

3.0 EVALUATION AND REEVALUATION STANDARDS

Evaluation or reevaluation is the process of utilizing formal and informal procedures to determine specific areas of a person's strengths, needs, and eligibility for special education services. Each district must conduct a full and individual evaluation of a child or student, for the purposes of special education that meets all state and federal requirements. Such an evaluation includes, but is not limited to: providing the parent(s) with prior written notice of each proposed evaluation; ensuring tests or evaluation tools are administered by trained and knowledgeable personnel; assessing the child or student in all areas related to the suspected disability; presenting all evaluation results to the parent(s) in writing within state and federal timelines; determining whether the child or student meets state eligibility criteria; and, in evaluating each child with a disability, ensuring the evaluation is sufficiently comprehensive to identify all of the child's or student's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.

3.01 Evaluation Notice, Consent, and Timelines

3.01.01 Notice Before Evaluation or Reevaluation

Legal Citations

The public agency must provide notice to the parents of a child with a disability, in accordance with 300.503, that describes any evaluation procedures the agency proposes to conduct.

34 C.F.R. 300.304(a)

Written Notice Requirement

A copy of the [procedural safeguards](#) available to the parent of a child with a disability must be given to the parents **only one time a school year**, except that a copy also must be given to the parents:

1. Upon initial referral or parent request for evaluation;
2. Upon receipt of the first State complaint under [300.151](#) through [300.153](#) and upon receipt of the first due process complaint under [300.507](#) in a school year.
3. In accordance with the discipline procedures in [300.530\(h\)](#); and
4. Upon request by a parent.

34 C.F.R. 300.504(a)

A parent must receive prior written notice a reasonable time before the district proposes or refuses to initiate or change the identification, evaluation, educational placement, or the provision of a free appropriate public education to a child with a disability.

MN Statute 125A.91, subd. 2

In order to document that the procedural safeguards have been given to parents, it is recommended that the date given is noted somewhere in the students Learner File. This documentation could be noted on the copy of the Prior Written Notice or IEP, or contact log for that year.

Contents of Prior Written Notice

The notice required under paragraph (a) of this section must include:

1. A description of the action proposed or refused by the agency;
2. An explanation of why the agency proposes or refuses to take the action
3. A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;
4. A statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;
5. Sources for parents to contact to obtain assistance in understanding the provisions of this part;
6. A description of other options that the IEP team considered and the reasons why those options were rejected; and
7. A description of other factors that are relevant to the agency's proposal or refusal.

34 C.F.R. 300.503(b)

[PRIOR WRITTEN NOTICE FORM](#)



Prior Written Notice

Student Name: _____ ID: _____ Date: _____
School: _____ Grade: _____ DOB: _____

Dear _____:

You are receiving this notice because the District is proposing and/or refusing the following changes in your child's identification, evaluation, educational placement, or provision of a free appropriate public education (FAPE) as follows:

Description of the action(s) proposed or refused by the district:

Explanation of why the district proposes to take or refused to take the action:

Description of each evaluation procedure, test, record, or report the district used as a basis for the proposed action or for refusing the requested action:

Description of other options the team considered and the reasons why those options were proposed or rejected:

Description of other factors affecting the proposal or refusal:

When a district proposes or refuses to initiate or change the identification, evaluation, or educational placement of your child, or the provision of FAPE to your child, the district must serve written notice on you before the changes go into effect. This notice must be served on you within a reasonable time, and in no case less than 14 calendar days before the proposed effective date of change or evaluation. If this notice only includes a refusal of a request, it must be served on you within 14 calendar days of the date your request was made.

The district will not proceed with the initial placement and provision of services without your written consent.

Except for the initial placement and provision of services, the district will proceed with the proposed placement and provision of services unless you object in writing on the enclosed response form or otherwise in writing within 14 calendar days after you receive this notice.

If you refuse to provide written consent for initial evaluation or initial placement or object in writing to any proposal, or if the district refuses to initiate or change the identification, evaluation, or educational placement or the provision of a free appropriate public education to your child, you may request a conciliation conference to resolve any disagreements about the proposal or refusal.

The district must provide you with a copy of the proposed Individualized Education Program (IEP) whenever the district proposes to initiate or change the content of the IEP.

You are protected by procedural safeguards and can get a description of the procedural safeguards by asking for them from:

Name	Position	Telephone
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Here are some agencies that may help you in understanding your rights and your child's rights under state and federal special education law:

ARC MN (Advocacy for Persons with Developmental Disabilities): 651-523-0823, 1-800-582-5256 or on the web at: www.thearcofminnesota.org

MN Department of Education: 651-582-8689, TTY: 651-582-8201, or on the web at: <http://education.state.mn.us>

MN Disability Law Center: 612-332-1441, 1-800-292-4150, TTY: 612-332-4668, or on the web at: www.mndlc.org

PACER (Parent Advocacy Coalition for Education Rights): 952-838-9000, 1-800-53-PACER, TTY: 952-838-0190 or on the web at: www.pacer.org

The district must obtain informed consent from the parent of a child before conducting an evaluation or reevaluation for special education. The purpose of this notice is to inform parents that their written consent must be obtained before the district proceeds with the initial assessment. For a reevaluation, the district may proceed if it can demonstrate and document that it has taken reasonable measures to obtain parent consent and the parent has failed to respond within 14 calendar days of receiving the notice. **Reasonable measures means more than one attempt.** This documentation can be provided by sending another copy of the Parental Consent/Objection form. Change the date to the current date at the top of the form and check the box by the "Prior Written Notice dated" indicating the date of the previous notice.

[PARENTAL CONSENT/OBJECTION FORM](#)



8/07

Parental Consent/Objection

This form pertains to the Prior Written Notice dated: _____

Student Name: _____ ID: _____ Date: _____
School: _____ Grade: _____ DOB: _____

Dear _____:

Dear Parent(s): Please check one of the options below, sign and date this form, and return the original of this page. If your consent is sought for an evaluation or initial placement, the school cannot proceed without your written consent. For other proposed actions, if you do not return this page or otherwise respond in writing within 14 calendar days, the school will proceed as indicated in the attached Prior Written Notice. If you object to specific parts of a proposal the district will proceed with the parts you do not object to.

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

◆ If you object to a proposal, the school will contact you to offer a conciliation conference, mediation, facilitated IEP team meeting, or other alternative to a due process hearing. You (or the school) may request a due process hearing in order to resolve the disagreement.

Parent Signature (or Student, if age 18 or older)

Date

This form may be available in other formats. Contact the IEP manager for an alternate format.

Return this form to:

District use only:
Date received: _____
Date evaluation to be completed: _____
Date Form <input type="checkbox"/> Given or <input type="checkbox"/> Mailed to Parent: _____

The Notice of Educational Evaluation/Reevaluation Plan is to be used in conjunction with the Parental Consent/Objection form when seeking permission for evaluation and requires the following questions to be answered for any proposed action or a denial of parental request:

- A. Description of the actions proposed by the district: This question is contained under letters (a.) and (b.) Simply indicate the correct choice by checking the box.
- B. Explanation of why the district proposes to take the action: This question is also contained under letters (a.) and (b.) Letter (a.) contains the explanation within the sentence. Letter (b.) requires checking the box by one of the two choices.
- C. Evaluation procedure, test, record, or report the district used as a basis for the proposed action or for refusing the requested action: The district must include a description of what the team used/reviewed to decide to evaluate. If reevaluating, describe what the team used to determine if additional testing was/was not necessary. Whether the team decided to evaluation or not, all procedures, test results, records, and reports the district used to make the determination must be included.
- D. Description of other options or factors affecting the proposal or refusal: The district must document other factors affecting proposals and refusals. These are items that may not have been covered under the description of other options. If there are no other factors, the district may simply say so. Some possible examples include:
 - 1. There are no other factors;
 - 2. The student's first language is Spanish
 - 3. The Student is new to the country;
 - 4. The student's mental health condition;
 - 5. The student's exposure to academic instruction;
 - 6. The student was recently adopted.
- E. Description of other options that the team considered and the reasons why those options were proposed or rejected: The district must document other options the team considered in its deliberation over ideas about evaluation. The teams are expected to discuss various options. Given the number of different people required to participate in team meetings, and the different roles they play, there should be not shortage of options considered. Some possible examples include:
 - 1. The team considered continuing with pre-referral interventions however the data suggests that the student did not make adequate gains;
 - 2. The team reviewed existing data and determined that formal assessment was not needed;
 - 3. The team reviewed existing data and determined informal data did not provide enough information;
 - 4. The team considered continuing with the present behavior plan however lack of plan success indicated for in depth information was needed;
 - 5. The team considered continuing special education services however the student is maintaining passing grades with minimal special education services.

NOTICE OF EDUCATIONAL EVALUATION/REEVALUATION PLAN



**NOTICE OF EDUCATIONAL
EVALUATION/REEVALUATION PLAN**
(Page 1 of 2)

Student Name: _____ ID: _____ Date: _____
School: _____ Grade: _____ DOB: _____

Dear _____:

Evaluation means appropriate procedures used to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs.

Your informed consent is required before the District may proceed with an evaluation, except when the District is relying on existing data, classroom observations, or has taken reasonable measures to obtain your consent for a re-evaluation and you have failed to respond. Your consent is voluntary and may be revoked at any time. Any revocation of consent will not be retroactive.

Your child's assessment must be sufficiently comprehensive to identify all of his or her special education and related service needs, whether commonly linked to the disability category suspected or in which your child has been classified. The evaluation, including any required medical services to determine a medically related disability, will be at no cost to you.

Please review the list of proposed testing below and provide consent by signing and returning the attached form. Providing consent for initial evaluation is not providing consent for the provision of special education and related services.

- a. This notice is for an initial evaluation to determine your child's eligibility for special education. The school district must receive your signed permission before it can begin evaluation.
- b. This notice is for a reevaluation. (Select one of the boxes below.)
- Based on a review of existing data regarding your child, additional testing is needed to determine if your child continues to have a disability and needs special education services.
 - Based on a review of existing data as described below, additional testing is not needed to determine whether your child continues to have a disability and continues to be in need of special education services. You have the right to request additional testing to determine whether your child continues to be a child with a disability and in need of special education services.

The District proposes to conduct an evaluation/reevaluation for the following reason(s):

Description of each evaluation procedure, test, record, or report the district used as a basis for the proposed action or for refusing the requested action:

Describe the other options considered and the reasons why those options were rejected:

Statement of adaptations needed to conduct this evaluation:

Other factors affecting this proposal (i.e., behavior, visual or hearing impairments, the need for assistive technology, language, etc.):

Area	Materials & Procedures	Evaluators

The evaluation will be conducted at _____ and is provided at no cost to you.

If you refuse to provide written consent for an initial evaluation, you may request a conciliation conference to resolve any disagreements about the proposed evaluation.

You are protected by procedural safeguards and can get a description of the procedural safeguards by asking for them from:

_____ Name _____ Position _____ Telephone _____

Here are some agencies that may help you in understanding your rights and your child's rights under state and federal special education law:

ARC MN (Advocacy for Persons with Developmental Disabilities): 651-523-0823, 1-800-582-5256 or on the web at: www.thearcofminnesota.org

MN Department of Education: 651-582-8689, TTY: 651-582-8201, or on the web at: <http://education.state.mn.us>

MN Disability Law Center: 612-332-1441, 1-800-292-4150, TTY: 612-332-4668, or on the web at: www.mndlc.org

PACER (Parent Advocacy Coalition for Education Rights): 952-838-9000, 1-800-53-PACER, TTY: 952-838-0190 or on the web at: www.pacer.org

Date received by district

(for district use only)

Evaluation completion due:

[30 school days (age 3-21)]
[45 calendar days (birth through age 2)]

The date the Parental Consent/Objection Form was given or mailed to the parent must be indicated on the form. When the parent returns the signed Parental Consent/Objection Form the date it was received and the date the evaluation will be completed (within the 30 school days) should also be indicated on the form. Always finalize the Notice of Educational Evaluation/Reevaluation Plan prior to printing and giving to the parent. A copy of the Notice of Educational Evaluation/Reevaluation Plan and the Parental Consent/Objection Form (signed copy or blank form if reevaluation and past 14 days) must be placed in the Learner File for the student.

Contents of Procedural Safeguards Notice

The procedural safeguards notice must include a full explanation of all the procedural safeguards available relating to:

- A. Independent educational evaluations;
- B. Prior written notice;
- C. Parental consent;
- D. Access to education records
- E. Opportunity to present and resolve complaints through the due process complaint and State complaint procedures, including:
 - 1. the time period in which to file a complaint;
 - 2. The opportunity for the agency to resolve the complaint; and
 - 3. the difference between the due process complaint and the State complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures;
- F. The availability of mediation;
- G. The child's placement during pendency of any due process complaint;
- H. Procedures for students who are subject to placement in an interim alternative educational setting;
- I. Requirements for unilateral placement by parents of children in private schools at public expense;
- J. Hearings or due process complaints, including requirements for disclosure of evaluation results and recommendations;
- K. State-level appeals (if applicable in that State); Civil actions, including the time period in which to file those actions; and
- L. Attorneys' fees.

34 C.F.R. 300.504(c)

The current Parent Rights/Procedural Safeguards brochure can be obtain through the MN Dept of Education website.

3.01.02 Notice of Refusal to Evaluate or Reevaluate

Legal Citations

Written Notice Requirement

A parent must receive prior written notice a reasonable time before the district proposes or refuses to initiate or change the identification, evaluation, educational placement, or the provision of a free appropriate public education to a child with a disability.

MN Statute 125A.91, subd. 2

Contents of Prior Written Notice

The notice required under paragraph (a) of this section must include:

- A. A description of the action proposed or refused by the agency;
- B. An explanation of why the agency proposes or refuses to take the action
- C. A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;
- D. A statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;
- E. Sources for parents to contact to obtain assistance in understanding the provisions of this part;
- F. A description of other options that the IEP team considered and the reasons why those options were rejected; and
- G. A description of other factors that are relevant to the agency's proposal or refusal.

34 C.F.R. 300.503(b)

The district must also inform the parent through the Prior Written Notice form when the district is intending to deny a request by the parent to initiate or change the identification, evaluation or educational placement of a student or other request made by the parent that would impact the provision of FAPE. If the notice only includes a refusal of a request, it must be served on the parent within **14 calendars days** of the date the request was made. It is important to document the date that the notice was given to the parent.

The parent has the opportunity to agree or disagree with the denial of the district's proposal through the Parental Consent/Objection form. This form also provides the parent with the option to agree or disagree with all or some of the district's proposal. The notice also informs parents of their right to request a conciliation conference about disagreements over the proposal or refusal.

3.01.03 Parental Consent for Evaluation or Reevaluation

Legal Citations

When required, the public agency proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability, after providing notice consistent with [300.503](#) through [300.504](#), obtain informed consent, consistent with [300.9](#), from the parent of the child before conducting the evaluation.

34 C.F.R. 300.300(a)(1)(i)

Each public agency must obtain informed parental consent, in accordance with [300.300\(a\)\(1\)](#), prior to conducting any reevaluation of a child with a disability. The informed parental consent need not be obtained if the public agency can demonstrate that it made reasonable efforts to obtain such consent and the child's parent has failed to respond.

34 C.F.R. 300.300(c)(1)(i) and (c)(2).

An initial evaluation cannot proceed without prior written consent of the parent. If the evaluation is a 3- year reassessment, the team can proceed with the evaluation after the expiration of the 14 calendar day parental response time. By law, you may proceed with the evaluation after 14 days if the parents don't respond in writing, but it is preferred that you try to get their permission if at all possible. More than one attempt should be documented to obtain written parental consent on a re-evaluation. This documentation can be provided by sending another copy of the Parental Consent/Objection form. Change the date to the current date at the top of the form and check the box by the "Notice of an Educational Evaluation/Re-evaluation Plan dated" indicating the date of the previous notice.

The parental responses to the Prior Written Notice for evaluation are:

- A. "I **agree** with the proposal and I **give permission** to the school to proceed." In this instance, the case manager will inform the evaluation team to begin the evaluation.
- B. "I **do not** agree with the entire proposal, and I do not give permission for the school to proceed." OR
- C. "I agree with **some** proposals and object to the following." In this instance the **case manager will immediately inform the building principal the director or assistant director of special education**. The district must offer a conciliation conference, mediation or facilitated IEP team meeting or other alternative to a due process hearing."

Consent Overrides

*Minnesota Statue is presently in conflict with Federal Rule.

Consent to Evaluate for Specific Learning Disability

The public agency must promptly request parental consent to evaluate the child to determine if the child needs special education and related services, and must adhere to the timeframes described in [300.301](#) and [300.303](#), unless extended by mutual written agreement of the child's parents and a group of qualified professionals, as described in [300.306\(a\)\(1\)](#):

- A. If, prior to a referral, a child has not made adequate progress after an appropriate period of time when provided instruction;
- B. Whenever a child is referred for an evaluation

34 C.F.R.300.309(c)

Ward of the State

For initial evaluations only, if the child is a ward of the State and is not residing with the child's parent, the public agency is not required to obtain informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability if:

- A. Despite reasonable efforts to do so, the public agency cannot discover the whereabouts of the parent of the child;
- B. The rights of the parents of the child have been terminated in accordance with State law; or
- C. The rights of the parent to make educational decisions have been subrogated by a judge in accordance with State law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

34 C.F.R. 300.300(a)(2)

Generally, students are considered residents of the district where they reside with the parent or legal guardian. Students with a disability who have a legal guardian are still considered residents of the district in which the parent lives unless parental rights have been terminated. Students who meet any of the following criteria are considered wards of the state and are a resident of the district in which the student lives:

- A. Parental rights have been terminated, this also includes parental rights terminated through the Tribal courts; or
- B. Parent or Guardian isn't living in Minnesota (parents moved out of Minnesota after the student placement); or
- C. No other district of residency can be established; or
- D. Parent or guardian is an inmate of a Minnesota correctional facility or a halfway house.

3.01.04 Infant and Toddler Prior Written Notice

Legal Citations

Written parental consent must be obtained before:

- A. Conducting the initial evaluation and assessment of a child; and
- B. Initiating the provision of early intervention services

If consent is not given, the public agency shall make reasonable efforts to ensure that the parent:


- A. Is fully aware of the nature of the evaluation and assessment or the services that would be available and
- B. Understands that the child will not be able to receive the evaluation and assessment or services unless consent is given

34 C.F.R. 303.404

The Infant and Toddler Prior Written Notice for Part C & B is a different from the K-12 Prior Written Notice form. The five questions on the Prior Written Notice are the same as for K-12 and should be responded to in a similar manner keeping in mind that the notice is being sent to parents of preschoolers. Please note that while there is only one

Parental Consent & Objection Form, the box at the top of the form must be checked to indicate ECSE Part B or ECSE Part C.

[PRIOR WRITTEN NOTICE ECSE](#)

 3/08 Date: _____	PRIOR WRITTEN NOTICE Evaluation to Determine Eligibility under Part C and Part B of IDEA
Child's Name: _____ MARSS: _____	
School: _____ Age: _____ Birthdate: _____	
Dear _____ :	
You are receiving this notice because the District is proposing the following action: (Check one or more of the following)	
<input type="checkbox"/> The district proposes to conduct an initial evaluation of your child's developmental functioning in the areas of cognition, communication, physical development, social-emotional development and adaptive development in order to determine if your child is eligible to receive infant and toddler intervention services under Part C of the Individuals with Disabilities Education Act (IDEA).	
<input type="checkbox"/> The district proposes to conduct an initial evaluation of your child in order to determine if your child is eligible to receive preschool services under Part B of the Individuals with Disabilities Education Act (IDEA).	
Explanation of why the district proposes to take the action:	
Description of each evaluation procedure, test, record, or report the district used as a basis for the proposed action:	
Description of other options that the team considered and the reasons why those options were rejected:	
Description of other factors affecting the proposal:	

Page 1 of ___

When a district proposes to conduct an evaluation of your child the district must provide you with written notice before the evaluation can begin. The district will not proceed with the initial evaluation without your written consent.

If you refuse to provide written consent for initial or object in writing to any proposal you may request a conciliation conference to resolve any disagreements about the proposed evaluation.

You are protected by procedural safeguards. A copy of your Rights and Procedural Safeguards is provided.

If you have any questions about this notice or your child's proposed initial evaluation, please contact:

Name	Position	Telephone
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Here are some agencies that may help you in understanding your rights and your child's rights under state and federal special education law:

ARC MN (Advocacy for Persons with Developmental Disabilities): 651-523-0823, 1-800-582-5256 or on the web at: www.thearcofminnesota.org

MN Department of Education: 651-582-8689, TTY: 651-582-8201, or on the web at: <http://education.state.mn.us>

MN Disability Law Center: 612-332-1441, 1-800-292-4150, TTY: 612-332-4668, or on the web at: www.mndlc.org

PACER (Parent Advocacy Coalition for Education Rights): 952-838-9000, 1-800-53-PACER, TTY: 952-838-0190 or on the web at: www.pacer.org

EVALUATION NOTICE

This notice deals with evaluation, please be aware of the following:

Evaluation means appropriate procedures used to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs.

Your consent is voluntary and may be revoked at any time. Any revocation of consent will not be retroactive.

Your child's evaluation must be sufficiently comprehensive to identify all of his or her special education and related service needs, whether commonly linked to the disability category suspected. The evaluation will be at no cost to you.

Please review the list of proposed testing below and provide consent by signing and returning the attached form. By providing consent for this initial evaluation you have not yet consented for the initial provision of special education and related services.

If this box is checked, additional testing is not needed to determine whether your child has a disability and is in need of special education or early intervention services, based on a review of existing data described in this notice. The reasons for this determination are included in this notice. You have the right to request additional testing to determine whether your child is a child with a disability or is in need of special education services under Part B or Infant and Toddler Intervention under Part C.

This form may be available in other formats. Contact your service coordinator for an alternate format.

FOR DISTRICT USE:

This Notice Served to the Parent on (date): _____

The Prior Written Notice for C & B is to be used in conjunction with the Parental Consent/Objection form when seeking permission for evaluation and requires the following five questions to be answered for any proposed action or a denial of parental request:

- A. Description of the actions proposed by the district: This question is answered by checking one or more of the boxes indicating the evaluation is for either Part C and/or Part B.
- B. Explanation of why the district proposes to take the action: Provide a brief description of the proposal or refusals. There will often be multiple descriptions of proposals and refusals in a single notice. These descriptions should be clear and succinct. Some possible examples include:
1. The student has been referred for an initial evaluation for early intervention (or special education) by (parents, public health nurse, teachers, etc.);
 2. The district is required by law to complete a comprehensive re-evaluation every three years to look at the student's need for special education services;
 3. The district proposes evaluation to discontinue early intervention services because the child is turning 3 years of age and determine possible eligibility for special education placement;
 4. The district proposes evaluation to discontinue early intervention services because the child is turning 3 years of age and does not appear to have special education needs;
 5. The child has been receiving special education services under developmental delay and must be reevaluated for categorical eligibility prior to seven years of age;
 6. After reviewing the child's present levels of performance in the preschool program (or in the home environment), the team feels that further evaluation would be beneficial in helping to plan for the child's future services.
 7. The district is rejecting a request for special education evaluation based on a district assessment having been completed less than one year ago.
- C. Description of each evaluation procedure, test, record, or report the district used as a basis for the proposed action: The district must describe each evaluation procedure, test, record, or report it used as a basis for its proposed actions and refusals. Some possible examples include:
1. The team reviewed current functioning and determine the need for the evaluation as proposed in the evaluation plan below.
 2. The team reviewed information from the parent and screening information to determine there was a need to evaluate.
- D. Description of other options that the team considered and the reasons why those options were proposed or rejected: The district must document other options the team considered in its deliberation over ideas about evaluation. The teams are expected to discuss various options. Given the number of different people required to participate in team meetings, and the different roles they play, there should be not shortage of options considered. Some possible examples include:
1. The team reviewed existing data and determined that formal assessment was not needed;

2. The team reviewed existing data and determined informal data did not provide enough information;
 3. The team considered evaluation however based on screening results, determined there was not a need to do a formal evaluation.
- E. Description of other factors affecting the proposal or refusal: The district must document other factors affecting proposals and refusals. These are items that may not have been covered under the description of other options. If there were no other factors, the district may simply say so. Some possible examples include:
1. There are no other factors;
 2. The child's first language is Spanish
 3. The Student is new to the country;
 4. The child's health condition;

3.01.05 Evaluation Timelines

Legal Citations

The team shall conduct an evaluation for special education purposes within a reasonable time **not to exceed 30 school days** from the date the district receives parental permission to conduct the evaluation or the **expiration of the 14 calendar day** parental response time in cases other than initial evaluation, unless a conciliation conference or hearing is requested.

MN R. 3525.2550, subp. 2

Infant and Toddler Evaluation

Once the public agency receives a referral, it shall appoint a service coordinator as soon as possible. Within 45 days after it receives a referral, the public agency shall:

- A. Complete the evaluation and assessment activities; and
- B. Hold an IFSP meeting.

34 C.F.R. 303.321(e)

The lead agency shall develop procedures to ensure that in the event of exceptional circumstances that make it impossible to complete the evaluation and assessment within 45 (calendar) days (e.g., if a child is ill) public agencies will document those circumstances and develop and implement an interim IFSP, to the extent appropriate.

34 C.F.R. 303.322(e)(2)

3.01.06 Independent Educational Evaluation

Legal Citations

An independent educational education means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question.

34 C.F.R. 300 502(a)(3)(i)

Right to an Independent Educational Evaluation

- A. The parents of a child with a disability have the right under this part to obtain an independent education evaluation of the child, subject to paragraphs (b) through (e) of this section.
- B. Each public agency must provide to parents, upon request for an independent education evaluation, information about where an independent education evaluation may be obtained, and the agency criteria applicable for independent education evaluations as set forth in paragraph (e) of this section.

34 C.F.R. 300.502(a)(1)-(2)

Independent Education Evaluation at Private Expense

If the parent obtains an independent educational evaluation at private expense or shares with the public agency an evaluation obtained at private expense, the results of the evaluation:

- A. must be considered by the public agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child; and
- B. may be presented by any party as evidence at a hearing or a due process complaint under subpart E of this part regarding that child.

34 C.F.R. 300.502(c)

Independent Educational Evaluation at Public Expense

- A. A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency, subject to the conditions in paragraph (b)(2) through (4) of this section.
- B. If a parent requests an independent education evaluation at public expense, the public agency must, without unnecessary delay, either:
 - 1. File a due process complaint to request a hearing to show that its evaluation is appropriate; or
 - 2. Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to [300.507](#) through [300.513](#) that the evaluation obtained by the parent did not meet agency criteria.
- C. If a parent requests an independent education evaluation, the public agency may ask for the parent's reason why he or she objects to the public evaluation. However, the public agency may not require the parent to provide an explanation and may not unreasonably delay either providing the independent educational evaluation at public expense or filing a due process complaint to request a due process hearing to defend the public evaluation.
- D. If an independent education evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the public agency uses when it initiates an evaluation

- E. Except for the criteria described in paragraph (d) of this section, a public agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

34.C.F.R. 300.502(b)(1)(2)(4) & (e)

If a hearing officer request an independent education evaluation as part of a hearing on a due process complaint, the cost of the evaluation must be at public expense.

34.C.F.R. 300.502(d)

3.02 Evaluation and Reassessment Procedures

Evaluation is the process of utilizing formal and informal procedures to determine specific areas of learner strengths, needs, and eligibility for special education services. The evaluation should reflect the person’s present level of performance and serve as a basis for educational planning. An evaluation must be conducted when a person’s academic, behavioral, emotional, social, physical, communication, or functional skill acquisition in the present educational setting indicates a disability and need for special education services. The purpose of evaluation to:

- A. to determine eligibility for special education and related services
- B. to identify specific strengths and areas of need that may be used to plan an appropriate instructional program
- C. to determine that the student has a disability

3.02.01 Initial Evaluation Procedures

Legal Citations

A school district shall conduct a full and individual initial evaluation, according to this part before the initial provision of special education and related services to a pupil under this chapter. The initial evaluation shall consist of procedures to determine whether a child is a pupil with a disability that adversely affects the child's educational performance as defined in Minnesota Statutes, section [125A.02](#), who by reason thereof needs special education and related services, and to determine the educational needs of the pupil. The district proposing to conduct an initial evaluation to determine if the child qualifies as a pupil with a disability shall obtain an informed consent from the parent of the child before the evaluation is conducted. Parental consent for evaluation shall not be construed as consent for placement for receipt of special education and related services. If the parents of the child refuse consent for evaluation, the district may continue to pursue an evaluation by utilizing mediation and due process procedures.

MN R. 3525.2710, subp.1

Initial Transition Planning Evaluation

By grade nine or age 14, whichever comes first, the IEP plan shall address the pupil's needs for transition from secondary services to post secondary education and training, employment, and community living.

- A. For each pupil, the district shall conduct an evaluation of secondary transition needs and plan appropriate services to meet the pupil's transition needs, The areas of evaluation and planning must be relevant to the pupil's needs and may include work, recreation and leisure, home living, community participation, and post secondary training and learning opportunities. To appropriately evaluate and plan for a pupil's secondary transition, additional IEP team members may be necessary and may include vocational education staff members and other community agency representatives as appropriate.
- B. Secondary transition evaluation results must be documented as part of an evaluation report. Current and secondary transition needs, goals, and instructional and related services to meet the pupil's secondary transition needs must be considered by the team with annual needs, goals, objectives, and services documented on the pupil's IEP.

MN R. 3525.2900, subp 4

Confusion often arises when a student moves from elementary to middle school and the student will turn age 14 during the current IEP year. Because the statute states transition planning must occur **by age 14**. As many students may turn 14 during the 3 year re-evaluation period starting at 6th grade, elementary case managers must be aware of when a student on their caseload will turn 14 and plan for the initial transition evaluation during the evaluation that will include the student turning age 14. If a transition evaluation was not conducted at the initial or 3 year re-evaluation time, a transition assessment must be completed prior to the student turning age 14. Parental permission for this assessment must be obtained through the Prior Written Notice and Parental Consent Objection forms.

3.02.02 Reevaluation Procedures

Results of the Reevaluation

Legal Citations

A public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with [300.304](#) through [300.311](#):

- A. If the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or
- B. If the child's parent or teacher requests a reevaluation.

34 C.F.R. 300.303(a)

The district shall administer such tests and other evaluation materials as may be needed to produce the data identified by the IEP team under item A, subitem (2)

MN R 3525.2710, subp 4(4)

Parental Consent

Each district shall obtain informed parental consent, in accordance with subpart 1, prior to conducting any reevaluation of a pupil, except that such informed parental consent

need not be obtained if the district can demonstrate that it had taken reasonable measures to obtain such consent and the pupil's parent failed to respond.

MN R. 3525.2710, subp 2

An evaluation must be conducted at least every three years. The Prior Written Notice and Parental Consent/Objection Form provide an opportunity for parents to give informed consent (i.e. signature) for any reevaluation plan developed by the IEP team. The district may proceed with a reevaluation after 14 calendar days if it has documented more than one attempt to get a signature and the parents have not responded. The minimum requirements for two attempts include re-sending the Parental Consent/Objection Form or phone contact.

Frequency of Reevaluation

A reevaluation may occur not more than once a year, unless the parents and the public agency agree otherwise; and must occur at least once every 3 years, unless the parent and the public agency agree that a reevaluation is unnecessary.

34 C.F.R. 300.303(b)

A district shall ensure that a reevaluation of each pupil is conducted if conditions warrant a reevaluation or if the pupil's parent or teacher requests a reevaluation, but at least once every three years and in accordance with subparts 3 and 4.

MN R. 3525.2710, subp.2

3.02.03 Use of Existing Data and Additional Data

Legal Citations

Review of Existing Evaluation Data

As part of an initial evaluation, if appropriate, and as part of any reevaluation under this part, or a reinstatement under part 3525.3100, the IEP team and other qualified professionals, as appropriate, shall review existing evaluation data on the pupil, including evaluations and information provided by the parents of the pupil, current classroom-based assessments and observations, and teacher and related services providers observation.

MN R. 3525.2710, subp. 4(A)(1)

Reevaluation does not necessarily mean retest. Based on a review of existing data, there is a continuum of options for reevaluation ranging from full evaluation to a determination that no additional data are needed. However, all criteria components must be addressed in each reevaluation.

The difference between an evaluation and a reevaluation is that the team knows significantly more about the student through the previous three years of experience with the student. This knowledge expands even further when there is a second or third reevaluation. The experience and knowledge gained can, if documented, substitute for formal testing so that the requirements for reevaluation may be altered. As a part of the

evaluation, the team shall review existing evaluation data on the child, including evaluations and information provided by the parents of the child, current classroom-based evaluations and observations, district wide assessment data, and teacher and related services providers observation.

On the basis of that review, and input from the parents, the team must identify what additional data, if any are needed. The use of existing data for reevaluation purposes means applying previous test scores and evaluation findings to address:

- A. whether the child continues to have a disability;
- B. the present levels of performance and educational needs of the child;
- C. whether the child continues to need special education and related services; and
- D. whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP and to participate as appropriate, in the general curriculum.

These previous findings must be confirmed by current information including at least teacher observations, parent input, and classroom evaluations.

It is not sufficient for the team to merely agree the student is still disabled. The team must still base its decision on reliable, valid, nondiscriminatory comprehensive and objective sources of data. After reviewing the existing data, the team may decide that no additional or formal evaluation needs to be done in order to make the determination that the child continues to be in need of special education. The case manager through the Notice of Educational Evaluation/Reevaluation Plan and the Prior Written Notice form must notify the child's parents of the determination and the reasons for it. The parents must be informed that they have the right to request an evaluation, if they choose. If one or both parents ask the district in writing for retesting to provide additional data, the district must do so.

If no further information is required, and with parent permission, the team could schedule a time to meet to develop a new IEP or, if the parent is present and is agreeable, move into developing a new IEP at that meeting. **Even when no additional information is needed, an Evaluation Report is still required.** The information that is used to make the determination that no additional information is needed will be used by the school psychologist to write the Evaluation Report. This written report must identify:

- A. The data used to confirm the student still has a particular category of disability or in the case of reevaluation, whether the student continues to have a disability;
- B. The present levels of performance and educational needs of the student;
- C. Whether the student continues to need special education services or in the case of reevaluation, whether the child continues to need special education and related services; and
- D. Whether modifications or adaptations to special education and related services are needed.

Additional Data Required

The public agency must administer such assessments and other evaluation materials as may be needed to produce the data identified under paragraph (A) of this section.
34 C.F.R. 300.305(c)

No Additional Data Required

If the IEP team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the pupil continues to be a pupil with a disability, the district shall notify the pupil's parents of that determination and the reasons for it, and the right of such parents to request an evaluation to determine whether the pupil continues to be a pupil with a disability, and shall not be required to conduct such an evaluation unless requested to by the pupil's parents. A district shall evaluate a pupil in accordance with this part before determining that the pupil is no longer a pupil with a disability.

MN R. 3525.2710, subp. 4(D)-(E)

Conduct of Review

The group described in the first paragraph of this section may conduct its review without a meeting.

34 C.F.R. 300.305(b)

A formal meeting is not required in order to determine no additional data is required on a re-evaluation.

3.02.04 Parent Involvement

Legal Citations

Upon completion of administration of tests and other evaluation materials, the determination of whether the child is a pupil with a disability as defined in Minnesota Statutes, section 125A.02, shall be made by a team of qualified professionals and the parent of the pupil, and a copy of the evaluation report and the documentation of determination of eligibility will be given to the parent.

MN R. 3525.2710, subp. 3(D)

It is recommended that a clearly labeled draft of the Evaluation Report be made available to the parent at the meeting if the report is not able to be completed prior to the meeting. The final copy of the Evaluation Report should be provided to the parents within a reasonable time (i.e. within 10 days of the meeting). After the school psychologist has determined that all the required information is in the Evaluation Report, the report must be "finalized" in order to remove the "draft" from the final copy. At that point the copy for the parents and the Learner File copy should be printed.

3.02.05 Evaluation Team

Legal Citations

"Evaluation" or "reevaluation" means an appropriate individual educational evaluation of a pupil's performance or development conducted by appropriately licensed personnel according to recognized professional standards, parts 3525.2550 and 3525.2710.

MN R. 3525.0210, subp. 18

A teacher with early childhood special education licensure must be a part of the team for children in kindergarten or first grade identified as developmental delay.

SLD Evaluation Team

The IEP team is required to conduct evaluations, determine eligibility, and develop the IEP. The IEP team itself must meet the requirements for the multidisciplinary evaluation team when performing this function. Team membership includes:

- A. the parent,
- B. at least one general education teacher (if the child is, or may be participating in the general education environment),
- C. at least one special education teacher, or where appropriate, one special education provider,
- D. a district representative who is qualified to provide, or supervise the provision of specially designed instruction, is knowledgeable about the general education curriculum, and is knowledgeable about the availability of resources of the district,
- E. an individual who can interpret the instructional implication of evaluation results, who may already be one of the above named members,
- F. at the discretion of the parents or the district, other individuals who have knowledge or special expertise regarding the student, and
- G. whenever appropriate, the student with a disability.

The public agency must ensure that the child is observed in the child's learning environment (including the regular classroom setting) to document the child's academic performance and behavior in the areas of difficulty.

The group, in deciding whether a child has a specific learning disability, must decide to:

- A. Use information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation; or
- B. Have at least one member of the group conduct an observation of the child's academic performance in the regular classroom after the child has been referred for an evaluation and parental consent, is obtained.

In the case of a child of less than school age or out of school, a group member must observe the child in an environment appropriate for a child of that age.

34 C.F.R. 300.310

When conducting an observation for evaluation purposes, it is not necessary to describe in the evaluation report each detail that occurred during the observation. Instead, it is important to summarize the observation, making note of observations that support the

need for special education. If no areas of special education need were noted, that environment may not be appropriate for a special education observation or it may be supporting that the child does not have a special education need.

Secondary Transition

As defined in this section, every district must ensure that all students with disabilities are provided the special instruction and services which are appropriate to their needs. Where the individual education plan team has determined appropriate goals and objectives based on the student's needs, including the extent to which the student can be included in the least restrictive environment, and where there are essentially equivalent and effective instruction, related services, or assistive technology devices available to meet the student's needs, cost to the district may be among the factors considered by the team in choosing how to provide the appropriate services, instruction, or devices that are to be made part of the student's individual education plan. The individual education plan team shall consider and may authorize services covered by medical assistance according to section 256B.0625, subdivision 26 . The student's needs and the special education instruction and services to be provided must be agreed upon through the development of an individual education plan. The plan must address the student's need to develop skills to live and work as independently as possible within the community. The individual education plan team must consider positive behavioral interventions, strategies, and supports that address behavior for children with attention deficit disorder or attention deficit hyperactivity disorder. By grade 9 or age 14, the plan must address the student's needs for transition from secondary services to postsecondary education and training, employment, community participation, recreation, and leisure and home living. In developing the plan, districts must inform parents of the full range of transitional goals and related services that should be considered. The plan must include a statement of the needed transition services, including a statement of the interagency responsibilities or linkages or both before secondary services are concluded.

MN Stat. 125A.08(a)(1)

For each pupil, the district shall conduct an evaluation of secondary transition needs and plan appropriate services to meet the pupil's transition needs. The areas of evaluation and planning must be relevant to the pupil's needs and may include work, recreation and leisure, home living, community participation, and postsecondary training and learning opportunities. To appropriately evaluate and plan for a pupil's secondary transition, additional IEP team members may be necessary and may include vocational education staff members and other community agency representatives as appropriate.

MN R. 3525.2900, subp 4(A)

The secondary transition results must be documented as part of an Evaluation Report. Confusion often arises when a student moves from elementary to middle school and the student will turn age 14 during the current IEP year. Because the statute states transition planning must occur **by age 14**. Elementary case managers must be aware of when a student on their caseload will turn 14 and plan for the initial transition evaluation during the 6th grade year.

For each student, the district shall conduct an evaluation of secondary transition needs and plan appropriate services to meet the student's transition needs. The areas of evaluation and planning must be relevant to the student's needs related to training, education, employment and where appropriate, independent living skills. To appropriately evaluate and plan for a student's secondary transition, additional IEP team members may be necessary and may include vocational education staff members and other community agency representatives as appropriate. Current and secondary transition needs, goals, and instructional and related services to meet the student's secondary transition needs must be considered by the team with annual needs, goals, objectives, and services documented on the student's IEP.

In developing the plan, districts must inform parents of the **full range** of transitional goals and related services that should be considered. Transition services according to Federal Law "means a coordinated set of activities for a child with a disability that...is designed to be within a **results-orientated process that is focused on improving the academic and functional achievement of a child with a disability** to facilitate the child's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation." The IDEA also state that transition services should be, "based on the individual child's needs, taking into account the child's strengths, preferences and interests" and **should include related services, community experiences, and the development of employment and other post-school adult living objectives**, and when appropriate, acquisition of daily living skills and functional vocational evaluation. For some students, at this point in their academic career, there may be more a need to focus on life skills rather than strictly on completing traditional classroom curriculum. To assess and plan for a learner's secondary transition appropriately, additional members of the multi-disciplinary evaluation team may be necessary and may include vocational education staff members and other community representatives as appropriate. In general, involvement of non-school participants on a student's transition-focused IEP team will be requested at least two years before a student leaves high school. If in doubt about when to include a person to participate on the team, contact the person/agency to discuss the request for involvement.

Outside Agencies

All Minnesota high school students with disabilities which may impact them in career planning/plan implementation should have the opportunity to learn about Work Force Center and vocational rehabilitation (VR) core and intensive services at least two years before leaving school.

Multidisability Team Teaching Model

The team member licensed in a pupil's disability shall be responsible for conducting the pupil's evaluation and participating at team meetings when an IEP is developed, reviewed, or revised. Consultation and indirect services as defined in part 3525.0210

must be provided to the general or special education teacher providing instruction if not licensed in the disability. The frequency and amount of time for specific consultation and indirect services shall be determined by the IEP team.

MN R. 3525.2350, subp. 3

Pupils may receive instruction and related services from any or all of the team members with appropriate skills. The special education provided by each team member shall be included in the IEP.

MN R. 3525.2350, subp. 4

Students Identified as Developmental Delay

Kindergarten and First Grade students identified under Developmental Delay must have an Early Childhood special education licensed teacher as a team member. Consultation services provided to the classroom teacher or special education teacher providing instruction should be documented on the IEP.

Interagency Services

If at the time of initial referral for an educational assessment, or a reassessment, the school district determines that a child with disabilities who is age 2-21 may be eligible for interagency services, the district may request that the county of residence provide a representative to the initial assessment or reassessment team or the first individual education plan team meeting following the assessment or reassessment. The district may request to have a county representative attend other individual education plan team meetings when it is necessary to facilitate coordination between district and county provided services. Upon request from a district, the resident county shall provide a representative to assist the individual education plan team in determining the child's eligibility for existing health, mental health, or other support services administered or provided by the county. The individual education plan team and the county representative must develop an interagency plan of care for an eligible child and the child's family to coordinate service required under the child's individual education plan with county services. The interagency plan of care must include appropriate family information with the consent of the family, a description of how services will be coordinated between the district and county, a description of service coordinator responsibilities and services, and a description of activities for obtaining third-party payment for eligible services, including medical assistance payments. Any state, county, or city government agency responsible for providing services of resources to students with disabilities under this section is subject to the same dispute resolution systems as local school districts, and all such agencies must comply with corrective action requirements that ensue from these systems.

Minn. Stat. 125A.10.

3.02.06 Nondiscriminatory Evaluation Procedures

Legal Citations

Each SNWSEC district shall ensure that assessments and other evaluation materials used to assess a child under this part are provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly feasible to so provide to administer.

34 C.F.R 300.304.(c)(1)(ii).

As defined in this section every district shall ensure that in accordance with recognized professional standards, testing and evaluation materials, and procedures used for the purposes of classification and placement of children with a disability are selected and administered so as not to be racially or culturally discriminatory.

MN Stat 125A.08(a)(6)

Each SNWSEC district shall ensure that evaluation tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the pupil are provided.

MN Rule 3525.2710, subp.3(C)(5)

Every effort is made to assure that testing and evaluation materials and procedures used for the purposes of evaluation and placement of children with disabilities are selected and administered so as not to be racially or culturally discriminatory. If staff has any questions regarding the appropriateness of particular evaluation procedures they should contact their school psychologist or the director or assistant director.

3.02.07 Evaluation Materials and Procedures

Legal Citations

District to Provide Relevant Evaluation Tools

Each SNWSEC district shall ensure that evaluation tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the pupil are provided.

MN Rule 3525.2710, subp.3(C)(5)

Evaluation Materials Designed Measure Special Education Needs

Each SNWSEC district shall ensure that materials and procedures used to evaluate a child with limited English proficiency are selected and administered to ensure that they measure the extent to which the child has a disability and needs special education and related services, rather than measure the child's English language skills.

MN Rule 3525.2710, subp. 3(C)(2)

Functional Evaluation

A functional behavioral evaluation is a process of gathering information which seeks to identify the problem behavior a student may exhibit in order to determine the function or

purpose of the behavior and to develop interventions to teach acceptable alternatives to the behavior. When a thorough functional analysis is completed, the following information is available:

- A. **Description.** Target behaviors, both undesirable, challenging behaviors and positive, replacement behaviors are described in such a manner that anyone reading the description knows exactly what the behavior looks like.
- B. **Prediction.** A predication is made of the times and situations during which the target behaviors will and will not be performed across the full range of typical daily routines. Such a prediction includes the following elements:
 - 1. identification of medical and physical variables that may affect the behaviors;
 - 2. define the setting in which the person performs the behaviors;
 - 3. identify and define the events that consistently precede the behaviors (e.g., people, setting, activity, time of day).
- C. **Function.** Identification of the functions or maintaining reinforcers for the challenging behaviors, adaptive replacement target behaviors are defined. In addition, a history of the challenging behaviors including previous intervention efforts and their effects are documented.

Validity and Reliability of Evaluation Materials

Each district shall ensure that: any standardized tests that are given to the child have been validated for the specific purpose for which they are used, are administered by trained and knowledgeable personnel, and are administered in accordance with any instructions provided by the producer of such tests.

MN R 3525.2710, subp. 3(C)(3)

Comprehensive Evaluation

Each district shall ensure that the child is evaluated in all areas of suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities **and** in evaluating each pupil with a disability, the evaluation is sufficiently comprehensive to identify all of the pupil's special education and related services needs, whether or not commonly linked to the disability category in which the pupil has been classified.

MN R 3525.2710, subp. 3(C)(4)(9)

When the district determines that the evaluation or a portion of the evaluation cannot be performed using the personnel resources of the district and/or SNWSEC, the district shall make arrangements elsewhere for that portion of the evaluation and shall assume all costs for such evaluation unless the evaluation is for services contracted and paid for by SNWSEC.

Need to Use Multiple Procedures

In conducting the evaluation, the district shall: use a variety of evaluation tools and strategies to gather relevant functional and developmental information, including

information provided by the parent, that are designed to assist in determining whether the child is a pupil with a disability and the content of the pupil's individualized education program, including information related to enabling the pupil to be involved in and progress in the general curriculum or, for preschool pupils, to participate in appropriate activities.

MN Rule 3525.2710, subp. 3(B)(1)

The evaluation team will not use a single procedure as the sole criterion for determining whether a child is a pupil with a disability or determining an appropriate education program for the student.

Variance from Standard Evaluation Conditions

Each district shall ensure that if an evaluation is not conducted under standard conditions, a description of the extent to which it varied from standard conditions must be included in the evaluation report.

Minn. R. 3525.2710, subp. 3(c)(6)

Use of Assessments Transferred from other Public Schools

Assessments of children with disabilities who transfer from one public agency to another public agency in the same academic year are coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as possible, to ensure prompt completion of full evaluations.

34 C.F.R. 300.304(c)(5)

When students who are in the process of an evaluation transfer from one district to another during the school year, every effort should be made to facilitate the completion of the evaluation. The case manager assigned at the receiving school should attempt to obtain information on those portions of the evaluation that was completed at the previous district. This information should be reviewed and if appropriate, used for evaluation purposes. The Notice of Evaluation/Reevaluation should document that some portions of the information will be obtained through a review of previous district's data.

If information is not made available by the previous district within a reasonable period of time, the receiving district should proceed with a full evaluation based on the presenting concern. With parent approval, a reasonable delay in evaluation may be appropriate in order for the student to adjust to a new school environment and allow the staff an opportunity to become familiar with the student.

3.02.08 Braille Skills Inventory

Legal Citations

In developing an individualized education plan for each blind student the presumption must be that proficiency in Braille reading and writing is essential for the student to achieve satisfactory educational progress. The assessment required for each student must

include a Braille skills inventory, including a statement of strengths and deficits. Braille instruction and use are not required by this paragraph if, in the course of developing the student's individualized education program, team members concur that the student's visual impairment does not affect reading and writing performance commensurate with ability. This paragraph does not require the exclusive use of Braille if other special education services are appropriate to the student's educational needs. The provision of other appropriate services does not preclude Braille use or instruction.

Instruction in Braille reading and writing must be available for each blind student for whom the multidisciplinary team has determined that reading and writing is appropriate.

MN Stat. 125A.06(c)

3.02.09 Secondary Transition Evaluation

Legal Citations

By grade nine or age 14, whichever comes first, the IEP plan shall address the pupil's needs for transition from secondary services to postsecondary education and training, employment, and community living.

For each pupil, the district shall conduct an evaluation of secondary transition needs and plan appropriate services to meet the pupil's transition needs. The areas of evaluation and planning must be relevant to the pupil's needs and may include work, recreation and leisure, home living, community participation, and postsecondary training and learning opportunities. To appropriately evaluate and plan for a pupil's secondary transition, additional IEP team members may be necessary and may include vocational education staff members and other community agency representatives as appropriate.

MN R. 3525.2900, subp.4(A)

The secondary transition results must be documented as part of an Evaluation Report. Confusion often arises when a student moves from elementary to middle school and the student will turn age 14 during the current IEP year. Because the statute states transition planning must occur **by age 14**. Elementary case managers must be aware of when a student on their caseload will turn 14 and plan for the initial transition evaluation during the 6th grade year.

For each student, the district shall conduct an evaluation of secondary transition needs and plan appropriate services to meet the student's transition needs. The areas of evaluation and planning must be relevant to the student's needs related to training, education, employment and where appropriate, independent living skills. To appropriately evaluate and plan for a student's secondary transition, additional IEP team members may be necessary and may include vocational education staff members and other community agency representatives as appropriate. Current and secondary transition needs, goals, and instructional and related services to meet the student's secondary transition needs must be considered by the team with annual needs, goals, objectives, and services documented on the student's IEP.

In developing the plan, districts must inform parents of the **full range** of transitional goals and related services that should be considered. Transition services according to Federal Law "means a coordinated set of activities for a child with a disability that...is designed to be within a **results-orientated process that is focused on improving the academic and functional achievement of a child with a disability** to facilitate the child's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation." The IDEA also state that transition services should be, "based on the individual child's needs, taking into account the child's strengths, preferences and interests" and **should include related services, community experiences, and the development of employment and other post-school adult living objectives**, and when appropriate, acquisition of daily living skills and functional vocational evaluation.

For some students, at this point in their academic career, there may be more a need to focus on life skills rather than strictly on completing traditional classroom curriculum. To assess and plan for a learner's secondary transition appropriately, additional members of the multi-disciplinary evaluation team may be necessary and may include vocational education staff members and other community representatives as appropriate. In general, involvement of non-school participants on a student's transition-focused IEP team will be requested at least two years before a student leaves high school. If in doubt about when to include a person to participate on the team, contact the person/agency to discuss the request for involvement.

Transition Areas to Assess

The five transition areas to be assessed and areas of need annually addressed in the IEP/transition planning process for all Minnesota students with special education needs age 14 years and older. These transition areas are:

- A. **Home Living:** developing necessary skills to live as independently as possible;
 - 1. Financial/Income such as earned and unearned income, insurance, general public assistance, food stamps, supplemental security income (SSI), social security benefits, medical assistance.
 - 2. Personal/Family Relationships such as health aide or personal care assistant, respite care.
 - 3. Develop personal care skills including hygiene, health, private and public behavior.
 - 4. Develop housekeeping and cooking skills
 - 5. Develop budgeting skills
 - 6. Identify who to call and what to do in emergency situations
 - 7. Explore possible living arrangements such as living with family, adult foster care, group home, semi-independent living, low income housing, shared living (roommate).
- B. **Recreation and Leisure:** knowing about and experiencing social and free time activities;
 - 1. Develop an array of specific and affordable recreation and leisure skills.
 - 2. Develop spectator or audience member skills.

3. Identify activities through community education classes.
 4. Identify acceptable dress behavior for a variety of situations.
 5. Arrange social activities.
 6. Establish exercise routines.
 7. Identify possible social supports through family and community (church, clubs, etc.).
- C. **Community Participation:** accessing community resources including people, places, and activities in the community;
1. Develop shopping skills
 2. Assess vulnerability status
 3. Open and learn to use a bank account
 4. Register for military selective service
 5. Register to vote and vote in a local precinct
 6. Learn to schedule appointments
 7. Learn to order and dine at restaurants
 8. Access/Medical Services
 9. Transportation such as own car, access public transportation etc.
 10. Advocacy/Legal Services such as guardianship, conservatorship, trusts etc.
- D. **Jobs and Job Training:** developing employment skills; and
1. Participate in work responsibilities (chores) at home.
 2. Visit possible employment sites and "shadow" employees.
 3. Become aware of career opportunities and interest.
 4. Receive vocational training within the community.
 5. Develop interpersonal skills necessary to maintain employment.
 6. Participate in summer employment.
 7. Identify people and agencies who can assist in job search.
 8. Apply for support from the Division of Rehabilitation Services.
 9. Identify and check eligibility requirement for other job supports.
 10. Identify and apply for day training and habilitation services.
 11. Identify and arrange for transportation to and from work.
- E. **Postsecondary Education and Training:** developing skills to access life-long learning opportunities.
1. Identify personal learning styles.
 2. Become aware of career interests and options.
 3. Become aware of post-secondary enrollment options.
 4. Visit post-secondary institutions.
 5. Register and take college entrance exams.
 6. Develop a resume and request letter of recommendation.
 7. Identify and apply to post-secondary institutions.
 8. Identify supports needed at post-secondary sites.
 9. Identify and check eligibility requirements for adult support.
 10. Check courses and credits toward high school graduation.
 11. Apply for financial aid, scholarships, etc.
 12. Arrange for transportation and housing, if necessary.

I COULD INSERT THE 10Sigma Scale here??

Transition Evaluation Plan

The following is a suggested plan for assessing students with disabilities throughout their transition years.

- A. By the time a student with an IEP reaches age 14 or grade nine, he or she needs a multidisciplinary evaluation of transition needs and a plan for obtaining services to meet those needs. School districts with Carl D. Perkins funding need to begin vocational **awareness** activities for students in 8th grade. The Career Winds software that your district may already have is a valuable tool for assessing vocational awareness in middle school students. If the district has a guidance counselor, information may already be available that can be incorporated into the assessment.
- B. **For initial referral, transition evaluation cannot occur until signed parent permission is received.** Permission is given when a parent or guardian signs the Parental Consent and Objection Form based on the Notice of Educational Evaluation/Reevaluation Plan. **For students with an existing IEP, reevaluations may begin unless the parent(s) or guardians object in writing within 14 school days after receiving the request.** If the team reviews existing data and determines that no further evaluation is needed the parent must sign the Parental Consent and Objection Form.
- C. For transition planning, all five areas must be addressed using more than one evaluation tool. In many instances, the use of surveys, interview of student and parent, observations and formal or standardized evaluations will provide the most effective transition evaluation tools.
- D. In general, a student's IEP Manager will be the primary person to ensure that transition evaluation and planning is carried out. Other members of a student's planning team may and should conduct any appropriate evaluation to obtain a holistic picture of the person. For some student's with disabilities it may be appropriate to include other agencies (i.e., county social services and or vocational rehabilitation) as early as age 14 in order to address issues such as guardianship and supported living and work situation planning may begin. Other agencies must be contacted for those students for which it is appropriate by age 16 in order for other agencies to become familiar with the student and identify services they may provide after graduation.

3.02.10 Infant and Toddler Evaluation

Legal Citations

Once the public agency receives a referral, it shall appoint a service coordinator as soon as possible. Within 45 days after it receives a referral, the public agency shall complete the evaluation and assessment activities and hold an IFSP meeting.

34 C.F.R. 303.321(e)

Health Status and Medical History

The evaluation and assessment of each child must include a review of pertinent records related to the child's current health status and medical history.

34 C.F.R. 303.322(c)(3)(i)

Levels of Functioning

The evaluation and assessment of each child must include an evaluation of the child's level of functioning in each of the following developmental areas:

1. Cognitive development;
2. Physical development, including vision and hearing;
3. Communication development
4. Social or emotional development;
5. Adaptive development.

34 C.F.R. 303.322(c)(3)(ii)

Unique Needs

The evaluation and assessment of each child must include an assessment of the unique needs of the child in terms of each of the developmental areas including the identification of services appropriate to meet those needs.

34 C.F.R. 303.322(c)(3)(iii)

Family Evaluation

Family assessments under this part must be family-directed and designed to determine the resources, priorities, and concerns of the family and the identification of the supports and services necessary to enhance the family's capacity to meet the developmental needs of the child. Any assessment that is conducted must be voluntary on the part of the family. If an assessment of the family is carried out, the assessment must:

1. Be conducted by personnel trained to utilize appropriate methods and procedures;
2. Be based on information provided by the family through a personal interview; and
3. Incorporate the family's description of its resources, priorities, and concerns related to enhancing the child's development.

34. C.F.R.303.322(d)

Nondiscriminatory Procedures

Each lead agency shall adopt nondiscriminatory evaluation procedures. The procedures must provide that public agencies responsible for the evaluation and assessment of children and families under this part shall ensure, at a minimum, that:

- A. Test and other evaluation materials and procedures are administered in the native language of the parents or other mode of communication, unless it is clearly not feasible to do so;
- B. Any assessment and evaluation procedures and materials that are used are selected and administered so as not to be racially or culturally discriminatory;
- C. No single procedure is used as the sole criterion for determining a child's eligibility under this part; and

D. Evaluation and assessments are conducted by qualified personnel.

C.F.R. 303.323

3.02.11 Evaluation Report

SNWSEC districts use locally developed SPED Forms templates to guide the content of the Evaluation Report. These templates have been designed to meet all the due process requirements outlined in IDEA '04 and Minnesota Rule and Statute. District evaluation teams are required to use these templates.

[EVALUATION REPORT](#)



Date: _____

EVALUATION REPORT
(Page 1 of ____)

Initial Evaluation Student Name: _____ D.O.B.: _____

Re-evaluation

FBA (functional behavioral assessment) School: _____

Transition Grade: _____

GENERAL REQUIREMENTS

This evaluation report must include:

- A summary of all evaluation results (list the criteria of the suspected disability categories and whether the student met them);
- A statement of whether the student has a particular category of disability or, in the case of a re-evaluation, whether the student continues to have such a disability. This determination must be made by the team of qualified professionals and the parent(s). A place for this statement is included on this form;
- The student's present levels of performance and educational needs that derive from the disability;
- A statement of whether the student needs special education and related services or, in the case of a re-evaluation, whether the student continues to need special education and related services;
- A statement of 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 IEP and to participate, as appropriate, in the general curriculum;

ADDITIONAL REQUIREMENTS for SLD

For children suspected of having a specific learning disability (SLD) this report must include in addition to the above or a statement of:

- The basis for making the determination of whether the student has a SLD, including an assurance that the determination was made in accordance with federal and state requirements;
- The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning;
- Educationally relevant medical findings, if any;
- Whether the child does not achieve commensurate with the child's age;
- Whether there are strengths and weaknesses in performance or achievement or both, or there are strengths and weaknesses in performance or achievement, or both, relative to intellectual development in one or more of the following areas:
 - o Oral expression
 - o Listening comprehension
 - o Written expression
 - o Basic reading skill
 - o Reading fluency skills
 - o Reading comprehension
 - o Mathematics calculation
 - o Mathematics problem solving
- The instructional strategies used and the student-centered data collected if a response to scientific, research-based intervention process was implemented; and
- The certification of each team member that this report reflects his or her conclusion and if not, an attached statement presenting his or her conclusions.

To be completed during meeting of qualified professionals and parent(s)
 Based on the information included in this report, the student:

- Is not eligible** (upon initial evaluation) for special education because the student did not meet State criteria in the following areas examined:
- | | | |
|---|---|--|
| <input type="checkbox"/> Autism Spectrum Disorder | <input type="checkbox"/> Developmental Cognitive Disability | <input type="checkbox"/> Specific Learning Disability |
| <input type="checkbox"/> Deaf & Hard of Hearing | <input type="checkbox"/> Emotional or Behavioral Disorder | <input type="checkbox"/> Speech or Language Impairment |
| <input type="checkbox"/> Deaf-Blind | <input type="checkbox"/> Other Health Disabilities | <input type="checkbox"/> Traumatic Brain Injury |
| <input type="checkbox"/> Developmental Delay | <input type="checkbox"/> Physically Impaired | <input type="checkbox"/> Visual Impaired |
| | <input type="checkbox"/> Severely Multiply Impaired | |

- Is eligible** for special education for the following reason(s):
- For initial evaluation, the student meets entrance criteria for the disability(ies) indicated below.
 - For initial evaluation, the student qualifies through a team override decision.
 - For re-evaluation, the student continues to have a disability and continues to demonstrate a need for special education and related services.

(P) indicates primary disability **(S)** indicates secondary disability(ies):

- | | | |
|---|---|--|
| <input type="checkbox"/> Autism Spectrum Disorder | <input type="checkbox"/> Developmental Cognitive Disability | <input type="checkbox"/> Specific Learning Disability |
| <input type="checkbox"/> Deaf & Hard of Hearing | <input type="checkbox"/> Emotional or Behavioral Disorder | <input type="checkbox"/> Speech or Language Impairment |
| <input type="checkbox"/> Deaf-Blind | <input type="checkbox"/> Other Health Disabilities | <input type="checkbox"/> Traumatic Brain Injury |
| <input type="checkbox"/> Developmental Delay | <input type="checkbox"/> Physically Impaired | <input type="checkbox"/> Visual Impaired |
| | <input type="checkbox"/> Severely Multiply Impaired | |

SLD or Team Override Signatures

Signatures and indication of agreement with conclusions are required for SLD evaluations and for an override of any eligibility criteria. For team members not in agreement, a statement of why they disagree must be attached.

<u>SIGNATURE</u>	<u>TITLE</u>	AGREEMENT WITH CONCLUSIONS	
		<u>YES</u>	<u>NO</u>
_____	_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	_____	<input type="checkbox"/>	<input type="checkbox"/>

- A. List documents that explain why the standards and procedures used with the majority of students resulted in invalid findings for the student:
- B. Describe what objective data were used to conclude that the student has a disability and is in need of special education and related services:
- C. Which data had the greatest relative importance for the eligibility decision?

Legal Citations

General Requirements

In interpreting evaluation data for the purpose of determining if a child is a child with a disability and the educational needs of the child, each public agency must:

- A. Draw upon information from a variety of sources, including aptitude and achievement test, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and
- B. Ensure that information obtained from all of these sources is documented and carefully considered.

34 C.F.R. 300.306(c)(1)

Secondary

An evaluation report must be completed and delivered to the pupil's parents within the specified evaluation timeline. At a minimum, the evaluation report must include:

- A. a summary of all evaluation results;
- B. documentation of whether the pupil has a particular category of disability or, in the case of a reevaluation, whether the pupil continues to have such a disability;
- C. the pupil's present levels of performance and educational needs that derive from the disability;
- D. whether the child needs special education and related services or, in the case of a reevaluation, whether the pupil continues to need special education and related services; and
- E. whether any additions or modifications to the special education and related services are needed to enable the pupil to meet the measurable annual goals set out in the pupil's IEP and to participate, as appropriate, in the general curriculum.

MN R. 3525.2710, subp.6

A "specified evaluation timeline" is generally considered 10 school days from the date of the meeting.

Secondary Transition

Secondary transition evaluation results must be documented as part of an evaluation report. Current and secondary transition needs, goals, and instructional and related services to meet the pupil's secondary transition needs must be considered by the team with annual needs, goals, objectives, and services documented on the pupil's IEP.

Minn. R 3525.2900 subp. 4(B)

3.03 Procedures for Determining Eligibility and Placement

Legal Citations

In interpreting the evaluation data for the purpose of determining if a child is a pupil with a disability under parts 3525.1325 to 3525.1351 and the educational needs of the child, the school district shall:

1. draw upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; and
2. ensure that the information obtained from all of the sources is documented and carefully considered.

If a determination is made that a child is a pupil with a disability who needs special education and related services, an IEP must be developed for the pupil according to part 3525.2810.

MN R. 3525.2710, subp. 5

Each district shall ensure that tests are selected and administered so as best to ensure that if a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills, unless those skills are the factors that the test purports to measure.

MN R. 3525.2710, subp. 3(C)(8)

3.03.01 Determining the Child is a Child With a Disability

Legal Citations

Upon completion of the administration of assessments and other evaluation measures:

1. A group of qualified professionals and the parent of the child determines whether the child is a child with a disability, and the educational needs of the child; and
2. The district provides a copy of the evaluation report and the documentation of determination of eligibility to the parent.

34 C.F.R. 300.306(a)

In making a determination of eligibility under item D, a child shall not be determined to be a pupil with a disability if the determinant factor for such determination is lack of instruction in reading or math or limited English proficiency, and the child does not otherwise meet eligibility criteria under parts 3525.1325 to 3525.1351.

MN R. 3525.2710, subp. 3(E)

"Child with a disability" means a child evaluated as having mental retardation, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), serious emotional disturbance (referred to in this part as "emotional disturbance"), an orthopedic impairment, autism, traumatic brain injury, and other impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who by reason thereof, needs special education and related services.

34 C.F.R. 300.8(a)(1)

If it is determined, through an appropriate evaluation, that a child has one of the disabilities identified in the previous paragraph, but only needs a related service and not special education, the child is not child with a disability under this part. If consistent with [300.39\(a\)\(2\)](#), the related service required by the child is considered special education rather than a related services under State standards, the child would be determined to be a child with a disability.

34 C.F.R. 300.8(a)(2)

"Child with a disability" for children aged three through nine (or any subset of that age range, including ages three through five) may, include a child:

1. Who is experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: Physical development, cognitive development, communication development, social or emotional development, or adaptive development; and
2. Who, by reason thereof, needs special education and related services.

34.C.F.R. 300.8(b)

Every child who has a hearing impairment, visual disability, speech or language impairment, physical impairment, other health impairment, mental impairment, emotional/behavioral disorder, specific learning disability, autism, traumatic brain injury, multiple disabilities, or deaf-blind disability and needs special instruction and services, as determined by the standards of the commissioner, is a child with a disability. In addition, every child under age three and at local district discretion from age three to age seven, who needs special instruction and services, as determined by the standards of the commissioner, because the child has a substantial delay or has an identifiable physical or mental condition known to hinder normal development is a child with a disability.

Minn. Stat. 125A.02, subp.1

In interpreting the evaluation data for the purpose of determining if a child is a pupil with a disability under parts [3525.1325](#) to [3525.1350](#) and the educational needs of the child, the school district shall:

1. draw upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; and
2. Ensure that the information obtained from all of the sources is documented and carefully considered.

Minn. R. 3525.2710, subp. 5(A).

3.03.02 Determining the Child is Not a Child With a Disability

Legal Citations

A district must evaluate a child with a disability before determining that the child is not longer a child with a disability. The evaluation is not required before the termination of a child's eligibility due to graduation from secondary school with a regular diploma, or exceeding the age eligibility for FAPE under State law.

For a child whose eligibility terminates under circumstances described above, a district must provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals.

34 C.F.R. 300.305(e)

A child with a short-term or temporary physical or emotional illness or disability, as determined by the standards of the commissioner, is not a child with a disability.

MN Stat. 125A.02 subd. 2

3.03.03 Infants and Toddlers with Disabilities

Legal Citations

Infants and toddlers with disabilities means individuals from birth through age two who need early intervention services because they:

- A. Are experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in one or more of the following areas:
 - 1. Cognitive development;
 - 2. Physical development including vision and hearing;
 - 3. Communication development;
 - 4. Social or emotional development;
 - 5. Adaptive development; OR
- B. Has a diagnostic physical or mental condition that has a high probability of resulting in developmental delay.

34 C.F.R.303.16

Every attempt should be made to ensure that the evaluation is completed **within 45 calendar days** from parent permission. In the event that exceptional circumstances make it impossible to complete the evaluation within 45 calendar days, the case manager should document those circumstances and develop and implement an interim IFSP as appropriate.

Within 45 **calendar** days after it receives a referral, the district shall complete the evaluation and evaluation activities and hold an IFSP meeting. In the event of exceptional circumstances that make it impossible to complete the evaluation and evaluation within 45 calendar day (e.g., if the child is ill) the district will:

- A. Document those circumstances; and
- B. Develop and implement an interim IFSP to the extent appropriate.

34 CFR 303.322

Transition from Part C to Part B Services

For Children Potentially Eligible for Part B

Good timely transition planning is critical. The service coordinator provided for in Minnesota Statutes, section [125A.33](#) must facilitate transition from infant and toddler intervention services before the child's third birthday. The transition conference must be held between **2 years 3 months and 90 days** prior to the child's 3rd birthday if the child is potentially eligible for Part B. The IFSP must include steps to determine and document eligibility for special education, and steps to support the transition of the child to special education or to other appropriate community-based services that may be available.

For a child who may be eligible for special education services under Part B, the service coordinator must with the approval of the family of the child, convene a conference between the family, the local educational agency, and community-based service providers to discuss services that the child may receive. The conference must be held **not less than 90 days**, and at the discretion of all the parties, **not more than nine months**, before the child is **eligible** for the preschool services.

For Children Who May Not be Eligible for Part B

In the case of a child who may not be eligible for Part B services, the case manager should make reasonable efforts to convene a meeting to discuss the appropriate services that the child might receive. Appropriate people to invite, in addition to the parents, would include district staff and providers of other appropriate services for children who are not eligible for preschool services under Part B such as Head Start, Learning Readiness or Early Childhood Family Education.

Transition Plan for Children Transitioning from Part C to Part B

A transition plan must be developed for **all** children potentially eligible and not eligible for Part B. The plan should include:

- A. The steps to be taken to support the transition of the child to:
 1. Preschool services under Part B, as appropriate;
 2. Other services that may be available, if appropriate
- B. These steps include:
 1. Discussions with, and training of parents regarding future placements and other matters related to the child's transition;
 2. Procedures to prepare the child for changes in service delivery, including steps to help the child adjust to, and function in, a new setting
- C. The IFSP must include steps to determine and document eligibility for special education;
 1. This documentation could occur either as an outcome or the activity page of the IFSP could be used.

3.03.04 Children Experiencing Developmental Delays

3.04 Specific Disabilities

3.04.01 Autism Spectrum Disorders

Legal Citations

Definition

Autism spectrum disorders (ASD) means a range of pervasive developmental disorders, with onset in childhood, that adversely affect a pupil'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 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.

M.R.3525.1325

Criteria

A multidisciplinary team shall determine that a pupil is eligible and in need of special education instruction and related services if the pupil meets the criteria in items A and B.

- A. An educational evaluation must address all three core features in sub items (1) to (3). The team must document that the pupil demonstrates patterns of behavior described in at least **two** of these sub items, **one** of which must be sub item (1)

Behavioral indicators demonstrated must be atypical for the pupil's developmental level. The team shall document behavioral indicators through at least **two** of these methods: structured interviews with parents, autism checklists, communication and developmental rating scales, functional behavior assessments, application of diagnostic criteria from the current Diagnostic and Statistical Manual (DSM), informal and standardized evaluation instruments, or intellectual testing.

1. Qualitative impairment in social interaction, as documented by **two or more** behavioral indicators, for example: limited joint attention and limited use of facial expressions directed toward others; does not show or bring things to others to indicate an interest in the activity; demonstrates difficulties in relating to people, objects, and events; a gross impairment in ability to make and keep friends; significant vulnerability and safety issues due to social naiveté; may appear to prefer isolated or solitary activities; misinterprets others' behaviors and social cues.
2. Qualitative impairment in communication, as documented by **one or more** behavioral indicators, for example: not using finger to point or

request; using others' hand or body as a tool; showing lack of spontaneous imitations or lack of varied imaginative play; absence or delay of spoken language; limited understanding and use of nonverbal communication skills such as gestures, facial expressions, or voice tone; odd production speech including intonation, volume, rhythm, or rate; repetitive or idiosyncratic language or inability to initiate or maintain a conversation when speech is present.

3. Restricted, repetitive, or stereotyped patterns of behavior, interest, and activities, as documented by **one or more** behavioral indicators, for example: insistence on following routines or rituals; demonstrating distress or resistance to changes in activity, repetitive hand or finger mannerism; lack of true imaginative play versus reenactment; overreaction or under-reaction to sensory stimuli; rigid or rule-bound thinking; an intense, focused preoccupation with a limited range of play, interests, or conversation topics.

B. The team shall document and summarized in an evaluation report that ASD adversely affects a pupil's performance and that the pupil is in need of special education instruction and related services. Documentation must include:

1. The evaluation of the pupil's present levels of performance and educational needs in each of the core features identified by the team in item A. In addition, the team must consider all other areas of evaluation concern related to the suspected disability;
2. Observations of the pupil in **two** different settings, on **two** different days; and
3. A summary of the pupil's developmental history and behavior patterns.

Team Membership

At least one professional with experience and expertise in the area of ASD must be included on the team determining eligibility and educational programming, due to the complexity of this disability and the specialized intervention methods. The team must also include a school professional knowledgeable of the range of possible special education eligibility criteria.

Implementation

Pupils with various educational profiles and related clinical diagnoses may be included as eligible if they meet the criteria of ASD. **However, a clinical or medical diagnosis is not required to be eligible for special education services.** Due to the wide variation in characteristics and needs, pupils with different educational profiles or a specific clinical diagnosis must also be determined as eligible following the criteria as listed in subpart 3. Following this eligibility determination process it is essential to identify and document individual strengths and weaknesses and the pupil's unique educational needs so that an effective individual educational program may be planned and implemented.

Common Questions about Autism Spectrum Disorders

What is the difference between PDD and autism?

Pervasive developmental disorders (PDD) is the umbrella term for a group of disorders. The disorders listed under PDD by the American Psychiatric Association's diagnostic manual are autism, Asperger's Syndrome, Rhett's Syndrome, and childhood disintegrative disorder. Some individuals who do not display all the characteristics listed under autism may be diagnosed as PDD-NOS (not otherwise specified). All of these disorders are also called autism spectrum disorders. These terms are merely labels to determine eligibility for services. They are **not** predications of future outcomes.

What are the characteristics of autism spectrum disorders?

Difficulty with communication

Speech may be slow to develop; speech may not develop. Sometimes speech develops and then is lost. Often speech is not used for conversational exchanges but rather to obtain objects. Some speech may be echoing speech heard in the past. Understanding of words is often very concrete. Perseveration is common.

Delays in understanding social relationships

Some individuals with autism spectrum disorders avoid eye contact, resist being touched, and seem to "tune out" the world. Children often do not play cooperatively with other children, imitating "grown-ups" and taking turns. Understanding other people's feelings and social rules is often difficult. Friendships may be difficult to develop. There may be a strong attachment to objects.

Inconsistent sensory regulation and response

Young children with autism spectrum disorders often appear deaf. Yet the same child may be very sensitive to everyday sounds. There may be uneven responses to touch, tastes, and sights. Sensory regulation difficulties may result from over-sensitivity. The individual's response will indicate a problem in the area of sensory regulation.

Uneven patterns of intellectual functioning

Individuals with autism spectrum disorders often have peak skills-such as drawing, music, computations in math, or memorization of facts. These skills often reflect strong rote memory skills, visual learning skills, and good visual-spatial learning skills. There may be more difficulty with sequencing, understanding abstract concepts, and complex problem-solving. Determining the unique learning style of an individual can be very challenging.

Motor planning

Although many individuals with autism seem well coordinated, motor planning difficulty may be seen in initiating, regulating, and shifting movements. Some children display difficulty with fine motor skills like buttoning, tying shoes, and catching a ball. Movement routines may develop over time.

Difficulty with attention

Attention skills are very strong, and learning depends upon attention. However, individuals with autism spectrum disorders often have trouble orienting their attention, shifting from one thing to another, and maintaining the joint attention that is necessary to learn from others. These attention skills often need to be taught so that learning is not compromised.

What causes autism spectrum disorders?

Autism spectrum disorders are brain disorders which occur before birth. Current research suggests that they are complex genetic disorders involving a number of genes which, in turn, influence a variety of brain functions. The cause of autism is still unknown. Researchers suggest that "several causes" will be discovered in time. There is no evidence to suggest that psychological conditions cause autism spectrum disorders.

Do autism spectrum disorders occur in conjunction with other disabilities?

These disorders can occur by themselves or in association with other neurological disorders such as mental retardation, attention deficit disorder, epilepsy, Tourette Syndrome, and obsessive compulsive disorder.

Characteristics of autism spectrum disorders occur on a continuum from mild to severe. Although it is often difficult to distinguish differences in disabilities, it is important to do so. Diagnostic confusion may result in referral to inappropriate and ineffective treatment.

Do children outgrow autism spectrum disorders?

No. They are life-long. Yet they are not progressive. People with autism spectrum disorders live a normal life span. With appropriate treatment and a nurturing environment, people with autism spectrum disorders show significant growth toward independence. They all can learn to communicate, to become more socially responsive, and to learn accommodations needed to control their won behavior.

Autism Resources

Advocacy Organizations

- Twin Cities Society for Children and Adults with Autism, 228-0974.
- Autism Society of American, 301-565-0433.
- PACER, Inc. 827-2966.
- ARC Minnesota, 827-5641.
- Legal Advocacy for Developmental Disabilities, 338-0968.
- The Association for Severe Handicaps, 206-523-9446.

Recommended Books

- *Emergence, Labeled Autism*, Temple Grandin
- *Mixed Blessings*, William Christopher
- *Without Reason*, Charles Hart
- *Early Intervention in Autism* Geraldine Dawson and Julie Osterling
- *Communication Problems in Autism*, Schopler and Mesibov
- *The Effects of Autism on the Family*, Schopler and Mesibov
- *Autism Research Review*, 4182 Adams Avenue, San Diego, CA 92116
- *Journal of Autism and Developmental Disorders*, Plenum Press.

Adult Vocational Service Providers

- Access to Employment, 870-0578
- Access Ability, Inc., 521-6251
- CHOICE, Inc. 446-1475
- Cooperating Community Programs, Don Priebe, 641-0041
- Dept. of Jobs and Training, St. Paul, 296-5616
- Governor's Planning Council on Developmental Disabilities, 296-4018
- McDonnell Center, 781-3181
- School for Social Development, 872-9264
- State Council for handicapped, 296-6785
- TSE, 2940 No. Rice St., St. Paul, 484-7000

Camp Programs

- ARC Camp, Albert Lea, (507) 377-3469
- Camp Confidence, Brainerd, (218) 828-2344
- Camp Friendship, Annandale, (612) 274-8376
- Camp New Hope, (218) 426-3560
- Eden Wood, (612) 934-2771

3.04.02 Criteria for Blind Student

Legal Citations

Definition

Visual Impairment including blindness means an impairment in vision that even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.

34 C.F.R. 300.8(c)(13)

Criteria

"Blind Student" means an individual who is eligible for special education services and who:

- A. has a visual acuity of 20/200 or less in the better eye with correcting lenses or has a limited field of vision such that the widest diameter subtends an angular distance of no greater than 20 degrees or
- B. has a medically indicated expectation of visual fatigue.

Minn. Stat. 125A.06(b)

3.04.03 Deaf-Blind

Legal Citations

Definition

Deaf-blindness means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education needs solely for children with deafness or children with blindness.

34 C.F.R. 300.7(c)(2)

Criteria

"Deaf-blind" means 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 must meet the criteria for both visually impaired, and deaf and hard of hearing.

M.R.3525.1327

Pupils at Risk

Pupils at risk of being deaf-blind include pupils who:

- A. are already identified as deaf or hard of hearing or visually impaired but have not yet had medical or functional evaluation of the other sense (vision or hearing);
- B. have an identified condition, such as Usher Syndrome or Optic Atrophy, that includes a potential deterioration of vision or hearing in the future;
- C. have a medically or functionally identified hearing loss and a verified deficit in vision determined by a functional evaluation in the learning environment;
- D. have a medically or functionally identified vision impairment and verified hearing loss determined by a functional evaluation in the learning environment; or

- E. have an identified syndrome or condition such as CHARGE Syndrome that includes hearing and vision loss in combination with multiple disabilities.

3.04.04 Emotional or Behavioral Disorders

Legal Citations

Definition

"Emotional or behavioral disorders" means an established pattern of one or more of the following emotional or behavioral responses:

- A. withdrawal or anxiety, depression, problems with mood, or feelings of self-worth;
- B. disordered thought processes with unusual behavior patterns and atypical communication styles; or
- C. 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, child care, or community. The responses must not be primarily the result of intellectual, sensory, or acute or chronic physical health conditions.

Criteria

A pupil is eligible and in need of special education and related services for an emotional or behavioral disorder when the pupil meets the criteria in items A to C.

- A. A pupil must demonstrate an established pattern of emotional or behavioral responses that is described in at least one of the following sub items and which represents a significant difference from peers:
 - 1. withdrawn or anxious behaviors, pervasive unhappiness, depression, or severe problems with mood or feelings of self-worth defined by behaviors, for example: isolating self from peers; displaying intense fears or school refusal; overly perfectionistic; failing to express emotion; displaying a pervasive sad disposition; developing physical symptoms related to worry or stress; or changes in eating or sleeping patterns;
 - 2. disordered thought processes manifested by unusual behavior patterns, atypical communication styles, or distorted interpersonal relationships, for example: reality distortion beyond normal developmental fantasy and play or talk; inappropriate laughter, crying, sounds, or language; self-mutilation, developmentally inappropriate sexual acting out, or developmentally inappropriate self-stimulation; rigid, ritualistic patterning; perseveration or obsession with specific objects; overly affectionate behavior towards unfamiliar persons; or hallucinating or delusions of grandeur; or

3. aggressive, hyperactive, or impulsive behaviors that are developmentally inappropriate, for example: physically or verbally abusive behaviors; impulsive or violent, destructive, or intimidating behaviors; or behaviors that are threatening to others or excessively antagonistic.

The pattern must not be the result of cultural factors, and must be based on evaluation data which may include a diagnosis of mental disorder by a licensed mental health professional.

- B. The pupil's pattern of emotional or behavioral responses adversely affects educational performance and results in:
 1. an inability to demonstrate satisfactory social competence that is significantly different from appropriate age, cultural, or ethnic norms; or
 2. a pattern of unsatisfactory educational progress that is not primarily a result of intellectual, sensory, physical health, cultural, or linguistic factors; illegal chemical use; autism spectrum disorders; or inconsistent educational programming.
- C. The combined results of prior documented interventions and the evaluation data for the pupil must establish significant impairments in one or more of the following areas: intrapersonal, academic, vocational, or social skills. The data must document that the impairment:
 1. severely interferes with the pupil's or other students' educational performance;
 2. is consistently exhibited by occurrences in at least three different settings: two educational settings, one of which is the classroom, and one other setting in either the home, child care, or community; or for children not yet enrolled in kindergarten, the emotional or behavioral responses must be consistently exhibited in at least one setting in the home, child care, or community; and
 3. has been occurring throughout a minimum of six months, or results from the well-documented, sudden onset of a serious mental health disorder diagnosed by a licensed mental health professional.

Minn. R. 3525.1329, subp.2a

Evaluation

The evaluation findings must be supported by current or existing data from:

1. clinically significant scores on standardized, nationally normed behavior rating scales;
2. individually administered, standardized, nationally normed tests of intellectual ability and academic achievement;
3. three systematic observations in the classroom or other learning environment;
4. record review;
5. interviews with parent, pupil, and teacher;
6. health history review procedures;
7. a mental health screening; and
8. functional behavioral assessment.

The evaluation may include data from vocational skills measures; personality measures; self-report scales; adaptive behavior rating scales; communication measures; diagnostic assessment and mental health evaluation reviews; environmental, socio-cultural, and ethnic information reviews; gross and fine motor and sensory motor measures; or chemical health assessments.

Children not yet enrolled in kindergarten are eligible for special education and related services if they meet the criteria listed in subpart 2a, items A, B, and C, sub items (2) and (3). The evaluation process must show developmentally significant impairments in self-care, social relations, or social or emotional growth, and must include data from each of the following areas: two or more systematic observations, including one in the home; a case history, including medical, cultural, and developmental information; information on the pupil's cognitive ability, social skills, and communication abilities; standardized and informal interviews, including teacher, parent, caregiver, and child care provider; and standardized adaptive behavior scales.

Student Discipline Proceedings

The [Pupil Fair Dismissal Act](#) applies to all pupils both regular and special education.

Suspension

Suspension means an action by the school administration, under rules promulgated by the school board, prohibiting a pupil from attending school for a period of no more than ten school days. If a suspension is longer than five days, the suspending administrator must provide the superintendent with a reason for the longer suspension. This definition does not apply to dismissal from school for one school day or less except as provided in federal law for a student with a disability.

Each suspension action may include a readmission plan. The readmission plan shall include, where appropriate, a provision for implementing alternative educational services upon readmission and may not be used to extend the current suspension. The readmission plan must not obligate a parent to provide a sympathomimetic medication for the parent's child as a condition of readmission.

The school administration may not impose consecutive suspensions against the same pupil for the same course of conduct, or incident of misconduct, except where the pupil will create an immediate and substantial danger to self or to surrounding persons or property, or where the district is in the process of initiating an expulsion, in which case the school administration may extend the suspension to a total of 15 days.

In the case of a student with a disability, the student's individual education plan (IEP) team must meet immediately but not more than ten school days after the date on which the decision to remove the student from the student's current education placement is made. The IEP team and other qualified personnel shall at that meeting:

- A. conduct a review of the relationship between the child's disability and the behavior subject to disciplinary action; and
- B. determine the appropriateness of the child's education plan.

The requirements of the IEP team meeting apply when:

- A. the parent requests a meeting;
- B. the student is removed from the student's current placement for five or more consecutive days; or
- C. the student's total days of removal from the student's placement during the school year exceed ten cumulative days in a school year. the school administration shall implement alternative education services when the suspension exceeds five days. A separate administrative conference is required for each period of suspension.

Alternative Educational Services

Alternative educational may include, but are not limited to, special tutoring, modified curriculum, modified instruction, other modifications or adaptation, instruction through electronic media, special education services as indicated by appropriate assessment, homebound instruction, supervised homework, or enrollment in another district in an alternative learning center to allow the pupil to progress toward meeting graduation standards although in a different setting.

Minn. Stat. 121A.41

The district may order make a change in placement of a student with a disability to an appropriate interim alternative educational setting, another setting, or suspension for not more than 10 school days using the same placement policies as apply to student's without disabilities. The alternative educational service selected must allow the pupil to progress toward meeting graduation standards.

M.S. 127.27 Subd.11

The setting, which is determined by the IEP team, must enable the continuation of:

- A. participation in general curriculum, although in another setting;
- B. receipt of IEP services and modifications to meet identified goals set in the IEP, and
- C. include services and modifications designed to address the behavior so it will not recur.

Districts are encouraged by the state to establish alternative educational services within school buildings or at alternative program sites that offer instruction to students. A student with a disability may be suspended for more than ten cumulative days in a school year, however the student may file a complaint alleging a pattern of systematic exclusion beginning on the 11th cumulative day of suspension in a school year.

Alternative Educational Setting

A district may unilaterally order change in placement for not more than 45 days if a student carries a weapon to school or school function or knowingly possesses or uses illegal drugs, sells, or solicits sale of controlled substances at school or school function.

The district may seek an expedited hearing if it believes that maintaining the current placement is substantially likely to result in injury to the student or others. A hearing officer may order change in placement for not more than 45 days if the district is able to substantiate its position by "substantial evidence".

Conditional Procedures and Required Documentation

If, after completing the initial parts of the IEP including present levels of performance, pupil needs, and a review of the district's discipline policy, the IEP team determines that the student is unable to follow the district's policy, a behavior plan that outlines the specific steps or changes for the student must be written into the IEP. If the use of a conditional procedure is necessary, the procedure must be addressed in the IEP.

The use of a conditional procedure for behavior must be a part of a comprehensive educational program that includes goals and objectives on the pupil's IEP that specifically addresses the corresponding appropriate behaviors that the pupil needs to acquire or demonstrate.

A district administrator may develop a readmission plan for a student who has been suspended. An admission or readmission plan must be developed for any student who is excluded or expelled from school. The plan may include measures to improve the student's behavior and require parental involvement in the admission or readmission process, and may indicate the consequences to the student of not improving the student's behavior.

M.S. 127.31 Subd. 15



BEHAVIOR INTERVENTION PLAN

For conditional procedures that are part of this behavior intervention plan (BIP), The following information is required:

- a. The behavior(s) to be addressed, including the frequency and severity:

- b. Two positive interventions used, and the effectiveness of each:
 - 1.

 - 2.

- c. The conditional procedure(s) to be used are based on present levels of performance, needs, goals and objectives and documentation in the IEP:

If the conditional procedures include time-out for seclusion, the following information is required:

- a. What is the Specific criteria for returning the student to routine activities and the regular education environment:

- b. Date, name, and location of evaluation which determined time-out for seclusion is not contraindicated for psychological or physical health reasons:

- c. Names and titles of staff who will likely monitor student while in time-out for seclusion:

- d. Will the student have access to drinking water and a bathroom for a time-out that exceeds 15 minutes? Yes No
 Yes No

- e. Where will the documentation regarding the length of time spent in each time-out and the number of occurrences each school day be kept? _____

- f. Is the time-out location for the student where:
 - i. all fixtures are tamper proof? Yes No
 - ii. walls and floors are properly covered? Yes No
 - iii. control switches are located immediately outside the room? Yes No
 - iv. there is an observation window or other device to permit continuous monitoring of the student? Yes No
 - v. the time-out location is at least five feet by six feet or substantially equivalent and large enough to permit the student to stand, stretch arms, and lie down? Yes No
 - vi. well-lighted, well-ventilated, adequately heated, and clean? Yes No
 - vii. all applicable fire and safety codes are met? Yes No

Parents have the right to stop the use of a conditional procedure at any time by notifying the District.

This form is available in other formats. Contact the IEP manager for an alternate format.

Dangerous Student

School officials are not permitted to change the placement of a special education student who poses a danger to others, unless the student's parent provides consent for the change of placement. If the parent refuses consent for a change of placement the district may be able to remove a dangerous student from school through a restraining order obtained in state or federal court. The district has the option of seeking a court order at any time to remove the student from school or to change the student's placement if the district believes maintaining the student in the current educational placement is substantially likely to cause injury. In such a proceeding the burden is on the school district to demonstrate to the court that such a removal or change in placement should occur to avoid injury.

To obtain a court injunction, a district must be able to demonstrate:

- A. that the student presents a substantial risk of serious physical harm to self or others;
- B. that the school has proposed an appropriate change in placement which it is ready and able to implement, subject only to parental approval or approval by a hearing officer in a due process hearing;
- C. that the school has made all reasonable efforts to accommodate the child's disabilities so as to minimize the likelihood that the child will injure self or others; and
- D. that despite the reasonable efforts of the school, injury remains substantially likely to result.

Expedited Hearing

In addition, schools now have the option of removal of dangerous students through an expedited hearing. This mechanism can also be used to change the "status quo" or "stay put" placement of the student when a parent challenges the removal action. The district may request a hearing officer review the case. The burden of proof rests on the district to show that:

1. the district has demonstrated by substantial evidence that maintaining the current placement of the student is substantially likely to result in injury to the student or to others;
2. they considered appropriateness of the child's current placement;
3. the district has made reasonable efforts to minimize the risk of harm in the student's current placement, including the use of supplementary aids and services; and
4. the proposed interim alternative education provides for the child's educational needs.

The district should contact either the director or assistant director of special education in order to receive guidance in reviewing whether the district has demonstrated they have taken all reasonable steps to assure that the current placement of the child is "substantially likely to result in injury to the child or to others".

Protections for Students Not Yet Eligible for Special Education

A student who has not been determined to be eligible for special education may assert any of the protections afforded students with disabilities if the district had knowledge that the student was a student with a disability before the behavior that precipitated the disciplinary action occurred. The determination for basis of knowledge includes:

1. the student's parent expressed concern in writing that the student is in need of special education;
2. the behavior or performance of the student demonstrates the need for such services;
3. the student's parent requested an evaluation; or
4. the student's teacher or other school personnel expressed concern about the behavior or performance of the student to other school personnel.

Use of Positive Behavioral Interventions

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 a pupil to benefit from an appropriate, individualized educational program, as well as develop skills that enable them to function as independently as possible in their communities.

M. R. 3525.8085

Time-Out for Seclusion Procedures

Time-out procedures that seclude a student in a specially designated isolation room or similar space must meet the following conditions:

1. Specific criteria for returning pupil to the routine activities and regular education environment. This criteria should be documented within the pupil's IEP;
2. An evaluation to determine whether seclusion is contraindicated for psychological or physical health reasons;
3. Adequate access to drinking water and to a bathroom for a time-out that exceeds 15 minutes;
4. Documentation of the length of time spent in each time-out procedure and the number of occurrences each day; and
5. Provision for the pupil to be continuously monitored by trained staff.

Isolation Room Specifications

Time-out procedures that seclude a student in a specially designated isolation room that must meet the following conditions:

1. Provide a safe environment for the pupil where all fixtures are tamper proof, walls and floors are properly covered, and control switches are located immediately outside the room;
2. Have an observation window or other device to permit continuous monitoring of the pupil;
3. Measure at least five feet by six feet or be substantially equivalent to these dimensions and be large enough to allow the pupil to stand, to stretch the pupil's arms, and to lie down;
4. Be well-lighted, well-ventilated, adequately heated, and clean; and
5. Meet all applicable fire and safety codes.

All behavioral interventions not covered in the IEP must be consistent with the district's discipline policy. Continued and repeated use of any element of a district's discipline policy must be reviewed in the development of the individual pupil's IEP.

Parental Right to Withdraw Consent

A parent has the right to withdraw consent for a conditional behavior intervention plan at any time by notifying the program administrator or designee and the district must stop the procedure immediately. After parental consent is withdrawn and the procedure is stopped, the school must send written acknowledgment to the parent and request parental signature. If a parent's signature to withdraw consent cannot be obtained, the district must document its efforts to communicate and obtain the signature. Parents must be contacted within three school days to determine the need to convene the IEP team to consider a change in program or placement.

Emergency Interventions

"Emergency" means a situation in which immediate intervention is necessary to protect a pupil 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. This does not prohibit staff persons from using reasonable force to protect themselves or other pupils or students.

If an emergency intervention is used **twice** in a month or a pupil's pattern of behavior is emerging that interferes with the achievement of the pupil's educational goals and objectives, a team meeting must be called to:

1. Determine if the pupil's IEP is adequate;
2. Determine if additional assessment is needed; and
3. If necessary, amend the IEP. Districts may use conditional procedures in emergencies until the IEP team meets, provided the emergency measures are deemed necessary by the district to protect the individual pupil or others from harm.

The IEP team must meet as soon as possible but no later than five school days after emergency procedures have commenced. District administration, the director or assistant director of special education and the parent must be notified immediately when a regulated procedure is used in an emergency situation.

Functional Behavioral Analysis

Functional behavioral assessment (FBA) means 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. When a thorough functional analysis is completed, the following information is available:

1. Description. Target behaviors, both undesirable, challenging behaviors and positive, replacement behaviors are described in such a manner that anyone reading the description knows exactly what the behavior looks like.
2. Prediction. A predication is made of the times and situations during which the target behaviors will and will not be performed across the full range of typical daily routines. Such a prediction includes the following elements:
 - a. identification of medical and physical variables that may affect the behaviors;
 - b. define the setting in which the person performs the behaviors;
 - c. identify and define the events that consistently precede the behaviors (e.g., people, setting, activity, time of day).
3. Function. Identification of the functions or maintaining reinforcers for the challenging behaviors, adaptive replacement target behaviors are defined. In addition, a history of the challenging behaviors including previous intervention efforts and their effects are documented.

As a part of a functional behavioral analysis, the IEP team should review the MDE document [*Addressing Challenging Student Behavior: Functional Behavioral Assessment and Positive Behavior Support*](#) 2005.

3.04.05 Deaf and Hard of Hearing

Legal Citations

Definition

"Deaf and Hard of Hearing" means a diminished sensitivity to sound, or hearing loss, that is expressed in terms of standard audiological measures.

Hearing loss has the potential to affect educational, communicative, or social functioning that may result in the need for special education instruction and related services.

M.R.3525.1331 subp 1

Criteria

A pupil who is deaf or hard of hearing is eligible for special education instruction and related services if the pupil meets one of the criteria in item A and one of the criteria in item B, C, or D.

- A. There is audiological documentation provided by a certified audiologist that verifies a pupil has one of the following:
 1. a sensorineural hearing loss with an unaided pure tone average, speech threshold, or auditory brainstem response threshold of 20 decibels hearing level (HL) or greater in the better ear;
 2. a conductive hearing loss with an unaided pure tone average or speech threshold of 20 decibels hearing level (HL) or greater in the better ear persisting over three months or occurring at least three times during the previous 12 months as verified by audiograms with at least one measure provided by a certified audiologist;
 3. a unilateral sensorineural or persistent conductive loss with an unaided pure tone average or speech threshold of 45 decibels hearing level (HL) or greater in the affected ear; or
 4. a sensorineural hearing loss with unaided pure tone threshold at 35 decibels hearing level (HL) or greater at two or more adjacent frequencies (500 hertz, 1000 hertz, 2000 hertz, or 4000 hertz) in the better ear.

- B. The pupil's hearing loss affects educational performance as demonstrated by:
 1. a need to consistently use amplification appropriately in educational settings as determined by audiological measure and systematic observation; or
 2. an achievement deficit in basic reading skills, reading comprehension, written language, or general knowledge that is at the 15th percentile or 1.0 standard deviation or more below the mean on a technically adequate norm-referenced achievement test that is individually administered by a licensed professional.

- C. The pupil's hearing loss affects the use or understanding of spoken English as documented by one or both of the following:
 1. under the pupil's typical classroom condition, the pupil's classroom interaction is limited as measured by systematic observation of communication behaviors; or
 2. the pupil uses American sign language or one or more alternative or augmentative systems of communication alone or in combination with oral language as documented by parent or teacher reports and language sampling conducted by a professional with knowledge in the area of communication with persons who are deaf or hard of hearing.

- D. The pupil's hearing loss affects the adaptive behavior required for age-appropriate social functioning as supported by:

1. documented systematic observation within the pupil's primary learning environments by a licensed professional and the pupil, when appropriate; and
2. scores on a standardized scale of social skill development are below the average scores expected of same-age peers.

Minn. R. 3525.1331, subp. 2

3.04.06 Developmental Cognitive Disability

Legal Citations

Definition

"Developmental cognitive disability (DCD)" means 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.

M. R. 3525.1333

Criteria

The team shall determine that a pupil is eligible as having DCD and is in need of special education instruction and related services if the pupil meets the criteria of both items A and B.

- A. The pupil demonstrates below average adaptive behavior in school and home, and, if appropriate, community environments. For the purposes of this item, "below average" means:
 1. a composite score at or below the 15th percentile on a nationally normed, technically adequate measure of adaptive behavior; and
 2. documentation of needs and the level of support required in at least **four** of the seven adaptive behavior domains across multiple environments. Systematic observation and parent input must be included as sources to document need and level of support. All of the following adaptive behavior domains must be considered:
 - a) daily living and independent living skills;
 - b) social and interpersonal skills;
 - c) communication skills;
 - d) academic skills;
 - e) recreation and leisure skills;
 - f) community participation skills; and
 - g) work and work-related skills.

Other sources of documentation may include checklists; classroom or work samples; interview; criterion-referenced measures; educational history; medical history; or pupil

self-report.

- B. The pupil demonstrates significantly below average general intellectual functioning that is measured by an individually administered, nationally normed test of intellectual ability. For the purposes of this sub item, "significantly below average general intellectual functioning" means:
1. **mild-moderate range:** two standard deviations below the mean, plus or minus one standard error of measurement; and
 2. **severe-profound range:** three standard deviations below the mean, plus or minus one standard error of measurement.

Significantly below average general intellectual functioning must be verified through a written summary of results from at least two systematic observations with consideration for culturally relevant information, medical and educational histories, and one or more of the following: supplemental tests of specific abilities, criterion-referenced tests, alternative methods of intellectual assessment, clinical interview with parents, including family members, if appropriate, or observation and analysis of behavior across multiple environments.

Minn. R. 3525.1333, subp. 2

3.04.07 Other Health Disabilities

Legal Citations

Minnesota schools are serving students with an extraordinary range of chronic or acute health conditions that may be either congenital or acquired. Students with health conditions may have associated characteristics or symptoms ranging from mild to severe. Some of the health conditions are progressive and some have associated symptoms that vary in intensity from day to day.

Medications, treatments, therapies, frequent doctor's appointments, and repeated hospitalizations can impact the student's ability to learn and function at school. Even relatively mild health conditions can significantly impact academic, behavioral, social, or emotional functioning. A student with such a condition may be considered for special education services under the Other Health Disabilities (OHD) category. However, when the condition is medically managed, and the student can successfully participate in school, then the student may not need special education services under OHD. Many students with health conditions may only require a 504 plan, an individual health plan completed by a school nurse or accommodations within the general education setting agreed upon by the parent and school staff.

Definition

"Other health disability" means 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 pupil's educational performance.

The following should be considered when looking at determining whether or not a student qualifies under Other Health Disability:

- A. A medical diagnosis alone is insufficient to determine eligibility for special education services.
- B. All students with medical diagnoses are not automatically to be considered for eligibility for Other Health Disabilities. Teams are advised to focus on the presenting problems in conjunction with a comprehensive evaluation to determine the appropriate disability category.
- C. Students with some medical diagnoses may demonstrate educational concerns that may lead teams to consider them eligible for other special education categories.
- D. Teams must establish and document a link between the chronic or acute health condition and its adverse effect on a pupil's educational performance.
- E. When determining eligibility for children birth through age six who have been diagnosed with a syndrome or condition known to hinder normal development please refer to Early Childhood Special education criteria.

Criteria

The team shall determine that a pupil is eligible and in need of special education instruction and services if the pupil meets the criterion in items A and B.

A. There is:

1. written and **signed** documentation by a licensed physician of a medically diagnosed chronic or acute health condition; **or**
2. in the case of a diagnosis of Attention Deficit Disorder or Attention Deficit Hyperactivity Disorder (ADD or ADHD), there is written and **signed** documentation of a medical diagnosis by a licensed physician. The diagnosis of ADD or ADHD must include documentation that DSM-IV criteria in **items A to E** have been met. DSM-IV criteria documentation must be provided by either a licensed physician or a mental health or medical professional licensed to diagnose the condition.

For **initial evaluation**, all documentation must be dated within the previous 12 months.

B. In comparison with peers, the health condition adversely affects the pupil's ability to complete educational tasks within routine timelines as documented by **three** or more of the following:

1. excessive absenteeism linked to the health condition, for example, hospitalizations, medical treatments, surgeries, or illnesses;
2. specialized health care procedures that are necessary during the school day;
3. medications that adversely affect learning and functioning in terms of comprehension, memory, attention, or fatigue;
4. limited physical strength resulting in decreased capacity to perform school activities;

5. limited endurance resulting in decreased stamina and decreased ability to maintain performance;
6. heightened or diminished alertness resulting in impaired abilities, for example, prioritizing environmental stimuli; maintaining focus; or sustaining effort or accuracy;
7. impaired ability to manage and organize materials and complete classroom assignments within routine timelines; or
8. impaired ability to follow directions or initiate and complete a task.

Minn. R. 3525.1335, subp. 2

Evaluation

The health condition results in a pattern of unsatisfactory educational progress as determined by comprehensive evaluation documenting the required components of subpart 2, items A and B. The eligibility findings must be supported by current or existing data from items A to E:

- A. an individually administered, nationally normed standardized evaluation of the pupil's academic performance;
- B. documented, systematic interviews conducted by a licensed special education teacher with classroom teachers and the pupil's parent or guardian;
- C. one or more documented, systematic observation in the classroom or other learning environment by a licensed special education teacher;
- D. a review of the pupil's health history, including the verification of a medical diagnosis of a health condition; and
- E. records review.

The evaluation findings may include data from: an individually administered, nationally normed test of intellectual ability; an interview with the pupil; information from the school nurse or other individuals knowledgeable about the health condition of the pupil; standardized, nationally normed behavior rating scales; gross and fine motor and sensory motor measures; communication measures; functional skills checklists; and environmental, socio-cultural, and ethnic information reviews.

Minn. R. 3525.1335, subp. 3

Services

If a student is eligible for special education and related services as Other Health Impaired, any licensed special education teacher may provide instruction and service because there is not teacher licensure specifically designated to work with this population. There is frequent confusion over "who serves" and the answer is "we all do!"

Terminology within Criteria

Chronic Health Condition: One that is long term and is either not curable or has residual features that result in limitations in functions of daily living requiring special

assistance or adaptations, **OR**, A disease or disorder that develops slowly and persists for a long period of time-often for the remainder of the life span. Examples are epilepsy, sickle cell anemia, Leukemia, diabetes or some autoimmune diseases.

Acute: A disease or disease symptom that begins abruptly and with marked intensity, then subsides after a relatively short period of time. Examples would be Crohn's disease, kidney diseases or conditions that require an organ transplant, **OR**, A health condition with rapid onset, severe symptoms, and a short course. *Sequelae*, however, may be short-term or persistent. (*Sequelae* are conditions that follow and result from a disease. For example, a child who has had meningitis may suffer from sequelae such as motor problems and cognitive impairment.)

Heightened or Diminished Alertness: Inability to maintain awareness, vigilance, mindfulness, or attentiveness. This may be caused by external stimuli in the environment or an internal inability to maintain focus.

Limited Strength: The inability to maintain effort caused by a lack of resilience or stamina.

Excessive Absenteeism: Student is noted to have consistent or intermittent absences that interfere with academic progress and participation in school activities. Absences must be the result of hospitalizations, medical treatments, surgeries, or illness.

Inadequate Academic Progress: Inadequate progress *in comparison to peers* as measured by these outcomes and which are directly linked to the chronic/acute health condition:

- A. Grades, test scores, and daily work: Academic work is consistently in the poor-to-failing range.
- B. Poor work completion: Failure to consistently complete work in a timely manner and results in poor-to-failing academic performance.
- C. Decrease or change in work output: There is a documented and consistent decrease or change in the amount of work produced that results in poor-to-failing academic performance.
- D. Decrease or change in independent functioning or organizational skills: There is a documented and consistent decrease in student's independent functioning or organizational skills that results in poor-to-failing academic performance.

Specialized Healthcare Procedures: The medically related services necessary during the school day prescribed by the student's licensed physician. These procedures require training for the individual who performs them. Examples include catherization, gastric tube feeding, postural drainage, tracheotomy care, oxygen administration, ostomy care, and the administration of medications: oral, inhaled, injected, or IV.

3.04.08 Physically Impaired

Legal Citations

Students who qualify for special education services under the category Physically Impaired frequently have a medical diagnosis of a physical impairment such as cerebral palsy, spina bifida, muscular dystrophy, spinal cord injuries, or arthrogyrosis. Orthopedic impairment means a severe orthopedic impairment that adversely affects a child's education performance. The term includes impairments caused by congenital anomaly (e.g., clubfoot, absence of some member, etc.), impairments caused by disease (e.g. poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

34 C.F.R. 300.7 (c)(8)

Definition

"Physically impaired" means a medically diagnosed chronic, physical impairment, either congenital or acquired, that may adversely affect physical or academic functioning and result in the need for special education and related services.

MR. 3525.1337

Criteria

A pupil is eligible and in need of special education instruction and services if the pupil meets the criterion in item A and one of the criteria in item B.

A. There must be documentation of a medically diagnosed physical impairment.

B. The pupil's:

1. need for special education instruction and service is supported by a lack of functional level in organizational or independent work skills as verified by a minimum of two or more documented, systematic observations in daily routine settings, one of which is completed by a physical and health disabilities teacher; or
2. need for special education instruction and service is supported by an inability to manage or complete motoric portions of classroom tasks within time constraints as verified by a minimum of two or more, systematic observations in daily routine settings, one of which is completed by a physical and health disabilities teacher; or
3. physical impairment interferes with educational performance as shown by a achievement deficit of 1.0 standard deviation or more below the mean on an individually administered reliable, valid, and adequately normed achievement test.

Minn. R. 3525.1337, subp. 2

Assessment for Physical Impairment

The educational assessment for a student with a physical impairment must include a licensed Physical and Health Disabilities (P/HD) teacher. The comprehensive assessment should identify the educational needs of the student related to the physical impairment and his or her learning skills. The assessment may require adaptations to traditional assessment tools to compensate for motor and sensory skills. The multidisciplinary assessment team will include licensed teachers and other specialists with knowledge in

the area(s) of suspected educational needs.

Team Members

A Physical and Health Disabilities Teacher is required to be a member of the IEP team. This person is responsible for planning and completing evaluation/reevaluation for students with physical impairments from pre-Kindergarten to age 22. The role of a P/HD teacher is to provide expertise in determining the educational implications and strategies unique to the physical disability; assist in developing appropriate goals and objectives, curricular modifications, adaptations, accommodations and use of assistive technology to meet curriculum requirements and to present disability specific in-service.

The P/HD teacher is itinerant and generally provides consultation services to the school. Direct service can be provided by the Physical and Health Disabilities teacher, but most academic services are provided through a multidisciplinary team teaching model utilizing a school's special education teachers.

In addition, services may be provided by one or more of the following team members:

- A. Physical Therapist
- B. Occupational Therapist
- C. Developmental Adapted Physical Education
- D. Nurse
- E. Speech Language

Frequent Educational Needs:

- A. Provision of compensatory skills through adaptations, modifications, technology, and equipment for motor and perceptual skills
- B. Provision of educational strategies for organizational, attending, and memory skills
- C. Development of self-advocacy skills regarding the student's needs as they relate to the physical impairment
- D. Development of evacuation plans, safety consideration, mobility, health plans
- E. Opportunity to access all curricular and educational experiences, including participation in courses requiring lab or hands-on work, field trips, music programs, and extracurricular activities.

3.04.09 Severely Multiply Impaired

Legal Citations

“Severely Multiply Impaired” means a pupil who has severe learning and developmental problems resulting from two or more disability conditions determined by evaluation.

Minn. R. 3525.1339, subp. 1

Criteria

The team shall determine that a pupil is eligible as being severely multiply impaired if the pupil meets criteria for two or more of the following disabilities:

- A. Deaf or hard of hearing
- B. Physically impaired
- C. Developmental cognitive disability: severe-profound range
- D. Visually impaired
- E. Emotional behavioral disorders
- F. Autism spectrum disorders

Minn. R. 3525.1339, subp. 2

3.04.10 Specific Learning Disability

Legal Citations

Definition.

"Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

The disorder is:

A. manifested by interference with the acquisition, organization, storage, retrieval, manipulation, or expression of information so that the child does not learn at an adequate rate for the child's age or to meet state-approved grade-level standards when provided with the usual developmental opportunities and instruction from a regular school environment; and

B. demonstrated primarily in academic functioning, but may also affect other developmental, functional, and life adjustment skill areas; and may occur with, but cannot be primarily the result of: visual, hearing, or motor impairment; cognitive impairment; emotional disorders; or environmental, cultural, economic influences, limited English proficiency or a lack of appropriate instruction in reading or math.

Minn. R. 3525.1341, subp. 1

Criteria.

A child is eligible and in need of special education and related services for a specific learning disability when the child meets the criteria in items A, B, and C or in items A, B, and D. Information about each item must be sought from the parent and must be included as part of the evaluation data. The evaluation data must confirm that the effects of the child's disability occur in a variety of settings. The

child must receive two interventions, as defined in Minnesota Statutes, section [125A.56](#), prior to evaluation, unless the parent requests an evaluation or the IEP team waives this requirement because it determines the child's need for an evaluation is urgent.

A. The child does not achieve adequately in one or more of the following areas: oral expression, listening comprehension, written expression, basic reading skills, reading comprehension, reading fluency, mathematics calculation, or mathematical problem solving, in response to appropriate classroom instruction, and either:

1. the child does not make adequate progress to meet age or state-approved grade-level standards in one or more of the areas listed above when using a process based on the child's response to scientific, research-based intervention (SRBI); or
2. the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, state-approved grade-level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability.

The performance measures used to verify this finding must be representative of the child's curriculum or useful for developing instructional goals and objectives. Documentation is required to verify this finding. Such documentation includes evidence of low achievement from the following sources, when available: cumulative record reviews; class work samples; anecdotal teacher records; statewide and district wide assessments; formal, diagnostic, and informal tests; curriculum-based evaluation results; and results from targeted support programs in general education.

B. The child has a disorder in one or more of the basic psychological processes which includes an information processing condition that is manifested in a variety of settings by behaviors such as inadequate: acquisition of information; organization; planning and sequencing; working memory, including verbal, visual, or spatial; visual and auditory processing; speed of processing; verbal and nonverbal expression; transfer of information; and motor control for written tasks.

C. The child demonstrates a severe discrepancy between general intellectual ability and achievement in one or more of the following areas: oral expression, listening comprehension, written expression, basic reading skills, reading comprehension, reading fluency, mathematics calculation, or mathematical problem solving. The demonstration of a severe discrepancy shall not be based solely on the use of standardized tests. The group shall consider these standardized test results as only one component of the eligibility criteria. The instruments used to assess the child's general intellectual ability and achievement must be individually administered and

interpreted by an appropriately licensed person using standardized procedures. For initial placement, the severe discrepancy must be equal to or greater than 1.75 standard deviations below the mean of the distribution of difference scores for the general population of individuals at the child's chronological age level.

D. The child demonstrates an inadequate rate of progress. Rate of progress is measured over time through progress monitoring while using intensive SRBI, which may be used prior to a referral, or as part of an evaluation for special education. A minimum of 12 data points are required from a consistent intervention implemented over at least seven school weeks in order to establish the rate of progress. Rate of progress is inadequate when the child's:

1. rate of improvement is minimal and continued intervention will not likely result in reaching age or state-approved grade-level standards;
2. progress will likely not be maintained when instructional supports are removed;
3. level of performance in repeated assessments of achievement falls below the child's age or state-approved grade-level standards; and
4. level of achievement is at or below the fifth percentile on one or more valid and reliable achievement tests using either state or national comparisons. Local comparison data that is valid and reliable may be used in addition to either state or national data. If local comparison data is used and differs from either state or national data, the group must provide a rationale to explain the difference.

Minn. R. 3525.1341, subp. 2

Determination of specific learning disability.

In order to determine that the criteria for eligibility in subpart 2 are met, documentation must include:

A. An observation of the child in the child's learning environment, including the regular classroom setting, that documents the child's academic performance and behavior in the areas of difficulty. For a child of less than school age or out of school, a group member must observe the child in an environment appropriate to the child's age. In determining whether a child has a specific learning disability, the parents and the group of qualified professionals, as provided by Code of Federal Regulations, title 34, section 300.308, must:

1. use information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for a special education evaluation; or

2. conduct an observation of academic performance in the regular classroom after the child has been referred for a special education evaluation and appropriate parental consent has been obtained; and
 3. document the relevant behavior, if any, noted during the observation and the relationship of that behavior to the child's academic functioning;
- B. A statement of whether the child has a specific learning disability;
- C. The group's basis for making the determination, including that:
1. the child has a disorder, across multiple settings, that impacts one or more of the basic psychological processes described in subpart 1 documented by information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and
 2. the child's underachievement is not primarily the result of visual, hearing, or motor impairment; developmental cognitive disabilities; emotional or behavioral disorders; environmental, cultural, or economic influences; limited English proficiency; or a lack of appropriate instruction in reading or math, verified by:
 - a. data that demonstrate that prior to, or as part of, the referral process, the child was provided appropriate instruction in regular education settings delivered by qualified personnel; and
 - b. data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of the child's progress during instruction, which was provided to the child's parents;
- D. Educationally relevant medical findings, if any;
- E. Whether the child meets the criteria in subpart 2, either items A, B, and C or items A, B, and D; and
- F. If the child has participated in a process that assesses the child's response to SRBI, the instructional strategies used and the child-centered data collected, the documentation that the parents were notified about the state's policies regarding the amount and nature of child performance data that would be collected and the general education services that would be provided, strategies for increasing the child's rate of learning, and the parent's right to request a special education evaluation.

Verification.

Each group member must certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the member must submit a separate statement presenting the member's conclusions.

The district's plan for identifying a child with a specific learning disability consistent with this part must be included with its total special education system (TSES) plan. The district must implement its interventions consistent with that plan. The plan should detail the specific SRBI approach, including timelines for progression through the model; any SRBI that is used, by content area; the parent notification and consent policies for participation in SRBI; procedures for ensuring fidelity of implementation; and a district staff training plan.

SLD Written Report

The team shall prepare a written report of the results of the evaluation. The report must include a statement of:

1. whether the child has a specific learning disability;
2. the relevant behavior as it relates to academic functioning noted during the observation of the child;
3. whether there is a severe discrepancy between achievement and ability that is not correctable without special education and related services; and
4. the determination of the team concerning the effects of the following:
 - a. Vision, motor, or hearing impairment
 - b. cognitive impairment or emotional or behavioral disorder or environmental, cultural, or economic influences
 - c. history of inconsistent education program or lack of instruction in reading or math
 - d. limited English proficiency

Each team member shall certify in writing whether the report reflects his or her conclusion. If it does not reflect his or her conclusion, the team member must submit a separate statement presenting his or her conclusion.

Team Override Criteria Documentation Required

The team may determine that a pupil is eligible for special instruction and related services because the pupil has a disability and needs special instruction even though the pupil does not meet the specific requirement in parts [3525.1325](#) to 3525.1345 and 3525.2335.

The team must include the documentation in the pupil's special education record in accordance with items:

- A. The pupil's record must contain documents that explain why the standards and procedures used with the majority of pupils, resulted in invalid findings for this pupil.
- B. The record must indicate what objective data were used to conclude that the pupil has a disability and is in need of specialized instruction. These data may include, for example, test scores, work products, self-reports, teacher comments, medical data, previous testing, observational data, ecological assessments, and other developmental data.
- C. Since 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 must be included.

3.04.11 Speech or Language Impairments

Legal Citations

Definition

Speech or language impairment means a communication disorder, such as stuttering, impaired articulation, language impairment, or a voice impairment, that adversely affects a child's educational performance.

Definition of a Fluency Disorder

"Fluency disorder" means the intrusion or repetition of sounds, syllables, and words; prolongations of sounds; avoidance of words; silent blocks; or inappropriate inhalation, exhalation, or phonation patterns. These patterns may also be accompanied by facial and body movements associated with the effort to speak. Fluency patterns that can be attributed only to dialectical, cultural, or ethnic differences or to the influence of a foreign language must not be identified as a disorder.

The pupil has a fluency disorder and is eligible for speech or language special education when:

- A. the pattern interferes with communication as determined by an educational speech pathologist and either another adult or the pupil; and
- B. dysfluent behaviors occur during at least five percent of the words spoken on two or more speech samples.

Minn. R. 3525.1343, subp. 1

Definition and Criteria of a Voice Disorder

"Voice disorder" means the absence of voice or presence of abnormal quality, pitch, resonance, loudness, or duration. Voice patterns that can be attributed only to dialectical,

cultural, or ethnic differences or to the influence of a foreign language must not be identified as a disorder.

A pupil has a voice disorder and is eligible for speech or language special education when:

- A. the pattern interferes with communication as determined by an educational speech language pathologist and either another adult or the pupil; and
- B. achievement of a moderate to severe vocal severity rating is demonstrated on a voice [evaluation] profile administered on two separate occasions, two weeks apart, at different times of the day.

Minn. R. 3525.1343, subp. 2

Definition and Criteria of an Articulation Disorder

“Articulation disorder” means the absence of or incorrect production of speech sounds or phonological processes that are developmentally appropriate. For the purposes of this subpart, phonological process means a regularly occurring simplification or deviation in an individual’s speech as compared to the adult standard, usually one that simplifies the adult phonological pattern. Articulation patterns that can be attributed only to dialectical, cultural, or ethnic differences or to the influence of a foreign language must not be identified as a disorder.

A pupil has an articulation disorder and is eligible for speech or language special education when the pupil meets the criteria in item (1) and either subitem item (2), or (3):

1. the pattern interferes with communication as determined by an educational speech language pathologist and either another adult or the pupil; and
2. test performance falls 2.0 standard deviations below the mean on a technically adequate, norm-referenced articulation test; or
3. a pupil is nine years of age or older and a sound is consistently in error as documented by two three-minute conversational speech samples.

Minn. R. 3525.1343, subp. 3

Definition and Criteria of a Language Disorder

“Language disorder” means a breakdown in communication as characterized by problems in expressing needs, ideas, or information that may be accompanied by problems in understanding. Language patterns that are attributed only to dialectical, cultural, or ethnic differences or to the influence of a foreign language must not be identified as a disorder.

A pupil has a language disorder and is eligible for speech or language special education services when:

1. the pattern interferes with communication as determined by an educational speech language pathologist and either another adult or the child;

2. an analysis of a language sample or documented observation of communicative interaction indicates the pupil's language behavior falls below or is different from what would be expected given consideration to chronological age, developmental level, or cognitive level; and
3. the pupil scores 2.0 standard deviations below the mean on at least two technically adequate, norm-referenced language tests if available; or
4. if technically adequate, norm-referenced language tests are not available to provide evidence of a deficit of 2.0 standard deviations below the mean in the area of language, two documented measurement procedures indicate a substantial difference from what would be expected given consideration to chronological age, developmental level, or cognitive level. The documented procedures may include additional language samples, criterion-referenced instruments, observations in natural environments, and parent reports.

Minn. R. 3525.1343, subp. 4.

3.04.12 Traumatic Brain Injury

Legal Citations

Definition

"Traumatic brain injury" means 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 child's educational performance and 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.

M.R. 3535.1348

Criteria

The team shall determine that a pupil is eligible and in need of special education and related services if the pupil meets the criterion in item A and in items B and C as documented by the information gathered according to item D:

- A. There is documentation by a physician of a medically verified traumatic brain injury.
- B. There is a functional impairment attributable to the traumatic brain injury that adversely affects educational performance in one or more of the following areas: intellectual-cognitive, academic, communication, motor, sensory, social-emotional/behavioral, and functional skills/adaptive behavior. Examples of functional impairments, which may adversely affect educational performance, are:
 1. Intellectual-cognitive, such as, but not limited to, impaired:
 - a) attention or concentration;

- b) ability to initiate, organize, or complete tasks;
 - c) ability to sequence, generalize, or plan;
 - d) insight/consequential thinking;
 - e) flexibility in thinking, reasoning, or problem-solving;
 - f) abstract thinking;
 - g) judgment or perception;
 - h) long-term or short-term memory;
 - i) ability to acquire or retain new information;
 - j) ability to process information.
2. academic, such as but not limited to:
- a) marked decline in achievement from pre-injury levels;
 - b) impaired ability to acquire basic skill (reading, written language, mathematics);
 - c) normal sequence of skill acquisition which has been interrupted by the trauma as related to chronological and developmental age.
3. communication, such as, but not limited to:
- a) impaired ability to initiate, maintain, restructure, or terminate conversation;
 - b) impaired ability to respond to verbal communication in a timely, accurate or efficient manner;
 - c) impaired ability to communicate in distracting or stressful environments;
 - d) impaired ability to use language appropriately (requesting information, predicting, analyzing, or using humor);
 - e) impaired ability to use appropriate syntax;
 - f) impaired abstract or figurative language;
 - g) perseverative speech (repetition of words, phrases, or topics);
 - h) impaired ability to understand verbal information;
 - i) impaired ability to discriminate relevant from irrelevant information;
 - j) impaired voice production/articulation (intensity, pitch, quality, apraxia, or dysarthria).
4. motor, such as, but not limited to, impaired:
- a) mobility (balance, strength, muscle tone, or equilibrium);
 - b) fine or gross motor skills;
 - c) speed or processing or motor response time;
 - d) sensory/perceptual motor skills;
5. sensory, such as, but not limited to impaired:
- a) vision (tracking, blind spots, visual field cuts, blurred vision, or double vision);
 - b) hearing (tinnitus, noise sensitivity, or hearing loss).
6. social-emotional-behavioral, such as, but not limited to:
- a) impaired ability to initiate or sustain appropriate peer or adult relationships;
 - b) impaired ability to perceive, evaluate, or use social cues or context appropriately;

- c) impaired ability to cope with over-stimulating environments, low frustration tolerance;
 - d) mood swings or emotional lability;
 - e) impaired ability to establish or maintain self-esteem;
 - f) denial or deficits affecting performance;
 - g) poor emotional adjustment to injury (depression, anger, withdrawal, or dependence);
 - h) impaired ability to demonstrate age-appropriate behavior;
 - i) impaired self-control (verbal or physical aggression, impulsivity, or disinhibition);
 - j) intensification of preexistent maladaptive behaviors or disabilities.
7. functional skills-adaptive behavior, such as but not limited to, impaired:
- a) ability to perform developmentally appropriate daily living skills in school, home leisure, community setting (hygiene, toileting, dressing, eating);
 - b) ability to transfer skills from one setting to another;
 - c) orientation (place, time, situations);
 - d) ability to find rooms, building, or locations in a familiar environment;
 - e) ability to respond to environmental cues (bells, signs);
 - f) ability to follow a routine;
 - g) ability to accept change in an established routine;
 - h) stamina that results in chronic fatigue.

C. The functional impairments are not primarily the result of previously existing:

- 1. visual, hearing, or motor impairments;
- 2. emotional/behavioral disorders;
- 3. mental retardation;
- 4. language or specific learning disabilities;
- 5. environmental or economic disadvantage;

D. Information/data to document a functional impairment in one or more of the areas in item B must, at a minimum, include one source from Group One and one source from Group Two:

1. GROUP ONE:

- a) checklists;
- b) classroom or work samples;
- c) educational/medical history;
- d) documented, systematic behavioral observations;
- e) interviews with parents, student, and other knowledgeable individuals;

2. GROUP TWO:

- a) criterion-referenced measures;
- b) personality or projective measures;
- c) sociometric measures;
- d) standardized assessment measures; (academic, cognitive, communication, neuropsychological, or motor).

3.04.13 Visually Impaired

Legal Citations

Definition

"Visually impaired" means a medically verified visual impairment accompanied by limitations in sight that interfere with acquiring information or interaction with the environment to the extent that special education instruction and related services may be needed.

M.R.3525.1345

Criteria

A child is eligible and in need of special education services for visual impairment when the child meets one of the criteria in item A and one of the criteria in item B:

- A. medical documentation of a diagnosed visual impairment by a licensed eye specialist establishing one or more of the following conditions:
 1. visual acuity of 20/60 or less in the better eye with the best conventional correction; estimation of acuity is acceptable for difficult-to-test children; and for children not yet enrolled in kindergarten, measured acuity must be significantly deviant from what is developmentally age-appropriate;
 2. visual field of 20 degrees or less, or bilateral scotomas; or
 3. a congenital or degenerating eye condition including, for example, progressive cataract, glaucoma, or retinitis pigmentosa; and

- B. functional evaluation of visual abilities conducted by a licensed teacher of the visually impaired that determines that the child:
 1. has limited ability in visually accessing program-appropriate educational media and materials including, for example, textbooks, photocopies, blackboard, white boards, computers, or environmental signs, without modification;
 2. has limited ability to visually access the full range of program-appropriate educational materials and media without accommodating actions including, for example, changes in posture, body movement, focal distance, or squinting;
 3. demonstrates variable visual ability due to environmental factors including, for example, contrast, weather, color, or movement, that cannot be controlled; or
 4. experiences reduced or variable visual ability due to visual fatigue or factors common to the eye condition.

Minn. R. 3525.1345, subp. 2

3.05 Early Childhood Special Education

Legal Citations

Definition

Early childhood special education must be available to pupils from birth to seven years of age who have a substantial delay or disorder in development or have an identifiable sensory, physical, mental, or social/emotional condition or impairment known to hinder normal development and need special education.

Minn. R. 3525.1350, subp. 1

Criteria for Children from Birth through Two Years of Age

The team shall determine that a child from birth through the age of two years and 11 months is eligible for early childhood special education if:

- A. the child meets the criteria of one of the disability categories; or
- B. the child meets one of the criteria for developmental delay in sub item (1) and the criteria in sub items (2) and (3):
 1. the child:
 - a) has a medically diagnosed syndrome or condition that is known to hinder normal development for example, cerebral palsy, chromosome abnormalities, fetal alcohol syndrome, maternal drug use, neural tube defects, neural muscular disorders, cytomegalovirus, grades III and IV intracranial hemorrhage, and bronchiopulmonary dysplasia (BPD);
 - b) has a delay in overall development demonstrated by a composite score of 1.5 standard deviations or more below the mean on an [evaluation] using at least one technically adequate, norm-referenced instrument that has been individually administered by an appropriately trained professional; or
 - c) is less than 18 months of age and has a delay in motor development demonstrated by a composite score of 2.0 standard deviations or more below the mean on an [evaluation] using technically adequate, norm-referenced instruments. These instruments must be individually administered by an appropriately trained professional;
 2. the child's need for instruction and services is supported by at least one documented, systematic observation in the child's daily routine setting by an appropriate professional. If observation in the daily routine setting is not possible, the alternative setting must be justified;
 3. corroboration of the developmental evaluation or medical diagnosis with a developmental history and at least one other [evaluation] procedure that is conducted on a different day than the medical or norm-referenced [evaluation]. Other procedures may include parent report, language sample, criterion-referenced instruments, or developmental checklists.

Minn. R. 3525.1350, subp. 2

Criteria for Children from Three through Six Years

The team shall determine that a child from the age of three years through the age of six years and 11 months is eligible for early childhood special education when:

- A. the child meets the criteria of one of the categorical disabilities; or

- B. the child meets one of the criteria for developmental delay in sub item (1) and the criteria in subitems (2) and (3). Local school districts have the option of implementing these criteria for developmental delay. If a district chooses to implement these criteria, it may not modify them.
1. the child:
 - a) has a medically diagnosed syndrome or condition that is known to hinder normal development including cerebral palsy, chromosome abnormalities, fetal alcohol syndrome, maternal drug use, neural tube defects, neural muscular disorders, cytomegalovirus, grades III and IV intracranial hemorrhage, and bronchiopulmonary dysplasia (BPD); or
 - b) has a delay in each of two or more areas of development that is verified by an [evaluation] using technically adequate, norm-referenced instruments. Subtests of instruments are not acceptable. The instruments must be individually administered by appropriately trained professionals and the scores must be at least 1.5 standard deviations below the mean in each area;
 2. the child's need for special education is supported by at least one documented, systematic observation in the child's daily routine setting by an appropriate professional. If observation in the daily routine setting is not possible, the alternative setting must be justified.
 3. corroboration of the developmental evaluation or medical diagnosis with a developmental history and at least one other evaluation procedure in each area that is conducted on a different day than the medical or norm-referenced evaluation.

Other procedures which may be used here include parent report, language sample, criterion-referenced instruments, or developmental checklists.

Minn. R. 3525.1350, subp. 3

3.06 Other Available Programs

3.06.01 Developmental Adapted Physical Education: Special Education (DAPE)

Legal Citations

Definition

"Developmental adapted physical education: special education" means specially designed physical education instruction and services for pupils with disabilities who have a substantial delay or disorder in physical development. Developmental adapted physical education: special education instruction for pupils 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 illnesses or disabilities are termed special needs students. Special needs students are not eligible for developmental adapted physical education: special education. Provisions for these students must be made within regular physical education.

M.R.3525.1352, subp 1

Criteria

A pupil is eligible for developmental adapted physical education: special education when the team determines the pupil has met the criteria in items A and B.

- A. The pupil has one of the following disabilities autism, blind or deaf/blind, emotional or behavioral disorders, deaf and hard of hearing, specific learning disabilities, developmental cognitive delay, severely multiply impaired, other health disabilities, physically impaired, visually impaired, traumatic brain injury or part [3525.1350](#), subpart 3.
- B. The pupil is determined by the team to need specially designed physical education instruction because:
 1. The pupil's performance on an appropriately selected, technically adequate, norm referenced psychomotor or physical fitness instrument is 1.5 standard deviations or more below the mean. The instrument must be individually administered by appropriately licensed teacher; or
 2. The pupil's development or achievement and independence in school, home, and community settings is inadequate to allow the pupil to succeed in the regular physical education program as supported by written documentation from two or more of the following: motor and skill checklists; informal tests; criterion referenced measures; deficits in achievement related to the defined curriculum; medical history or reports; parent and staff interview; systematic observation; and social, emotional, and behavioral assessments.

Minn. R. 3525, subp. 2

What is DAPE?

DAPE is a branch of special education that shares common beliefs, knowledge, and goals with physical education. Its focus is primarily on the psychomotor domain, but it also includes the cognitive and affective domain. DAPE involves itself with ***specifically designed physical education*** for learners with categorical handicaps that demonstrate a need for this service.

Role of the DAPE Teacher

The role of the DAPE teacher is to individualize instruction, facilities and equipment; to assess, interpret test results and needs; as well as write goals and objectives based on the students needs. The DAPE teacher will also become involved in participation in the team conference's and team decision making; modify or adapt facilities, activities, and equipment for the student; provide direct or indirect instruction to the student; and consult, if necessary, with the classroom or regular P.E. teacher.

Philosophy

Physical education is an essential and basic component of a comprehensive education program. Physical education contributes to the total development of every child through natural medium of human movement and physical activity. It is through the synthesis of human movement and physical activity that unique relationships develop between the physical, social, emotional and intellectual needs of each child.

Physical education promotes a healthy body; develops coordination and motor skills; fosters creativity; enhances peer interaction and socialization.

Developmental, Adapted Physical Education is a service area defined by two areas of instructional support. The term *Developmental* focuses on the outcomes to be achieved, by the student, as a result of participation in the physical education program. Each student's unique physical, social, emotional and intellectual development is considered when determining how the outcomes are to be achieved. Through an individualized approach which recognizes personal interest and abilities, appropriate expectations are determined. Expectations relate to rules for participation and evaluation are defined for each activity.

The term *Adapted* focuses on individualizing the instruction process. Instructional adaptations include selecting the setting and environment; determining the pace of instruction; providing appropriate independent and guided practice; and modifying equipment.

It is through a carefully planned, diversified program of developmental activities; games; sports and rhythms suited to the interest, limitations and capabilities of each child that the outcomes could be realized. Through an integrated and child centered approach, children develop a positive self-image and learn to feel good about themselves. Children discover that learning through moving is not only fun but also helps improve the quality of their life.

Placement Options

Placement is based on the least restrictive environment which means the student is to be educated with peers and still be needs effective.

- A. **In regular PE class** with direction from either regular PE teacher or the DAPE teacher, or both, such as team teaching.
- B. **Specifically designed placement.** Based on least restrictive environment which may be one of the following:
 1. Individual instruction with the DAPE teacher
 2. Combination of individual and regular PE
 3. Regular PE with DAPE teacher providing hands on service based on the PE curriculum during the regular PE class

3.07 Team Override on Eligibility Decisions

Legal Citations

The team may determine that a pupil is eligible for special instruction and related services because the pupil has a disability and needs special instruction even though the pupil does not meet the specific requirement in parts [3525.1325](#) to [3525.1345](#) and [3525.2335](#). The team must include the documentation in the pupil's special education record in items listed in items A, B, C, and D.

- A. The pupil's record must contain documents that explain why the standards and procedures used with the majority of pupils, resulted in invalid findings for this pupil.
- B. The record must indicate what objective data were used to conclude that the pupil has a disability and is in need of specialized instruction. These data may 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 must be included.

MN R. 3525.1354, subp. 1

3.08 Exit Procedures

Legal Citations

The district shall evaluate a student with a disability **before** determining that the student is no longer a student with a disability.

C.F.R. 300.305(e)

Evaluation does not necessarily mean formal evaluation; the team must review existing data and determine what additional data is needed, if any, to make an informed decision. The team shall consider discontinuing special education instruction and services after:

- A. reviewing existing evaluation data on the student, including evaluations and information provided by the parents of the student, current classroom-based evaluations and observations, and teacher and related services providers observation and
- B. on the basis of that review, and input from the student's parents, identify what additional data, if any are needed to determine:
 - 1. whether the student continues to have a disability;
 - 2. the present levels of performance and educational needs of the student;

3. whether the student continues to need special education and related services; and
4. whether the child is able to participate, as appropriate in the general curriculum.

This evaluation is not required before the termination of a student's eligibility due to graduation with a regular high school diploma or through exceeding the age eligibility for FAPE under State Law.

Exit Summary

For any pupil discontinuing special education and services, the IEP manager must attach/include an exit summary to the Evaluation Report which specifies what data was used to make the determination that the student no longer qualifies for special education services.

Graduating Student's on IEP's

Student's on IEP's who are graduating from high school are transitioning to another environment and are not exiting from special education (i.e. they are still an individual with a disability). Therefore, they are not dismissed from special education but are transitioning to another setting based on their transition goals and objectives. A student's right to FAPE is terminated upon graduation with a regular high school diploma. An evaluation is not needed for this transition to occur. This change of placement requires Prior Written Notice to the parent or to the student, if age 18. A Summary of Performance review of transition information is required for all student's with disabilities who will be graduating. This Summary of Performance could take place during a Progress Review time.

Reinstatement of Special Education Services

Pupils who are discontinued from all special education services may be reinstated within 12 months of dismissal. If data on the student's present levels of performance are available and an evaluation had been conducted within three years, the district is not required to document two pre-referral interventions or conduct a new evaluation.