

Special Education Guidelines

These guidelines were developed by the Task Force for Online Learning and Students with Disabilities, which included representatives from OSPI, the Department of Education's Office for Civil Rights, Puget Sound Educational Service District, the Attorney General's office, school districts, and online learning providers.

The guidelines cover:

- [Recruitment](#)
- [Admission](#)
- [Free Appropriate Public Education \(FAPE\)](#)

Recruitment

A public school district that operates an online school program must not discriminate against students based on disability in recruitment.

- When a public school district announces an online school program or conducts public outreach and recruitment, it must do so in such a way that does not discriminate against students from all segments of the community served by the program, including students with disabilities.
- Promotional materials used by online school programs on the internet, in newspapers, and in other online or written communications, should state that the program does not discriminate against students based on disability, gender, racial and ethnic minorities, people of all sexual orientations and gender identities in admission or treatment in the program.
- Recruitment materials should include the contact information for the person responsible for coordinating the online school program's efforts to comply with Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act.
- It should also be made clear in the recruitment materials that if the student does not reside in the district that is offering the online school program and wants to attend this program, Washington's interdistrict choice transfer processes must be followed. (Those processes are set forth in chapter 392-137 of the Washington Administrative Code).

Admission

Choice

Online programs are operated by public school districts. When parents apply for their child's admission into the online program offered by a school district and the child is not a resident of that district, the parents will usually have to request that the non-resident district accept the student under the state non-resident transfer rules. (The primary alternative to this choice process, an inter-district agreement, is discussed [below](#).)

In typical cases, a student is first accepted by the non-resident school district offering the online school program; it is therefore advisable for parents to contact the online school program before initiating any transfer request with the student's resident district so that parents can verify that the online program is accepting new students. Once the non-resident district offering the online program has accepted the student and the student's resident district has released the student, the student is ready to begin the online program in the new school district. If either the resident or non-resident district does not act on the parents' request for release or for acceptance within 45 days, it is deemed denied. As discussed below, state law guarantees an appeal process if the transfer is denied.

Communication with Parents

Districts must make sure that the process for application into the online program and the process for admission into the district are clear and understandable to parents. In particular, online programs should also make clear to parents that students remain a resident of their district of residence until the non-resident district offering the online program accepts the student and the resident district releases the student.

Eligibility Criteria

A district that operates a multidistrict online school program under school choice may develop eligibility criteria for admission as long as the criteria are:

1. Neutral on their face with respect to disability;
2. Educationally justified;
3. Applied equally to both disabled and nondisabled students alike; and
4. Subject to modification when necessary to avoid discriminating against a student on the basis of disability, unless the district can demonstrate that making the modification would fundamentally alter the nature of its online school program.

For example, a district can establish specific reading, writing, and math achievement criteria for admission to its online school program, as long as the criteria are justified by the nature of its online school program, applied equally to all applicants, and subject to modification when necessary to avoid discriminating against a student on the basis of disability, unless the district can demonstrate that making the modification would fundamentally alter the nature of its online school program.

Because online programs should not have the same limited capacity issues as a physical, bricks-and-mortar classroom, the online program should not use classroom size as a basis for denying admission. When considering admission of a non-resident student, a district must not discriminate against a student based on disability in admission. The district cannot categorically deny admission to a student under school choice based on disability, or deny admission to a disabled student solely because the student needs special education or related aids or services. Nor may the district ask the parent to revoke consent for special education services as a condition of acceptance. The district must provide disabled students an equal opportunity to meet any appropriate minimum eligibility criteria for admission, consistent with the mission of the online school program and Section 504.

Appeals

Parents may appeal a denial of acceptance by a non-resident district or appeal a denial of release by a resident district. Each district has procedures for processing such denials. After that process has occurred, the parent may request OSPI to conduct a formal adjudicative hearing to resolve the dispute. The student remains a resident of their district pending any appeals.

Interdistrict Agreements

A district operating an online program may also ask another district to enter into an interdistrict agreement that sets forth the courses and services that will be provided by the non-resident district online program and by the resident district. If a resident district agrees to this arrangement, it remains the student's district of residence. Districts do not need to agree to enter into such interdistrict arrangement; it is wholly voluntary. Parents have no right to appeal a district's refusal to enter into an interdistrict agreement.

Free Appropriate Public Education (FAPE)

Once a district has accepted a student for its online program through the non-resident transfer process, that district is legally responsible for providing special education and related services to the student. The online program should review the student's educational records including evaluations and IEPs to determine how services will be provided. Given the nature of the online program, the IEP may need to be revised. In some cases, the IEP may have lapsed and the non-resident district providing the online program will need to develop a current IEP. This may require a reevaluation.

If the student needs related services, the district providing the online program must determine how those services will be delivered. Some methods for delivering related services can include:

- contracting with the student's resident district,
- contracting with another district that is located close to the student's physical location, or
- contracting with private providers, or determining whether some services can be provided using teletherapy.

School district administrators and school boards should be aware of these requirements when making decisions about operating online programs.

Parents of special education children enrolled in non-resident district online programs possess all of the procedural safeguards provided by the Individuals with Disabilities Education Act and Section 504 to address the district's obligation to provide a free appropriate public education. Districts should make sure they are following all requirements for any student in the online program to address identification, evaluation, placement and the provision of FAPE.