

5.0 INSTRUCTIONAL DELIVERY OF PROGRAMS

Instructional delivery of programs is the system the local education agency (LEA) uses to ensure that a continuum of alternative placements is available to meet the needs of pupils with disabilities for special education and related services. Programs may have categorical or non-categorical labels. Placement referral pertains to the time after a pupil has been determined eligible for special education and related services and the individualized education program (IEP) or individualized family service plan (IFSP) goals and objectives have been written. Then the pupil may be referred for a special placement, such as a state academy, private school, or residential facility

5.01 Free Appropriate Public Education

Every district must provide special instruction and services, either within the district or in another district, for children with a disability who are residents of the district and who are disabled. Notwithstanding any age limits in laws to the contrary, special instruction and services must be provided from birth until July 1 after the child with a disability becomes 21 years old but shall not extend beyond secondary school or its equivalent. Local health, education, and social service agencies must refer children under age five who are known to need or suspected of needing special instruction and services to the school district.

Pupils with disabilities who are eligible for special education services based on an appropriate individual evaluation shall have access to FAPE, as that term is defined by applicable law.

Minn. R. 3525.0300

5.01.02 Limitation on Obligation to Make FAPE Available

Student Discipline

A district need not provide services during the periods of removal to a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if services are not provided to a child without disabilities who has been similarly removed.

34 C.F.R. 300.530(d)(3)

Students Incarcerated in Adult Prisons

School districts are not obligated to make special education and related services available to students aged 18 through 21 who in the last educational placement prior to their incarceration in an adult correction facility were not actually identified as being a child with a disability and who did not have an IEP.

34 CFR 300.311(a)

Students with High School Diplomas

A district need not provide services to children with disabilities who have graduated from high school with a **regular** high school diploma.

5.01.04 Services At No Cost to Parents

If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the child.

34 C.F.R. 300.302

A pupil's district of residence is responsible for assuring that an appropriate program is provided for all eligible pupils placed by the district's team within the district or in an out-of-district placement regardless of the method or location of instruction used.

Minn. R. 3525.0800, subp.1

5.01.05 Availability of Educational Programs and Services

The State must ensure that each public agency takes steps to ensure that its children with disabilities have available to them the variety of educational programs and services available to nondisabled children in the area served by the agency, including art, music, industrial arts, consumer and homemaking education, and vocational education.

34 C.F.R. 300.110

5.01.07 Availability of Physical Education Services

Physical education services, specially designed if necessary, must be made available to every child with a disability. Each child with a disability must be afforded the opportunity to participate in the regular physical education program available to nondisabled children unless the child is enrolled full time in a separate facility or the child needs specially designed physical education as prescribed in the child's IEP. If specially designed physical education is prescribed in a child's IEP, the district responsible for the education of that child shall provide the services directly or make arrangements for those services to be provided other programs.

34 C.F.R. 300.307

5.02 Methods and Continuum of Instructional Services

Each district will ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services. This continuum must include the alternative placements such as instruction in regular classes, special classes, special schools, home instruction and instruction in hospitals and institutions as well as make provision for supplementary services such as a resource room or itinerant instruction to be provided in conjunction with regular class placement.

Minn. R. 3525.3010, subp. 1

5.02.01 Ensuring Implementation of LRE

The district, in providing for the education of children with disabilities within its jurisdiction, must have in effect policies, procedures, and programs that are consistent with the State policies and procedures

34 C.F.R. 300.201

5.02.02 Methods of Instruction

Legal Citations

Special instruction and services for children with a disability must be based on the assessment and IEP plan. The continuum of instruction and services may be provided by one or more of the following methods:

1. in connection with attending regular school classes'
2. establishment of special classes;
3. in the home or bedside of the child;
4. in other districts;
5. instruction and services by special education cooperative centers, or in another member district of the cooperative center to which the resident district of the child with a disability belongs;
6. in a state residential school or a school department of a state institution approved by the commissioner;
7. by contracting with public, private or voluntary agencies;
8. in other states;
9. by contracting with public, private or voluntary agencies;
10. for children under age five and their families, programs and services established through collaborative efforts with other agencies;
11. for children under age five and their families, programs in which children with a disability are served with children without a disability;
12. any other method approved by the commissioner.

Minn. Stat. § 125A.05(a)

The primary responsibility for the education of a child with a disability must remain with the district of the child's residence regardless of which method of providing special instruction and services is used. If a district other than a child's district of residence provides special instruction and services to the child, then the district providing the special instruction and services must notify the child's district of residence before the child's individual education plan is developed and must provide the district of residence an opportunity to participate in the plan's development. The district of residence must inform the parents of the child about the methods of instruction that are available.

Minn. Stat. § 125A.05(c)

5.02.03 Direct and Indirect Services

Legal Citations

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

Minn. R. 3525.0200 Subp. 8c

“Direct services” means special education services provided by a teacher or a related service professional when the services are related to instruction, including cooperative teaching.

Minn. R. 3525. 0210, subp. 14

5.02.04 Extended School Year

As part of the development and content of an annual IEP, the team must **discuss ESY needs at each annual IEP and/or periodic review**. An Extended School Year (ESY) is **not** the same as summer school. ESY is a mandatory extension of special education services to learners with a disability over the summer months. Although the specific reason for providing ESY vary from learner to learner, the need arises when the IEP team determines the services are necessary during a break in instruction in order to provide a free appropriate public education. The district may not limit extended school year services to particular categories of disability or unilaterally limit the type, amount, or duration of those services.

If the team determines that ESY is appropriate based on the above criteria, then the team needs to determine the amount and type of service for summer that is appropriate to **maintain performance** on IEP goals. It is the responsibility of the special education service provider to document student progress on IEP goals and objectives on a regular basis throughout the IEP year. The IEP team will determine the specific IEP goals and objectives where skill regression/recoupment or self-sufficiency criteria have been documented or is predicted. Present level of performance at the end of the school year should be preserved and used as a baseline for those students who may be considered for ESY.

When is Extended School Year Service Needed?

Schools are required to provide extended school year (ESY) services to a pupil if the IEP team determines the services are necessary during a break in instruction in order to provide a free appropriate public education.

Minn.R. 3525.0755

Definitions

Level of Performance. Means a pupil's progress toward annual IEP goals immediately prior to a break in instruction as seen in progress measurements.

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

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

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

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

ESY Criteria

At least annually, the IEP team must determine a pupil is in need of ESY services if the pupil meets the conditions of item A, B, or C.

- A. There will be significant regression of a skill or acquired knowledge from the pupil's level of performance on an annual goal that requires more than the **length of the break** in instruction to recoup unless the IEP team determines a shorter time for recoupment is more appropriate;
- B. Services are necessary for the pupil to **attain** and **maintain** self-sufficiency because of the critical nature of the skill addressed by an annual goal, the pupil's age and level of development, and the timeliness for teaching the skill; or
- C. The IEP team otherwise determines, given the pupil's **unique** needs, that ESY services are necessary to ensure that pupil receives a free appropriate public education.

Sources of Information for IEP Team Determination

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

- A. Prior observation of the pupil's regression and recoupment over the summer;
- B. Observation of the pupil's tendency to regress over extended breaks in instruction during the school year; and
- C. Experience with other pupils with similar instructional needs.

Other Factors to be Considered

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

- A. The pupil's progress and maintenance of skills during the school year.
- B. The pupil's degree of impairment;
- C. The pupil's rate of progress;
- D. The pupil's behavioral or physical problems;
- E. The availability of alternative resources;
- F. The pupil's ability and need to interact with nondisabled peers;
- G. The areas of the pupil's curriculum which need continuous attention; or
- H. the pupil's vocational needs.

What Extended School Year Service Is Not:

- A. An individual decision. Parents or staff alone cannot determine the need for extended year service. The IEP team needs to agree on this issue as on other programming and service issues.
- B. Respite or day care for families who need or would like those services.
- C. A continuation of the entire special education services or program as written in the IEP.
- D. Summer school. Summer school is permissive and meant to remediate, reinforce, or enrich. Extended year service is meant to retain skills to allow for benefit from a "free appropriate public education".
- E. For only the severely handicapped. Although it is most likely that students with more severe handicaps experience problems with regression, recoupment, or self-sufficiency, other students with handicaps could experience significant programs in these areas also.
- F. To make up credits for failed classes.
- G. To be considered for content area classes that are over after the year or semester. For example, students may lose skills learned in a science or health class, but these are not skills that are indicators of basic self-sufficiency.
- H. Other Specific Maintenance Activities As Developed By The IEP Team

5.02.05 Multidisability Team Teaching Models

Legal Citations

A district may assign more than one teacher licensed in different areas or one or more teachers and related services staff as a team to provide instruction and related services to pupils in a school-age educational service alternative.

There must be a teacher on the team who is licensed in the disability area of each pupil served by the team.

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.

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

Minn. R. 3525.2350

5.02.06 Early Intervention Services

"Early Intervention Services" means services provided in conformity with an individualized family service plan that are designed to meet the special developmental needs of a child with a disability and the needs of the child's family related to enhancing the child's development and that are selection in collaboration with the parent. These services include core early intervention services and additional early intervention services including assistive technology devices and assistive technology services, audiology, family training, counseling, and home visits, health services, medical services only for diagnostic or evaluation purposes, nursing services, nutrition services, occupational and physical therapy, psychological services, service coordination services, social work services, special instruction, speech-language pathology and transportation and related costs.

Minn. Stat. 125A.27, subp. 6

District Obligation for Special Instruction and Services for Families

The district shall ensure that children with disabilities under age five and their families are provided special instruction and services appropriate to the child's level of functioning and needs.

Minn. Stat. 125A.08(a)(2)

Types of Early Intervention Services

The following are types of services included under "early intervention services":

1. assistive technology devices and assistive technology services
2. audiology
3. family training, counseling and home visits
4. health services
5. medical services only for diagnostic or evaluation purposes
6. nursing services
7. nutrition services
8. occupational therapy
9. physical therapy psychological services
10. service coordination services
11. social work services
12. special instruction
13. speech-language pathology

14. transportation and related costs
15. vision services

Development of Interagency IFSPs and IEPs

The interagency early intervention committee (IEIC) in each SNWSEC county have developed and implemented interagency policies and procedures concerning the following ongoing duties:

1. assure the development of individualized family service plans for all eligible infants and toddlers with disabilities from birth through age two, and their families, and individual education plans and individual service plans when necessary to appropriately serve children with disabilities, age three and older, and their families and recommend assignment of financial responsibilities to the appropriate agencies; and
2. implement a process for assuring that services involve cooperating agencies at all steps leading to individualized programs.

Minn. Stat. 125A.30 (b)(4) & (6)

Appropriate Program Alternatives

Appropriate program alternatives to meet the special education needs, goals, and objectives of the pupil must be determined on an individual basis. Choice of specific program alternatives must be based on the pupil's current levels of performance, pupil special education needs, goals, and objectives and written in the IEP. Program alternatives are comprised of type of services, setting in which services occur, and amount of time and frequency in which special education services occur. A pupil may receive special education services in more than one alternative based on the IEP or IFSP.

Minn. R. 3525.2335, subp. 2

Types of Special Education Services

There are two types of special education services: services provided directly and services provided indirectly.

Minn. R. 3525.2335 subp. 2(A)

The school may provide direct or indirect special education services by district special education staff to a pupil attending a community-based program. The school may contract for special education services with a community-based program if the program meets State rules.

Minn. R. 3525.1550, subp. 2

Types of Special Education Settings

There are three types of settings: home, district early childhood special education (ECSE) classroom, and community-based programs.

- A. Home includes the home of the pupil and parent or relative, or licensed family child care setting in which the pupil is placed by the parent.

- B. District ECSE classroom includes classrooms that are located in district schools or community center buildings housing elementary students or preschool-aged children who do not have disabilities.
- C. Community-based programs include licensed public or private nonsectarian child care programs other than a family child care setting, licensed public or private nonsectarian early education programs, community cultural centers, Head Start programs, and hospitals. A school district must provide direct or indirect special education services by district special education staff to a pupil attending a community-based program.

Minn. R. 3525.2335, subp. 2(B)

Preference shall be given to providing special instruction and services to children under age three and their families in the residence of the child with the parent or primary caregiver, or both, present.

Minn. Stat. 125A.05(b)

Early Intervention Respite

Respite services for an eligible child and family must be determined in the context of the IFSP development based on the individual needs of the child and family and with consideration given to the following criteria:

1. severity of the child's disability and needs;
2. potential risk of out-of-home placement for the child if respite services are not provided;
3. parental lack of access to informal support systems, including, but not limited to, extended family, supportive friends, and community supports;
4. presence of factors known to increase family stress, including but not limited to, family size and presence of another child or family member with a disability;
5. the availability of other public services provided to the family that assist the parent or primary caretaker in obtaining relief from caretaking responsibilities; and
6. the perceived and expressed level of need for respite services by the parent.

Minn. Stat. 125A.34

5.03 Related Services

The district provides related services to assist learners with disabilities to benefit from special education. "Related services" means any specially designed services not provided by regular education or special education instruction to meet the unique needs of a learner with a disability to benefit from the educational program. The term, related services, includes: audiology; assistive technology devices and services; counseling services, including rehabilitation counseling; early identification and assessment of disabilities in learners; medical services for diagnostic or evaluation purposes; music therapy; occupational therapy; orientation and mobility training; parent counseling and training; physical therapy; psychological services; recreation; school health services; social work services in the schools; speech pathology; transition services; transportation; brailists;

interpreter services; program support assistants; pupil support assistants; other similar services.

34 CFR 300.34(a)

In Minnesota, a related service is **not** a primary special education service. In order for a student to receive OT or PT, the student must be identified as a special education student and both demonstrate a need for special education instruction and demonstrate a need for supplementary or complementary support services. **These services must relate to primary educational goals.** It should be noted, however, that in the birth to three population, the student's primary needs may be in the motor area, and the therapist may be the primary service provider.

Generally, the need for a related service will only become apparent after a learner's IEP team has reviewed the IEP's goals and objectives and has determined a lack of progress on the part of the learner or a need for additional support in order to continue progress on the goals. Related services are not determined prior to special education eligibility; therefore, a related service assessment will **not** likely take place during an initial assessment.

Need Statements

Based on the student's strengths and weaknesses which were identified within the present levels of performance areas, the team must formulate corresponding statements of education need. As members of the educational team, occupational therapists and physical therapists share responsibility for helping to identify these needs. Best practice asserts that great care and collaboration should take place among team members when writing need statements since they are the rationale for developing goals and objectives, and ultimately for determining the appropriate array of necessary services.

Thoughtfully written needs are based on the team's analysis of the student's functioning, taking into account the skills the child has, the potential to learn, the educational environment, and limitations that are unlikely to be remediated. Need statements should focus on identifying the specific school tasks or activities the team wants the child to perform, given instruction/intervention or adaptations/accommodations. As team members, therapist should strive to replace discipline specific jargon with practical, school referenced terms to assure meaning and educational relevance.

It is inappropriate to designate that a child requires a specific service in a need statement (e.g., "needs occupational therapy", "needs physical therapy"). It is also improper to define methods of intervention as an educational need (e.g., "needs sensory integration", "needs strengthening activities"). Although the student may require specific adaptations in order to perform a task (e.g., foot braces for walking, enlarged print for reading), they should be referenced in the accommodation/modifications section of the IEP rather than referenced in a need statement. Another error can occur when terms such as "improve", "increase", "maintain", "reduce", etc are incorporated, giving the impression of a goal rather than a need statement (e.g. "needs to write legibly" instead of "needs to improve handwriting"). These examples represent layers of ambiguity and short-sightedness.

Teams can avoid these pitfalls when writing need statement by continually probing, "What does the child need to be able to do?" or asking "Why does the child need this?".

An educational need that is written well targets a specific school task or activity, allows consideration of a broad array of intervention and/or accommodations, and promotes "ownership" by members of the team and can be transformed easily into a goal by adding phrases of directional change and measurable behaviors or outcomes.

IEP Goals and Objectives

The IEP for each child must include a statement of annual goals, including short-term instructional objectives or benchmarks. Goals and objectives ideally should be developed by the team and not by individual disciplines. The goals and objectives in the IEP should focus on offsetting or reducing the problems resulting from the child's disability that interfere with learning and education performance in school. An annual goal cannot be developed in isolation by a therapist. The therapist should assist in the development of short-term objectives that support attainment of the annual goals.

Intervention Options

There are several options for the delivery of therapy service in an education setting, all of which are based on the identified student's needs as determined through the IEP/IFSP process. The team will collaborate on the most beneficial service delivery option. This is based on the student's needs. Services should be flexible as they need to change as the student's needs change.

In Minnesota, special education services are defined as indirect, direct or accommodations. While the services are different, one should not be valued more highly than another, as the type of service is determined by the student's needs.

The following definitions are taken from Minnesota Rules and apply to all special education services. Examples specific to therapy follow.

Direct Services

Direct Services means special education services provided by a teacher or a related services professional when the services are related to instruction, including cooperative teaching.

Direct service is appropriate when:

- A. it is anticipated that the student's rate of change will require continuous modification of the treatment objectives,
- B. the student requires interventions that cannot be easily provided by others,
- C. the therapist needs to work directly with the child for a short time in order to identify strategies that can be implemented by others.

Indirect Services

Indirect services means special education services which include:

- A. ongoing progress reviews,
- B. cooperative planning,
- C. consultation,
- D. demonstration teaching,
- E. modification and adaptation of the environment, curriculum, materials or equipment, and
- F. direct contact with the pupil to monitor and observe.

Indirect services may be provided (to the extent that the services are written in the student's IEP or IFSP) by a teacher or related services professional to:

- A. another regular education teacher,
- B. special education teacher,
- C. related services professional,
- D. paraprofessional,
- E. support staff
- F. parents, and
- G. public and nonpublic agencies.

Intervention will be most beneficial when provided in the student's natural settings and when goals and objectives are integrated into the student's daily routine. This can be accomplished whether indirect or direct service is selected.

Indirect service is chosen when the intervention can be taught to other staff working with the student, but requires regular input of the therapist. Examples of indirect intervention include working with the student and paraprofessional on eating skills during lunch or snack times, on writing/computer skills during class time, and on mobility skills during transitions within the home/classroom/work setting or around the building/community, and teaching the paraprofessional to work with the student in these settings.

Direct intervention is chosen when a therapist is the only one qualified to provide the intervention. An example of direct intervention is helping a student regain educationally related functional skills following traumatic brain injury.

Accommodations

Minnesota Rules require that the school district provide a student with reasonable accommodations or modification in programs. These are stated in the accommodations/modifications section of the IEP and also are stated on the IFSP.

Accommodations include physical and occupational therapy services that are not defined as direct or indirect, but are determined by the team to be necessary to meet the student's instructional needs which occur on an infrequent or incidental basis. Examples include providing incidental information regarding environmental access, providing equipment for daily cares (toileting, eating), and providing evacuation plans. Frequently there is need for technical assistance from the therapist during transitions to new settings.

Therapists who describe their service under the accommodations/modifications section of the IEP should continue to assure that their name and title as a team member be recorded on the front page of the IEP.

Therapists bring unique skills and provide important service to student in the educational setting. It is essential to realize, however, that a student's therapy service will change in type and duration or be discontinued altogether depending on the student's educational needs. When students are served in natural education settings such as home, daycare, classroom, workplace, etc., frequent practice of skills can occur and other educational personnel and caregivers can observe and learn how to provide guidance and assistance when the therapist is not present. This integration of activities into the student's daily routine shifts the focus of therapy from amounts and types of service to attainment of functional skills, which will ultimately enhance a child's educational experience.

Discontinuation of OT or PT Intervention

Therapy may be discontinued for a variety of reasons and the decision to discontinue should be made on a case by case basis. Discontinuation should occur when:

- A. the student no longer qualifies for special education,
- B. the student has successfully accomplished the goals and objectives and has no new needs,
- C. the student no longer needs intervention to accomplish educational goals and objectives,
- D. the student's needs are being met by other educational staff,
- E. the educational setting or program has changed and the student is functional in the setting/program,
- F. the student graduates, having successfully completed graduation requirements, or the student exceeds the age of 21,
- G. the student's performance in the educational setting remains unchanged despite multiple interventions by therapists.

Educationally Related Therapies Versus Clinical Therapies

Therapy services provided in the public schools are different than those provided in clinical settings. The major differences are the intent, location and approach. Therapy services provided in an educational setting use a team approach to help students benefit from educational services.

In the schools, therapy services are not isolated from the educational program. A student's IEP would not simply list therapy services to be provided, such as range of motion, adaptive devices or transfer skills. Therapy services have to be related to the **educational needs**. Anticipated or an actual lack of effectiveness of the special physical education program or special education classroom instructional program may be an indicator of a need for therapy services. For example, both the occupational therapist and the physical therapist can provide expertise in the areas of motor development, positioning and adapting the environment. The physical therapist works in conjunction

with a physician with children who most often have a physical dysfunction. The PT generally has additional expertise in gross motor skills, posture, ambulation, cardiorespiratory functioning, joint mobility and muscle strength. The OT generally has additional expertise in fine motor, perceptual motor, and sensory motor skills, sensory integration and environmental and equipment adaptations to increase participation in functional daily activities (e.g., feeding, dressing, writing, organizational skills, hygiene, vocational skills and homemaking).

A student may have therapy needs that are most appropriately met outside the educational setting. This may occur when the need for intense therapy service is so significant that it becomes the student's primary need or when the therapeutic outcome is not expected to have significant impact on educational performance.

5.03.01 Transition Services

Legal Citations

Transition services for students with disabilities may be special education, if provided as specially designed instruction, or a related service, if required to assist a child with a disability to benefit from special education.

34 C.F.R. 300.43(b)

5.03.02 Assistive Technology Devices and Services

Legal Citations

Assistive technology device means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted, or the replacement of such device

34 C.F.R. 300.5

Assistive technology service means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes:

- A. The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;
- B. Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;
- C. Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;
- D. Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

- E. Training or technical assistance for a child with a disability or, if appropriate, that child's family; and
- F. Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of that child.

34 C.F.R. 300.6

Each public agency must ensure that assistive technology devices or assistive technology services, or both, as those terms are defined in 300.5 and 300.6, are made available to a child with a disability if required as a part of the child's Special Education, related services and supplementary aids and services.

On a case-by-case basis, the use of school-purchased assistive technology devices in a child's home or in other settings is required if the child's IEP Team determines that the child needs access to those devices in order to receive FAPE.

34 C.F.R. 300.105

Each public agency must ensure that hearing aids worn in school by children with hearing impairments, including deafness, are functioning properly.

34 C.F.R. 300.113(a)

Each public agency must ensure that the external components of surgically implanted medical devices are functioning properly. For a child with a surgically implanted medical device who is receiving special education and related services under this part, a public agency is not responsible for the post-surgical maintenance, programming, or replacement of the medical device that has been surgically implanted (or of an external component of the surgically implanted medical device).

34 C.F.R. 300.133(b)

5.04 Staff to Pupil Ratios

5.04.01 Early Childhood Case loads

Legal Citations

A teacher's case load must be adjusted downward based on pupils' severity of disability or delay, travel time necessary to serve pupils in more than one program alternative, and if the pupils on the teacher's case loads are receiving services in more than one program alternative or the pupils are involved with other agencies. The maximum number of pupils that can be assigned to a teacher in any early childhood program alternative is:

- A. birth through two years: 12 pupils per teacher;
- B. three through six years: 16 pupils per teacher; and
- C. birth through six years: 14 pupils per teacher.

District early childhood special education (ECSE) classes must have at least one paraprofessional employed while pupils are in attendance. The maximum number of pupils in an ECSE classroom at any one time with a teacher and a program support

assistant is eight. The maximum number of pupils in an ECSE classroom at any one time with an early childhood team is 16.

Minn. R. 3525.2340, subp. 5

5.04.02 Case Loads for School-Age Educational Service Alternatives

Legal Citations

The maximum number of school-age pupils that may be assigned to a teacher for pupils who receive direct special instruction from a teacher 50 percent or more of the instructional day, but less than a full school day:

- A. deaf-blind, autism spectrum disorders, developmental cognitive disability: severe-profound range, or severely multiply impaired, three pupils;
- B. deaf-blind, autism spectrum disorders, developmental cognitive disability: severe-profound range, or severely multiply impaired with one program support assistant, six pupils;
- C. developmental cognitive disability: mild-moderate range or specific learning disabled, 12 pupils;
- D. developmental cognitive disability: mild-moderate range or specific learning disabled with one program support assistant, 15 pupils;
- E. all other disabilities with one program support assistant, ten pupils;
- and
- F. all other disabilities with two program support assistants, 12 pupils.

Minn. R. 3525.2340, subp. 4(A)(1)

The maximum number of school-age pupils that may be assigned to a teacher for pupils who receive direct special education for a full day:

- A. deaf-blind, autism spectrum disorders, developmental cognitive disability: severe-profound range, or severely multiply impaired with one program support assistant, four pupils;
- B. deaf-blind, autism spectrum disorders, developmental cognitive disability: severe-profound range, or severely multiply impaired with two program support assistants, six pupils; and
- C. all other disabilities with one program support assistant, eight pupils.

Minn. R. 3525.2340, subp. 4(A)(2)

For pupils who receive direct special education less than 50 percent of the instructional day, case loads are to be determined by the local district's policy based on the amount of time and services required by the pupils' IEP plans.

Minn. R. 3525.2340, subp. 4(B)

5.04.03 Variance from Staff to Pupil Ratios

Legal Citations

The district may apply to the commissioner of Department of Education, or the commissioner's designee for a variance from the case loads. The commissioner or the commissioner's designee shall grant a variance for less than 90 school days when it is demonstrated that unanticipated special education enrollment increases have occurred for students with severe disabilities.

Minn. R. 3525.2380, subp. 1

5.05 Attendance Outside Resident Public School

5.05.01 Educational Options

School of Parent's Choice

Nothing in this chapter must be construed as preventing parents of a child with a disability from sending the child to a school of their choice, if they so elect, subject to admission standards and policies adopted.

Minn. Stat. 125A.13

Pupils Placed Through Education Choice Options

When a pupil is placed outside of the district of residence by the parent or pupil for the purpose of education and in accordance with a statutory education choice enrollment act, the resident district shall be responsible for assuming the cost of the education program when notified in accordance with Minnesota Statutes, section 127A.47, subdivision 5. The providing district shall be responsible for assuring that an appropriate program is available for the pupil including the notice and hearing provisions. Responsibility for transportation costs between the pupil's home and the providing school district shall be determined in accordance with Minnesota Statutes.

Minn. R. 3525.0800, subp. 8

Private Schools and Facilities

Services to students with disabilities enrolled in non-public schools are delivered by the public school if the parents make the child available for the services. Parents who seek special education services must be provided the opportunity to participate in the assessment process, IEP development, and placement decision relating to their child. The student's general education teacher must be a part of the student's IEP team and participate in the development of the student's IEP. If a parent disputes one or more issues within the assessment, IEP, or placement decision, all dispute resolution procedures available to parents of students enrolled in public schools are available to parents of students enrolled in non-public schools.

A school district may provide special instruction and services at the nonpublic school building, a public school, or at a neutral site other than a nonpublic school. The school district shall determine the location at which to provide services on a student-by-student basis.

Attendance in Another District

No resident of a district who is eligible for special instruction and services pursuant to this section, may be denied provision of this instruction and service because of attending a public school in another district. If the pupil attends a public school located in a contiguous district and the district of attendance does not provide special instruction and services, the district of residence must provide necessary transportation for the pupil between the boundary of the district of residence and the educational facility where special instruction and services are provided within the district of residence. The district of residence may provide necessary transportation for the pupil between its boundary and the school attended in the contiguous district, but must not pay the cost of transportation provided outside the boundary of the district of residence.

Minn. Stat. § 125A.12.

Placement in a Minnesota Academy

See 5.10 for Admission Standards and Obligations of the Academies.

Nonpublic School

“Nonpublic School” means any school, church or religious organization, or home school wherein a resident of Minnesota may legally fulfill the compulsory instruction requirements of 120A.22. It does not mean a public school.

Minn. Stat. § 123B.41, subd. 9.

Charter School

Children with disabilities who attend public charter schools and their parents retain all rights under this part.

34 C.F.R. 300.209(a)

5.06 Parental Placement in Private School

5.06.01 Disagreements Between Parent and District About the Provision of FAPE

Legal Citations

This part does not require a district to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made FAPE available to the child and the parents elected to place the child in a private school or facility. However, the public agency must include that child in the population whose needs are addressed consistent with 300.131 through 300.144.

34 C.F.R. 300.148(a)

Disagreements between the parents and a public agency regarding the availability of a program appropriate for the child, and the question of financial reimbursement, are subject to the due process procedures in 300.504 through 300.520.

34 C.F.R. 300.148(b)

5.06.02 Reimbursement for Parents' Expenditure When FAPE is Not Provided

Legal Citations

If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private preschool, elementary school, or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to education provided by the State Education Agency and districts.

34 C.F.R. 300.148(c)

Limitation on Reimbursement

The cost of reimbursement may be reduced or denied if:

1. At the most recent IEP Team meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense or at least ten (10) business days (including any holidays that occur on a business day) prior to removal of the child from the public school, the parents did not give written notice to the public agency.
2. If, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements, of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for such evaluation: or,
3. Upon a judicial finding of unreasonableness with respect to actions taken by the parents

34 C.F.R. 300.148(d)

Exception to Limitation on Reimbursement

Notwithstanding the notice requirement, the cost of reimbursement:

1. Must not be reduced or denied for failure to provide the notice if: the school prevented the parents from providing this notice, the parents had not received notice, or compliance would likely result in physical harm to the child and:
2. May, in the discretion of the court or a hearing officer, not be reduced or denied for failure to provide this notice if the parents are not literate or cannot write in English, or compliance would likely result in serious emotional harm to the child.

34 C.F.R. 300.148

5.06.03 Provision of Services to Children Enrolled by Their Parents in Private School

Legal Citations

Determining Services

Parentally-placed private school children with disabilities means children with disabilities enrolled by their parents in private, including religious, schools or facilities that meet the definition of elementary school or secondary school, other than children with disabilities covered under 300.145 through 300.147.

34 C.F.R. 300.130

The district must make the final decisions with respect to the services to be provided to eligible parentally-placed private school children with disabilities.

34 C.F.R. 300.137(b)

If a child with a disability is enrolled in a religious or other private school by the child's parents and will receive special education or related services from a district, the district must:

1. Initiate and conduct meetings to develop, review, and revise a services plan for the child, in accordance with 300.138 and
2. Ensure that a representative of the religious or other private school attends each meeting. If the representative cannot attend, the district shall use other methods to ensure participation by the religious or other private school, including individual or conference telephone calls.

34 C.F.R. 300.137(c)

Consultation with Private School and Parent Representatives

To ensure timely and meaningful consultation the district must consult with private school representatives and representatives of parents of parentally-placed private school children with disabilities during the design and development of special education and related services for the children regarding the following:

1. The consultation process among the district, the private school officials, and representatives of parents of parentally-placed private school children with

disabilities, including how the process will operate throughout the school year to ensure that parentally-placed children with disabilities identified through the child find process can meaning fully participate in special education and related services.

2. How, where, and by whom special education and related services will be provided for parentally-placed private school children with disabilities, including a discussion of:
 - a. The types of services, including direct services and alternate service delivery mechanisms; and
 - b. How special education and related services will be apportioned if funds are insufficient to serve all parentally-placed private school children; and
 - c. How and when those decisions will be made
3. How, if the district disagrees with the views of the private school officials on the provision of services or the types of services (whether provided directly or through a contract), the district will provide to the private school officials a written explanation of the reasons why the district chose not to provide services directly or through a contract.

34 C.F.R. 300.134(c)-(e)

Location of Services

For those children with a disability who attend nonpublic school at their parent's choice, a school district may provide special instruction and services at the nonpublic school building, a public school, or at a neutral site other than a nonpublic school. The school district shall determine the location at which to provide services on a student-by-student basis, consistent with federal law.

Minn. Stat. 126C.19, subd. 4(b)

Personnel to Deliver Services

The services provided to parentally-placed private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools, except that private elementary school and secondary school teachers who are providing equitable services to parentally-placed private school children with disabilities do not have to meet the highly qualified special education teacher requirements.

34 C.F.R. 300.138(a)(1)

A district may use funds available to make public school personnel available in other than public facilities

1. To the extent necessary to provide services for parentally-placed private school children with disabilities; and
2. If those services are not normally provided by the private school.

34 .F.R. 300.142(a)

A district may use funds available to pay for the services of an employee of a private school to provide services if:

1. The employee performs the services outside of his or her regular hours of duty; and
2. The employee performs the services under public supervision and control

34 C.F.R. 300.142(b)

Level of Service

Parentally-placed private school children with disabilities may receive a different amount of services than children with disabilities in public schools.

34 C.F.R. 300.138(a)(2)

Separate Classes Prohibited

A district may not use funds available for classes that are organized separately on the basis of school enrollment or religion of the students if:

1. The classes are at the same site; and
2. The classes include students enrolled in public schools and children enrolled in private schools

34 C.F.R.300.143

Expenditure

1. A district may not use funds provided to finance the existing level of instruction in a private school or to otherwise benefit the private school.
2. The district must use funds provided to meet the special education and related services needs of parentally-placed private school children with disabilities, but not for meeting the needs of a private school or the general needs of the students enrolled in the private school.

34 C.F.R. 300.141

Equipment and Supplies

1. A public agency must control and administer the funds used to provide special education and related services and hold title to and administer materials, equipment, and property purchased with those funds for the uses and purposes provided in the Act.
2. The public agency may place equipment and supplies in a private school for the period of time needed for the Part B program.
3. The public agency must ensure that the equipment and supplies placed in a private school are only used for Part B purposes; and can be removed from the private school without remodeling the private school facility.
4. The public agency must remove equipment and supplies from a private school if the equipment and supplies are no longer needed for Part B purposes; or removal is necessary to avoid unauthorized use of the equipment and supplies for other than Part B purposes.

5. No funds under Part B of the Act may be used for repairs, minor remodeling, or construction of private school facilities.

34 C.F.R. 300.144

5.06.04 Transportation Services (See also Chapter 11)

The district must provide necessary transportation for a private school student with a disability within the district from the nonpublic school or home to the educational facility where special instruction and services are provided on a shared time basis. If a resident pupil with a disability attends a nonpublic school located in another district and if no agreement exists for providing special instruction and services on a shared time basis to that pupil by the district of residence, the district of residence must provide necessary transportation for that pupil between the boundary of the district of residence and the educational facility. The district of residence may provide necessary transportation for that pupil between its boundary and the nonpublic school attended, but the nonpublic school must pay the cost of transportation provided outside the district boundary.

Minn. Stat. 125A.18

5.07 District Initiated Placement in a Private School or Facility

5.07.01 Prior to Placement in a Private School or Facility

Legal Citations

Before a public agency places a child with a disability in, or refers a child to, a private school or facility, the agency must initiate and conduct a meeting to develop an IEP for the child.

The agency must ensure that representative of the private school or facility attends the meeting. If the representative cannot attend, the agency must use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.

34 C.F.R. 300.325(a)

5.07.02 Once Placed in a Private School or Facility

Legal Citations

Provision of Services

Sections 300.146 to 300.147 apply only to children with disabilities who are or have been placed in or referred to a private school or facility by a public agency as a means of providing special education and related services.

34 C.F.R.300.145

Each State Education Agency must ensure that a child with a disability who is placed in or referred to a private school or facility by a public agency:

- A. Is provided special education and related services in conformance with the IEP that meets the requirements of 300.320 through 300.325 and at no cost to the parents.
 - B. Is provided an education that meets the standards that apply to educations provided by the State Education Agency and districts including the requirements of this part, except for 300.18 and 300.156(c) and
 - C. Has all of the rights of a child with a disability who is served by a public agency.
- 34 C.F.R. 300.146*

In implementing 300.146 the State Education Agency must:

- A. Monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires
 - B. Disseminate copies of applicable standards to each private school and facility to which a public agency has referred or placed a child with a disability and
 - C. Provide an opportunity for those private schools and facilities to participate in the development and revision of State standards that apply to them.
- 34 C.F.R. 300.147*

Meetings to Review and Revise IEPs

- A. After a child with a disability enters a private school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the public agency.
- B. If the private school or facility initiated and conducts these meetings, the public agency must ensure that the parents and agency representative:
 - 1. Are involved in any decision about the child's IEP and
 - 2. Agree to any proposed changes in the IEP before those changes are implemented
- C. Even if a private school or facility implements a child's IEP, responsibility for compliance with this part remains with the public agency and the State Education Agency.

34C.F.R. 300.325(b)-(c)

5.08 Providing Special Education to Shared-Time Pupils

Legal Citations

Public school programs that provide instruction in core curriculum may be provided to shared time pupils only at a public school building. Public school programs, excluding programs that provide instruction in core curriculum, may be provided to shared time pupils at a public school building, a neutral site, the nonpublic school, or any other suitable location. Guidance and counseling and diagnostic and health services required may be provided at a nonpublic school building. As used in this subdivision, "diagnostic services" means speech, hearing, vision, psychological, medical and dental diagnostic

services and “health services” means physician, nursing or optometric services provided to pupils in the field of physical and mental health.

Minn. Stat. 126C.19, subd. 4(a)

For those children with a disability under Minn. Stat. 125A.03 to 125A.24 who attend nonpublic school at their parent’s choice, a school district may provide special instruction and services at the nonpublic school building, a public school, or at a neutral site other than a nonpublic school as defined in section 123B.41, subdivision 13. The school district shall determine the location at which to provide services on a student-by-student basis, consistent with federal law.

Minn. Stat. 126C.19, subd. 4(b)

5.09 Student Enrolled Outside of the Resident District

Legal Citations

The resident district is responsible for the pupil’s initial evaluation, initial IEP, due process procedures, and initial placement regardless of whether the placement is within the district or outside the district, unless the pupil is placed for care and treatment or through one of the education choice options.

If the IEP team determines that it may be appropriate to consider placement options outside of the resident district, representatives from the outside district, agency, or academy must be invited to attend a team meeting as a participant to complete an appropriate IEP for the pupil including the needs, goals, objectives, services, and placement of the pupil.

Minn. R. 3525.0800, subp. 3

5.09.01 Purchased Services

Legal Citations

The district shall not purchase special educational services for a pupil from a public or private agency when the service is available or can be made available and can be more appropriately provided as the least restrictive alternative within the district. Whenever it is appropriate for a district to purchase special education service for pupils with disabilities and who reside in the district, it continues to be the responsibility of the school district, consistent with Minnesota Statutes and parts 3525.0200 to 3525.4770, to assure and ascertain that such pupils and youth receive the education and related services and rights to which they are entitled.

Minn. R. 3525.0800, subp. 2

5.09.02 Educational and Financial Responsibilities of the Resident District

Legal Citations

Development of an Appropriate Program

As provided in Minnesota Statutes, section 125A.05 a pupil's district of residence is responsible for assuring that an appropriate program is provided for all eligible pupils placed by the district's team within the district or in an out-of-district placement regardless of the method or location of instruction used.

Minn. R. 3525.0800, subp. 1

The resident district is responsible for the pupil's initial evaluation, initial IEP, due process procedures, and initial placement regardless of whether the placement is within the district or outside the district, unless the pupil is placed for care and treatment or through one of the education choice options.

If the IEP team determines that it may be appropriate to consider placement options outside of the resident district, representatives from the outside district, agency, or academy must be invited to attend a team meeting as a participant to complete an appropriate IEP for the pupil including the needs, goals, objectives, services, and placement of the pupil.

Minn. R. 3525.0800, subp. 3

If the resident district places a pupil in an out-of-district placement, the resident district is still responsible to assure that an appropriate IEP is developed, that the pupil is placed in the least restrictive environment, and that due process procedures associated with these responsibilities are followed.

It is the responsibility of the providing district, agency, or academy to implement the IEP, conduct periodic and annual reviews, convene and facilitate the IEP team meeting, and assure that due process procedures associated with these responsibilities are followed.

The annual IEP must be developed jointly by the providing district, agency, or academy and resident district. The resident district may appoint a member of the providing district as its representative.

Minn. R. 3525.0800, subp. 4

The resident district is responsible for resolving disagreements between the pupil's parents and district, including conciliation and due process hearings when the placement has been made by the resident district. If the providing district, agency, or academy receives a request for a conciliation conference, mediation, or due process hearing from the parent, the providing district, agency, or academy must notify the resident district of the parent's request within one school day.

Minn. R. 3525.0800, subp. 5

Other Responsibilities

If the districts do not agree on the tuition rate, either district may appeal to the commissioner as provided in Minnesota Statutes, section 125A.11.

Minn. R. 3525.0800, subp. 6

5.09.03 Educational and Financial Responsibilities of the Providing District

Legal Citations

Provision of Services

A school district may provide direct or indirect special education services by district special education staff to a pupil attending a community-based program. A school district may contract for special education services with a community-based program if the program meets Department of Education rules.

Minn. R. 3525.1550, subp. 2

If the resident district places a pupil in an out-of-district placement, the resident district is still responsible to assure that an appropriate IEP is developed, that the pupil is placed in the least restrictive environment, and that due process procedures associated with these responsibilities are followed.

It is the responsibility of the providing district, agency, or academy to implement the IEP, conduct periodic and annual reviews, convene and facilitate the IEP team meeting, and assure that due process procedures associated with these responsibilities are followed.

The annual IEP must be developed jointly by the providing district, agency, or academy and resident district. The resident district may appoint a member of the providing district as its representative.

Minn. R. 3525.0800, subp. 4

Other Responsibilities

The resident district is responsible for resolving disagreements between the pupil's parents and district, including conciliation and due process hearings when the placement has been made by the resident district. If the providing district, agency, or academy receives a request for a conciliation conference, mediation, or due process hearing from the parent, the providing district, agency, or academy must notify the resident district of the parent's request within one school day.

Minn. R. 3525.0800, subp. 5

If the districts do not agree on the tuition rate, either district may appeal to the as provided in Minnesota Statutes, section 125A.11.

Minn. R. 3525.0800, subp. 6

5.09.04 Joint Participation

Legal Citations

If the resident district places a pupil in an out-of-district placement, the resident district is still responsible to assure that an appropriate IEP is developed, that the pupil is placed in the least restrictive environment, and that due process procedures associated with these responsibilities are followed.

It is the responsibility of the providing district, agency, or academy to implement the IEP, conduct periodic and annual reviews, convene and facilitate the IEP team meeting, and assure that due process procedures associated with these responsibilities are followed.

The annual IEP must be developed jointly by the providing district, agency, or academy and resident district. The resident district may appoint a member of the providing district as its representative.

Minn. R. 3525.0800, subp. 4

5.10 Placement in Minnesota State Academies

5.10.01 Admission Standards

Legal Citations

There are two kinds of admission to the Minnesota state academies.

- A. A pupil who is deaf, hard of hearing, or blind-deaf, may be admitted to the academy for the deaf. A pupil who is blind or visually impaired, blind-deaf, or multiply impaired may be admitted to the academy for the blind. For a pupil to be admitted, two decisions must be made under sections 125A.03 to 125A.24 and 125A.65.
 1. It must be decided by the individual education planning team that education in regular or special education classes in the pupil's district of residence cannot be achieved satisfactorily because of the nature and severity of the deafness or blindness or visual impairment respectively.
 2. It must be decided by the individual education planning team that the academy provides the most appropriate placement within the least restrictive alternative for the pupil.
 3. A deaf or hard of hearing child or a visually impaired pupil may be admitted to get socialization skills or on a short-term basis for skills development.

Minn. Stat. § 125A.69, subd. 1

5.10.02 Obligations of the Academies

Legal Citations

The academies must provide their pupils with the levels of service defined in rules of the state board.

The academies must deal with the developmental needs of their pupils.

The academies must provide opportunities for their pupils to be educated with pupils without a disability. A pupil's opportunities must be consistent with the pupil's IEP or IFSP and assessment.

Minn. Stat. § 125A.66

5.12 Care and Treatment

5.12.01 Education programs approval and responsibility

Legal Citations

The commissioner of the Department of Education shall approve education programs for placement of children and youth in care and treatment facilities including detention centers, before being licensed by the Department of Human Services, or the Department of Corrections. Education programs in these facilities shall conform to state and federal education laws including the Individuals with Disabilities Education Act (IDEA).

Minn. Stat. § 125A.515, subd. 1

5.12.02 Definition of Care and Treatment Placement

Legal Citations

Students placed in the following public or private facilities are considered to be placed for care and treatment:

- A. group foster home, Department of Corrections;
- B. secure juvenile detention facilities, Department of Corrections;
- C. juvenile residential facilities, Department of Corrections
- D. temporary holdover - eight day, Department of Corrections;
- E. group homes, Department of Human Services
- F. residential academies, Department of Human Services;
- G. transitional programs, Department of Human Services
- H. shelter care, Department of Human Services and Department of Corrections;
- I. shelter for homeless, Department of Human Services;
- J. adult facilities that admit persons under the age of 22; and
- K. residential treatment programs.

Minn. Stat. § 125A.515, subd. 2

For those education programs run by the Department of Corrections, the district shall be the Department of Corrections. The district is responsible for ensuring that a cooperative agreement is reached with the care and treatment center facility which addresses all the requirements of Department of Human Services Rules, which pertain to the provision of education services for students placed in centers for care and treatment. Provision of special education services requires implementation of all due process safeguards defined in state and federal law. Some procedures are modified to assure the pupil's access to education.

For purposes of Minnesota Rules, part 3525.2325, pupils and regular education students placed in the following facilities by someone other than the district are considered to be placed for care and treatment:

- A. chemical dependency and other substance abuse treatment centers;
- B. shelter care facilities;
- C. home, due to accident or illness;
- D. hospitals;
- E. day treatment centers;
- F. correctional facilities;
- G. residential treatment centers; and
- H. mental health programs.

Minn. R. 3525.2325, subp. 1(D)

5.12.03 Students unable to attend school but not placed in care and treatment facilities

Legal Citations

Students who are absent from, or predicted to be absent from, school for 15 consecutive or intermittent days, at home or in facilities not licensed by the Departments of Corrections or Human Services are not students placed for care and treatment. These students include students with and without disabilities who are home due to accident or illness, in a hospital or other medical facility, or in a day treatment center. These students are entitled to education services through their district of residence.

Minn. Stat. § 125A.515, subd. 10.

5.12.04 When Education is Required

The district in which a facility is located, must provide regular education, special education or both, to a pupil or regular education student in kindergarten through grade 12 placed in a facility or the student's home for care and treatment.

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

- A. Prevented from attending the pupil's normal school site for 15 consecutive days;
or

- B. Predicted to be absent from the pupil's normal school site for 15 consecutive days according to the placing authority (i.e., medical doctor, psychologist, psychiatrist, judge or other court-appointed authority); or
- C. Health Impaired and in need of special education and predicted by the IEP team to be absent from school for 15 intermittent days.

The pupil shall begin receiving instruction as soon as practical under treatment conditions.

Special education services must be provided as required by the learner's IEP, and to the extent that treatment conditions allow the learner to participate. Placement for care and treatment does not of itself require special education placement.

Minn.R. 3525.2325, Subp.1

5.12.05 Provisions of Education for Short-Term Placement

Legal Citations

When a student is placed in a care and treatment facility that has an on-site education program, the providing district, upon notice from the care and treatment facility, must contact the resident district within one business day to determine if a student has been identified as having a disability, and to request at least the student's transcript, and for students with disabilities, the most recent individualized education plan (IEP) and evaluation report, and to determine if the student has been identified as a student with a disability. The resident district must send a facsimile copy to the providing district within two business days of receiving the request.

Minn. Stat. 125A.515, subd. 5(a)

A placement for care and treatment is a short-term placement if the anticipated duration of the placement is less than 31 school days. The school district must begin to provide instruction to the pupil or regular education student immediately after the student is enrolled in the program. If the student is enrolled in the educational program without an education record or IEP, the district's procedures must include immediate phone contact with the home school to see if the regular education student has been identified as disabled.

A placement made for care and treatment is long term if it is anticipated to extend beyond 30 school days. The pupil or regular education student must receive educational services immediately upon enrollment in the education program.

All due process rights and timelines remain in effect when a pupil with a disability is placed for care and treatment.

If a regular education student has been identified as disabled and has a current IEP:

Initial due process procedures for previously identified pupils placed for care and treatment in a short-term facility may be accomplished by telephone; however, the required written documentation, including notices, consent forms, and IEPs, must follow immediately. If the pupil has a current IEP in the home school, the home school must give the providing agency an oral review of the IEP goals and objectives and services provided. The providing agency must contact the parents and together an agreement must be reached about continuing or modifying special education services in accordance with the current IEP goals and objectives. If agreement is not reached over the phone, the providing district shall hold a team meeting as soon as possible. At least the following people shall receive written notice to attend: the person or agency placing the pupil, the resident district, the appropriate teachers and related services staff from the providing district, the parents, and, when appropriate, the pupil. This meeting may be held in conjunction with a meeting called by a placing agency. A copy of the documentation, including the modified IEP, must be provided to the parents with a copy of their rights, including a response form.

If a regular education student has not been identified as disabled or if the providing district cannot determine if a student has been identified as disabled:

- A. Regular education instruction must begin immediately upon enrollment in the education program.
- B. A screening must be conducted by education staff to determine the student's academic, social, and behavioral needs.
- C. Based on the documented results of the screening, a decision must be made about the need for prereferral interventions or an appropriate special education evaluation according to parts 3525.2550 and 3525.2710. It is not required that an appropriate evaluation be started unless it appears that it can be completed.
- D. During the student's placement, regular education instruction must be provided.

Minn. R. 3525.2325, subp. 2

When the Pupil Has an Identified Disability and an IEP

If the student placed for care and treatment has been identified as having a disability and has an individual education plan in the resident district:

- A. the providing district must conduct an individualized education plan meeting to reach an agreement about continuing or modifying special education services in accordance with the current individualized education plan goals and objectives and to determine if additional evaluations are necessary; and
- B. at the least the following people shall receive written notice or documented phone call to be followed with written notice to attend the individualized education plan meeting:
 - 1. the person or agency placing the student;
 - 2. the resident district;
 - 3. the appropriate teachers and related services staff from the providing district;

4. appropriate staff from the care and treatment facility;
5. the parents or legal guardians of the student; and
6. when appropriate, the student.

Minn. Stat. § 125A.515, subp. 5(b)

If a regular education student has been identified as disabled and has a current IEP:

Initial due process procedures for previously identified pupils placed for care and treatment in a short-term facility may be accomplished by telephone; however, the required written documentation, including notices, consent forms, and IEPs, must follow immediately. If the pupil has a current IEP in the home school, the home school must give the providing agency an oral review of the IEP goals and objectives and services provided. The providing agency must contact the parents and together an agreement must be reached about continuing or modifying special education services in accordance with the current IEP goals and objectives. If agreement is not reached over the phone, the providing district shall hold a team meeting as soon as possible. At least the following people shall receive written notice to attend: the person or agency placing the pupil, the resident district, the appropriate teachers and related services staff from the providing district, the parents, and, when appropriate, the pupil. This meeting may be held in conjunction with a meeting called by a placing agency. A copy of the documentation, including the modified IEP, must be provided to the parents with a copy of [parental] rights, including a response form.

Minn. R. 3525.2325, subp. 2(A)

When a Disability Has Not Been Identified

For a student who has not been identified as a student with a disability a screening must be conducted by the providing districts as soon as possible to determine the student's educational and behavioral needs and must include a review of the student's educational records.

Minn. Stat. § 125A.515, subp. 5(c)

If a regular education student has not been identified as disabled or if the providing district cannot determine if a student has been identified as disabled:

- A. Regular education instruction must begin immediately upon enrollment in the education program.
- B. A screening must be conducted by education staff to determine the student's academic, social, and behavioral needs.
- C. Based on the documented results of the screening, a decision must be made about the need for prereferral interventions or an appropriate special education evaluation according to 3525.2550, to 3525.2710. It is not required that an appropriate evaluation be started unless it appears that it can be completed.
- D. During the student's placement, regular education instruction must be provided.

Minn. R. 3525.2325, subp. 2

5.12.06 Provisions of Education

Legal Citations

When a student is placed in a care and treatment facility that has an on-site education program, the providing district, upon notice from the care and treatment facility, must contact the resident district within one business day to determine if a student has been identified as having a disability, and to request at least the student's transcript, and for students with disabilities, the most recent individualized education plan (IEP) and evaluation report, and to determine if the student has been identified as a student with a disability. The resident district must send a facsimile copy to the providing district within two business days of receiving the request.

Minn. Stat. § 125A.515, subd. 5 (a)

A placement made for care and treatment is long term if it is anticipated to extend beyond 30 school days. The pupil or regular education student must receive educational services immediately upon enrollment in the education program:

A. If the student has been identified as disabled and has a current IEP.

If the education staff of the providing district decides that the pupil's current IEP can be implemented while the pupil is placed for care and treatment, the education staff must contact the parents to secure an agreement to continue to provide special education services according to the IEP. If the parents do not agree with the providing district's proposal, the district shall hold a team meeting as soon as possible.

If the education staff needs additional evaluation information or the pupil's current IEP cannot be fully implemented while the pupil is placed for care and treatment, the education staff must:

1. contact the parents to secure an agreement to provide special education on an interim basis while an evaluation is completed; or
2. call a team meeting to revise the current IEP or develop an interim IEP while the pupil is undergoing additional evaluation to determine an appropriate program.

B. If the student has not been identified as disabled or if the providing district cannot determine if the student has been identified as disabled, the student entering a residential facility for a long-term placement must be screened to determine if there is a need for an appropriate educational evaluation. An evaluation must begin with a review of screening and other information such as the parent or student interview, available educational and social history, and the purpose of the treatment placement. The evaluation must be conducted according to parts 3525.2550 and 3525.2710.

If the student meets entrance criteria for special education, an IEP must be developed. Special education services must be provided by appropriately licensed staff in accordance with the IEP. If the student was not evaluated or was evaluated and does not meet entrance criteria for special education, regular education services must be provided in accordance with the student's education plan.

Minn. R. 3525.2325, subp. 3

When the Pupil Has an Identified Disability and an IEP

If the student placed for care and treatment has been identified as having a disability and has an individual education plan in the resident district:

- A. the providing district must conduct an individualized education plan meeting to reach an agreement about continuing or modifying special education services in accordance with the current individualized education plan goals and objectives and to determine if additional evaluations are necessary; and
- B. at the least the following people shall receive written notice or documented phone call to be followed with written notice to attend the individualized education plan meeting:
 1. the person or agency placing the student;
 2. the resident district;
 3. the appropriate teachers and related services staff from the providing district;
 4. appropriate staff from the care and treatment facility;
 5. the parents or legal guardians of the student; and
 6. when appropriate, the student.

Minn. Stat. § 125A.515, subp. 5(b)

If the student has been identified as disabled and has a current IEP:

If the education staff of the providing district decides that the pupil's current IEP can be implemented while the pupil is placed for care and treatment, the education staff must contact the parents to secure an agreement to continue to provide special education services according to the IEP. If the parents do not agree with the providing district's proposal, the district shall hold a team meeting as soon as possible.

If the education staff needs additional evaluation information or the pupil's current IEP cannot be fully implemented while the pupil is placed for care and treatment, the education staff must:

- A. contact the parents to secure an agreement to provide special education on an interim basis while an evaluation is being completed; or
- B. call a team meeting to revise the current IEP or develop an interim IEP while the pupil is undergoing additional evaluation to determine an appropriate program.

Minn. R. 3525.2325, subp. 3(A)

When a Disability Has Not Been Identified

If the student has not been identified as disabled or if the providing district cannot determine if the student has been identified as disabled, the student entering a residential facility for a long-term placement must be screened to determine if there is a need for an appropriate educational evaluation. An evaluation must begin with a review of screening and other information such as the parent or student interview, available educational and social history, and the purpose of the treatment placement.

If the student meets entrance criteria for special education, an IEP must be developed. Special education services must be provided by appropriately licensed staff in accordance with the IEP. If the student was not evaluated or was evaluated and does not meet entrance criteria for special education, regular education services must be provided in accordance with the student's education plan.

Minn. R. 3525.2325, subp. 3(B)

5.12.07 Financial Responsibilities for Care and Treatment

Legal Citations

The responsibility for special education and services for a child with a disability temporarily placed in another district for care and treatment shall be determined in the following manner:

The district of residence of a child shall be the district in which the child's parent resides, if living, or the child's guardian, or the district designated by the commissioner if neither parent nor guardian is living within the state.

Minn. Stat. § 125A.15(a)

- A. Education services provided to students who have been placed for care and treatment are reimbursable in accordance with special education and general education statutes.
- B. Indirect or consultative services provided in conjunction with regular education prereferral interventions and assessment provided to regular education students suspected of being disabled and who have demonstrated learning or behavioral problems in a screening are reimbursable with special education categorical aids.
- C. Regular education, including screening, provided to students with or without disabilities is not reimbursable with special education categorical aids.

Minn. Stat. § 125A.515, subd. 9

If the resident district places a pupil for care and treatment, the resident district shall be responsible for providing and paying for an appropriate education program in according to this part, either directly or through tuition agreement, and shall also be responsible for the costs associated with care and treatment.

Minn. R. 3525.0800, subp. 7(A).

When a child is temporarily placed for care and treatment in a day program located in another district and the child continues to live within the district of residence during the care and treatment, the district of residence is responsible for providing transportation to and from the care and treatment program and an appropriate educational program for the child. Transportation shall only be provided by the district during regular operating hours of the district. The district may provide the educational program at a school within the district of residence, at the child's residence, or in the district in which the day treatment center is located by paying tuition to that district.

Minn. Stat. § 125A.15(b)

When a child is temporarily placed in a residential program for care and treatment, the nonresident district in which the child is placed is responsible for providing an appropriate educational program for the child and necessary transportation while the child is attending the educational program; and must bill the district of the child's residence for the actual cost of providing the program. However, the board, lodging, and treatment costs incurred in behalf of a child with a disability placed outside of the school district of residence by the commissioner of human services or the commissioner of corrections or their agents, for reasons other than providing for the child's special educational needs must not become the responsibility of either the district providing the instruction or the district of the child's residence. For the purposes of this section, the state correctional facilities operated on a fee-for-service basis are considered to be residential programs for care and treatment.

Minn. Stat. § 125A.15(c)

When the pupil is placed in a residential facility or foster care by someone other than the resident district, the district in which the facility is located is responsible for providing an appropriate education program. The resident district is responsible for assuming the cost of the educational program when notified according to Minnesota Statutes, sections 125A.15 and 127A.47. The district is not responsible for the cost of care and treatment.

Minn. R. 3525.0800, subp. 7(B)(1)

When the pupil is placed in a day treatment program by an agency other than the resident district, the resident district is responsible for determining the location of the special education services in accordance with the options outlined in Minnesota Statutes, section 125A.15. The resident district shall be responsible for ensuring that an appropriate program is provided, including all costs for the education program and any due process proceedings regardless of the method or locations of services selected.

Minn. R. 3525.0800, subp. 7(B)(2)

5.12.08 Pupils Leaving the Care and Treatment Facility

Legal Citations

If a student has been placed in a care and treatment facility for 15 or more business days, the providing district must prepare an exit report summarizing the regular education, special education, evaluation, educational progress, and service information and must send the report to the resident district and the next providing district if different, the parent or legal guardian, and any appropriate social service agency. For students with disabilities, this report must include the student's IEP.

Minn. Stat. 125A.515, subd. 6

If a student or pupil has received an evaluation or special education services for 15 or more school days, the providing district must prepare an exit report summarizing the regular education or special education evaluation or service information and must send the report to the home school, the receiving facility, the parent, and any appropriate social service agency. For a pupil, this report must include a summary of current levels of performance, progress, and any modifications made in the pupil's IEP or services. Record transfers between anyone other than educational agencies and the parent require prior approval of the parents in accordance with data privacy laws.

Minn. R. 3525.2325, subp. 4

5.12.09 Minimum Service Requirements When Placed for Care and Treatment

Legal Citations

At a minimum, the providing district is responsible for:

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

Minn. Stat, § 125A.515, subd. 7

The team must predict how long the pupil or regular education student must be placed for care and treatment. If the prediction is for a restricted period of more than 170 school days or its equivalent, exclusive of summer school, the district shall make available:

- A. the instruction necessary for the student or pupil to make progress in the appropriate grade level for the successful completion of the courses, programs, or classes the student or pupil would have been enrolled in if the student or pupil were not placed for care and treatment;
- B. preferably a normal school day in accordance with the pupil's IEP
- C. an average of at least two hours a day of one-to-one instruction; or
- D. a minimum of individualized instruction for one-half of the normal school day if it is justified in the pupil's IEP or student's education plan that none of these options are appropriate.

If the predicted restricted period is fewer than 171 school days, exclusive of summer school, the district shall make available at a minimum either small group instruction for one-half of the normal school day or at least an average of one hour a day of one-to-one instruction.

Provision of special educational services for pupils [placed for care and treatment] outside of the providing school district's regular calendar is optional unless the pupil has an extended year IEP.

Minn. R. 3525.2325, subp. 5

5.12.10 Due Process Requirements in Care and Treatment Placement

Legal Citations

When a student's treatment and educational needs allow, education shall be provided in a regular educational setting. The determination of the amount and site of integrated services must be a joint decision between the student's parents or legal guardians and the treatment and education staff. When applicable, educational placement decisions must be made by the IEP team of the providing district. Educational services shall be provided in conformance with the least restrictive environment principle of the Individuals with Disabilities Education Act. The providing district and care and treatment facility shall cooperatively develop discipline and behavior management procedures to be used in emergency situations that comply with the Minnesota Pupil Fair Dismissal Act and other relevant state and federal laws and regulations.

Minn. Stat. § 125A.515, subd. 8

IEP Development

The IEP developed by the team must include the provisions of parts 3525.2810 and 3525.2900, the location of the special education services, the projected duration of the special education services, and provisions for coordinating the care and treatment and the special education services.

Minn. R. 3525.2325, subp. 6(A)

Integration of Pupils at Required On-Site Program

The nature of and the restrictiveness of some long-term facilities require the pupils to remain on site. When a pupil's treatment and educational needs allow integration shall be provided in a regular educational setting. The determination of the amount and site of integrated services must be a joint decision between parents, the treatment and education staff, and when possible final educational placement decisions must be made by the IEP team of the providing educational agency. If the IEP team concludes a pupil can benefit from an average of more than three hours of educational services, it must, in conjunction

with care and treatment center staff, consider the feasibility and appropriateness of an education placement at a regular school site.

Minn. R. 3525.2325, subp. 6(B)

Residential Facility as Providing District

If a pupil is placed in a residential facility outside the resident district, the providing district must provide appropriate special education services. The placement of the pupil in a residential center for care and treatment outside the resident district is not an initial placement in the receiving district. The providing district shall make every effort to implement the resident district's IEP, making the modifications necessary due to the restrictive care and treatment setting and based on agreements reached with the parent. The providing district shall comply with the due process procedures of parts 3525.2550 to 3525.4770. Districts shall develop alternative procedures for implementing the legal requirements for observing the student in a regular classroom and document previous interventions that have been tried before the student placed for care and treatment is identified as having a specific learning disability or an emotional or behavioral disorder. These alternative procedures must be included in the district's entrance criteria. The district and facility shall cooperatively develop procedures to be used in emergency situations that comply with the Pupil Fair Dismissal Act according to Minnesota Statutes, section 121A.40 to 121A.56, and the district's discipline policy.

Minn. R. 3525.2325, subp. 6(c)

5.12.11 Placement in State Institution

Legal Citations

- A. Responsibility for special instruction and services for a child with a disability placed in a state institution on a temporary basis must be determined in the following manner:
 - 1. the legal residence of the child is the district in which the child's parent resides, if living, or the child's guardian; and
 - 2. when the educational needs of the child can be met through the institutional program, the costs for the instruction must be paid by the department to which the institution is assigned with exception of children placed in fee-for-service facilities operated by the commissioner of corrections whose cost for such instruction shall be paid as outlined in section 125A.15.

- B. When it is determined that the child can benefit from public school enrollment, provision for the instruction shall be made in the following manner:
 - 1. determination of eligibility for special instruction and services must be made by the

commissioner and the commissioner of the department responsible for the institution;

2. the district where the institution is located is responsible for providing transportation and an appropriate educational program for the child and must make a tuition charge to the child's district of residence for the actual cost of providing the program; and

3. the district of the child's residence shall pay the tuition and other program costs excluding transportation costs and may claim general education aid for the child. Transportation costs must be paid by the district where the institution is located and the state must pay transportation aid to that district.

Minn. Stat. 125A.16

5.12.12. Legal Residence of a Child with a Disability Placed in a Foster Facility

Legal Citations

The legal residence of a child with a disability placed in a foster facility for care and treatment is the district in which the child resides when:

- A. parental rights have been terminated by court order;
- B. the parent or guardian is not living within the state;
- C. no other district residence can be established; or
- D. the parent or guardian having legal custody of the child is an inmate of a Minnesota correctional facility or is a resident of a halfway house under the supervision of the commissioner of corrections; is the district in which the child resides.

The school board of the district of residence must provide the same educational program for the child as it provides for all resident children with a disability in the district.

Minn. Stat. 125A.17

5.13 Protections For Students Not Yet Eligible for Special Education and Related Services

5.13.02 Exception

Legal Citations

A public agency would not be deemed to have knowledge if:

- A. The parent of the child has not allowed an evaluation of the child or has refused services.
 - B. The child has been evaluated and determined to not be a child with a disability.
- 34 C.F.R. 300.534(c)*

5.13.03 Conditions That Apply If No Basis of Knowledge

Legal Citations

If a public agency does not have knowledge that a child is a child with a disability prior to taking disciplinary measures against the child, the child may be subjected to the disciplinary measures applied to children without disabilities who engage in comparable behaviors.

34 C.F.R. 300.534(d)(1)

5.13.04 Limitations

Legal Citations

- A. If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures, the evaluation must be conducted in an expedited manner.
- B. Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.
- C. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency must provide special education and related services.

34 C.F.R. 300.534(d)(2)