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DUE PROCESS PROCEDURES

The Due Process Procedures set forth in this section provide structure for the delivery of special education programs and services within Minnesota Valley Education District. The procedures are presented in five general topical areas:

- Part I: Student Identification
- Part II: Pre-referral Activities
- Part III: Evaluation and Eligibility Determination
- Part IV: Provision of Special Education
- Part V: Review of Progress

Each section begins with a reference to the applicable Federal or State Statute or Rule. Individual procedures are listed within each section, and are numbered to correspond with the Due Process Procedures Flowchart that appears on the following page. It is hoped that such a format provides a useful and easily understood means of communicating River Bend's Special Education procedures.

Note: Throughout this manual, procedures involving and references made to the "IEP" are also applicable to the IFSP and IIP, unless otherwise noted.

**PART I:
STUDENT IDENTIFICATION**

"School districts shall develop systems designed to identify pupils with disabilities beginning at birth, pupils with disabilities attending public and nonpublic school, and pupils with disabilities who are of school age and are not attending any school. The district's identification system shall be developed in accordance with the requirement of nondiscrimination and included in the district's total special education system plan." [M.R. 3525.0750]

1. Child Find Activities: Member districts/Minnesota Valley Education District shall conduct ongoing activities designed to identify students who may require special education. These activities shall include, but are not limited to:

a. Community Outreach: Member districts, in cooperation with River Bend, county Interagency Early Intervention Committees (IEIC's) and county Family Service Collaboratives, shall prepare and disseminate information regarding available services and referral procedures for students, ages birth through 21, who may be in need of special education. Each district shall insure that such information is available in the native language of its non-English speaking residents. Dissemination may be made via public news releases (i.e., newspapers, radio, etc.), school bulletins, brochures, speaking engagements to parent and civic groups, etc. Records of news releases, speaking engagements and copies of disseminated information shall be maintained by the District and/or MVEDas appropriate (*see Appendix A: Sample Annual Notices*).

b. Coordination With Referring Agencies: District and MVEDpersonnel shall provide information regarding available services, referral procedures, forms, etc. to all community agencies, groups and individuals who have contact with students ages birth through 21. Community agencies and groups shall include, but are not limited to:

- 1) Physicians, clinics and hospitals;
- 2) Public health agencies;
- 3) Public and private social service agencies;
- 4) Public and private schools;
- 5) Head Start, preschools, nurseries and day care facilities;
- 6) Mental health service agencies; and
- 7) Local chapters of parent and lay associations.

c. Review of Student Progress: All students shall have their progress reviewed to determine if they may be in need of special education. This shall include, but is not limited to:

- 1) A periodic review of student records, including the results of group testing, by classroom teachers; and
- 2) A review of the educational record and/or interview with the parent of each new student by the building principal (or designee).

Note: If an enrolling student received special education in the prior district, refer to *Transfer Procedures*.

2. Request for Assistance: When a student grades K-12 is having difficulty within the general education setting, a Request for Assistance form shall be completed. This form may be completed solely by the referring person(s), or by the referring person in conjunction with the building administrator or others, as appropriate. The completed form is then given to the building administrator (or designee) who shall place the Request on the agenda of a regularly scheduled Child Study Team meeting (*see Due Process Procedures, Step 3*).

Requests for Assistance for nonpublic students shall be directed to the nonpublic building principal. The nonpublic principal shall forward the Request to the appropriate district building administrator. Upon receipt of the Request, the district building administrator (or designee) shall place the Request on the agenda for the next regularly scheduled Child Study Team meeting (*see Due Process Procedures, Step 3*).

Referrals for student's age's birth through six who have not entered the K-12 educational system shall be made by the appropriate county Interagency Early Intervention Committee (IEIC). The county IEIC shall serve as the Child Study Team for such referrals.

Note: The referring person(s) must contact the student's parent(s) and inform them that a Request for Assistance is being completed. This and all other Forms shall be placed in the student's record, parents have the right to review these documents upon request (refer to local district's records policy).

PART II: PRE-REFERRAL ACTIVITIES

Before a student is referred for a special education evaluation, the district must conduct and document at least two instructional strategies, alternatives, or interventions using a system of scientific, research-based instruction and intervention in academics or behavior, based on the pupil's needs, while the pupil is in the regular education classroom. The pupil's teacher must provide the documented results. A special education evaluation team may waive this requirement when they determine the pupil's need for the evaluation is urgent.

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This section may not be used to deny a pupil's right to a special education evaluation. [M.S. 125A.56]

3. K-12 Child Study Team: When general education resources are unable to resolve the presenting problem, the building administrator (or designee) shall schedule a Child Study Team (CST) meeting. The building administrator (or designee) is responsible for prioritizing cases to be presented to the Team, ensuring that the cumulative file, health record, etc. are made available to the CST and for establishing a workable agenda for the meetings. The CST shall consist of the following personnel:

- a. The building administrator (or designee);
- b. The student's teacher [When the student's teacher is unable to attend the Child Study Team meeting, the CST may appoint a member to interview the student's teacher(s), gather data and report back to the Team. This data would then be discussed at the next regularly scheduled CST meeting.
- c. Building level support personnel (i.e., counselor, nurse, special education staff, etc.), as appropriate;
- d. MVEDsupport personnel (psychologist, occupational therapist, etc.), as appropriate; and
- e. Others, as necessary.

The function of the Child Study Team is to:

- a. Behaviorally clarify the presenting problem
- b. Pull-together and consider existing information as it relates to the presenting problem;
- c. Gather additional information within the general education setting utilizing general education personnel and/or procedures; and
- d. Determine appropriate course(s) of action in attempting to resolve the presenting problem.

Three potential courses of action are available to the CST in attempting to resolve problems:

- a. General Education System's intervention (*see Due Process Procedures, Step 4*);
- b. Pre-referral Interventions aimed at resolving the presenting problem within the general education setting (*see Due Process Procedures, Step 5*); and
- c. Referral for Evaluation (*see Due Process Procedures, Step 8*).

4. General Education System's Intervention: This option is selected by the Child Study Team in response to problems that are aspects of the general education system. Examples of general education system issues are:

- a. Referral for grade retention;

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- b. Questions concerning general education policies and practices; and
- c. Non-special education parental concerns.

Although the CST may consult with school staff and/or parents or provide in-service training aimed at resolving the presenting problem(s), the formal referral process is halted, as the issue at hand does not involve special education.

Note: This policy should not be construed as prohibiting MVED or other special education personnel from being actively involved in situations such as crisis intervention or assisting with referrals to community-based service providers.

5. Pre-referral Interventions: This option is selected by the Child Study Team in an attempt to assist the classroom teacher in resolving the presenting problem within the general education setting. These interventions shall be conducted prior to consideration for special education eligibility and shall be based on scientific, research-based instruction and intervention in academics and/or behavior. In developing pre-referral interventions, the Child Study Team shall:

- a. Review prior interventions conducted by the classroom teacher and/or others, noting the number, duration and appropriateness of the interventions
- b. Review data contained within the student's record, including results of group testing, health history/status etc.
- c. Review teacher logs, student work samples, etc.

The Child Study Team may elect to:

- a. Utilize district curriculum measures with local norms
- b. Interview and/or consult with the parent(s);
- c. Interview and/or consult with the student;
- d. Obtain teacher checklists; and/or
- e. Conduct an informal observation of the student.

Based upon data obtained through the above procedures, the Team in consultation with the classroom teacher (or parents, as appropriate) shall develop a plan of action designed to remediate the presenting problem. This plan is to be implemented by the teacher, parent(s) and/or other general education personnel as part of the general education program. Through the consultation process, Team members and the teacher (or parent) collaboratively review, revise and evaluate the effects of the pre-referral intervention(s).

Note: Although the Child Study Team must be granted flexibility in creatively attempting to resolve problems within the general education setting, no student specific, individually administered evaluation instruments/procedures normally used to determine eligibility for special education shall be administered, nor shall the student be placed within a special education classroom on a 'trial' basis

or for behavior management purposes, nor shall the student be provided individualized instruction by special education personnel as part of a pre-referral intervention.

Note: When a student who has been dismissed from all special education services is re-referred for special education services within twelve (12) calendar months of being dismissed, the requirement to document two pre-referral interventions is waived, assessments conducted within the prior twelve (12) calendar months may be considered current, and reevaluation criteria shall be utilized.

6. Problem Resolution: When pre-referral interventions have proven successful in remediating the presenting problem, formal involvement by the Child Study Team shall be terminated. However, changes resulting from interventions often need monitoring to ensure they are maintained across time and settings. During the monitoring phase, Child Study Team members may provide informal consultation to general education staff. Should the problem recur, additional assistance from the Child Study Team may be requested via completion of the *Request for Assistance* (see *Due Process Procedures, Step 2*).

7. Referral for Non-Special Education Services: When pre-referral interventions have failed to resolve the presenting problem but the solution does not appear to involve special education, referral may be made for non-special education services. Sources of potential referrals include, but are not limited to:

- a. Referral to the school counselor;
- b. Referral for Title 1 services;
- c. Referral to community-based services (i.e., mental health, medical, social services, etc.); or
- d. Consideration for eligibility under Section 504.

PART III: EVALUATION AND ELIGIBILITY DETERMINATION

“Evaluation or reevaluation means an appropriate individual educational evaluation of a pupil’s performance of development conducted by appropriately licensed personnel according to recognized professional standards, parts 3525.2550 and 3525.2710.” (M.R.3525.0210 Subp.18)

8. Referral for Evaluation: Referral for evaluation may occur when:

- a. Pre-referral interventions have proven unsuccessful in remediating the presenting problem and the Child Study Team/IEIC determines that evaluation is warranted
- b. The Child Study Team/IEIC determines that the student's need for the evaluation is urgent. (Reasons for urgency include: possible physical and/or sensory disabilities, or the student's behavior is a danger to self or others).
- c. Requested by the parent or student over age 18.

Note: Should the district deny a formal request for an evaluation by the parent or student over age 18, the building principal, or designee, shall immediately contact the Director of Special Education (or designee) who will contact the parent to offer and arrange a Conciliation Conference. (*See Due Process Procedures, Step 9*). In addition the district must inform the parent or student of its decision utilizing the *Prior Written Notice and Parental Consent/Objection Form*.

Referral for evaluation *may* occur when:

- a. Requested by the student under age 18, or
- b. Requested by other agencies.

The Child Study Team/IEIC (or Director of Special Education or designee in special circumstances) shall appoint an Evaluation Team Manager to oversee the evaluation process and coordinate the Evaluation Team.

The Evaluation Team shall, at a minimum, include:

- a. The student's parent(s);
- b. The student's general education teacher or, if the student does not have a regular teacher, a general education teacher licensed to teach students that age; and
- c. At least one person qualified to conduct individual diagnostic examinations of students (i.e., school psychologist, educational speech/language clinician, remedial reading teacher and/or special education teacher).

The Evaluation Team shall conduct a review of the student's performance in the following areas: intellectual functioning, academic performance, communicative status, motor ability, vocational potential, sensory status, physical status, emotional and social development, and behavior and functional skills. The Team shall:

a. Review existing data on the student, including:

- 1) Evaluations and information provided by the student's parent(s);
- 2) Current classroom-based assessments and observations; and
- 3) Observations by teachers and related service providers.
- 4) Data from Response to Intervention (RTI) probes

b. On the basis of that review and with input from the parent(s), identify what additional data, if any, is needed to determine:

- 1) Whether the student has a disability (or in the case of a reevaluation, whether the student continues to have a disability);
- 2) The present levels of performance and educational needs of the student;

- 3) Whether the student needs special education and related services (in the case of a reevaluation, whether the student continues to need special education and related services); and
- 4) For reevaluations ONLY, determine whether any additions or modifications to the special education and related services are needed to enable the student to meet the measurable annual goals set out in the student's IEP and to participate, as appropriate, in the general curriculum

Note: The Evaluation Team need not “meet” to fulfill the review requirement, as long as input is sought from all team members (e.g., documented phone calls or e-mail contact is sufficient).

The Evaluation Team Manager shall complete the *Notice of an Educational Evaluation/Reevaluation Plan, Prior Written Notice, and Parental Consent/Objection* form. The plan will note the areas to be evaluated, the tests and other evaluation materials to be utilized and necessary to complete the evaluation. The evaluation team manager shall contact the parent(s) to obtain consent to conduct the evaluation. An initial evaluation cannot proceed without prior written consent of the parent(s).

Three parental responses to the Notice are possible:

- a. I agree with the proposal, and I give permission to the school district to proceed.
- b. I do not agree with the proposal, and I do not give permission for the school to proceed.
- c. I agree with some proposals and object to the following (Specify your objections).

If the parent(s) fail to respond to the request for an initial evaluation within **fourteen (14) calendar days** of their receipt of the Notice, the district *may* proceed to Step 9: Request for Conciliation or Mediation. However, the district is not held liable should they decide not to proceed.

Note: Districts are not required to utilize the Notice form for actions which are part of its overall identification system, including: large group screenings, individual student observation within the general classroom, informal inventories, and consultation between general and special education personnel.

9. Dispute Resolution: Formal due process dispute resolution may be initiated whenever:

- a. the parent(s) disagrees with (i.e., denies permission for) a proposed initial evaluation;

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- b. The parent(s) does not respond within fourteen (14) calendar days to the district's request to conduct an initial evaluation

Dispute Resolution IS initiated whenever:

- a. The parent(s) denies permission for an initial placement of the student into special education (i.e., disagrees with a proposed initial IEP/IFSP);
- b. The parent(s) does not respond within fourteen (14) calendar days to the district's proposed initial placement of a student into special education (i.e., initial IEP/IFSP)
- c. The parent(s) disagrees with (i.e., denies consent for) a proposed continuing (i.e., annual) IEP/IFSP;
- d. The district refuses to conduct an initial evaluation/reevaluation that has been formally request by the parent(s)
- e. The parent(s) formally disagree with any other action proposed by the district which requires use of the *Parental Consent/Objection* form; or
- f. The district receives a formal, written parental request for a hearing.

Two courses of action are available to the parents and district in resolving these differences:

- a. Alternative Dispute Resolution – which includes, but is not limited to, Conciliation Conferences, Facilitated IEP meetings, and Mediation; and
- b. Due Process Hearing.

Note: If a parent makes a written request for withdrawal of ALL special education services for their child, the district must honor the request and the district is not held responsible. The following procedures should be followed:

1. Send a *Prior Written Notice*, *Parental Consent/Objection*, and *Procedural Safeguards* and *Parental Rights* forms acknowledging receipt of the request and informing parents that the student will no longer be considered a special education student and that general education district policies apply.

Note: *In the event the parent asks that their child be considered for special education in the future, the district would follow **initial** evaluation procedures.*

When a parent disagrees with any action proposed by the district, fails to respond within fourteen (14) calendar days for any initial action proposed by the district, or upon receipt of the parent's written request for a hearing, the IEP Manager shall immediately contact the Director of Special Education. The Director (or their designee) shall be responsible for overseeing and coordinating the process for resolving the dispute, up to and including serving as primary contact for the district should the issue result in a Due Process Hearing. (*See Due Process Procedures, Step 9*).

Note: It is the policy of MVED to offer parents the opportunity to resolve special education disputes via alternative dispute resolution prior to initiation of a Due Process Hearing.

10. Evaluation: The evaluation shall reflect the student's present level of performance and shall be the basis for educational planning. For students age three (3) and above, the evaluation and report must be completed within 30 school days following the date the district receives the written Parental Consent/Objection Form to conduct an initial evaluation/reevaluations, unless a Conciliation Conference, Mediation or Due Process Hearing is requested. For student's age's birth through two (2), the evaluation and report must be completed within 45 calendar days from the date of the initial referral to the IEIC. The evaluation shall:

- a. Fully assess those areas of suspected disability using technically adequate instruments and procedures
- b. Make reasonable efforts to obtain information from the parents and others with knowledge regarding the student's functioning in current and anticipated environments when the team determines it to be necessary because of cultural or other differences presented by the student or due to the nature of the student's disability
- c. Be provided and administered in the student's primary language or mode of communication unless it is clearly not feasible due to obscurity of language (contact Director or Coordinator for guidance).
- d. Be performed in accordance with the recognized professional standards which include the recognition or accommodation for persons whose differences or conditions cause standardized instruments to be invalid and otherwise in accordance with the requirements of non-discrimination; and
- e. Be conducted with procedures that ensure that, in accordance with professional standards, testing and evaluation materials and procedures are used for the purposes of identification, evaluation classification, educational program plan development, educational placement, including special education services, program implementation, review and evaluation, notice and hearing, are selected and administered so as not to be discriminatory, concluding cultural discrimination. The procedures and materials shall take into account the special limitations of persons with disabilities and the racial or cultural differences presented by persons and must be justified on the basis of their usefulness in making educational program decisions that serve that individual student.
- f. When the use of a conditional behavioral intervention procedure is being considered, the evaluation must include a functional behavioral assessment (FBA). The evaluation must document that it has ruled out any

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other treatable cause such as a medical or health condition for the interfering behavior; and

g. **During** grade nine, *whichever comes first*, must include an evaluation of the student's needs for transition from secondary services to post secondary education and training, employment and/or independent living.

Note: Norm-referenced evaluations and outside evaluation data may be considered "current" if they were conducted within 12 calendar months prior to the Eligibility Determination meeting (*see Due Process Procedures, Step 13*).

Note: When completing an initial evaluation (or considering change of category) utilizing the disability criteria checklist is recommended as part of the determination process.

11. Reevaluation: A comprehensive reevaluation of the student's need for special education shall be conducted every three years, or earlier at the request of the parent or district. The IEP Manager shall alert the Evaluation Team in a timely manner such that all evaluations and Eligibility Determination (Step 13) are completed **on or before** the three-year anniversary of the previous Eligibility Determination.

a. The Evaluation Team (which includes the parents) shall review existing data, including evaluations and information provided by the parent, current classroom-based evaluations and observations, and teacher and related services provider observations.

b. On the basis of that review, the Evaluation Team shall identify, what additional data, if any, are needed to determine:

- 1) Whether the student continues to have a disability,
- 2) Present levels of performance in all areas associated with the student's disability,
- 3) The student's special education needs,
- 4) Whether the student continues to need special education and related services, and
- 5) Whether any additions or modifications to the student's special education program are needed to enable the child to meet their measurable annual goals and to participate, as appropriate, in the general curriculum.

c. The IEP Manager shall complete the *Notice of an Educational Evaluation/Reevaluation Plan and Prior Written Notice* and contact the parent(s) to obtain consent to conduct the reevaluation.

No Needs Assessment

If the Team determines that no additional "testing" is needed, parents must be informed of the decision and of their right to request a full and comprehensive

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reevaluation. Utilize the Parent Consent/Objection Form and Prior Written Notice to document a “no needs” assessment.

Note: In completing the reevaluation, the procedures listed under *Evaluation* (Step 10) shall be followed.

12. Request for Outside Evaluation: When the **Evaluation Team** determines that additional outside evaluation is necessary to determine a student's eligibility for special education, or when the IEP Team determines additional data is required to clarify the student's special education needs, the following procedure shall be followed for students grades K-12:

- a. The Team will make a written request to the Director of Special Education describing the need and rationale for additional evaluation, and what specific questions are to be answered by the evaluation
- b. The Director will review the request, along with other pertinent data, and do one of the following:
 - 1) Approve the request and instruct the Team to make arrangements for the evaluation,
 - 2) Request the Team supply additional data prior to making a decision, or
 - 3) Deny the request, providing rationale for the denial.
- c. Copies of the written request and response will be placed in the student's school record.

Requests for outside evaluations of students ages birth through six who are not yet enrolled in the K-12 curriculum will be referred to the appropriate county IEIC.

Note: When results from an outside evaluation cannot be obtained within normal due process time limits, the Evaluation Team Manager or IEP Manager, as appropriate, must inform the parent(s) of the delay and document the reason for the delay in the student's school record.

13. Eligibility Determination: On or before 30 school days from the date the district receives parental permission to conduct an evaluation/reevaluation (or 45 calendar days from the date which the referral was received for students ages birth through two), the Evaluation Team, including the student's parent(s), shall meet to review evaluation data, determine the student's eligibility and need for special education and document its findings utilizing the *Evaluation Report* form. The Evaluation Team or IEP Manager, as appropriate, shall contact the parent(s) either verbally (in person or via telephone) and/or via use of the *Notice of a Team Meeting* form to arrange for a meeting to discuss evaluation results and determine if the student is eligible for special education services.

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The Team shall document its findings and conclusions utilizing the *Evaluation Report* (see *Guidelines for Write-ups in appendix*), which shall include:

- a. Information reported by the parents;
- b. A summary of all evaluation results, including tests and scores
- c. Present level of performance statement(s), including educational needs that derive from the disability;
- d. Interpretation of evaluation results and determination of eligibility by addressing criteria components verifying the student has a disability and is in need of (or continues to be in need of) special education and related services; and
- e. Team members' names, titles and the date of the report.

Note: A student may not be identified as having a disability if the determinant factor for that eligibility determination is a lack of instruction in reading or math or Limited English Proficiency.

Two general conclusions are available to the Team:

- a. The student "is not eligible for special education . . ." or
- b. The student "is eligible for special education . . ." - Proceed to Step 15: IEP Development.

A copy of the *Evaluation Report* must accompany the IEP, unless it has already been provided to the parent(s).

Note: For a Specific Learning Disability or an override of any criteria ONLY, Team members must sign the *Evaluation Report* and indicate their Agreement with the team's conclusions. If any member of the Team does not agree with the conclusion(s) of the *Evaluation Report*, they must write, sign and attach a Dissenting Opinion to the Report.

Note: students who are not eligible for, or do not need special education, may be considered "handicapped" under Section 504 of the Rehabilitation Act of 1973. Federal law requires that schools make reasonable, individualized accommodations within the general education setting for students who are handicapped under Section 504.

14. Request for an Independent Evaluation: When the parent(s) disagree with the findings and/or conclusion(s) as detailed in the *Evaluation Report*, the parent(s) may request, in writing, an independent educational evaluation of their child at the district's expense.

- a. When parents formally request an independent evaluation, the IEP Manager shall immediately contact the building principal and Director of Special Education and inform them of the request.

- b. The Director of Special Education (or their designee) shall contact the parent(s) and provide them information about where an independent educational evaluation may be obtained and inform them of the required qualifications of independent examiners.
- c. Upon receipt of the Independent Evaluation report(s), the Evaluation Team will reconvene and reconsider the student's eligibility and/or programming for special education in light of the additional data. (*See Due Process Procedures, Step 13*).

Note: Outside evaluations initiated by the parents are not the financial responsibility of the district if it does not follow the procedures for the Independent Evaluation. In such instances, the Evaluation Team must consider the results of an outside evaluation, but is not obligated to accept the findings nor the recommendations of such an evaluation.

PART IV: PROVISION OF SPECIAL EDUCATION

"Pupils with disabilities who are eligible for special education services based on an appropriate individual evaluation shall have access to free appropriate public education, as that term is defined by applicable law." [M.R. 3525.0300]

15. IEP/IFSP/IIIP Development: When the Evaluation Team determines a student is eligible for and needs special education, the building principal and/or Director of Special Education shall appoint an IEP Manager to coordinate special education services for the student. [Individualized Family Service Plan (IFSP) Managers are selected by the parent(s).]

Within 30 calendar days after the Eligibility Determination meeting and annually thereafter, an IEP meeting must be held. The IEP Manager shall contact the parent(s) either verbally (in person or via telephone) and/or via use of the *Notice of a Team Meeting* form to arrange for an IEP team meeting.

Federal regulations require that the IEP meeting be scheduled at a mutually agreed upon time and place and that the parents:

- a. Are notified of each IEP meeting early enough to ensure they will have an opportunity to attend
- b. Be informed as to the purpose, time, and location of the meeting
- c. Be informed of who will be in attendance at the meeting; and
- d. Be informed of their right to invite people of their choosing to the meeting who have knowledge or special expertise concerning the student.

Note: When a district proposes an out-of-district placement (i.e., to a Care and Treatment program, State Academy, etc.), the placing district is responsible for

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preparing the IEP placing the student into the new program/district. For subsequent IEP's, the providing district is responsible for developing the IEP and a copy must be sent to the resident district.

The IEP Team shall be composed of:

- a. The student's parent(s) (when parents choose not to attend an IEP meeting, the IEP Manager must document multiple attempts to arrange a mutually agreeable meeting via logs of telephone calls made or attempted, copies of correspondence and/or records of visits made to the parent's home or place of employment):
- b. The student, when appropriate (Beginning at age 14 or grade nine, the student must be invited to attend the meeting to discuss transition needs. If the student chooses not to attend, the IEP Manager must implement procedures to determine and report student preferences.)
- c. A representative of the school district, other than a teacher or other professional who provides services to the student, who
 - 1) Is licensed to provide or supervise the provision of special education services
 - 2) Is knowledgeable about the general curriculum;
 - 3) Has the authority to make decisions about the appropriateness of the proposed program; and
 - 4) Has the authority to commit the responsible district's resources
- d. A special education teacher licensed in the area of the student's primary disability
- e. A teacher or other representative of the general education program where the student is enrolled or expected to enroll
- f. Others at the discretion of the parents, district or Director.

In addition, the following persons shall be invited to attend the IEP meeting under the following special circumstances:

- a. For initial placements, at least one member of the evaluation team who is knowledgeable about the evaluation procedures used and the results
- b. When a conditional behavioral intervention procedure is being considered, a person knowledgeable about ethnic and cultural issues relevant to the student's behavior and education (A parent may serve in this capacity if they understand the duties/implications and agree to also serve in this capacity - in which case their dual role must be documented on the IEP.)
- c. A cultural liaison, as appropriate;
- d. When secondary transition services are being considered, a representative of any agency that is likely to be responsible for providing or paying for transition services; and

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- e. For students attending nonpublic schools, a representative of that school.

Note: If a team member is unable to attend the meeting in part, or in whole, they may be excused if the parent and the public agency agree in writing prior to the start of the meeting. Document agreement by completing the *Agreement Regarding IEP Team Member Attendance* form.

The IEP Team shall:

- a. Review parental rights;
- b. Discuss the student's present level of academic and functional performance in each area related to the student's disability
- c. Determine the student-based special education instructional needs which derive from the disability
- d. Identify one or more annual goals for each identified special education need
- e. Identify two or more benchmarks or instructional objectives for each annual goal, including the criteria for attainment
- f. Describe the special education and related services needed to accomplish the goals and objectives
- g. Identify the extent the student will be able to participate in general education programs.
- h. Determine the projected dates for initiation and the anticipated duration of each service
- i. Determine the frequency and method(s) for reporting progress toward meeting IEP goals to the parent(s)
- j. Determine if alterations of the student's school day are required, which must be based on student needs and not administrative convenience
- k. Determine the student's need for Extended School Year services (*see Special Procedures: Extended School Year*)
- l. Determine if conditional procedures are necessary in achieving IEP goals (*see Special Procedures: Conditional Behavioral Procedures*)
- m. For students by grade nine or age 14, address the student's needs for transition from secondary services to post secondary education and training, employment and independent living
- n. Determine and describe the student's need for and specific responsibilities of a paraprofessional; and
- o. Document these activities via completion of the Individual Education Program (IEP) Plan, Individualized Family Service Plan (IFSP) or Individual Interagency Intervention Plan (IIIP), as appropriate.

Note: (Transfer of Rights) Beginning at least one year before the pupil reaches the age of 18, document in the IEP that the pupil and the parents have been informed that the rights will transfer to the pupil at the age of 18 (unless a guardian or conservator has been appointed). Utilize the *Notice of Transfer of Parental Rights* form and initial the date in the IEP.

A written copy of the IEP must be given to the parents within ten (10) school days following the IEP Team meeting. [If an evaluation was recently completed, a copy of the *Evaluation Report* must accompany the IEP, unless it has already been provided to the parent(s).]

16. Placement In Special Education: The district must obtain signed parental consent prior to the Initial Placement of a student into special education. The written notification must:

- a. Include a copy of the proposed IEP, the *Evaluation Report* and other supporting documentation
- b. Inform the parent(s) that the district will not proceed with the initial placement without prior written consent; and
- c. Inform the parent that except for initial placement, subsequent proposed placement and service provisions will occur unless the parent(s) object in writing within fourteen (14) calendar days after the receipt of the *Parental Consent/Objection Form and Prior Written Notice*.

The IEP Manager shall be responsible for obtaining signed parental consent prior to initial placement, and notifying parent(s) of subsequent proposed placement and service provision via use of *Parental Consent/Objection Form* accompanied with *Prior Written Notice*.

Three parental responses to the Notice are possible:

- a. I agree with the proposal, and I give permission to the school district to proceed.
- b. I do not agree with the entire proposal, and I do not give permission for the school to proceed.
- c. I agree with some proposals and object to the following (specify your objections):

Note: If the parent(s) fail to respond to the request for initial placement into special education within fourteen (14) calendar days of their receipt of the Notice, the IEP Manager must immediately contact the Director of Special Education for consideration of conciliation (*see Due Process Procedures, Step 9*).

PART V: PROGRESS REVIEWS

The providing school district shall determine the effectiveness of the student's IEP by conducting periodic progress reviews of the student's program plan. The IEP team shall address the plan for, location of, and frequency of at least one progress review and one annual review of the student's progress in achieving the prescribed educational goals and objectives and the appropriateness of the program and placement.

17. Progress Reporting: The student's parent(s) shall be regularly informed regarding their child's progress toward meeting IEP goals. Progress reporting shall occur *at least* as often as parents are informed of the progress of their nondisabled children. Progress reporting can be done in writing, utilizing the *IEP Progress Report* form, verbally at a parent-teacher meeting/conference, or verbally via telephone, as specified on the student's IEP. Verbal reports must be documented in the communication log in the student file.

Progress reporting includes:

- a. Progress toward meeting the annual goals; and
- b. The extent to which that progress is sufficient to enable the student to achieve the goals by the end of the year.

If, as a result of the Progress Reporting, it is determined that Significant Changes are required, the IEP Manager will contact the parent(s) and arrange a meeting to revise the IEP. Significant Changes requiring an IEP Team meeting include:

- a. The IEP goals have been completed or require modification
- b. There is a need to add or delete a service (*see Special Procedures: Adding Services To An Existing IEP*)
- c. There is a change in the type of site or setting in which the student receives special education;
- d. The amount of time the student spends with nondisabled peers changes
- e. The amount of special education necessary to meet the goals and/or objectives needs to be increased or decreased; or
- f. When the Team determines there is a need for a conditional behavioral intervention procedure.

18. Annual Review: An IEP Team meeting must be held:

- a. Prior to the anniversary date of the existing IEP;
- b. Within 30 calendar days following a completion of a reevaluation;
- c. When significant changes to the IEP appear necessary
- d. Prior to the exclusion or expulsion of a student (*see Special Procedures: Expulsion of Students with Disabilities*);
- e. Within five (5) school days when a student has been removed and/or suspended for five (5) or more consecutive days (*see Special Procedures: Suspension of Students with Disabilities*);

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- f. Within five (5) school days when a student has been removed and/or suspended for eleven (11) or more cumulative school days in a school year (*see Special Procedures: Suspension of Students with Disabilities*);
- g. Within five (5) school days of the use of a conditional procedure in an emergency situation (*see Special Procedures: Conditional Behavioral Interventions*);
- h. Within three (3) school days following parental withdrawal of consent for use of a conditional procedure (*see Special Procedures: Conditional Behavioral Interventions*); or
- i. Earlier at the request of the parent(s) or district.

The procedures listed under Step 15: IEP Development shall be followed.

Note: IEP meetings must be held prior to the IEP due date so that no lapse in service occurs. The case manager should account for writing the IEP and allowing 14 days for parents to sign the IEP.

19. Dismissal from Special Education: When the Evaluation Team determines that a student no longer requires special education services; the Team shall dismiss the student from special education and document its decision via completion of the *Evaluation Report* and *Prior Written Notice and Parental Consent/Objection Form*.

Note: This section applies only to students who are being dismissed from ALL special education services, not those who are being dismissed from a part of their services (e.g., dropping Speech/Language or OT services, but continuing to receive special education instruction). *See Special Procedures: Adding/Deleting Services to an Existing IEP.*

Special education instruction and services shall be discontinued when:

- a. The Evaluation Team determines the student no longer meets continuing eligibility requirements
- b. The Evaluation Team determines the student no longer needs special education services
- c. The student graduates having successfully completed graduation requirements as prescribed by the Board of Education or the student's IEP;
- or
- d. The student reaches 21 years of age prior to September 1.

For any student discontinuing special education services due to graduation or aging out, the IEP Manager shall attach a completed *Summary of Performance* form to the *Prior Written Notice and Parental Consent/Objection form*.

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Note: Students who have been dismissed from special education may qualify as "handicapped" under Section 504 of the Rehabilitation Act of 1973. Federal law requires that schools make reasonable, individualized accommodations within the general education setting for students who are handicapped under Section 504.

Note: When a student, who has been dismissed from all special education services, is re-referred for special education services within twelve (12) calendar months of being dismissed, the requirement to document two pre-referral interventions is waived, assessments conducted within the prior twelve (12) calendar months may be considered current, and reevaluation criteria shall be utilized.

SPECIAL PROCEDURES

I. ADDING/DELETING SERVICES TO AN EXISTING IEP

Adding a new or additional service(s) constitutes a significant change, requiring that a new IEP be developed. The need for new services may be established via informal and/or curriculum-based means (i.e., teacher reports, work samples, observations by the related services professionals, etc.). The data is entered under the Present Levels of Academic and Functional Performance section of the IEP, the educational need identified, appropriate goals and objectives developed, and the necessary service added to *Special Education and Related Services* section of the IEP, as appropriate.

Note: Related services do not require separate goals/ objectives. Rather, such services are in support of instructional goals/objectives.

There are circumstances where additional, formal evaluation is necessary to establish the need for a new service(s) – this is particularly true when considering adding secondary transition services or DAPE (Developmental Adaptive Physical Education) which has specific eligibility criteria. Under such circumstances, there are two options:

1. Conduct a comprehensive reevaluation to determine the student's continued need for special education, including the need for the new service(s) (*see Due Process Procedures, Step 11*); or
2. Conduct an evaluation in the area of the needed service(s) only.

When choosing to conduct an evaluation for a specific service only, the following procedure shall be followed:

1. The IEP Team shall complete the *Notice of an Educational Evaluation/Reevaluation Plan*. This will be an Initial Evaluation to determine the need for service(s).

2. Following completion of the evaluation, the person(s) who conducted the evaluation must complete a written report which documents the date and types of evaluation used, evaluation results, interpretations of the results, and a recommendation whether the service is needed utilizing the *Performance Evaluation Area* additional form.

Note: Do NOT use the *Evaluation Report* unless you are conducting a comprehensive reevaluation.

3. The IEP Manager shall schedule an IEP meeting with the parent(s) (*see Due Process Procedures, Step 13*). Results of the evaluation shall be included within the Present Levels of Performance section of the IEP, special education needs identified, appropriate goals and objectives developed (if needed), and the new service(s) added under the *Special Education and Related Services* section of the new, annual IEP.

2. EXTENDED SCHOOL YEAR (ESY)

School districts are required to provide extended school year (ESY) services to a student if the IEP team determines the services are necessary during a break in instruction in order to provide a Free Appropriate Public Education (FAPE).

ESY Determination:

At least annually, the IEP team must determine a student is in need of ESY services if the student meets the conditions of item 1, 2, or 3.

1. There will be significant regression of a skill or acquired knowledge from the student's level of performance (i.e., the student's level of performance prior to the break in instruction) on an annual goal that requires more than the length of the break in instruction to recoup unless the IEP team determines a shorter time for recoupment is more appropriate
2. Services are necessary for the student to attain and maintain self-sufficiency because of the critical nature of the skill addressed by an annual goal, the student's age and level of development, and the timeliness for teaching the skill; or
3. The IEP team otherwise determines, given the student's unique needs, that ESY services are necessary to ensure the student receives a Free Appropriate Public Education.

Sources of Information Determination:

The IEP team must decide the basis for determining whether a student is eligible for ESY services using information including:

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1. Prior observation of the student's regression and recoupment over the summer;
2. Observation of the student's tendency to regress over extended breaks in instruction during the school year; and
3. Experience with other students with similar instructional needs.

Other Factors to be Considered:

In making its determination of ESY, the IEP team must consider the following factors, when relevant:

1. The student's progress and maintenance of skills during the regular school year;
2. The student's degree of impairment;
3. The student's rate of progress;
4. The student's behavioral or physical problems;
5. The availability of alternative resources;
6. The student's ability and need to interact with nondisabled peers;
7. The areas of the student's curriculum which need continuous attention;
- or
8. The student's vocational needs.

Note: In making ESY determination, the IEP team **may** use the Extended School Year Checklist that is a link under Extended School Year Service in SpEdForms.

3. HOMEBOUND/HOMEBASED

CARE AND TREATMENT

(Students placed for Care and Treatment)

Education services must be provided to a student with a disability or a general education student who is:

1. Prevented from attending the student's normal school site for 15 consecutive school days; or
2. Predicted to be absent from the student's normal school site for 15 consecutive school days according to the placing authority (i.e., Medical Doctor, Psychologist, Psychiatrist, Judge or other court-appointed authority); or
3. Health Impaired and in need of special education and predicted by the IEP Team to be absent from school for 15 intermittent school days.

A special education student or regular education student shall begin receiving instruction as soon as practicable under treatment conditions. If the student's condition requires a significant change in IEP services, a new annual IEP must be written to reflect the necessary changes (*see Due Process Procedures, Step 18*).

Students placed in the following facilities by someone other than the district, are considered to be placed for care and treatment:

1. Chemical dependency and other substance abuse treatment centers;
2. Shelter care facilities
3. Home, due to accident or illness;
4. Hospitals;
5. Day treatment centers;
6. Correctional facilities;
7. Residential treatment centers; and
8. Mental health programs.

Special education services must be provided as required by a student's IEP, and to the extent that treatment considerations allow the student to participate. The number of school days for determining due process procedures shall begin upon enrollment in an education program.

Note: Placement into care and treatment facility does not of itself necessitate the provision of special education.

Short-term Placements (30 school days or less):

When the student with disabilities or general education student is placed within the district for short-term care and treatment, the providing district must begin to provide instruction to the student immediately after enrollment in the educational program.

When an out-of-district student is placed for care and treatment within the district without an educational record or IEP, the district must immediately contact the home school to determine if the student has been identified as disabled.

1. If the student has been previously identified as disabled and has a current IEP:
 - a. The providing district shall immediately contact the home district via telephone and receive an oral review of the IEP goals and objectives and services provided.
 - b. The providing district must immediately contact the parent(s) and together reach an agreement about continuing or modifying special education services in accordance with the current IEP goals and objectives. [Due process procedures may be accomplished via telephone in this situation, however, the required written documentation (i.e., Prior Written Notice, Parental Consent/Objection form, IEP, etc.) must follow by mail immediately.]
 - c. If agreement is not reached with the parent(s) via telephone, the providing district shall hold an IEP team meeting as soon as possible (*see Due Process Procedures, Step 15*). The following people shall receive written notice to attend that meeting:

- a. The student's parents;
- b. The student, when appropriate;
- c. The person or agency placing the student;
- d. The student's resident district; and
- e. Appropriate teachers and related services staff from the providing district.

The meeting may be held in conjunction with a meeting called by the placing agency. A copy of the documentation, including IEP, must be provided to the parents with a copy of their rights, including a response form.

2. If a general education student has not been identified as disabled or if the providing district cannot determine if a student has been identified as disabled:
 - a. General education instruction shall begin immediately upon enrollment in the program.
 - b. A screening must be conducted by education staff to determine the student's academic, social and behavioral needs; and
 - c. Based on the documented results of screening, a decision must be made regarding the need for pre-referral interventions (*see Due Process Procedures, Step 5*) or a special education evaluation (*see Due Process Procedures, Step 10*).

Long-term Placements (31 school days or more):

The providing district must begin to provide instruction to the student immediately after enrollment in the educational program.

1. If the student has been identified as disabled and has a current IEP, special education staff of the providing district shall determine if the student's current IEP can be implemented while the student is placed for care and treatment.
 - a. When special education staff determines the current IEP can be implemented:
 - 1) Staff shall contact the student's parent(s) to secure an agreement to continue to provide special education services according to the current IEP [Due process procedures may be accomplished via telephone; however, the required written documentation (i.e., *Prior Written Notice, Parental Consent/Objection Form, IEP*, etc.) must follow by mail immediately.
 - 2) If agreement is not reached with the parent(s) via telephone, the providing district shall hold an IEP team meeting as soon as possible (*see Due Process Procedures, Step 15*).

- b. If staff determines they need additional evaluation data or that the student's current IEP cannot be fully implemented while the student is placed for care and treatment, educational staff shall:
 - 1) Call an IEP Team meeting to revise the current IEP as necessary while the student is undergoing additional evaluation to determine an appropriate program.
2. If the student has not been identified as disabled or if the providing district cannot determine if the student has been identified as disabled:
 - a. The student must be screened to determine if there is a need for an educational evaluation. An evaluation must begin with a review of screening and other information such as the parent or student interview, available educational and social history, and the purpose of the treatment placement.
 - b. Once the evaluation is complete the student meets entrance criteria for special education, an IEP must be developed. Appropriately licensed staff in accordance with the IEP must provide special education services. If the student was not evaluated or was evaluated and does not meet entrance criteria for special education, general education services must be provided in accordance with the student's education plan.

4. VARIANCE FROM STANDARD ENTRANCE CRITERIA

(Team Override)

The evaluation team may determine that a student is eligible for special instruction and related services because the student has a disability and needs special instruction even though the student does not meet the specific eligibility requirement. The team must document the following in the student's *Evaluation Report*:

- A. An explanation why the standards and procedures used with the majority of students resulted in invalid findings for this student.
- B. What objective data were used to conclude that the student has a disability and is in need of special instruction and related services? These data include, for example, test scores, work products, self-reports, teacher comments, medical data, previous testing, observational data, ecological evaluations, and other developmental data.
- C. Because the eligibility decision is based on a synthesis of multiple data and not all data are equally valid, the team must indicate which data had the greatest relative importance for the eligibility decision.
- D. The team override decision must be signed by the team members agreeing to the override decision. For those team members who disagree with the override decision, a statement of why they disagree and their signature (sometimes referred to as a 'dissenting opinion' report) must be included in the student's record.

5. SURROGATE PARENT

A surrogate parent shall be appointed by the district to ensure the rights of the student to a free and appropriate education are protected when:

1. The parent, guardian or conservator is unknown or unavailable;
2. The student is a ward of the Commissioner of Human Services; or
3. The student is an unaccompanied homeless youth; or
4. The parent requests in writing the appointment of a surrogate parent.
(The request can be revoked in writing at any time.)

Appointment of a Surrogate Parent:

1. The building administrator (or designee) shall make reasonable efforts to locate the student's parents before the appointment of a surrogate. These may be made through documented phone calls, letters, certified letters with return receipts and visits to the parent's last known address.
2. When the building administrator believes a student with a disability requires a surrogate parent as defined above, s/he shall contact the district superintendent informing him/her of the situation.
3. The district superintendent shall appoint a surrogate parent in accordance with MN Rule § 3525.2435-2455.
4. Upon written appointment, the surrogate parent shall be accorded all rights and responsibilities of the student's parents in relation to special education decision making for the time period specified by the superintendent.

Note: Group home directors, caseworkers, or others who receive public funds to educate or care for the student may not be assigned as surrogate parents. However, the district shall consult with the county social services office before appointing a surrogate parent when the learner is a ward of the Commissioner of Human Services. Foster parents may be appointed as a surrogate parent if no conflict of interest exists.

Surrogate Parent Knowledge and Skills:

The district shall either make the following information and training available to the surrogate parent, or appoint a surrogate parent who has all of the following:

1. Knowledge of State and Federal requirements;
2. Knowledge of district structure and procedures;
3. An understanding of the nature of the student's disability and needs;
and
4. An ability to effectively advocate an appropriate educational program for the student.

Removal of a Surrogate Parent:

A surrogate parent may be removed by majority vote of the district school board. The surrogate parent must be notified of the time and place of the meeting at which a vote is to be taken and of the reasons for the proposed removal. The surrogate parent shall be given the opportunity to be heard. Removal may be for any of the following reasons:

1. Failure to perform the duties required in the team meeting and IEP process;
2. A conflict of interest;
3. Actions that threaten the well being of the assigned student;
4. Failure to appear to represent the student; or
5. The student no longer requires special education services.

6. REFERRAL TO OTHER PROGRAMS

Students with disabilities are eligible to enroll in alternative programs (i.e., alternative schools, area learning centers, etc.) when they meet the entrance requirements for that program. However, such programs are appropriate only to the extent that they can reasonably address the student's special education needs and provide those special education programs and services specified in the student's IEP. In those instances where the alternative program cannot adequately meet the student's special education needs (which includes fulfilling the service obligations specified in the student's IEP), then placement in the alternative program is inappropriate.

For example, a student, because of their disability, may require a highly structured environment (i.e., consistent levels of feedback regarding their performance, extensive direct special education services, etc.). If the alternative program offers a less structured environment and less service options than the current placement/school, then the alternative program would be an inappropriate placement for that student.

District Initiated Placement:

Districts may refer a student with a disability to an alternative program when the district believes that program would serve the student's needs better than their current placement.

1. The IEP Manager shall convene an IEP meeting (*see Due Process Procedures, Step 14*) to discuss the student's current status and reason(s) why the district believes the alternative program would better meet the student's educational needs. That meeting must include staff from the alternative program.
2. If the IEP Team believes that a) the student's overall needs can be better served in the alternative program, b) that the alternative program can appropriately meet the student's special education needs and c) that the alternative program can reasonably provide all special education program(s) and service(s) necessary to meet the goals and objectives

specified in the IEP, the IEP manager, in consultation with staff from the alternative program, shall develop a new IEP reflecting the proposed change in placement.

3. Entrance into the alternative program shall occur only after the district has obtained signed parental consent for the change of placement on the *Prior Written Notice and Parental Consent/Objection Form* accompanying the new IEP or 14 calendar days after parental receipt of the *Prior Written Notice, Parental Consent/Objection Form*, and IEP (see *Due Process Procedures, Step 16*).

Note: The placing district/school is responsible for developing the IEP proposing the change in placement into the alternative program.

Parent Initiated Placement:

Parents may enroll their child into an alternative program when the student meets the eligibility requirements of that program.

1. Immediately upon enrollment, the alternative program shall schedule an IEP meeting. (See *Special Procedures: Transfer Procedure and Due Process Procedures, Step 15*). When possible, this should include staff from the student's prior placement/school.
2. If the Team determines the alternative program can provide an appropriate program to meet the student's special education needs, a new annual IEP shall be developed (see *Due Process Procedures, Step 15*).

Note: A transfer student's placement is considered an initial placement in the alternative program. Therefore signed parental consent must be obtained before special education services begin via use of the *Prior Written Notice and Parental Consent/Objection* form.

3. If the Team determines the alternative program cannot provide an appropriate program to meet the student's special education needs, the Team remains obligated to develop an IEP which addresses the student's special education needs and to recommend an appropriate placement which provides the program(s) and service(s) necessary to meet those needs. In some instances, this may mean placement back to the student's prior placement/school.

Note: Due to the unique structure of an alternative program (i.e., smaller class sizes, self-paced or individualized programming, etc.), some students with mild disabilities may be successful in that environment without the need for continued special education services. In such instances, those students would likely continue to be eligible for, but would no longer need special education.

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Should this occur, the IEP Team should consider dismissing the student from special education (*see Due Process Procedures, Step 19*).

7. TRANSFER PROCEDURE

When a student with an active IEP transfers into a district the building administrator (or designee) shall assign an IEP Manager who will immediately schedule an IEP Team meeting to address the special education needs of the student. Additionally, the building administrator (or designee) shall immediately undertake efforts to obtain the complete educational record from the previous district.

In State Transfer:

When a student transfers with an active IEP from another Minnesota district, the IEP Team shall review the existing IEP and:

1. When the Team determines that the receiving district can provide a program, which matches the program described in the IEP from the previous district, the student may be served using the existing IEP for a period not to exceed 75 calendar days, after which a new Annual IEP must be developed.
2. When the IEP from the previous district is unavailable, outdated or when the Team determines that the receiving district cannot implement the IEP from the previous district, a new Annual IEP must be developed immediately.
3. When the Team determines that the student is no longer eligible for and/or in need of Special Education Services, it may discontinue services to the student (*see Due Process Procedures, Step 19*).

Note: An in-state transfer student's IEP is considered an annual IEP for the receiving district. Follow the guidelines for an annual IEP utilizing the *Prior Written Notice and Parental Consent/Objection forms*.

Transfer From Another State:

When a student transfers with an active IEP from another state, the Child Study Team (CST) shall meet to review the evaluation/eligibility data from the previous district as soon as possible.

1. When the evaluation/eligibility data is timely, complete and supports the student's eligibility and need for special education, the CST will complete and sign a new *Evaluation Report* based on Minnesota criteria. The date for the three-year reevaluation shall be on or before the three-year anniversary date of the evaluation completed at the previous district.

When it is determined that the student is eligible for and needs special education, an IEP Team meeting will be scheduled as soon as possible. The Team may utilize options 1 or 2 listed under *In State Transfer* above.

2. When the evaluation/eligibility data is unavailable, outdated and/or incomplete, the CST shall determine whether to conduct a reevaluation or, if it believes the student is ineligible and/or no longer requires special education, may discontinue services to the student. (*See Due Process Procedures, Step 19*).

When the Team determines to conduct an evaluation, the student shall continue to receive Special Education services either via the existing IEP from the previous district (see option 1 under *In State Transfer* above) or via development of a new Annual IEP.

Note: The out-of-state transfer student's evaluation is considered an initial evaluation for the receiving district. Therefore, signed parental permission for evaluation must be obtained before testing is initiated via use of the *Notice of an Educational Evaluation/Reevaluation Plan and Prior Written Notice*. However, re-evaluation criteria are utilized by the CST to determine continued eligibility for special education services. (*See Due Process Procedures, Step 11*).

8. STUDENTS ATTENDING NONPUBLIC SCHOOLS (Shared Time students)

"For those children with a disability...who attend nonpublic school at their parent's choice, a school district may provide special instruction and services at the nonpublic school building, a public school, or at a neutral site other than the nonpublic school.. The school district shall determine the location at which to provide services on a student-by-student basis, consistent with federal law."
[M.S. § 126C.19, Subd. 4(b)]

When a student is enrolled in a nonpublic school, the providing district (i.e., the district in which the nonpublic school is located) is responsible for assuring that appropriate special education services are provided to the student.

In providing these services, the district may:

1. Assess the student at the nonpublic school, including observing the student as part of the formal evaluation;
2. Meet periodically with the nonpublic school staff to review progress of the student receiving special education;
3. Periodically observe the student in the nonpublic school classroom to evaluate the results of special education interventions; and
4. Hold IEP meetings at the nonpublic school.

When proposing services to a student attending a nonpublic school, the following additional factors shall be considered:

- a. The providing district shall propose an IEP plan that offers “full services” to the student, that is, an IEP, which addresses all the student’s identified special education, needs;
- b. The providing district determines the location where the proposed services will be provided or made available. (The location of services must be decided on a case-by-case basis. Districts may not have a local policy, written or otherwise, which broadly refuses to provide services in nonpublic settings.)

In making its decision where services will be provided to the nonpublic student, the providing district may consider factors such as:

- a. The cost of providing the services at various locations;
- b. The efficiency involved in providing the service at various locations (i.e., time, travel, etc.); and
- c. The ability to provide proper supervision for staff.

District control over the location of services applies to all services, including those that are not severable from the student, including:

- a. Paraprofessional services
- b. Sign language interpreter services, and
- c. Assistive devices.

Note: When the district proposes to provide the special education services at its facility on a shared time basis, transportation must be provided between the nonpublic facility and the facility where the services are provided when services are within the district’s boundaries.

Note: If the parents reject the initial service plan that provides FAPE, the district should offer a conciliation meeting. At that time the team could reach agreement of services that would be accepted, if any. If any services are accepted, a new service plan must be developed based on the IEP team agreement.

Note: If the parent rejects all services or agrees to the reduced services in writing, the district **must** follow up with a “stand ready to serve” letter to the parent stating that they are ready and able to implement the original service plan upon parent request.

When District Elects to Provide Services at a Nonpublic Site:

The following procedural safeguards were cited by the Supreme Court in *Agostini v. Felton* (U.S. 1997), and the US Dept. of Education has since “strongly encouraged” districts to adopt these procedures prior to placing personnel at nonpublic sites, both parochial and nonsectarian:

1. Only public school employees may provide services;
2. Assignment of public school personnel to private schools must be made without regard to the religious affiliation of the employee;
3. All religious symbols should be removed from classrooms used for public school instruction/services;
4. Public school personnel must limit their consultations/conversations with nonpublic school personnel to concerns regarding the student’s education;
5. District administrators/supervisors should make unannounced visits to the nonpublic site; and
6. The District should provide detailed instruction to personnel assigned to private schools regarding their role.

9. CONDITIONAL BEHAVIORAL INTERVENTION

“This policy is intended to encourage the use of positive approaches to behavioral interventions. The objective of any behavioral intervention must be that pupils acquire appropriate behaviors and skills. It is critical that behavioral intervention programs focus on skills acquisition rather than merely behavior reduction or elimination. Behavioral intervention policies, programs, or procedures must be designed to enable the pupil to benefit from an appropriate, individualized educational program as well as develop skills to enable them to function as independently as possible in their communities.” [M.R. 3525.0850]

Prohibited Procedures:

Prohibited Procedures are interventions that are prohibited from use in schools by school district employees, contracted personnel and volunteers. They are:

1. Corporal punishment;
2. Requiring a student to assume and maintain a specific specified physical position, activity, or posture that induces physical pain as an aversive procedure
3. Presentation of intense sounds, lights, or other sensory stimuli as an aversive stimulus;
4. Use of noxious smell, taste, substance, or spray as an aversive stimulus;
5. Denying or restricting a student’s access to equipment and devices such as hearing aids and communication boards that facilitate the person’s functioning, except temporarily when the student is perceived to be destroying or damaging the equipment or devices;
6. Faradic skin shock;

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7. Totally or partially restricting a student's auditory or visual sense, not to include a study carrel when used as an academic intervention
8. Withholding regularly scheduled meals or water; and
9. Denying a student access to toilet facilities.

Conditional Procedures:

Conditional procedures are:

1. The use of manual restraint;
2. The use of mechanical or locked restraints (This does NOT include restraint used to treat a student's medical needs or to position a student with a physical disability);
3. Time-out for seclusion (see below); and
4. Temporary delays or withdrawal of regularly scheduled meals or water not to exceed 30 minutes.

Conditional procedures may only be used when included as part of a student's IEP or in an emergency situation as defined below. In order to utilize a conditional procedure, the IEP Team must:

1. Identify the frequency and severity of target behaviors for which the conditional procedure is being considered;
2. Identify at least two positive interventions implemented and the effectiveness of each;
3. Design and implement regulated interventions based on present levels of functional performance, needs, goals and objectives; and
4. Describe the specific circumstances under which and how the conditional procedure will be utilized in *the Program Modifications, Supports and Adaptations in General and Special Education* section of the IEP.

The Team's assessment and conclusions regarding the need for use of a conditional procedure shall be documented via use of the *Assessment Report for Use With Conditional Procedure* optional form.

Any behavioral intervention(s) not covered in the IEP must be consistent with the district's discipline policy affecting all students within the district. Continued and repeated use of any element of a district's discipline policy must be reviewed in the development of the student's IEP.

Emergency Situation:

An emergency situation is one in which immediate intervention is necessary to protect a student or other individual from physical injury, emotional abuse due to verbal or nonverbal threats or gestures, or to prevent severe property damage. The emergency intervention must be the least intrusive intervention possible to reasonably react to the emergency situation. Both the building principal and

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parents must be notified immediately when a conditional procedure is used in an emergency situation, and followed by written documentation utilizing the *Emergency Use of a Conditional Procedure* form.

Note: This procedure should not be interpreted so as to prohibit staff from using reasonable force to protect themselves or other students.

If an emergency procedure is used twice in one month's time, or a student's pattern of behavior is emerging that interferes with the achievement of the student's educational goals and objectives, the IEP Manager shall immediately contact the parents and schedule an IEP meeting utilizing the *Notice of a Team Meeting* form. The IEP Team shall:

1. Meet within 5 school days after emergency procedures have begun
2. Determine if additional evaluation is necessary (*see Due Process Procedures, Step 11*); and
3. Review the IEP to determine if it adequately addresses the student's special education needs, and amend the IEP if necessary (*see Due Process Procedures, Step 18*).

If necessary to protect the student or others from harm, the district may continue to use conditional procedures in emergency situations until the IEP team meets. ***However, the building principal and parents must both be notified immediately each and every time a conditional procedure is used in an emergency situation.***

Time-out For Seclusion:

Time-out for seclusion means placing the student in a specially designed isolation room or similar space. In addition to those procedures listed under Conditional Procedures above, the following procedures shall be followed when time-out for seclusion is utilized:

1. Specific criteria must be developed for returning the student to the routine activity and regular education environment
2. The evaluation must address whether seclusion is contraindicated for psychological or physical health reasons
3. The time-out room/area must have an observation window or other device that permits *continuous* monitoring of the student by trained staff
4. The student must have adequate access to drinking water and to a bathroom for a time-out that exceeds 15 minutes duration
5. A log must be maintained which records the number of occurrences and length of time spent in time-out
6. The time-out room/area must be, at a minimum, five feet by six feet (or substantially equivalent to these dimensions) and be large enough to allow the student to stand, to stretch their arms, and to lie down.
7. The time-out room/area must be a safe environment in which:
 - a. All fixtures are tamper proof
 - b. Walls and floors are properly covered
 - c. Control switches are located immediately outside the room

- d. Is well lighted
- e. Is well ventilated and heated
- f. Is kept clean; and
- g. Meets all applicable fire and safety codes.

The Team's evaluation and conclusions regarding the use of a conditional procedure, including time-out for seclusion, shall be documented via use of the *Assessment Report for Use With Conditional Procedure* form (located in Additional Forms).

Withdrawal of Consent:

Parents have the right to withdraw consent for use of a conditional procedure at any time by notifying the Building Principal or IEP Manager. When parental consent is withdrawn:

1. The district must immediately discontinue use of the conditional procedure
2. The building principal (or IEP Manager when assigned by the principal) shall send a written acknowledgement to the parent(s) and request parental signature (*see sample letter, Appendix A.4*)
3. If a parent's signature to withdraw consent cannot be obtained, the Principal and/or IEP Manager must document efforts to communicate and obtain the signature
4. The IEP Manager must contact the parent(s) within three (3) school days to schedule an IEP meeting to consider a change in the IEP or in the student's placement. (*See Due Process Procedures, Step 16*).

Minimum Service Required:

When a student is placed in a facility for care and treatment at a minimum, the providing district is responsible for:

1. The education necessary, including summer school services, for a student who is not performing at grade level as indicated in the education record or IEP; and
2. A school day, of the same length as the school day of the providing district, unless the unique needs of the student, as documented through the IEP or education record in consultation with treatment providers requires an alteration in the length of the school day.

When a student will be in attendance at a facility for more than 170 school days or its equivalent, exclusive of summer school, the district shall make available the instruction necessary for the student to make progress in the appropriate grade level for the successful completion of the courses, programs or classes the student would have been enrolled in if the student were not placed in care and treatment; preferably a normal school day.

Provision of special educational services for students outside of the providing school district's regular calendar is optional unless extended school year services are included in the student's IEP.

When a Student Leaves the Care and Treatment Facility:

If a student was evaluated or received special education services for 15 or more school days, the providing district must prepare an exit report which:

1. Summarizes the results of the evaluation (i.e., the Evaluation Report); and/or
2. Summarizes general education, special education evaluation, service information, educational progress, and
3. Includes the student's IEP for any student who has received special education services.

Note: Record transfers between anyone other than educational agencies and the parent require prior approval of the parents in accordance with data privacy laws.

Misc. Due Process Requirements:

1. The placement of a student in a residential center for care and treatment outside the resident district is NOT an initial placement in the receiving district.
2. The providing district shall make every effort to implement the resident district's IEP, making the modifications necessary due to the restrictive care and treatment setting and based on agreements reached with the parent.
3. The providing district in which the care and treatment facility is located shall comply with all special education due process requirements.
4. Providing districts shall develop alternative procedures for implementing the legal requirements for observing the student in a regular classroom and document previous interventions that have been tried before the student placed for care and treatment is identified as having a specific learning disability or an emotional or behavioral disorder. These alternative procedures must be included in the district's entrance criteria.
5. The providing district and facility shall cooperatively develop procedures to be used in emergency situations that comply with the *Pupil Fair Dismissal Act* and the district's discipline policy.

10. SUSPENSION OF STUDENTS WITH DISABILITIES

Definition:

For the purposes of this policy, "suspension" means:

1. Removal from school for all or part of a school day;
2. An in-school suspension when the student;

- a. Is not afforded the opportunity to progress in the general curriculum;
 - b. Does not receive the services specified on their IEP; and
 - c. Does not participate with nondisabled children to the extent they would have in their current placement.
3. A bus suspension, when transportation is listed as a related service on the student's IEP *and* the district fails to provide alternative transportation.

Note: This definition differs from that used in general education for counting and reporting suspensions.

Suspensions of 4 Consecutive or 10 Cumulative Days or Less:

When a student with an IEP commits an act for which the district's discipline policy dictates a suspension of four (4) consecutive school days or less, or when the cumulative total of suspensions for the student is ten (10) school days or less within a school year, no due process procedures are required unless requested by a member of the IEP team.

Districts are encouraged, but are not required, to provide "access to the general curriculum" when a student with an IEP is suspended for two (2) or more consecutive days. This can easily be accomplished by providing the student with homework assignments and an opportunity to ask questions concerning those assignments (such as by telephone conversation), it provides the student the opportunity to stay current with their classes, and decreases the district's exposure to future claims for compensatory education.

Suspensions of 5 to 10 Consecutive Days:

If a student with an IEP commits an act for which the district discipline policy dictates a suspension of five (5) consecutive days, the district may suspend the student. The *Pupil Fair Dismissal Act* provides that additional suspensions up to five (5) days may be imposed if the student poses an immediate and substantial danger to self or to surrounding persons or property. However, districts are obligated to implement "alternative educational services" (see *Pupil Fair Dismissal Act*) when a suspension exceeds five (5) consecutive school days.

An IEP Team meeting shall be held immediately, but not more than 10 school days from the date on which the decision to remove the student was made. The IEP Manager shall notify parent(s) of the Team meeting. The IEP Team shall:

1. Determine whether the misconduct is a manifestation of the student's disability, documenting the Team's decision via use of the *Manifestation Determination* form;
2. Review all evaluation data/information and determine if there is a need for further evaluation. If the IEP team determines additional evaluation is necessary, the parameters of the evaluation will be discussed

and the *Notice of Educational Evaluation/Reevaluation Plan* and Prior Written Notice form will be completed; and

3. Review the IEP plan to determine if the goals and objectives, level of service(s) and placement meet the student's special education needs. If the Team determines the IEP does not adequately address the special education needs of the learner, the Team shall develop a new *Annual IEP*.
(*See Due Process Procedures, Step 14*)

Suspensions of 11 or More Cumulative Days:

Suspensions which total more than eleven (11) school days in a school year, including those which extend beyond ten (10) consecutive days, must be treated as a change in placement. Therefore, the total number of days a student with an IEP can be suspended cannot exceed ten (10) school days during the normal school year unless the IEP Team, including the parents, develops a new IEP to provide for the new placement.

An IEP Team meeting shall be held immediately, but not more than ten (10) school days from the date on which the decision to remove the student was made which results in the student exceeding ten (10) cumulative school days during the school year. The IEP Manager shall notify parent(s) of the Team meeting. The IEP Team shall:

1. Determine whether the misconduct is a manifestation of the student's disability, documenting the Team's decision via use of the *Manifestation Determination* form;
2. Make arrangements to conduct a Functional Behavioral Assessment, seeking parental permission via use of the *Notice of an Educational Evaluation/Reevaluation Plan and Prior Written Notice*. (If an FBA plan is already in place, the Team shall review the plan and its implementation, and modify the plan and its implementation, as necessary.);
3. Review all evaluation data/information and determine if there is a need for further additional assessment. If the IEP team determines additional evaluation is necessary, the parameters of the evaluation will be determined and parental permission sought via use of the *Notice of Educational Evaluation/Reevaluation Plan* and Prior Written Notice, and
4. Review the IEP plan to determine if the goals and objectives, level of service(s) and placement meet the student's special educational needs. If the Team determines the IEP does not adequately address the special education needs of the student, the Team shall develop a new *Annual IEP* (*see Due Process Procedures, Step 15*).

Note: When conducting a FBA ONLY, do not use the *Evaluation Report*. The *Evaluation Report* is used only when conducting a comprehensive reevaluation to determine a student's initial or continued eligibility for special education (*see Due Process Procedures, Step 11*).

11. EXPULSION OF STUDENTS WITH DISABILITIES

When a student with an IEP commits an act for which the district's discipline policy dictates expulsion, an IEP Team meeting must be held *before* expulsion.

1. Prior to the exclusion or expulsion of a student with a disability, the IEP manager shall schedule and conduct an IEP Team meeting to determine whether the misconduct is related to the learner's disabling condition(s). The team will document its findings via use of the *Manifestation Determination* form.
2. When the Team concludes that the misconduct is a manifestation of the student's disability, the district may NOT expel the student. The Team shall:
 - a. Review all assessment data/information and determine the need for further assessment. If the Team determines additional assessment is required, the Assessment Team shall determine the parameters of the evaluation and inform the parent(s) of the proposed reassessment via use of the *Prior Written Notice and Notice of an Educational Assessment/Reassessment Plan*; and/or
 - b. Review the IEP plan to determine if the goals and objectives, level of service(s) and placement meet the student's special education needs. If the Team determines the IEP does not adequately address the special education needs of the learner, the team shall develop a new Annual IEP (*see Due Process Procedures, Step 15*).
3. If the Team concludes that the misconduct is NOT a manifestation of the student's disability and that the IEP adequately addresses the student's special education needs, the issue of exclusion/expulsion shall be forwarded to the district administration for adjudication according to the *Pupil Fair Dismissal Act*.

Note: After the expulsion has occurred, the district must continue to provide the special education and related services itemized in the student's IEP.

Exception:

When a student with an IEP is in possession of a firearm, illegal drugs, sells or solicits the sale of a controlled substance in school and/or has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function the district may unilaterally make a change of placement to an interim educational setting for up to 45 school days.

1. If the parent agrees with the change to the interim alternative educational setting, a new IEP shall be developed which places the student in that setting on a long-term basis.
2. If the parent disagrees with the interim alternative educational setting and the IEP Team does not come to agreement regarding the student's educational placement within the 45 days, on the 46th day the student must be returned to the placement defined in the student's previous IEP.

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3. If the parent requests a Due Process Hearing regarding the change in placement during the 45 days interim placement, the student will remain “stay-put” in the interim alternative setting for the duration of the due process proceedings.

Note: It is STRONGLY recommended that districts seek legal counsel when attempting to expel a student with disabilities. **Contact the Director of Special Education immediately if expulsion is being considered.**

12. PROTECTIONS FOR STUDENTS NOT YET ELIGIBLE FOR SPECIAL EDUCATION

A student who has not been determined to be eligible for special education and who has engaged in behavior that violates any school policy may assert any of the protections provided to students with disabilities if the district had knowledge of a disability prior to the behavior that precipitated the disciplinary action.

The district is legally considered to have had prior knowledge of the disability when:

1. The parent expressed concern in writing (or orally if the parent was unable to provide a written statement) to school personnel that the child was in need of special education and related services;
2. The parent requests an evaluation of the student; or
3. School personnel expressed concern about the behavior or performance of the student to the Director of Special Education or other supervisory personnel of the building.

The district is NOT considered to have prior knowledge of a disability if:

1. The parent of the child has denied evaluation and/or refused special education services to the child as documented through due process procedures
2. An evaluation was previously conducted and determined that the student did not have a disability; or
3. The building-based Child Study Team had previously determined that an evaluation was not necessary and provided the student’s parent(s) with documentation of the determination.

If a request is made for an evaluation of a student during the time period in which the student is subjected to disciplinary measures:

1. The evaluation must be conducted in an expedited manner.
2. Until the evaluation is completed, the student shall remain in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

3. If the student is determined to be a student with a disability, special education services must be provided.

13. DUE PROCESS DISPUTE RESOLUTION

Due Process Dispute Resolution is initiated whenever:

1. The parent(s) disagrees with (i.e., denies permission for) a proposed initial evaluation of the student;
2. The parent(s) does not respond within fourteen (14) calendar days to the district's request to conduct an initial evaluation of the student;
3. The parent(s) denies permission for an initial placement of the student into special education (i.e., disagrees with a proposed initial IEP);
4. The parent(s) does not respond within fourteen (14) calendar days to the district's proposed initial placement of a student into special education (i.e., initial IEP/IFSP);
5. A parent(s) disagrees with (i.e., denies consent for) a proposed continuing (i.e., annual and/or significant change) IEP for the student (when this occurs, the existing IEP remains in effect until the disagreement is resolved – this is commonly referred to as “stay put”);
6. The district refuses to conduct an initial evaluation or reevaluation of the student which has been formally requested by the parent(s); or
7. The parent(s) formally disagree with any other action proposed by the district, which requires use of *Prior Written Notice* and the *Parental Consent/Objection Form*.

Two courses of action are available to the parents and district in resolving these differences:

1. Alternative Dispute Resolution – which includes, but is not limited to, Conciliation Conferences, Facilitated IEP meeting, Mediation; and/or
2. Due Process Hearing.

Note: If a parent makes a written request for withdrawal of ALL special education services for their child, the district must honor the request and the district is not held responsible. The following procedures should be followed:

1. Send a letter acknowledging receipt of the request and inform parents that the district stands ready to consider an evaluation if the parent wishes to re-consider special education programming.

Conciliation Conference:

The Director of Special Education (or their designee), in consultation with district administrative staff, shall contact the parent(s) and arrange for a conference within ten calendar days of receipt of the denial or objection. If the parent(s) is willing to enter conciliation, the district shall arrange for a meeting to review the reasons for the proposed action and conciliate the matter. The conference shall be held at a time and place mutually convenient to the parent and district. Written

notification of the conference will be sent to the parent(s) by the Director (or their designee) utilizing the *Notice of a Team Meeting* form.

Within seven (7) calendar days of the final conciliation conference, the Director of Special Education (or their designee) shall serve the parent(s) with a written summary of the meeting utilizing the *Parent Consent and Objection Form and Prior Written Notice* forms. That document shall inform the parent:

1. Of the district's proposed action following the conference(s);
2. That if they continue to object to the proposed action, they have the right to request Mediation or an impartial Due Process Hearing (including information on the procedure and time lines for making such a request);
3. That if they do not request mediation or a hearing, the district will proceed with the proposed action within seven calendar days. [If the proposed action is an initial action and the parent continues to refuse to provide prior written consent, the district must schedule a hearing within seven calendar days after the expiration of the seven days allowed for parental response.]; and
4. That if a hearing is scheduled the district will send a notice describing the rights and procedures available to parents relative to a hearing.

Note: More than one conciliation conference may be held. Should the parent(s) fail to attend an initial conference, the district may choose to offer additional opportunities to conciliate. The parent or district may request a Due Process Hearing at any time.

Facilitated IEP Meeting:

When the IEP team process has been difficult or ineffective at developing an IEP that is acceptable to the parents and school district, either party may seek to use a facilitator. A facilitated IEP meeting includes an impartial facilitator who promotes effective communication and assists an IEP team in developing an acceptable IEP. Similar to an IEP meeting, a facilitated IEP meeting is scheduled by the district at a time and place mutually agreed to by the parent and school. **Notify the Director** (or designee) when the district or the parent is initiating a facilitated IEP meeting.

The purpose of the facilitated IEP meeting is to develop an acceptable IEP and involves the required IEP team members, in addition to the facilitator. The district must give proper notice to the parent utilizing the *Notice of a Team Meeting* form. A facilitated IEP meeting may take longer than a typical IEP meeting but the scheduled time should not exceed four (4) hours. If consensus is not reached in the allotted time, the meeting can be reconvened.

Facilitators are individuals on the roster of the Minnesota Special Education Mediation Service (MNSEMS) who have experience and training in IEP

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development and conflict resolution. They are not a decision-maker, but model effective communication skills and offer ways to address and resolve conflict. They are impartial and do not represent the parent, the school district, or the state.

Note: When initiating a facilitated IEP, the district must follow the procedures listed on the *Request for Facilitated IEP/IIIP/IFSP Meeting form found on the Minnesota Department of Education website (Mediation Services).* (<http://education.state.mn.us>)

Mediation:

When informal meeting, a formal Conciliation Conference and/or a Facilitated IEP meeting have failed to resolve the disputed issue(s); the parent(s) or district may request mediation. A specially trained, neutral third party conducts mediation. Although the mediator has no decision-making authority, s/he acts as a facilitator to help reach a settlement all parties can agree to.

Participation in mediation is voluntary, non-binding and either party may request a Due Process Hearing at any time. However, it is the policy of MVEDto offer parents the opportunity to mediate special education disputes prior to initiation of a Due Process Hearing.

When the parent(s) agree to mediate a dispute, the Director of Special Education (or their designee) will contact the Minnesota Special Education Mediation Services (MNSEMS), or parents may contact MNSEMS directly. MNSEMS will then contact the parent(s) and district to explain the mediation process and arrange the time and place for the mediation conference.

Within seven (7) calendar days following the mediation, the Director of Special Education (or their designee) shall serve the parent(s) with written documentation of the district's proposed action following the conference and inform them that if they continue to object to the proposed action, they have a right to request a due process hearing.

If the parent refuses to provide written consent for an initial proposed action following mediation, the district shall schedule a hearing within seven (7) days following the expiration of the seven (7) days allowed for parental response.

Due Process Hearing:

A Due Process Hearing *must* be held whenever:

1. The district receives a parental request for a hearing;
2. A parent(s) disagrees with (i.e., denies consent for) a proposed reevaluation and the disagreement has not been resolved via alternate dispute resolution methods;
3. A parent(s) disagrees with (i.e., denies consent for) a proposed continuing IEP and the disagreement has not been resolved via alternate dispute resolution methods;

5. The district refuses to conduct an evaluation/reevaluation which has been formally requested by the parent(s), and the disagreement has not been resolved via alternate dispute resolution methods; or
6. The parent(s) formally disagrees with any other action proposed by the district, which requires use of the *Parental Consent/Objection Form and Prior Written Notice*, and the disagreement has not been resolved via alternate dispute resolution methods.

NOTE: Parental denial of a proposed initial placement into special education (i.e., an initial IEP) does NOT trigger a Due Process Hearing.

Upon receipt of the parent's request for a hearing, denial of any proposed action by the district, or upon expiration of the seven (7) days allowed for parental response to a proposed action following conciliation or mediation, the Case Manager shall immediately contact the building principal and the Director of Special Education. The district, under the direction of the Director, must serve the parent(s) written notice of their rights and procedures relative to the hearing within five (5) calendar days of the receipt of the parent's request for a hearing, utilizing the *Parent Rights and Procedures Safeguards* form.

The Director will serve as primary contact between MDE and the district regarding the due process hearing. The Hearing shall be conducted consistent with M.R. 3525.3900 through 3525.4750.

DEFINITIONS

Annual IEP: The IEP has been in place for one year and needs to be reviewed to determine student progress, continuing need, and changes needed. The duration of the IEP cannot exceed 12 calendar months.

Assistive Technology Device: Any item, piece of equipment or produce system, whether acquired commercially off the shelf, modified or customized, that is used to increase, maintain or improve functional capabilities of a student with a disability.

Assistive Technology Service: Any service that directly assists a student with a disability in the selection, acquisition or use of an assistive technology device.

This includes:

1. the evaluation of the needs of a student, including a functional evaluation of the student in their customary environment;
2. purchasing, leasing or otherwise providing for the acquisition of assistive technology devices;

3. selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing or replacing of assistive technology devices;
4. coordinating and using other therapies, interventions or services with assistive technology devices, such as those associated with existing education and rehabilitation programs and plans;
5. training or technical assistance for the student, or, when appropriate, the student's family; and
6. training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers or other individuals who provide services to, employ or are otherwise substantially involved in the major functions of the student.

Autism Spectrum Disorder (ASD): A range of pervasive developmental disorders, with onset in childhood, that adversely affect a student's functioning and result in the need for special education instruction and related services. ASD is a disability category characterized by an uneven developmental profile and a pattern of qualitative impairments in several areas of development, including social interaction, communication, or the presence of restricted, repetitive, and stereotyped patterns of behavior, interests, and activities. These core features may present themselves in a wide variety of combinations that range from mild to severe, and the number of behavioral indicators present may vary. ASD may include Autistic Disorder, Childhood Autism, Atypical Autism, Pervasive Developmental Disorder Not Otherwise Specified, Asperger's Disorder, or other related pervasive developmental disorders.

Aversive Procedure: The planned application of an aversive stimulus: 1) contingent upon the occurrence of a behavior identified for reduction or elimination in the IEP; or 2) in an emergency situation. Except those procedures that are identified as Conditional Procedures, the use of Aversive Procedures is prohibited.

Business Day: Monday through Friday, except for Federal and State holidays.

Conditional Procedures: Interventions that meet the definition as Aversive or Deprivation Procedures that are not prohibited. Conditional procedures are:

1. the use of manual restraint;
2. the use of mechanical restraints;
3. time out for seclusion; and
4. temporary delay or withdrawal of regularly scheduled meals or water not to exceed 30 minutes.

Consent: see *Informed Consent*

Corporal Punishment: Conduct involving: hitting or spanking a person with or without an object; or unreasonable physical force that causes bodily harm or substantial emotional harm. An employee or agent of a district shall not inflict corporal punishment or cause corporal punishment to be inflicted upon a student to reform unacceptable conduct or as a penalty for unacceptable conduct. [See M.S. 121A.58]

Cultural Liaison: A person who is of the same racial, cultural, socioeconomic, or linguistic background as the student, and who:

1. provides information to the IEP team about the student's race, cultural, socioeconomic, and linguistic background;
2. assists the IEP team in understanding how racial, cultural, socioeconomic, and linguistic factors impact educational progress; and
3. facilitates the parent's understanding and involvement in the special education process.

If a person who is of the same racial, cultural, socioeconomic, or linguistic background as the student is not available, then a person who has knowledge of the student's racial, cultural, socioeconomic, and linguistic background may act as a cultural liaison.

Day: Day means calendar day unless otherwise indicated as a business day or school day.

Deprivation Procedures: The planned delay or withdrawal of goods, services, or activities that the student would otherwise receive: 1) contingent upon the occurrence of a behavior identified for reduction or elimination on the IEP; or 2) in an emergency situation. Except those procedures, which are identified as Conditional Procedures, the use of Deprivation Procedures is prohibited.

Deaf-Blind: Medically verified visual loss coupled with medically verified hearing loss that, together, interfere with acquiring information or interacting in the environment. Both conditions need to be present simultaneously, and the student must meet the criteria for both visually impaired and deaf and hard of hearing to be eligible for special education and services under this category.

Developmental/Adapted Physical Education: Special Education (DAPE): Specially designed physical education instruction and services for students with disabilities who have a substantial delay or disorder in physical development. Developmental adapted physical education: special education instruction for students age three through 21 may include development of physical fitness, motor fitness, fundamental motor skills and patterns, skills in aquatics, dance, individual and group games, and sports.

Students with conditions such as obesity, temporary injuries, and short-term or temporary illness or disabilities are termed special needs students. Special needs students are not eligible for developmental adapted physical education: special education. Provisions and modifications for these students must be made within regular physical education.

Developmental Cognitive Disability (DCD): A condition resulting in significantly below average intellectual functioning and concurrent deficits in adaptive behavior that adversely affects educational performance and requires special education and related services. DCD does not include conditions primarily due to a sensory or physical impairment, traumatic brain injury, autism spectrum disorders, severe multiple impairments, cultural influences, or inconsistent educational programming.

Developmental Delay (DD): A substantial delay or disorder in development of a child ages birth through six (6) known to hinder normal development and need special education.

Direct Services: Special education services provided directly to the student by a special education teacher or related service professional in general or special education classrooms or settings, including cooperative teaching.

Early Childhood Special Education (ECSE): Special education instruction and/or services available to students from birth to seven years of age who have a substantial delay or disorder in development or who have an identifiable sensory, physical, mental or social/emotional condition or impairment known to hinder normal development and who need special education.

Emergency: A situation in which the immediate intervention is necessary to protect a student or other individual from physical injury, emotional abuse due to verbal and nonverbal threats and gestures, or to prevent severe property damage. The emergency intervention must be the least intrusive intervention possible to reasonably react to the emergency situation.

Emotional/Behavioral Disorders (EBD): An established pattern of one or more of the following emotional or behavioral responses:

1. withdrawal or anxiety, depression, problems with mood, or feelings of self-worth;
2. disordered thought processes with unusual behavior patterns and atypical communication styles; or
3. aggression, hyperactivity, or impulsivity.

The established pattern of emotional or behavioral responses must adversely affect educational or developmental performance, including intrapersonal, academic, vocational, or social skills; be significantly different from appropriate age, cultural, or ethnic norms; and be more than temporary, expected responses to stressful events in the environment. The emotional or behavioral responses must be consistently exhibited in at least three different settings, two of which must be educational settings, and one other setting in either the home, childcare, or community. The responses must not be primarily the result of intellectual, sensory, or acute or chronic physical health conditions.

Extended School Year (ESY): Special education instruction and related services for students who demonstrate the need for continued service on days when school is not in session for all students as a necessary component of a free appropriate public education (FAPE). The IEP/IFSP team shall determine the need for ESY annually.

Functional Behavioral Assessment (FBA): A process for gathering information to maximize the efficiency of behavioral supports. An FBA includes a description of problem behaviors and the identification of events, times, and situations that predict the occurrence and nonoccurrence of the behavior. An FBA also identifies the antecedents, consequences, and reinforcers that maintain the behavior, the possible functions of the behavior, and possible positive alternative behaviors. An FBA includes a variety of data collection methods and sources that facilitate

the development of hypotheses and summary statements regarding behavioral patterns.

Functional Skills Evaluation: The use of test instruments and evaluation procedures to determine current levels of skill development and factors relevant to:

1. independence and self-sufficiency in school, home, and community settings;
2. freedom to participate in leisure activities; and
3. post secondary and other life long learning opportunities

Hearing Impaired (HI): A diminished sensitivity to sound, which can be expressed in terms of audiological measures. Hearing impairment has the potential to affect educational, communicative, or social functioning that may result in the need for special education instruction and related services.

IEP Manager: A special education teacher or licensed related service professional, who is a member of the student's IEP Team, who is assigned by the district to coordinate the instruction and related services for a student. The IEP manager's responsibility shall be to:

1. coordinate the delivery of special education services in the student's IEP;
2. serve as the primary contact for the parent;
3. assure compliance with procedural requirements, including adherence with due process timelines;
4. communicate and coordinate among home, school, and other agencies;
5. coordinate regular and special education programs,
6. facilitate placement; and
7. schedule team meetings.

MN Rules do NOT require that the IEP Manager be licensed in the area of the student's disability however; an individual licensed in the disability area must be a member of the IEP team.

Indirect Services: Special education services which include ongoing progress reviews; cooperative planning; consultation; demonstration teaching; modification and adaptation of the environment, curriculum, materials or equipment; and direct contact with the student to monitor and observe. Indirect services may be provided by a teacher or related services professional to a regular education teacher, special education teacher, related services professional, paraprofessional, support staff, parents, and public and nonpublic agencies to the extent that the services are written in the student's IEP or IFSP.

Informed Consent: Consent means the parent:

1. Has been fully informed, in their native language or other form of communication, of all information relevant to the activity for which consent is sought;
2. Understands and agrees in writing to the carrying out of the activity for which their consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and

3. Understands that the granting of consent is voluntary and may be revoked at any time.

Parental consent must be obtained before:

1. Conducting an initial evaluation,
2. Conducting a reevaluation, and
3. The initial provision of special education to a student within a district.

Individual Education Program (IEP) Plan: A written individualized educational plan developed annually for a student.

Individual Family Service Plan (IFSP): A written plan for providing services to a student and the student's family through interagency agreements. Procedural requirements of the IEP apply to the educational components of the IFSP.

Interagency Individual Intervention Plan (IIIP): A written plan for providing multi-agency services to a student and the student's family. Procedural requirements of the IEP apply to the educational components of the IIIP. The IIIP can be used in place of the following plans:

1. Community Alternatives for Disabled Individuals Plan (CADI)
2. Community Alternative Care Plan (CAC)
3. Individual Services Plan (ISP)
4. Individual Education Program (IEP) Plan
5. Traumatic Brain Injury Plan (TBI)
6. Individual Family Community Support Plan (IFCSP)
7. Individual Family Service Plan (IFSP)

Initial Evaluation: The first formal assessment conducted by the district, which addresses student's need for special education. The first assessment following a change in the district of residence is also considered an "initial assessment."

Initial Placement: The first special education placement and provision of special education services by the district. An initial placement occurs each time the district of residence changes.

Initial IEP: The student has been assessed and determined to be eligible for special education service for the first time. Parent signature is required before services may begin.

Interim IEP: These are no longer permitted. Interim IEP's have been removed from Federal and State regulations. Write an annual IEP and then revise with another annual IEP at a later date if needed.

Learning Disability (LD): See *Specific Learning Disability*

Least Restrictive Environment (LRE): To the maximum extent appropriate, students with disabilities shall be educated with children who do not have disabilities and shall attend regular classes. A student with a disability shall be removed from a regular educational program only when the nature or severity of the disability is such that education in a regular educational program with the use of supplementary aids and services cannot be accomplished satisfactorily. Furthermore, there must be an indication that the student will be better served outside of the regular program. The needs of the student shall determine the type and amount of services needed.

Manual Restraint: Physical intervention intended to hold a student immobile or limit a student's movement by using body contact as the only source of physical restraint.

Mechanical Restraints: The use of devices, (e.g., mittens, straps, or restraint chairs) to limit a student's movement or hold a student immobile as an intervention precipitated by the student's behavior. Mechanical restraint applies to uses intended to prevent injury with students who engage in behaviors, for example, head banging, gouging, or other self-injurious actions that result in tissue damage and medical problems. Mechanical restraint does not apply to restraint used to treat a student's medical needs or to position a student with physical disabilities.

Native Language: The language normally used by the child in the home or learning environment.

Nonpublic School: Any school, church or religious organization, or home school, which is located within the state, wherein a resident of Minnesota may legally fulfill the compulsory instruction requirements.

Other Health Disabilities (OHD): Having limited strength, endurance, vitality, or alertness, including a heightened or diminished alertness to environmental stimuli, with respect to the educational environment that is due to a broad range of medically diagnosed chronic or acute health conditions that adversely affect a student's educational performance.

Paraprofessional: A district employee who is primarily engaged in direct interaction with one or more students for instructional activities, physical or behavior management, or other purposes under the direction of a regular or special education teacher, or related services professional.

Parent: The term parent means:

1. The natural or adoptive parent of the child;
2. A legal guardian as appointed by the courts;
3. A person acting in place of the parent, such as grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare;
4. A surrogate parent appointed by the district (*see Special Procedures: Surrogate Parent*); or
5. The student, upon reaching the age of majority (i.e., age 18).

Physically Impaired (PI): A medically diagnosed chronic physical impairment, either congenital or acquired, that may adversely affect physical or academic functioning and results in the need for special education and related services.

Positive Behavioral Interventions and Supports (PBIS): A systems approach to preventing and responding to classroom and school discipline problems. PBIS develops school-wide systems that support staff to teach and promote positive, appropriate behavior in all students so teachers can teach and students can learn.

Prereferral Interventions: Planned, systematic efforts by regular education staff to resolve apparent learning and behavior problems before a student is referred for a special education assessment.

Primary Disability: That disability with the most dominant characteristics and for which the greatest intervention is programmed.

Providing District: The public school district in which the nonpublic school foster home and/or care and treatment facility is located, which provides special education services to a student. The providing district is responsible for implementing the IEP, convening and facilitating IEP team meetings, conducting reevaluations and assuring that due process procedures and timelines associated with these responsibilities are followed.

Recoupment: A student's ability to regain the performance of a skill or acquired knowledge to approximately the same level of performance just prior to the break in instruction.

Regression: A significant decline in the performance of a skill or acquired knowledge, specified in the annual goals as stated in the student's IEP, that occurs during a break in instruction.

Related Services: Transportation and such developmental, corrective and other supportive services as are required to assist a student with a disability to benefit from special education. Related services include:

1. speech-language pathology;
2. audiology;
3. psychological services;
4. physical and occupational therapy;
5. recreation (including therapeutic recreation);
6. social work services;
7. counseling services (including rehabilitation counseling);
8. orientation and mobility services;
9. school health services;
10. medical services for diagnostic or evaluation purposes
11. early identification and assessment of disabling conditions in students; and
12. parent counseling and training.

Representative of the School District: A person, other than the student's teacher, who:

1. is licensed to provide or supervise the provision of special education;
2. is knowledgeable about the general curriculum
3. has the authority to make decisions about the appropriateness of the proposed program; and
4. has the authority to commit the responsible district's resources.

Resident District: The district in which the student's parent resides. It does not mean the district in which a surrogate parent resides. If the parents of the student are separated or divorced and both maintain legal rights to determine the student's education, but are living in different districts, the district of residence is the district in which the student primarily resides for the greater part of the school year.

In those situations when a student is placed for care and treatment or foster care by an agency other than the school district, the district of residence is the district in which the student's parent resides or the district designated by the Commissioner when parental rights have been terminated. If the parents of the student are separated or divorced and both maintain legal rights to determine the student's education, but are living in different districts, the district of residence is the district last responsible for education services when the student resided with either parent.

RTI (Response to Intervention): The practice of providing scientifically research based instruction and interventions matched to student need, monitoring progress frequently to make changes in instruction, and applying child response data to important educational decision.

School Day: Any day, including partial day, that students are in attendance at school for instructional purposes. School day has the same meaning for all students in school, including students with and without disabilities.

Section 504: Section 504 of the Rehabilitation Act of 1973 prohibits discrimination against any person with a "handicap." The Act defines a person with a "handicap" as anyone who:

1. has a mental or physical impairment, which substantially limits one or more of major life activities (including learning);
2. has a record of such an impairment; or
3. is regarded as having such an impairment."

Self-sufficiency: The functional skills necessary for a student to achieve a reasonable degree of personal independence as typically identified in the annual IEP goals for a student requiring a functional curriculum. To attain self-sufficiency, a student must maintain skills consistent with the student's IEP goals in any of these skill areas:

1. basic self-help, including toileting, eating, feeding, and dressing;
2. muscular control;
3. physical mobility;
4. impulse control;
5. personal hygiene;
6. development of stable relationships with peers and adults;
7. basic communication; or
8. functional academic competency, including basic reading and writing skills.

Severely Multiply Impaired (SMI): A student who has severe learning and developmental problems resulting from two or more disability conditions.

Significant Change: A proposed modification or change in the IEP, which necessitates development of a new IEP. Significant changes include:

1. IEP goals have been met or require modification based on a periodic review;
2. adding or deleting a service based upon a periodic review or assessment;

3. changes in the type of site or setting in which the student receives special education;
4. changes in the amount of time a student spends with nondisabled peers;
5. changes in the amount of special education needed to accomplish the goals or objectives; or
6. when the team determines there is a need for a conditional procedure.

Special Education: Specially designed instruction and related services to meet the unique cognitive, academic, communicative, social and emotional, motor ability, vocational, sensory, physical or behavioral and functional needs of a student as stated in an IEP.

Specific Learning Disability (SLD): A condition within the individual affecting learning, relative to potential. It is manifested by interference with the acquisition, organization, storage, retrieval, manipulation or expression of information so that the student does not learn at an adequate rate when provided with the usual developmental opportunities and instruction from a regular school environment. It is demonstrated by a significant discrepancy between a student's general intellectual ability and academic achievement in one or more of the following areas: oral expression, listening comprehension, mathematical calculation or mathematical reasoning, basic reading skills, reading comprehension, and written expression. A SLD is demonstrated primarily in academic functioning, but may also affect self-esteem, career development, and life adjustment skills. A specific learning disability may occur with, but is not primarily the result of: visual, hearing or motor impairment; mental impairment; emotional disorders; or environmental, cultural, economic influences; or a history of an inconsistent education program.

Speech/Language Impairments: Fluency, voice, articulation and/or language disorders, which adversely affect education performance and result in the need for special education.

Supplementary Aids and Services: Aids, services and other supports that are provided in regular education classes or other education-related settings to enable students with disabilities to be educated with nondisabled students to the maximum extent appropriate.

Surrogate Parent: A person, appointed by the providing district, to intervene on behalf of a student, to help ensure that the rights of the student to a free and appropriate education are protected. A surrogate parent is appointed when the parent is unknown, unavailable, when the student is a ward of the commissioner of Human Services, or when a parent requests in writing the appointment of a surrogate parent. Group home directors, caseworkers or others who receive public funds to educate or care for the student may not be assigned as surrogate parents. However, foster parents may serve as a surrogate parent if appointed and no conflict of interest exists.

Suspension: For the purposes of special education, "suspension" means:

1. Removal from school for all or part of a school day:

2. An in-school suspension when the student:
 - a. is not afforded the opportunity to progress in the general curriculum;
 - b. does not receive the services specified on their IEP; and
 - c. does not participate with non-disabled children to the extent they would have in their current placement;
3. A bus suspension when transportation is listed as a related service on the student's IEP and the district fails to provide alternative transportation.

Time Out for Exclusion: Procedures that remove a student from a regularly scheduled education program for brief periods not to exceed 30 minutes. Time out for exclusionary purposes is NOT considered a conditional procedure.

Time Out for Seclusion: A conditional procedure that places the student in a specially designated isolation room or similar space.

Transition Services: A coordinated set of activities for a child with a disability that is designed to be a results-oriented process that is focused on improving the academic and functional achievement of the child with a disability. It facilitates the child's movement from school to post-school activities including post-secondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. Transition services are based on the individual child's needs, taking into account the child's strengths, preferences, and interests.

Traumatic Brain Injury (TBI): An acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that may adversely affect a student's educational performance and may result in the need for special education and related services. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as: cognition, speech/language, memory, attention, reasoning, abstract thinking, judgment, problem-solving, sensory, perceptual and motor abilities, psychosocial behavior, physical functions, and information processing. The term does not apply to brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma.

Travel Training: Providing instruction, as appropriate, to students 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 the environment.

Visually Impaired (VI): A medically verified visual impairment accompanied by limitations in sight that interfere with acquiring information or interacting in the environment to the extent that special education instruction and related services may be needed.

Vocational Evaluation: An ongoing, comprehensive process used to assist the student and the team to determine the student's strengths, interests, abilities, and needed support to be successful in a vocational setting. A vocational evaluation is one component of the ongoing special education multidisciplinary evaluation.

Revised on 7/09

Weapon: For the purposes of special education due process - "A weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 1/2 inches in length." [18 U.S.C. § 930 (2)(g)]