPs, and is developed, reviewed and revised consistent with procedures ASDOE Special Education Division has established for IEP development, review and revision.



- e. Providing or Contracting for Services. (34 CFR §300.141) In expending federal IDEA Part B funds, ASDOE Special Education Division may provide services at the private school, at a public or neutral site convenient to the private school, on public school grounds, or contract for the provision of services at an appropriate site, ensuring that they provide transportation to the student. IDEA funds may not be paid directly to the private school and may not be used to meet general needs of students.
  - i. Services to parentally placed private school students will be provided by ASDOE Special Education Division. Special education and related services provided to parentally placed private school students with disabilities, including materials and equipment, must be secular, neutral and non-ideological. Reusable materials and equipment must be returned to ASDOE Special Education Division upon completion of services. Services provided to parentally placed private school students with disabilities may be provided on-site at a student's private school, including a religious school, to the extent consistent with AS law.
  - ii. Parentally placed private school students with disabilities may receive a different amount of services than students with disabilities in public schools. [Sec 300.138(a)(2)]
  - iii. If necessary for the student to benefit from or participate in the services provided by ASDOE Special Education Division under this part, a parentally placed private school student with a disability will be provided transportation:
    - a. from the student's school or the student's home to a service site other than the private school, and
    - b. from the service site to the private school, or to the student's home, depending on the timing of the services.
  - iv. ASDOE Special Education Division is not required to provide transportation between the student's home and the private school.
  - v. Title to and administrative control over the above mentioned portable or mobile equipment will be maintained by ASDOE Special Education Division, which will also be responsible for monitoring the use, availability and removal of such equipment. Equipment or supplies purchased with IDEA funds may be placed at a private school for the period of time needed for the program. Such equipment or supplies will be used only for special education purposes. Any equipment or supplies purchased with IDEA funds will be removed from a private school if:

- a. the equipment or supplies are no longer needed for the purposes of the project; or
    - b. removal is necessary to avoid use of the equipment or supplies for other than project purposes.
  - vi. ASDOE Special Education Division will keep records and account for equipment and ensure that all equipment is utilized for the specific purposes of the program or project.
  - vii. IDEA funds for education of students in need of special services enrolled in private schools will not be used for repairs, minor remodeling, or construction of private school facilities.
- f. Use of Personnel. (34 CFR §300.142) ASDOE Special Education Division may use the proportionate share funds to pay public school personnel to provide services in private schools. ASDOE Special Education Division may use the proportionate share funds pay for the services of an employee of a private school to provide services under only if the employee performs the services outside of his or her regular hours of duty; and the employee performs the services under public supervision and control.
  - i. The services for parentally placed private school students with disabilities will be provided by personnel meeting the same standards as personnel providing services in the public schools, except that private elementary school and secondary school teachers who are providing equitable services to parentally placed private school students with disabilities do not have to meet the highly qualified special education teacher requirements.
  - ii. Public school personnel and services may be made available to non-public schools only to the extent necessary to provide the special education and related services required by students in need of services enrolled in private schools when those personnel and services are not provided at the private schools. IDEA funds may not be used to meet the general needs of a private school or the general needs of parentally placed students enrolled in private schools. ASDOE Special Education Division, in providing educational and related services to parentally placed students enrolled in private schools, will maintain administrative control and direction over those services.
- 4. Due Process Complaints. A student parentally placed in a private school does not receive the same right to due process as a student with a disability placed and served by ASDOE Special Education Division. Due process procedures for students parentally placed in private schools apply only to complaints that ASDOE Special Education Division has failed to meet the requirements for child

find, and not to the determination and provision of services indicated on a student's services plan, or to transportation, expenditures for services, or other areas described in this section. Any due process complaints regarding child find requirements must be filed with ASDOE Special Education Division. Any complaint that ASDOE Special Education Division has failed to meet the requirements of consultation and equitable services must be filed in accordance with AS complaint procedures (Procedural Safeguards, Section VI). [34 CFR §§300.140 and 300.137]

5. A private school official has the right to submit a complaint to the Director of ASDOE Special Education Division that ASDOE Special Education Division did not engage in consultation that was meaningful and timely or did not give due consideration to the views of the private school official.
  - a. If the private school official wishes to submit a complaint, the official must provide to ASDOE Special Education Division the basis of the noncompliance with the applicable IDEA private school provisions.
  - b. If the private school official is dissatisfied with the decision of ASDOE Special Education Division, the official may submit a complaint to the Secretary of the US Department of Education by providing the information on noncompliance. ASDOE Special Education Division must forward the appropriate documentation to the Secretary.

## **SECTION XI: RESPONSIBILITY OF THE STATE EDUCATIONAL AGENCY**

### Policy Statement

The unique infrastructure of a unitary SEA/LEA is important to understanding program development and delivery in American Samoa. The ASDOE Special Education Division functions as both the SEA and the LEA. ASDOE Special Education Division acts as an SEA performing the administrative functions as regulated by IDEA and performs as the LEA in applying funds to the development, implementation and monitoring of the special education program.

### Implementation Procedures

- A. Responsibility of State Educational Agency for All Educational Programs
  1. The American Samoa Special Education Act of 1977 as amended in 2000, establishes and maintains the special education program within ASDOE Special Education Division. This local law (in 16.604) established within the department a division of special education which shall be headed by an Assistant Director of special education who is qualified by education, training, and experience to take responsibility for, and give direction to, the programs of American Samoa relating to the education of children with disabilities. This Act delegates the authority for general supervision of all educational programs serving students with disabilities public schools and other public agencies to the Assistant Director of ASDOE Special Education Division. Monitoring, program evaluation, and the implementation of programs meeting the standards of the ASDOE are a part of the responsibility of ASDOE Special Education Division.
  2. ASDOE Special Education Division has in effect policies and procedures that ensure it complies with the monitoring and enforcement requirements of IDEA, as they apply within the unitary status of the Territory.
    - a. ASDOE Special Education Division is responsible for all educational programs for students and youth with disabilities from age three through age twenty-one within AS; they are under the general supervision of the Assistant Director of Special Education and meet the educational standards of ASDOE.
    - b. This does not limit the responsibility of any other public agency that might provide or pay some or all of the costs of FAPE to students with disabilities in American Samoa.
  3. ASDOE Special Education Division works with the Department of Public Safety to ensure that all incarcerated youth with disabilities on an IEP that are convicted as adults and who are under 22 years of age will receive a free, appropriate public education. All educational services for these youth are

provided by personnel from ASDOE Special Education Division and are usually provided at the correctional facility.

4. Although currently there are no schools in AS that are operated by the Secretary of the Interior, and AS does not have any students who would be considered homeless, ASDOE Special Education Division ensures that if these populations should appear within AS, programs and services for them would meet the requirements.
5. ASDOE Special Education Division has in effect procedures to inform each public agency of its responsibility for ensuring effective implementation of procedural safeguards for students with disabilities served by that public agency. A current copy of Procedural Safeguards, Section VI, is delivered and discussed with agency personnel.
6. Hearings related to LEA eligibility are not applicable. In this unitary system, ASDOE Special Education Division serves the dual role of SEA and LEA in relationship to educational programming for students with disabilities.
7. ASDOE Special Education Division's day-to-day actions more closely resemble those of an LEA. ASDOE Special Education Division provides technical assistance at the school and classroom levels. ASDOE Special Education Division's administrators and Education Specialists work directly with school administrators, classroom teachers and the community to meet the needs of students with disabilities.

#### B. Monitoring and Enforcement

1. Monitoring programs for students with disabilities in AS is directly administered and supervised by the ASDOE Special Education Division Assistant Director with the assistance of Compliance Officer(s) consistent with the American Samoa Special Education General Supervision Manual. Under the authority of its Assistant Director, ASDOE Special Education Division monitors and enforces the implementation of services and programs for all students with disabilities in AS and annually reports on its results.
2. The primary focus of monitoring activities is on improving educational results and functional outcomes for all students with disabilities in AS; and on ensuring that program requirements are met, with particular emphasis on those requirements that are most closely related to improving educational results for students with disabilities.
  - a. ASDOE Special Education Division uses quantifiable and qualitative indicators as needed to adequately measure performance, as well as indicators established by the US Secretary of Education for the state performance plan and annual performance reports.

3. Verification of Correction of Noncompliance

- a. Consistent with OSEP Memorandum 09-02, the ASDOE Special Education Division has revised its policies and procedures to verify timely correction of noncompliance as described in detail in the American Samoa Special Education General Supervision Manual.

C. Performance Plans and Data Collection

1. ASDOE Special Education Division has in place a performance plan that evaluates its efforts to implement the requirements and purposes of Part B of IDEA and describes how ASDOE Special Education Division will improve such implementation.
2. ASDOE Special Education Division's plan has established measurable and rigorous targets for each indicator and has been submitted to the US Secretary of Education for approval. The plan will be reviewed at least once every six years, and any amendments will be submitted to the Secretary.
3. ASDOE Special Education Division collects valid and reliable information on the indicators, and annually reports that information to the Secretary. As a unitary SEA/LEA, data are collected on specific indicators as described in its annual report.

D. Public reporting and Privacy

1. ASDOE Special Education Division reports annually to the US Secretary and to the American Samoa public on its performance on the targets in its performance plan. ASDOE Special Education Division makes that information available to the public through the ASDOE web site, announcements through the media and distribution from the ASDOE Special Education Division office. The annual reports include the most recently available performance data for AS including the date the data were obtained.
2. It is important to recognize that AS's total student population, and its population of students with disabilities, may weigh against certain levels of performance reporting for reasons of statistical soundness and confidentiality. To meet the intent of improving educational results, ASDOE Special Education Division will endeavor to find ways to present performance data that are sufficiently reliable, without disclosing personally identifiable information on individual students.
3. ASDOE Special Education Division takes necessary measures to notify the public of the pendency of any action taken by the US Secretary of Education.

E. Reporting Requirements: Annual Report of Children Served

ASDOE Special Education Division annually reports to the US Secretary of Education on the information required by section 618 of the IDEA at the times and

on the forms specified by the Secretary.

1. Annual report of children served—information required in the report.
  - a. For purposes of the annual report required by IDEA, ASDOE Special Education Division counts and reports the number of students with disabilities receiving special education and related services on any date prior to November 1 of each year.
  - b. For the purpose of this annual report, a student’s age is the student’s actual age on the date of the child count.
  - c. ASDOE Special Education Division will not report a student under more than one disability category.
  - d. If a student with a disability has more than one disability, ASDOE Special Education Division reports that student in accordance with the following procedure:
    - i. If a student has only two disabilities and those disabilities are deafness and blindness, and the student is not reported as having a developmental delay, that student will be reported under the category “deaf-blindness.”
    - ii. A student who has more than one disability and is not reported as having deaf- blindness or as having a developmental delay will be reported under the category “multiple disabilities.”

2. Data reporting: protection of personally identifiable data

The data described in section 618(a) of the IDEA and in annual reports of children served are publicly reported by ASDOE Special Education Division in a manner that does not result in disclosure of data identifiable to individual students (see also D2, above).

3. Annual report of children served—certification

ASDOE Special Education Division includes in its report a certification signed by an authorized official that the information provided is an accurate and unduplicated count of students with disabilities receiving special education and related services on the dates given.

4. Annual report of children served—criteria for counting children

ASDOE Special Education Division includes in its report students with disabilities who are enrolled in a school or program that is operated or supported by a public agency, and that—

- a. provides them with both special education and related services that meet ASDOE Special Education Division standards;
  - b. provides them only with special education, if a related service is not required, that meets ASDOE Special Education Division standards; or
  - c. in the case of students with disabilities enrolled by their parents in private schools, those students who are eligible under the IDEA and receive special education or related services or both that meet ASDOE Special Education Division standards.
5. Annual report of children served—other responsibilities

In addition to the other requirements described above, ASDOE Special Education Division also:

- a. establishes procedures to be used in counting the number of students with disabilities receiving special education and related services;
- b. sets dates by which schools must report to ensure that ASDOE Special Education Division can submit reports in a timely manner;
- c. obtains certification from schools or other agencies that an unduplicated and accurate count has been made;
- d. aggregates the data from the count obtained from each school or other agency, and prepares the reports required above; and
- e. ensures that documentation is maintained that enables ASDOE Special Education Division and the US Secretary to audit the accuracy of its data.



## **SECTION XII: PERSONNEL QUALIFICATIONS**

### Policy Statement

It is the policy of ASDOE that personnel employed by ASDOE Special Education Division and any other agency providing special education and related services to students with disabilities are fully trained and competent within their discipline and meet the standards set by ASDOE. These standards are consistent with all ASDOE-recognized certification, licensing, or other competency requirements that apply to the profession or discipline in which a person is providing special education or related services.

ASDOE Special Education Division assures that the standards for special education certification are the same as, and therefore consistent with, those for general education certification. ASDOE has statutory certification requirements for providers of general education, special education and related services.

The minimum academic requirement for teaching personnel employed by ASDOE is an AA degree. Applicants who have completed their AA degree in any field are eligible for hire by ASDOE. Incentives and opportunities are continuously offered by ASDOE in a joint arrangement with other accredited institutions for obtaining bachelor's or higher degrees.

The ultimate goal of ASDOE is to have all teachers highly qualified (attaining a bachelor's degree, receiving an ASDOE teaching certificate and requirements, passing the PRAXIS, and being competent in their content area). ASDOE provides ongoing inservice on teaching methodology and content to teachers with no teaching experience; ASDOE Special Education Division provides inservice to its teachers who have no special education background.

On-island training has been available for certification in speech and language, assistive technology, assessment, and visual impairments. Certification programs are currently being developed for these areas: deaf/hard of hearing, learning disabilities, response to intervention, and behavioral intervention/counseling.

The ASDOE shall ensure that any services provided to students with disabilities that need to be provided by a professional service provider are provided by professionals that have the appropriate certification, licensing and/or training to provide the services to the disabled students.

### Implementation Procedures

- A. ASDOE Special Education Division continues to require all newly hired personnel on provisional status providing special education services to students with disabilities to earn basic teaching certification. ASDOE Special Education Division provides ongoing inservice to its teachers and other related services personnel to increase information and skills to enhance services provided to children and youth with disabilities. The following activities are calculated to increase that expertise:
  1. Inservice, induction and preservice sessions are required of all personnel.

Individual professional profiling sessions identify special education teachers and/or other personnel who need to complete their prerequisites and pursue higher-level courses to earn a basic teaching certificate.

2. ASDOE administrators and ASDOE Special Education Division Education Specialists who are certified at either the basic or professional levels supervise all provisionally certified teachers.
  3. ASDOE continues to work with the American Samoa Teacher Education Program (ASTEP) and other degree programs to ensure that all individuals hired by ASDOE Special Education Division complete prerequisite courses and gain admission to earn a bachelor's degree.
  4. Certification requirements are under revision at the present time. Formal notice of final changes on requirements will be provided by the ASDOE and the AS legislature to ASDOE Special Education Division. Any changes will be incorporated appropriately in the AS Policies and Procedures.
- B. ASDOE hires and certifies teachers, specialists, administrators and specified related services. ASDOE Special Education Division hires medical and psychological service personnel on contract, as needed. These personnel are licensed by the Health Services Regulatory Board.
- C. There are no private schools designated for students with disabilities, nor any private medical facilities on the island. Hence no local agency has higher standards for any discipline area than those of the ASDOE and AS Health Services Regulatory Board.
- D. A parent on behalf of a student cannot sue a teacher for failing to meet the highly qualified standards of IDEA/NCLB. However, that does not prevent a parent or other individual from filing a formal complaint about staff qualifications.

## **SECTION XIII: ENSURING SERVICES**

### Policy Statement

In order to provide special education and related services to all children and youth, the Assistant Director of the ASDOE Special Education Division or designee coordinates activities and services with several non-educational public agencies. Interagency agreements (Memoranda of Understanding) are in place with the Department of Health, Division of Vocational Rehabilitation, LBJ Tropical Medical Center, Division of Public Safety, Office of Protection and Advocacy (OPAD), Department of Human and Social Services, and American Samoa Community College.

### Implementation Procedures

#### A. Service Coordination

ASDOE Special Education Division uses a template that ensures all of the necessary elements to comply with Federal requirements, including:

1. A description of the role that each agency plays in providing or paying for services for children and youth with disabilities.
2. Clear definitions of the financial responsibility, conditions, terms and procedures under which ASDOE Special Education Division must be reimbursed by other agencies.
3. A mechanism for resolving interagency disputes among the agencies that are parties to the agreements, so that ASDOE Special Education Division may initiate proceedings to ensure reimbursement from other agencies or otherwise implement the provisions of the agreement.
4. Policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of special services. Nothing in the agreement will limit the responsibility of an agency paying for those services for which it would be responsible without the availability of IDEA funds.
5. ASDOE Special Education Division meets its requirements through signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services.

#### B. Obligation of Non-educational Public Agencies

Any public agency other than ASDOE Special Education Division which is obligated under federal law to provide or pay for any services that are

considered special education or related services, necessary for ensuring FAPE to students with disabilities, such as services related to assistive technology devices, related services, supplemental aids and services, and transition services, must fulfill that obligation or responsibility either directly or through other arrangements.

If the public agency fails to provide or pay for special education and related services as described above, ASDOE Special Education Division will provide or pay for these services to the students in a timely manner. ASDOE Special Education Division will then claim reimbursement for the services from the non-educational public agency that failed to provide or pay for these services and that agency will reimburse ASDOE Special Education Division in accordance with the terms of the interagency agreement.

### C. Special Factor

American Samoa's LBJ Tropical Medical Center is federally subsidized to provide health care for all persons residing in American Samoa. Medical services are provided at minimal expense to individuals. Medicaid funding and Children's Health Insurance Program (CHIP) funding come to the LBJ Tropical Medical Center but the funds are not distributed to individuals or families. When medical conditions develop that cannot be treated on island, people are flown to Honolulu or elsewhere for treatment.

Since residents are not individually entitled to Medicaid or other public benefits, and the incidence of private insurance is very limited, ASDOE does not require parents to contribute to services provided through its educational programs to students with disabilities. ASDOE uses Part B funds to pay for all special education and related services provided through its educational programs to students with disabilities.

## **SECTION XIV: PERFORMANCE GOALS AND INDICATORS**

### Policy Statement

The VISION of the American Samoa Department of Education is for all our children to achieve success locally and abroad; to understand the Samoan language and culture; and to be proud of their heritage, while appreciating the cultural diversity of American Samoa.

The MISSION of the American Samoa Department of Education is to ensure student success by providing high quality teaching and learning opportunities to all our children.

### Implementation Procedures

- A. The mission is implemented through two interrelated learning goals:
  1. improving achievement of all students' basic skills in reading, writing and mathematics, and
  2. improving the readiness of all American Samoa's students to enter the world of work.
  
- B. Based on ASDOE's two primary goals and in conformity with the requirements under IDEA, ASDOE Special Education Division has in effect performance goals and indicators for students with disabilities. These performance goals and indicators align with ASDOE Special Education Division's objectives for progress and are used to assess that progress on an annual basis. ASDOE Special Education Division annually reports to the US Secretary of Education and the public on the progress of students with disabilities toward meeting the performance goals. Their purpose is:
  - a. to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living;
  - b. to ensure that the rights of children with disabilities and their parents are protected;
  - c. to assist ASDOE Special Education Division, Federal agencies and other educational service agencies to provide for the education of all children with disabilities; and
  - d. to assess and ensure the effectiveness of efforts to educate children with disabilities.

## **SECTION XV: PARTICIPATION IN ASSESSMENT**

### Policy Statement

It is the policy of the ASDOE Special Education Division that every student, including students with disabilities, participates in all Statewide assessments, which measure educational performance and provide systematic indicators of progress in the general curriculum. Students with disabilities are provided appropriate accommodations if necessary.

Students who cannot meaningfully participate in statewide assessments will participate in alternate assessments. To the extent feasible, ASDOE Special Education Division uses universal design principles in developing and administering any alternate assessments.

### Implementation Procedures

- A. Participation. Each student, including a student with a disability, participates in the Statewide general assessments at grades that are determined by ASDOE Special Education Division. If a student with a disability is determined by her/his IEP Team to be unable to participate without accommodations, the statement of accommodations for the administration of the assessment or justification for participation in the alternate assessment will be described in his/her IEP.
- B. Accommodations. ASDOE Special Education Division has developed guidelines for the provision of appropriate accommodations. Accommodations are intended to reduce and/or eliminate the effects of a student's disability; they do not reduce learning expectations. The accommodations provided to a student are the same for classroom instruction, classroom assessments, and Statewide assessments. It is important to note that although some accommodations may be appropriate for instructional use, they may not be appropriate for use on a standardized assessment [See ASDOE Special Education Division Accommodations Manual].
- C. Alternate Assessments. If a student with a disability is determined by her/his IEP Team to be unable to participate in the Statewide general assessments even with accommodations, that student will be provided opportunity to demonstrate performance in an alternate assessment. The need for an alternate assessment will be documented in the student's IEP at the time of its development [See ASDOE Special Education Division Assessment Standard Operating Procedures Manual].

## **SECTION XVI: SUSPENSION AND EXPULSION**

### Policy Statement

It is the policy of the American Samoa Department of Education (ASDOE) Special Education Division to ensure to the maximum extent possible, the education of students with disabilities, including students with emotional disabilities, in the least restrictive environment and to minimize the need for removing students from their most appropriate placement. To this end data is collected annually to monitor removal of students with disabilities for disciplinary reasons and to compare these rates with those of the general student population.

As American Samoa's student population is virtually 100% "Asian/Pacific Islander," it has been determined by the US Office of Special Education Programs that disaggregating these data by race/ethnicity for the purposes of considering disproportionality is not required in American Samoa until there is child count of at least 10 students with disabilities in another race/ethnicity group.

### Implementation Procedures

- A. ASDOE will examine data on suspension and expulsion rates to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of students with disabilities:
  1. among the public elementary and secondary schools in AS, or
  2. compared to the rates for non-disabled students within the public school system.
- B. If discrepancies are found in these rates, ASDOE Special Education Division will review, and if appropriate revise, its policies, procedures and practices relating to the development and implementation of IEPs, the use of behavioral interventions and supports, and procedural safeguards, to ensure that these policies, procedures and practices comply with IDEA.
- C. It should be noted that the long-term suspension and expulsion of students, both those with disabilities and their non-disabled peers, is rare in American Samoa. Such numbers are quite small and easily tracked as part of annual data collection activities.

## **SECTION XVII: PUBLIC PARTICIPATION**

### Policy Statement

The American Samoa Department of Education (ASDOE) Special Education Division ensures that, prior to the adoption of any policies and procedures needed to comply with IDEA requirements, there are public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of students with disabilities.

### Implementation Procedures

#### A. Public Notice

1. THE ASDOE Special Education Division provides adequate notice to the general public of public hearings. Notices contain the following information:
  - a. the purpose and scope of the proposed policies and procedures and their relation to Part B of the IDEA;
  - b. where the public can obtain a copy;
  - c. the date, time and location of each public hearing;
  - d. the procedures for submitting written comments; and
  - e. the timetable for approvals.
2. Notices are published in the local media. The notice is published in advance of the date of the hearings to afford all interested parties in AS a reasonable opportunity to participate.

#### B. Public Comment Period

ASDOE Special Education Division conducts public hearings at times and in places that are convenient for the general public so that persons who are interested throughout AS will have a reasonable opportunity to participate.

New or revised policies and procedures will be available for comment at least 60 days following the date of the public notice.

#### C. Review of Public Comments

Before adopting the policies and procedures, ASDOE Special Education Division will review and consider all public comments and make any appropriate modifications.

#### D. Publication of Approved Policies and Procedures



After ASDOE approval, ASDOE Special Education Division will notify the local media that the policies and procedures are approved and when they will be available. Copies will be available for the public at the Special Education Office in Fagaalu. Policies and Procedures will also be posted on the ASDOE official website.

## **SECTION XVIII: STATE ADVISORY PANEL**

### Policy Statement

ASDOE Special Education Division maintains an advisory panel, appointed by the Governor or his designee, which provides policy guidance with respect to special education and related services provided to students with disabilities in American Samoa.

### Implementation Procedures

- A. ASDOE Special Education Division Advisory Panel membership includes at least one person from each of the following groups, with the majority being either individuals with disabilities or parents of students with disabilities:
  1. parents or guardians of students with disabilities (ages birth through 26);
  2. individuals with disabilities;
  3. teachers;
  4. representatives of institutions of higher education that prepare special education and related services personnel;
  5. administrators of special education programs;
  6. representatives of other agencies involved in financing or delivering related services to students with disabilities;
  7. representatives of private schools;
  8. at least one representative of a vocational, community, or business organization concerned with the provision of transition services to students with disabilities;
  9. a representative from the Department of Human and Social Services (DHSS-ASG) responsible for foster care; and
  10. a representative from the Department of Public Safety (DPS-ASG) responsible for juvenile and adult correctional facilities.
- B. Advisory Panel Functions (34 CFR §300.169)
  1. Advising ASDOE Special Education Division of unmet needs in educating students with disabilities within American Samoa.
  2. Commenting publicly on any rules or regulations proposed regarding the education of students with disabilities.
  3. Advising ASDOE Special Education Division in developing evaluations

and reporting data to the Secretary under Section 618 of the IDEA.

4. Advising ASDOE Special Education Division in preparing corrective action plans to address findings identified in Federal monitoring reports under Part B.
5. Advising ASDOE Special Education Division in developing and implementing policies related to the coordination of services for students with disabilities.
6. Advising ASDOE Special Education Division on the education of eligible students with disabilities who have been convicted as adults and incarcerated in the correctional facility.

## **SECTION XIX: IDEA FISCAL PROCEDURES**

### Policy Statement

The special education program in American Samoa is funded primarily through the Part B formula grant; however, a child count is not used to establish funding levels, and the direct relationship between allocated funds and services to individual students contemplated in the formula for States is not applicable.

All IDEA Part B funds received are used to deliver or support services to infants, toddlers, children and youth with disabilities. The American Samoa Department of Education (ASDOE), as a unitary SEA/LEA, directly administers the public education programs for children and youth ages 3 – 21.

ASDOE Special Education Division assures as a condition of receipt of its Part B funds that such funds are used to either deliver or support services to children and youth with disabilities, or to enhance ASDOE Special Education Division's capacity to provide FAPE to children with disabilities.

In order to receive grant funds, ASDOE Special Education Division assures that it will comply with the requirements of Part B of IDEA. All expenditures are initiated or reviewed by the Special Education Assistant Director and are also reviewed by the Federal Grants Coordinator, ASDOE Special Education Division Fiscal Officer, the Office of Budget and Planning and other respective offices as indicated by the type of expenditure. All funds are used to either provide direct services to students with disabilities, or to enhance ASDOE Special Education Division's capacity to provide FAPE to students with disabilities.

### Implementation Procedures

The American Samoa Department of Education (ASDOE) Special Education Division must ensure fiscal accountability at each phase in the distribution and use of IDEA Part B Section 611 funds. ASDOE Special Education Division has established policies and procedures for requesting, accessing, reporting and verifying the obligation and expenditure of IDEA Part B funds.

These procedures includes the following sections to meet the listed purposes:

#### A. Use of IDEA Funds

- Ensure LEAs use IDEA funds only to pay excess costs of providing special education and related services to children with disabilities [34 CFR §§300.16 & 300.202]
- Ensure IDEA funds are used to supplement and not supplant state, local and other federal funds [34 CFR §§300.162(c), 300.202(a)(3)]

#### B. Allowable Costs

- Ensure that costs are necessary, reasonable and allocable [2 CFR 200.403-405]
- Time and Effort Reporting [2 CFR 200.430(i)]
- Equipment/Inventory Control [2 CFR 200.313(c)-(e)]

C. Timely Obligation and Liquidation of IDEA Funds

- Timely obligation and liquidation [EDGAR 34 CFR §§76.703, 76.707-76.710]
- Financial Management Systems [2 CFR 300.302]
- Audit Requirements [2 CFR 200.501]

D. Private School Proportionate Share

- Ensure a proportionate share of IDEA funds to be spent on equitable services [34 CFR §300.133]
- Ensure proportionate share funds do not benefit a private school [34 CFR §300.141]
- Ensure appropriate use of public and private school personnel [34 CFR §300.142]
- Ensure ASDOE Special Education Division controls and administers the funds used to provide equitable services and holds title to and administer materials, equipment, and property purchased with those funds [34 CFR §300.144(a)]

A. Use of IDEA Funds Procedures (34 CFR §300.202)

1. Use of amounts

a. General. Amounts provided to the LEA under Part B of the Act –

- i. Must be expended in accordance with the applicable provisions of this part;
- ii. Must be used only to pay the excess costs of providing special education and related services to children with disabilities...; and
- iii. Must be used to supplement State, local, and other Federal funds and not to supplant those funds.

2. Prohibition Against Commingling

The American Samoa Government maintains a separate accounting

system for all Part B funds for administrative, accounting and audit purposes. The American Samoa Government assures that it will not commingle funds received under its Part B grants with other funds. ASDOE Special Education Division ensures that proper fiscal control and fund accounting procedures are employed in disbursing of and accounting for Federal funds.

3. State Level Nonsupplanting

ASDOE Special Education Division assures that funds received under these grants will be used to supplement the level of other federal and local funds expended for the special education and related services for students with disabilities and in no case will supplant local funds.

4. Maintenance of State Financial Support

ASDOE Special Education Division will not reduce the amount of local financial support for special education and related services for students with disabilities, or otherwise make available a lower amount of support than that of the preceding fiscal year. ASDOE Special Education Division reports the amount made available in its annual application for IDEA Part B funds. The amount is proposed by ASDOE-Special Education Division, set by the legislature annually and provided by the American Samoa Budget and Planning Office to the ASDOE Special Education Division.

To inform the amount made available and ensure maintenance of financial support, ASDOE Special Education Division submits an annual budget and informs the American Samoa Budget and Planning Office of the IDEA requirements for maintenance of state financial support.

If for any fiscal year American Samoa fails to meet the above requirement, the financial support required in future years will be the amount that would have been required in the absence of that failure and not the reduced level of AS's support.

B. IDEA Allowable Costs Procedure

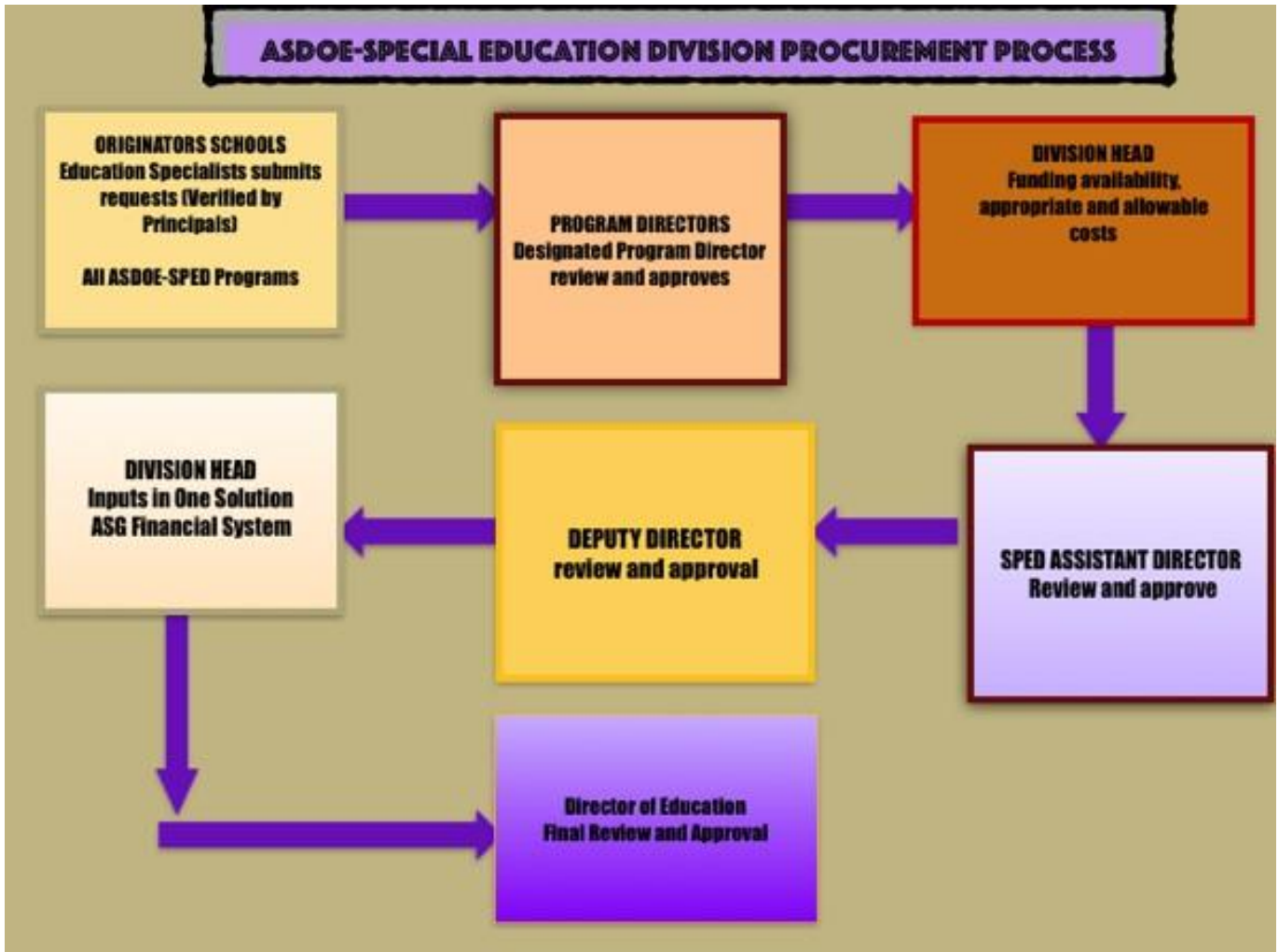
To determine if a cost is allowable, the American Samoa Department of Education (ASDOE) Special Education Division relies on the Uniform Grant Guidance at 2 CFR 200.403 through 200.405. Costs must be necessary, reasonable, allocable, and adequately documented.

1. The ASDOE Special Education Division reviews each of the following questions and only approve a cost to be charged to IDEA funds if it can answer yes to each question.

- a. Necessary

- i. Is the cost needed to provide special education?
  - ii. Is the cost only generated by or for students with disabilities?
- b. Reasonable
  - i. Is the cost what a reasonable person would pay?
  - ii. Would the cost be the same if there were no federal funds available?
- c. Allocable
  - i. Is the cost allowed by or required to implement IDEA?
  - ii. Does this cost exist because of special education?
- d. Adequately Documented
  - i. Is the cost and justification documented to sufficiently respond to each of these questions?
  - ii. If it's for an individual child, is the cost documented on an IEP?

When a program director or specialist requests approval for a cost to be paid by IDEA funds, they must submit responses and documentation for each question. The ASDOE Special Education Division Workflow Process for payment approval is illustrated in the following graphic and described in the table below.





## ASDOE – SPECIAL EDUCATION DIVISION PROCUREMENT PROCESS AND TIMELINE (REVISED 2023)

Step	ASDOE Special Education Division Activity	Timeline	Person Responsible	Notes
1	<p>All procurements are made using the SPED Request form. All requests must contain a detailed justification and be able to answer yes to each of the IDEA allocation questions:</p> <p><b>Necessary</b> Is the cost needed to provide special education?</p> <p>Is the cost only generated by or for students with disabilities?</p> <p><b>Reasonable</b> Is the cost what a prudent person would pay?</p> <p>Would the cost be the same if there were no federal funds available?</p> <p><b>Allocable</b> Is the cost allowed by or required to implement IDEA? Does this cost exist because of special education?</p> <p><b>Adequately Documented</b> Is the cost and justification documented to sufficiently respond to each of these questions? If it's for an individual child, is the cost documented on an IEP?</p>			
1(A)	<p><b>School Origination of the Order:</b> Education Specialists from schools submit orders or request instructional materials/supplies as needed. School principal or school administrators verify these orders; request forms require the school administrator's signature(s).</p>		Education Specialist	
1(B)	<p><b>All ASDOE-SPED Programs Origination of the Order:</b> ASDOE Special Education Division Programs submit requests for instructional materials/supplies, related services, equipment, minor repairs, travel and program activities (professional development, meetings/trainings). A detailed justification for program activities must include dates, venue, number of participants, detailed budget (projected) and activity objectives. Travel requests must include purpose of travel, invitation letters and travel itineraries. Requests must be submitted 60 days</p>		All ASDOE Special Education Division Programs	

Step	ASDOE Special Education Division Activity	Timeline	Person Responsible	Notes
	prior to activity/travel.			
2	Requests are forwarded to the ASDOE Special Education Division office where the administrative assistants will stamp and log the orders as received on this date (the process begins when order is received and stamped) and assign a ASDOE Special Education Division Request Number. Copies of the received requests are made and a copy is given back to the originators for their records. Originals are forwarded to the appropriate Program Director.	One day	ASDOE Special Education Division Administrative Assistant	
3	The appropriate Program Directors review and confirm the need/purpose for the requests. If approved the Program Director forwards the request back to the administrative assistant to obtain quotes (three if needed) and or as required by ASG Procurement Rules and Regulations.	One Day	ASDOE Special Education Division Program Director	**All the required documents must be attached for this review **A request may be returned back for more justification; quotes may not contain required material/supply or other reasons**
4	After retrieving required quotes, the Administrative Assistants checks for all the required supporting documents, logs and submits to the Division Head for review of funding availability, allowable costs and assigns account numbers on the DOE routing form and forwards to the ASDOE-Assistant Director with recommendations.	One Dependin g on the respond from the vendors	ASDOE- Special Education Division Head	**All the required documents must be attached for this review **A request may be returned back for more justification; quotes may not contain required material/supply, funding unavailable or other reasons**
5	The requests are then forwarded to the ASDOE-Special Education Assistant Director for review and approval. The ASDOE-SPED Assistant Director signs the DOE routing form for approval. The requests are then retrieved back by Admin Assistants to log, make copies and submits requests to the main office for the Deputy Director's approval.	One day	ASDOE Special Education Division Assistant Director	**All the required documents must be attached for this review **A request may be returned back for more justification; quotes may not contain required material/supply or other reasons**
6	Upon the Assistant Director's approval, the requests are then submitted to the main office for the ASDOE-Deputy Director's review and	Two days	ASDOE- Deputy Director-	**All the required documents must be attached for this review

Step	ASDOE Special Education Division Activity	Timeline	Person Responsible	Notes
	approval.		Instructions	**A request may be returned back for more justification; quotes may not contain required material/supply or unallowable costs** The Admin Assistants maintains a log of all outgoing and incoming correspondence.
7	<p>Once requests are received back from Deputy Director, (if approve) and the Staff Accountants input requests in the ASG Financial System (One Solution). If not approved, requests goes back to Administrative Assistants to log date and return back to appropriate Program Directors.</p> <p>If requests are approved all the justification and supporting documents will be loaded into the ASG Financial System (One Solution) for the Director of Education's review and approval</p> <p>A Purchase Requisition number will be originated and begins the ASG Financial System (One Solution) process. The Admin Assistants will enter the PR number on the requests forms for documentation and follow up.</p>	Two days	Staff Accountant	**All the required justification and supporting documents must be downloaded in the One Solution for the Director's final review ***
8	Following entering the Purchase Requisition in One Solution, the Director of Education has final review and approval in One Solution. All the supporting documents will be downloaded and attached for the Directors review and approval in One Solution	Two Days	AS Director of Education	**All the required documents must be attached for this review **A request may be returned back for more justification; quotes may not contain required material/supply or other reasons**
9	ASDOE Special Education Division Administrative Assistants have access to One Solution and must follow upon all the requests and provides weekly status report for the Division Head and a copy to the ASDOE Special Education Division Assistant Director	Two Days	Administrative Assistants	***Follow up is a critical area to keep process going meeting deadlines within grant time frame***

Step	ASDOE Special Education Division Activity	Timeline	Person Responsible	Notes
10	Upon approval from the ASDOE Director, the request is then processed through the ASG system (One Solution) that includes four other ASG Agencies and departments	Five to seven days	ASG Agencies (Budget, Procurement & Treasury),  ASDOE Special Education Division Administrative Assistant	If at the end of the first 2 days, the request has not moved through the appropriate agencies, a follow up phone call or in person to the agency and its officials is made regarding the PR status. At the end of 5 days another follow-up phone call or in person visit is made to the appropriate agencies to validate the progress of processing the requests. If little or no progress is made, then a meeting with the agency officials to discuss processing delays is requested.

The assigned PR number by the ASG Financial System (One Solution) is used to trace the requests from schools and various ASDOE Special Education Division programs. ASDOE Special Education Division Program Directors and or the Division Programs can follow up with Administrative Assistants on the status of PRs. Education Specialists can follow up with Program Directors.

If the established timelines are not adhered to, this justifies follow-up phone calls or request for meetings with agency officials to discuss and identify the reasons for delay. Depending on what kind of equipment, availability on island and vendors’ deliverance of items a timeframe of up to 20 days is feasible for the receipt of items or services for students with disabilities in the territory’s schools.

2. ASDOE-Special Education Division Contracts Internal Approval Process

Contractual Service Requests (Contracts) follow the same internal ASDOE Special Education Division Procurement Process and comply with the Uniform Grant Guidance at 2 CFR 200.403 through 200.405 and the American Samoa Code Annotated, Title 12. Costs must be necessary, reasonable, allocable, and adequately documented.

- a. ASDOE Special Education Division Programs/Initiators are responsible for developing the Scope of Work for services/materials as required under IDEA 2004 regulations to be

provided. The Scope of work must include the following:

- i. A detailed description of work to be completed or specifications for desired services materials
  - ii. A timeframe for completion/delivery of all tasks.
  - iii. Detailed/itemized budget or a projected total cost for the services/material
- b. ASDOE Special Education Division Programs/Initiators are responsible for review of reports from contractors prior to processing payments.
3. Time and Effort Reporting [2 CFR 200.430(i)]

ASDOE Special Education Division complies with the federal requirements for time and effort reporting and documentation of personnel expenses.

In order to determine if Personnel Costs are allowable under IDEA ASDOE Special Education Division and its schools are required to maintain auditable "time and effort" documentation that show how each employee paid with IDEA Part B funds spent his or her compensated time. Such documents are written, after-the-fact (not estimated or budgeted) reports of how the time was spent. Time and effort reports should be prepared by any staff with salary charged (1) directly to the federal award, (2) directly to multiple federal awards, or (3) directly to any combination of a federal award and other federal, state or local fund sources.

Semi-annual certifications are required for the following personnel:

- a. Work solely in special education and compensation is funded solely from the IDEA Part B grant or from both Part B and general funds.
  - b. Stipends (and other supplemental contracts) must also be reported. Record stipends on semi- annual certifications or monthly reports, whichever is utilized for the particular employee. Alternatively, permitted documentation includes (1) a signed supplemental contract that stipulates IDEA Part B/special education work activity, (2) sign-in attendance logs approved by the supervisor (e.g., pay for professional development activities), and (3) employee time/pay slips that specify IDEA Part B/special education and are approved by the supervisor.
4. Equipment/Inventory Control [2 CFR 200.313(c)-(e)]

ASDOE Special Education Division complies with the federal requirements for

equipment and inventory control.

- a. IDEA allows the use of Part B and Preschool funds for the acquisition of equipment and for construction or alteration of facilities under certain conditions defined in the Part B regulations.

34 CFR §300.718 Acquisition of equipment and construction or alteration of facilities:

(a) General. If the Secretary determines that a program authorized under Part B of the Act will be improved by permitting program funds to be used to acquire appropriate equipment or to construct new facilities or alter existing facilities, the Secretary may allow the use of those funds for those purposes.

(b) Compliance with certain regulations. Any construction of new facilities or alteration of existing facilities under paragraph (a) of this section must comply with the requirements of –

(1) Appendix A of part 36 of title 28, Code of Federal Regulations (commonly known as the “Americans with Disabilities Accessibility Standards for Buildings and Facilities”); or

(2) Appendix A of subpart 101-19.6 of title 41, Code of Federal Regulations (commonly known as the “Uniform Federal Accessibility Standards”).

- b. Equipment is defined in federal regulations at 34 CFR §74.2: Equipment means tangible nonexpendable personal property including exempt property charged directly to the award having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit.
  - i. ASDOE Special Education Division must receive prior approval from the Office of Special Education Programs, US Department of Education to use IDEA Part B funds for the purchase of equipment, as defined above, or for remodeling or construction of facilities. The request must include the following:
    - (1) For equipment purchases: Detail of the items to be purchased, including base cost per unit and any additional costs (such as delivery, installation, etc.), name of vendor, and assurance that all applicable ASDOE procurement policies and procedures have been adhered to in the purchase of this item. The letter should include a detailed description of the manner in which the item of equipment will be used in providing services to

children with disabilities and how its use will improve the ASDOE special education program.

- (1) For remodeling/construction projects: A detailed description of the construction/remodeling project that includes description of work to be done, individual items of cost, and total estimated cost of the project (an example of project descriptions is included following this summary). The letter should include estimated timelines for completion of the project, the names of contractors and vendors to be used, and assurances that all applicable ASDOE contracting and procurement policies and procedures have been adhered to in the purchase of this item. The letter should include a detailed description indicating how the new or remodeled facility will be used in providing services to children with disabilities and how its use will improve the ASDOE special education program.

## 5. Inventory Management Systems

*Equipment or property purchased exclusively with IDEA Part B funds must be used exclusively for the benefit of the Special Education Program.*

- a. ASDOE Special Education Division maintains an adequate inventory management that complies with 2 CFR 200.313 (c)-(e).
- b. Property records in the inventory management system include, at a minimum: 1)Property description; 2) Identification number; 3) Source of funding; 4) Acquisition date and cost; 5) The location, use and condition of the property; and 6) Any ultimate disposition data including the date of disposal and sale price of the property. In addition to the above information, the inventory management system should ensure that all source documents in support of the above information are maintained throughout the life and disposition of the equipment, and property records should be updated frequently so that grantees and subgrantees can account for every piece of equipment purchased with federal funds at any given time.
- c. Inventory Controls
  - i. Adequate safeguards to prevent loss, damage, or theft
  - ii. Physical inventory of property at least every two years
  - iii. Adequate maintenance of equipment

d. Disposition of Equipment

2 CFR 200.313(e) establishes rules for disposing of equipment:

Disposition. When original or replacement equipment acquired under a grant or subgrant is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency, disposition of the equipment will be made as follows:

- (1) Items of equipment with a current per-unit fair market value of less than \$5,000.00 may be retained, sold or otherwise disposed of with no further obligation to the awarding agency.
- (2) Items of equipment with a current per unit fair market value in excess of \$5,000.00 may be retained or sold, and the awarding agency shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by the awarding agency's share of the equipment.
- (3) In cases where a grantee or subgrantee fails to take appropriate disposition actions, the awarding agency may direct the grantee or subgrantee to take excess and disposition action.

C. Timely Obligation and Liquidation of IDEA Funds

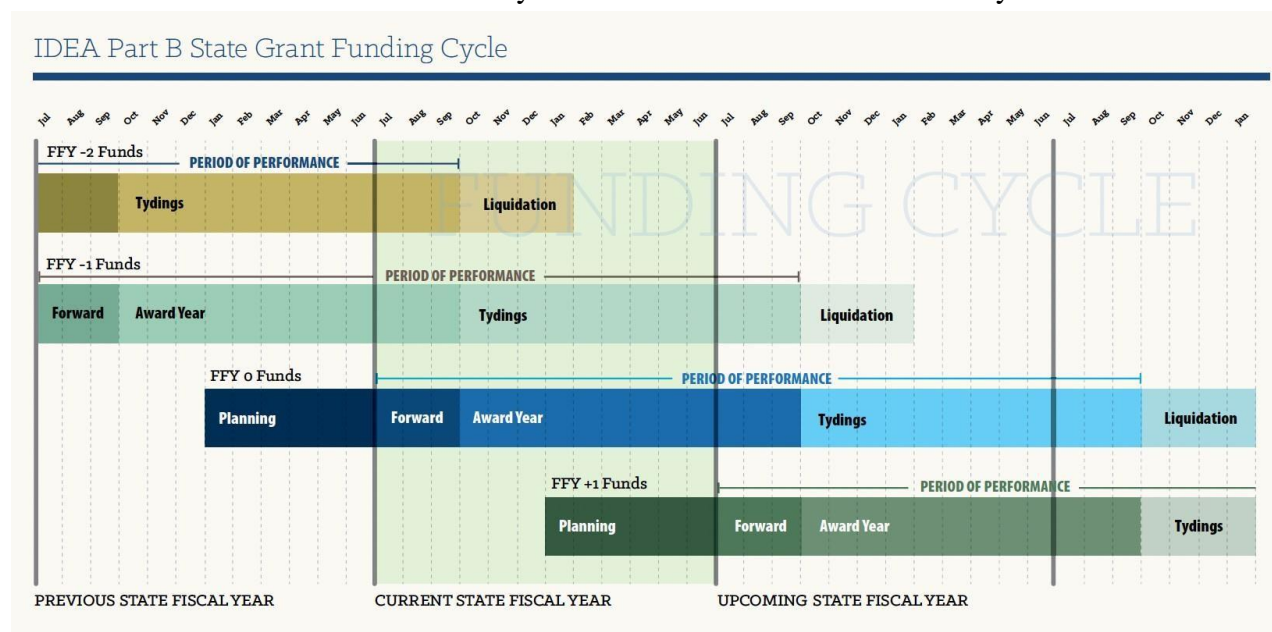
ASDOE Special Education Division receives an IDEA Part B section 611 grant each federal fiscal year (FFY). The federal fiscal year runs from October 1 to September 30 and is named by the year the funds start. (FFY 2020 is the federal fiscal year running from October 1, 2020, through September 30, 2021.)

ASDOE Special Education Division is informed of the amount of its grant award when the Office of Special Education Programs (OSEP), U.S. Department of Education, releases preliminary budget information — as early as December or January of the previous year. ASDOE Special Education Division applies for funds in May and is generally approved by OSEP by July 1.

An initial portion of ASDOE Special Education Division's IDEA funds are made available in July and the remainder is made available on October 1. The Tydings period makes funds available for one additional year so IDEA funds are available for 27 months.



This means that there may be funds available from three fiscal years at one time.



Source: CIFR: <https://cifr.wested.org/customizable-idea-fiscal-timeline-helps-sea-staff-plan-work-and-meet-deadlines/>

1. Timely obligation and liquidation [EDGAR 34 CFR §§76.703, 76.707-76.710]

a. *Obligation*

It is important to understand that obligated doesn't necessarily mean "spent." Obligation occurs when the agency or an LEA has entered into a binding commitment to pay out money, such as entering into a contract to pay for supplies or services. Obligations means the amounts of orders placed, contracts and subgrants awarded, goods and services received, and similar transactions during a given budget period that will require payment by the grantee during the same or a future budget period.

- i. ASDOE Special Education Division may obligate appropriated IDEA funds for 27 months, from July 1 of the year the funds are made available through September 30<sup>th</sup> two years later (For example, FFY 2020 funds can be obligated from July 1, 2020, through September 30, 2022.)

b. *Liquidation*

ASDOE Special Education Division must liquidate all obligations (i.e., pay outstanding debts) within 120 days of the end of the period of performance. This deadline is January 28, which is 31 months after the

funds were first made available. (For example, FFY 2020 funds must be liquidated by January 28, 2022.)

- i. To ensure timely obligation and liquidation of IDEA funds, ASDOE Special Education Division runs a monthly report for IDEA funds available from each FFY and amounts obligated. This allows ASDOE Special Education Division to move obligations to prior years grants as necessary when funds from an earlier year's grant are not spent down.

2. Financial Management Systems [2 CFR 300.302]

ASDOE Special Education Division uses the financial management systems put in place by the fiscal office.

3. Audit Requirements [2 CFR 200.501]

ASDOE Special Education Division complies with all single audit requirements.

4. Internal Controls

ASDOE Special Education Division follows the processes for entering new grant awards, checklist guidelines, and process to prevent budget overrun for local funds (see following pages) developed by ASG.

**FLOW CHART AND CHECKLIST FOR NEW GRANT AWARDS**

**NEW GRANT AWARD REQUIREMENTS - Initiated byASG Department**

BUD 202 FORM & required documents:Grant Award Notice (GAN)

State Plan including Special Conditions.Budget Narrative & Budget detail plan.

BUD 202 must match the GAN.

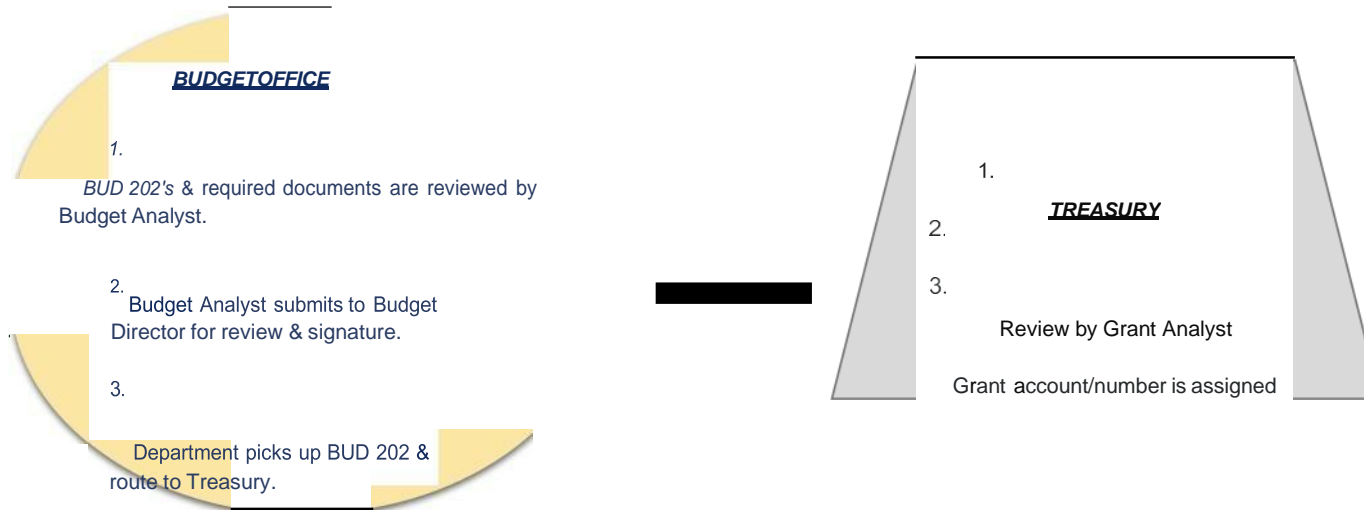
BUD 202 for DOI & CIPGrant Awards must be initialed by Lydia Nomura before submitting to BUDGET OFFICE.

CIP BUD 202'sare routed to Special Program/CIPOffice on the 2nd Floor of EOB before submitted to Budget Office.

<b><u>ASG - DEPARTMENT CHECK LIST:</u></b> BUD 202 FORM - completed and signed
<input type="checkbox"/>
<input type="checkbox"/>
GRANT AWARD NOTICE - GAN
<input type="checkbox"/>
by Director
<input type="checkbox"/> STATE PLAN & SPECIAL CONDITIONS

BUDGET NARRATIVE AND BUDGET DETAIL PLAN

# 1



### REPROGRAMMING OR REVISIONS OF GRANT AWARD

\*\*BUD 202 revisions for reprogramming follows the same flow chart\*\*

\*\*BUD 202 revisions for reprogramming requires supporting documentations\*\*

\*\*Reprogramming of approved cost centers is allowed based on the special conditions & approved budget narrative/details\*\*

\*\*Reprogramming of cost centers not approved in the award requires a granter approval\*\*

\*\*Reprogramming of RESTRICTED GRANTS requires granter approval\*\*

Provided By:OFFICE OF PROGRAM, PLANNING AND BUDGET

---

CHECK LIST GUIDELINES: Office of Program, Planning &

---

Budget

**BUD202 NEW AWARDS**

Click Box

- Grant Award Notice
- State plan including Special Conditions
- Budget Narrative & Budget detail
- DOI & CIP **Awards**, approved by DOI Rep.

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**BUD202 REPROGRAM**

- Attach documents to justify reprogramming
- Attach GAN for increase to original award
- Emails from Grantor pertaining to reprogramming

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**contract personnel**

- Attach analysis to identify available funds for transfer

**LOCALFUND TRANSFER**

- BUD 14 signed by Director

**FOR  
M48**

**DIRECTPAYMENT  
VOUCHER**

- Attach Invoice, stamped "Approved forpayment"
- Invoice signed, completed & Rec'd
- Ac.ct. & object class, Vendor & DPV #
- DPV signed by Director
- DPV THRESHOLD- max \$500.00
- SLP Farmers/Scholarship exempt onthreshold..

**PURCHASE REQUISITION  
(PR)**

- Scan and attach quote
- Scan and attach 3 quotes for purchase over \$2,501.00 - Sole Source

**Initiate to hire career or**

- Funding source/ account number
- Position Title
- Form sign by Director

**Reclassification**

- Supporting documents for reclass/promo/change title

**(Add/delete information)**

**Q,anse fundins source  
NTEdate**

- Funding source/account number
- Position Title

•Form sign by Director

\_\_\_\_\_

Title change

**CHANGE NOTICE**

(PO/PR,Contracts,Lease)

Funding source/account# (sufficient funds)

\_\_\_\_\_

**CONTRACTS**

**Independent Service**

**Leases**

• Director Signature

• Vendor Signature

• Attorney General Signature

• Funding Source (sufficient funds)

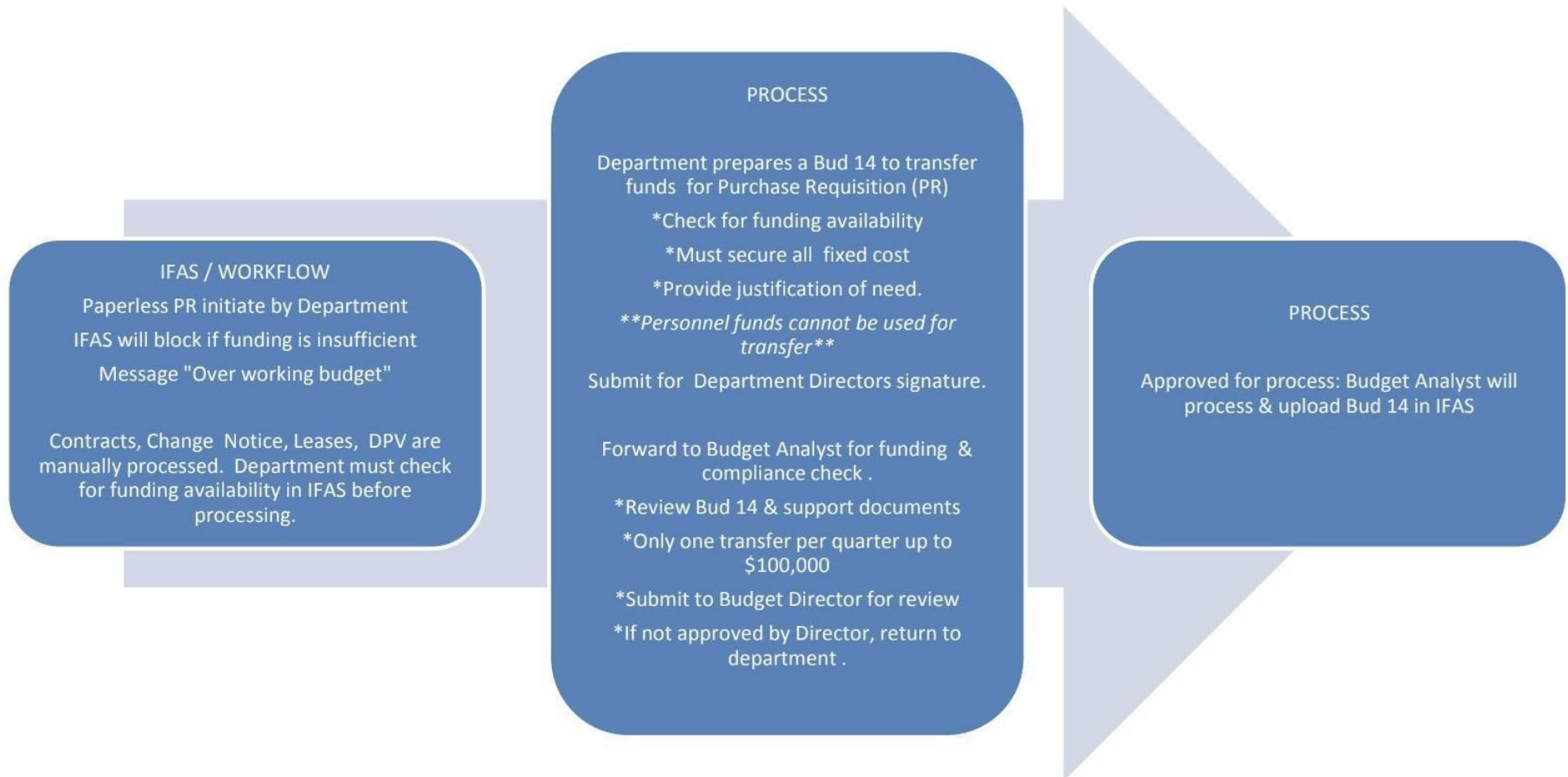
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\_\_\_\_\_



**PROCESS TO PREVENT BUDGET OVERRUN FOR LOCAL FUNDS**





D. Parentally-Placed Private School Student Procedures including Proportionate Share  
(See Section X: Private Schools for additional detail)

IDEA requires each LEA that receives IDEA funds to spend a **proportionate share** of their federal IDEA dollars on **equitable services** for private school students. (34 CFR §§300.129- 300.144 and Appendix B)

As the LEA for special education students in American Samoa, ASDOE Special Education Division has an obligation to locate and evaluate students with disabilities enrolled by their parents in private schools located in American Samoa, and to calculate and spend a proportionate share of IDEA grant funds providing equitable services for these students.

1. Privately-enrolled students include students at secular, non-secular, and independent schools, and home-schooled students.
2. In order to provide equitable services, ASDOE Special Education Division complies with the following procedures:
  - a. **Timely and Meaningful Consultation.** (34 CFR §300.134) Annually, ASDOE Special Education Division invites private school and home school representatives (when there are children with disabilities participating in home school), and representatives of parents of eligible privately-enrolled students educated in American Samoa to a consultation meeting. During that meeting, topics that must be discussed are: child find process, determination of proportionate share, consultation process, provision of special education and related services, and provision of a written explanation by the district regarding services (in the event of disagreement between the district and private school officials). Although the initial consultation must occur prior to other required activities, additional consultation may occur subsequently and be an ongoing process. Ongoing consultation may be with individuals or groups of private school representatives.
  - b. **Written Affirmation Following Consultation.** (34 CFR §300.135) After the annual meeting, ASDOE Special Education Division obtains written affirmation confirming that timely and meaningful consultation has occurred, signed by the private school representatives and home school representatives. The written affirmation is confirmation that consultation has occurred—not that there is agreement among meeting participants. See Sample Written Affirmation in Appendix A.
  - c. **Child Find.** (34 CFR §300.131) Child find activities for privately-enrolled students are conducted by ASDOE Special Education Division and are comparable to those conducted for public school students. ASDOE Special Education Division provides all private schools and privately-enrolled students with information describing how students can access publicly-funded evaluations and special education services. For preschool-aged students (3-5), students who attend a private preschool program meeting the definition of an elementary school under the law may be included.

- d. **Evaluation and Determination of Eligibility.** ASDOE Special Education Division and determines whether privately-enrolled students are eligible for special education services. ASDOE Special Education Division may accept a prior evaluation if the information is comprehensive and current.
        - e. **Child Count and Proportionate Share Calculation.** (34 CFR §300.133 and Appendix B to the Regulations) ASDOE Special Education Division determines the number of eligible students who are privately-enrolled and educated in American Samoa. The child count (conducted between October 1 and December 1) is the number of *eligible* students, not the number of such students receiving services.
3. To calculate proportionate share, separately for the IDEA Section 611 grant, ASDOE Special Education Division completes the following steps:
  - a. Determines the proportion of eligible special education students who are privately- enrolled:
    - i. Determines the total number of eligible special education students who are privately-enrolled or homeschooled
    - ii. Divides that number by the total number of eligible special education students
  - b. Reduces the amount of the IDEA Section 611 grant by 5% to account for state-level activities and IDEA administration:
    - i. Multiplies the total IDEA Section 611 grant by 0.95
  - c. Determines the proportionate share to be expended on **equitable services** for private school students by multiplying the reduced amounts of each grant by the proportion of students who are privately-enrolled.
4. **Proportionate Share Expenditure.** (34 CFR §300.138) ASDOE Special Education Division determines which services to provide following the consultation with representatives of the private schools and parent representatives of eligible private school and/or home-schooled students. IDEA allowability rules apply to proportionate share funds. ASDOE Special Education Division must document expenditures and other activities related to IDEA and proportionate share.
5. **Development of Services Plans.** (34 CFR §300.138) ASDOE Special Education Division is responsible for ensuring that each parentally-placed private school student with a disability who has been designated to receive proportionate share services has a services plan describing the specific special education services that ASDOE Special Education Division will provide, including where and when the district will provide services to the student. See Sample Services Plan in Appendix B.
6. **Providing or Contracting for Services.** (34 CFR §300.141) In expending federal

IDEA Part B funds, ASDOE Special Education Division may provide services at the private school, at a public or neutral site convenient to the private school, on public school grounds, or contract for the provision of services at an appropriate site, ensuring that they provide transportation to the student. IDEA funds may not be paid directly to the private school and may not be used to meet general needs of students.

7. **Use of Personnel.** (34 CFR §300.142) ASDOE Special Education Division may use the proportionate share funds to pay public school personnel to provide services in private schools. ASDOE Special Education Division may use the proportionate share funds pay for the services of an employee of a private school to provide services under only if the employee performs the services outside of his or her regular hours of duty; and the employee performs the services under public supervision and control.

## Appendices

### Appendix A Sample Written Affirmation

#### Written Affirmation of Consultation with Private School Representatives concerning Special Education Services

I hereby affirm that I was invited to and participated in the private and home school providers' consultation meeting sponsored by the American Samoa Department of Education Division of Special Education held on [DATE] in accordance with the requirements of the Individuals with Disabilities Education Act (IDEA).

During the course of the consultation, the following issues were discussed:

- The child find process and how parentally-placed students who are privately educated and suspected of having a disability can participate equitably, including how parents, teachers, and private school officials will be informed of the process by ASDOE Special Education Division;
- The determination of the proportionate amount of federal funds available to serve parentally- placed private school students with disabilities under this paragraph, including the determination of how the amount was calculated and allocated by ASDOE Special Education Division;
- The consultation process among the ASDOE Special Education Division, private school officials, and representatives of parents of parentally-placed students with disabilities who are privately educated, including how such process will operate throughout the school year to ensure that parentally placed-private school students with disabilities identified through child find can meaningfully participate in special education and related services;
- How, where, and by whom special education and related services will be provided for parentally-placed students with disabilities who are privately educated, including a discussion of types of services and how and when these decisions will be made, including direct services and alternate service delivery mechanisms;
- How such services will be apportioned if funds are insufficient to serve all children, and how and when these decisions will be made; and
- How, if ASDOE Special Education Division disagrees with the views of the private school officials on the provision of services or the types of services, whether provided directly or through a contract, the ASDOE Special Education Division shall provide to the private school officials a written explanation of the reasons why the school district chose not to provide services directly or through a contract.

I was provided the opportunity to express my views and to ask questions of ASDOE Special Education Division pertaining to these issues. I understand that if I believe that the consultation was not meaningful, or that my views and those of others were not given due consideration by the school district, I may file a State complaint with ASDOE Special

Education Division that identifies the area(s) in which I believe the school district did not comply with the consultation process.

PRIVATE SCHOOL: \_\_\_\_\_

REPRESENTATIVE: \_\_\_\_\_

PRINTED NAME: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_

**Appendix B Sample Services Plan American Samoa Department of Education Special Education Division**

Date: \_\_\_\_\_

Name of Eligible Private School Student

Special Education Services Plan for \_\_\_\_\_

School: \_\_\_\_\_

Implementation Dates: \_\_\_\_\_ Date of service – not to exceed one school

The following services will be provided for the eligible private school student named above.

<b>Special Education and/or Related Services (Direct Services)</b>					
Type of Service	Person(s) Responsible	Start Date	Frequency/ Duration	Location of Service	Comments (if applicable)
<b>Training or Support Services (Indirect services for School Personnel and/or Parents)</b>					
Type of Service	Person(s) Responsible	Start Date	Frequency/ Duration	Location of Service	Comments (if applicable)



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Evaluation and Service Delivery Information: (Provide individual evaluation information related to the abovenamed student with sufficient detail that the service delivery can be individualized to meet the student's needs. It may be helpful to identify specific goals.)

Please contact ASDOE Special Education Division at (phone) if you have any questions about these services. Use of these services does not constitute an individual entitlement or an individual commitment by ASDOE Special Education Division to provide such services.

## **Appendix C Extended School Year Procedures**

Extended school year (ESY) services shall be considered annually for all students who have an individualized educational program (IEP). American Samoa Department of Education – Division of Special Education (ASDOE-SPED) shall provide ESY services to students with disabilities who qualify for such services. Extended school year programs for eligible students shall meet the requirements of a free appropriate public education (FAPE).

### **A. DEFINITION**

“Extended school year services” means special education and related services provided beyond the regular school year that are:

1. provided to a student with a disability;
2. beyond the normal school year of the ASDOE;
3. in accordance with the student’s IEP; and
4. at no cost to the parent and/or adult student.

The goal of ESY is to assist students with disabilities with the emergence, maintenance, or generalization of specific IEP goals and benchmarks/objectives from the school year preceding the ESY. These may include goals and benchmarks/objectives related to independence, behavior, socialization, communication, and academics. ESY services for special education students provide a different focus from general summer school programs. Some students with disabilities cannot receive an appropriate education if they do not receive some type of ESY program.

### **B. DETERMINATION OF THE NEED FOR ESY**

ESY services can be based on one or more of three general areas using the following guidelines. When the answer is yes to all questions within one area, there is a strong indication that ESY services are warranted.

#### **1. Emerging Skill or Knowledge**

ESY shall be considered when few, if any, gains are made during the general school year and a skill or knowledge is in the process of emerging. In addition, the IEP team believes that with ESY services the student could make reasonable gains. The IEP team should collect documentation and data to determining the following:

- a. Does progress toward goals and benchmarks/objectives over an extended period show few if any gains?
- b. Is a skill or knowledge emerging?
- c. Does documentation and data support that ESY services are needed to

avoid irreparable loss of the learning opportunity?

## 2. Regression-Recoupment

ESY services shall be considered when the student would regress to such an extent and the amount of time required to relearn a skill, knowledge, or behavior would become so significant that the student would be unable to benefit from his or her special education program. The IEP team should collect documentation to determine the following:

- a. Do progress reports and data show that the student demonstrates periodic regression that is related to breaks in instruction throughout the school year?
- b. Do progress reports and data show that the student regresses and cannot relearn the skills, knowledge, or behavior in a reasonable amount of time following the breaks?
- c. Does documentation support a finding that without ESY services the student would regress to such an extent and have such limited recoupment ability that he or she would be unable to benefit from his or her special education program?

## 3. Self-Sufficiency

ESY services shall be considered when the acquisition of critical life skills and abilities that aid in the student's ability to function independently would be threatened by an interruption in services. In addition, the IEP team believes that continued services would reduce the student's reliance on caretakers or institutionalized care. Critical life skills relate to those skills and abilities that lead to independent functioning. Development of these skills and abilities can lead to reduced dependency on future caretakers and enhance students' integration with non-disabled individuals. Skills and abilities may include such things as toileting, feeding, mobility, communication, dressing, self-help, and social/emotional functioning.

In considering which goals are critical life skills, knowledge, and abilities, the IEP team shall consider the following: (1) How old is the student? (2) How many years does the student have left in school? (3) Is the skill required across a number of current environments? (4) Is the skill required across a number of future environments? (5) If the student does not perform the skill, will someone else have to do it for him or her? (6) Are the critical life skills aligned with the student's post-school goals?

The IEP team should collect and document information and data to determine the following:

- a. Does documentation identify critical life skills that are needed for independence?
- b. Will failure to maintain acquired critical life skills, knowledge, and abilities cause major or permanent loss of the skills, knowledge, and abilities and create a dependence on caregivers?
- c. Without ESY services, would the student fail to maintain these critical life

skills, knowledge, and abilities?

### C. ESY IEP DEVELOPMENT

ESY services are specifically determined for individual student needs and will be aligned to those IEP goals identified as needing extended school year services. ESY services shall be clearly delineated in an IEP (the IEP forms have a checkbox for ESY). Additionally, the district can meet this requirement by amending the current IEP using an amendment form. A copy of the IEP or amendment and written notice shall be given to the parent and/or adult student.

### D. BASIC ESY CONCEPTS

1. To be considered for ESY services, the student shall be identified as having a disability and shall currently be receiving special education services as defined by an IEP or IFSP.
2. Determination of the need for ESY services shall be made only for the immediate period of interruption of the instructional program. The provision of ESY services for the immediate period does not imply that ESY services will be required for subsequent periods.
3. The skills that are the focus of the ESY services are determined at the time of the development of the IEP or through an IEP amendment during the school year. They shall be appropriate for the student, shall consider the student's ability to acquire the skill, knowledge, or abilities, and shall be a priority for the student's developmental age.
4. The student's educational program is based on individual needs and not determined by what programs are readily available within the district.
5. The student cannot be required to fail, or to go for an entire year without ESY services, simply to prove a need.
6. The IEP team will determine the duration, frequency, and type of services that each student will receive during the ESY. The amount and duration of ESY shall not be predetermined by a district's schedule. The goals and benchmarks/objectives should be continuations of all or part of the previous year's IEP, although ESY instruction may be modified to enhance the emergence, maintenance, and/or generalization of skills, knowledge, or abilities.
7. The district will not automatically or categorically exclude or include any student or group from consideration for ESY services. However, only those who will be significantly impacted by an extended break in instruction should be enrolled.
8. ESY services may include special education and/or related services. ESY services may be only related services.

9. ESY is not subject to the same LRE considerations that apply during the regular school year. First, the same LRE options may not be available, and second, for some students, the appropriate LRE may be at home with the other family members and with only very limited ESY services.
10. ESY will be provided when ordered by a due process hearing officer. If the district chooses to appeal, the student will be placed in ESY pending the result of the appeal.
11. ESY shall be determined on a case-by-case basis based on the needs of the student as considered by the IEP team.

#### E. WHEN ESY IS NOT APPROPRIATE

ESY services were never intended to serve as the only resource available to parents and students. The district is encouraged to assist families in using community resources to meet their unique needs during periods of extended breaks. The district should not offer ESY services when it is inappropriate to do so. The following list is intended to help clarify decisions on ESY services.

1. The IDEA does not mandate that year-round services be provided for all students with disabilities.
2. ESY services are not required for the convenience of the school or parent and/or adult student and, therefore, cannot serve as a day-care or respite-care service.
3. The IDEA does not require that ESY services be provided to maximize educational opportunities for a student with a disability.
4. It is not necessary to continue instruction in all of the previous year's IEP goals and benchmarks/objectives during the ESY period. The focus should be on those specific goals and objectives that would be significantly impacted by an extended break in instruction.
5. ESY programs are not summer recreation programs.
6. ESY services are not to be considered to help students with disabilities advance in relation to their peers.
7. ESY services are not designed for students who exhibit situational regression or regression that is solely related to medical problems resulting in degeneration, or who are experiencing transitional life situations such as divorce or death of a family member.

#### F. DATA SOURCES FOR ESY DECISIONS

Decisions for ESY services shall be based on data collection and written documentation. Types of data may include, but are not limited to, the following:

1. Criterion-referenced test data: Consider daily/weekly probes or pretest/post-test data;
2. Norm-referenced test data: Consider pretest/post-test data.
3. Anecdotal records: Consider information collected throughout the school year.
4. Physical, mental, emotional, or health factors: Consider the educational, medical, or psychological records of the student as well as the prognosis or judgments of educators, medical personnel, parents, and others that work with the student. Consider degenerative types of difficulties that may become intensified during breaks in educational programming.
5. Past history: The IEP team should consider evidence of past regression, or past ESY services. It should not automatically be assumed that a student who has received ESY services in the past will be eligible in the future, but it is a factor to consider.
6. Data-based observations: Consider empirical data maintained on the student from performance in the classroom or community-based activities as well as the IEP data.
7. Teacher interviews and recommendations: Consider progress reports by teachers, therapists, and others having direct contact with the student before and after breaks in educational programming.
8. Parent and/or adult student input: Consider parent observations of the student as well as parent and/or adult student requests for ESY services.

#### G. ESY PROGRAM MODELS

The IEP team will determine the duration, frequency, and type of services that each student will receive during the ESY program. The goals and benchmarks/objectives should be continuations of all or part of the previous year's IEP, although ESY instruction may be modified to facilitate the emergence, maintenance, and/or generalization of skills, knowledge, or abilities.

ESY services may not necessarily be provided in a classroom setting. For example, some students may need services provided in the home or at an alternative location.

Types of ESY programs may include, but are not limited to:

1. training for the parent before breaks in programming;
2. home-based programs that may include parent training;
3. school-based programs;
4. cooperative programs with other agencies;

5. contracting with another agency; and
6. related services.

#### H. STAFF CONSIDERATIONS

Staffing options might include local certificated staff, supervised university practicum students, supervised student teachers, supervised trained paraprofessionals, cooperative multidistrict programs, or contracted/purchased services with agencies.