

8.0 PARENTAL INVOLVEMENT/DUE PROCESS

Parent involvement/due process refers to the parental rights and responsibilities, according to state and federal laws, rules, and regulations, in all aspects of acquiring, developing, planning and implementing special education and related services for pupils with disabilities.

As defined in this section, every district must ensure that children with a disability and their parents or guardians are guaranteed procedural safeguards and the right to participate in decisions involving identification, including assistive technology assessment, and educational placement of children with a disability.

Minn. Stat. 125A.08(a)(3)

Parents of pupils with disabilities have a right to be involved by the school district in the education decision-making process by participating or being afforded the opportunity to participate at each IEP/IFSP meeting to develop, review, or revise the IEP/IFSP. At the time of contact, the district shall inform the parents of their right to bring anyone of their choosing to accompany them to the meeting. The district shall inform the pupil's parents about the alternatives and methods of instruction as described in Minnesota Statutes, section [125A.05](#).

Minn. R. 3525.0700

The case manager must document all attempts to include parents at any of the meetings involving their child.

8.01 Identification of Parent

8.01.01 Definition of Parent

Legal Citations

Parent means:

1. A biological or adoptive parent of a child;
2. A foster parent, unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent;
3. A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State);
4. An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or
5. A surrogate parent who has been appointed.

The biological or adoptive parent, when attempting to act as the parent under this part and when more than one party is qualified to act as a parent, must be presumed to be the

parent for purposes of this section unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.

If a judicial decree or order identifies a specific person or persons as the “parent” of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the “parent” for purposes of this section.

34 C.F.R. 300.30(a)

8.01.02 Effort to Locate Parent

Legal Citations

Reasonable efforts shall be made to locate the parent. These may be made through documented phone calls, letters, certified letters with return receipts, and visits to the parent’s last known address.

Minn. R. 3525.2435

8.01.03 Surrogate Parents

It is necessary to differentiate between a guardian and surrogate parent. A surrogate parent is a person appointed by the providing district to intervene on behalf of a pupil, to help ensure that the rights of a pupil to a free and appropriate education are protected.

Minn. R. 3525.0200 Subp.20b

Legal Citations

When a Surrogate is Required

The district shall appoint the surrogate parent when:

- A. the parent, guardian, or conservator is unknown or unavailable;
- B. the pupil is a ward of the commissioner of human services; or
- C. the parent requests in writing the appointment of a surrogate parent. The request may be revoked in writing at any time.

Minn. R. 3525.2440

The surrogate parent shall not be a person who receives public funds to educate or care for the child; however, a foster parent may serve as a surrogate parent if no conflict of interest exists. A person cannot be a surrogate parent to a child for whom the person provides early intervention services.

Agency Decision

The district shall consult the county social services office before appointing the surrogate parent when a pupil is the ward of the commissioner of human services.

Minn. R. 3525.2445

Surrogate Duties and Skills

Upon written appointment, the surrogate parent may represent the child in all matters relating to the identification, evaluation and educational placement of the child, and development and implementation of the child's IEP or IFSP.

A District must ensure that a person selected as a surrogate has:

- A. a knowledge of state and federal requirements;
- B. a knowledge of district structure and procedures;
- C. an understanding of the nature of the pupil's disability and needs; and
- D. an ability to effectively advocate for an appropriate educational program for the pupil.

Minn. R. 3525.2455

The Director of Special Education has materials available for surrogate parent training.

Removal of Surrogate

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

- A. failure to perform the duties required in the team meeting and IEP process
- B. conflict of interest
- C. actions that threaten the well-being of the assigned pupil;
- D. failure to appear to represent the pupil; or
- E. the pupil no longer needs special education and related services.

Minn. R. 3525.2450

8.01.04 Transfer of Parental Rights at the Age of Majority

Legal Citations

A State may provide that, when a child with a disability reaches the age of majority under State law that applies to all students (except for a child with a disability who has been determined to be incompetent under State law)

1. The public agency must provide any notice required by this part to both the child and the parents; and all other rights accorded to the parents under part B of the Act transfer to the child;
2. All rights accorded to parents transfer to children who are incarcerated in adult or juvenile, State or local correctional institution; and

Whenever a State provides for the transfer of rights, the agency shall notify the child and the parents of the transfer of rights.

34 C.F.R. 300.520(a)

8.02 Notice to Parents

8.02.01 Prior Written Notice

Legal Citations

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

Minn. Stat. 125A.091, subd. 2

The notice must:

1. describe the action the district proposes or refuses;
2. explain why the district proposes or refuses to take the action;
3. describe any other option the district considered and the reason why it rejected the option;
4. describe each evaluation procedure, test, record, or report the district used as a basis for the proposed or refused action;
5. describe any other factor affecting the proposal or refusal of the district to take the action;
6. state that the parent of a child with a disability is protected by procedural safeguards and, if this notice is not an initial referral for evaluation, how a parent can get a description of the procedural safeguards; and
7. identify where a parent can get help in understanding this law.

Minn. Stat. 125A.091, subd. 3

The written notice must be understandable to the general public and available in the parent's native language or by another communication form, unless it is clearly not feasible to do so.

If the parent's native language or other communication form is not written, the district must take steps to ensure that:

1. the notice is translated orally or by other means to the parent in the parent's native language or other communication form;
2. the parent understands the notice; and
3. written evidence indicates the requirements in subdivision 2 are met.

Minn. Stat. 125A.091, subd. 4

[PRIOR WRITTEN NOTICE](#)



Prior Written Notice

Student Name: _____

ID: _____

Date: _____

School: _____

Grade: _____

DOB: _____

Dear _____:

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

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

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

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

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

Description of other factors affecting the proposal or refusal:

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

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

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

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

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

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

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

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

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

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

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

8.02.02 Procedural Safeguards Notice

Legal Citations

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

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

34 C.F.R. 300.504(a)

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

1. Independent educational evaluation;
2. Prior written notice;
3. Parental consent;
4. Access to education records;

5. Opportunity to present and resolve complaints through the due process complaint and State complaint procedures, including:
 - a. The time period in which to file a complaint;
 - b. The opportunity for the agency to resolve the complaint; and
 - c. The difference between the due process complaint and the State complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures;
6. The availability of mediation;
7. The child's placement during pendency of any due process complaint;
8. Procedures for students who are subject to placement in an interim alternative educational setting;
9. Requirements for unilateral placement by parents of children in private schools at public expense;
10. Hearings on due process complaints, including requirements for disclosure of evaluation results and recommendations;
11. State-level appeals (if applicable in the State);
12. Civil actions, including the time period in which to file those actions; and
13. Attorneys' fees.

34 C.F.R. 300.504(c)

A public agency may place a current copy of the procedural safeguards notice on its Internet Web site if a Web site exists.

34 C.F.R. 300.504(b)

8.02.03 Other Notice Requirements

Legal Citations

IEP — Parent and Student Participation

Each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate, including:

1. Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and
2. Scheduling the meeting at a mutually agreed on time and place.

The notice must:


1. Indicate the purpose, time, and location of the meeting and who will be in attendance; and
2. Inform the parents of the provisions in [300.321\(a\)\(6\)](#) and (c) (relating to the participation of other individuals on the IEP Team who have knowledge or special expertise about the child), and [300.321\(f\)](#) (relating to participation of the Part C service coordinator or other representatives of the Part C system at the initial IEP Team meeting for a child previously served under Part C of the Act)

For a child with a disability beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, the notice also must indicate:

1. That a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child; and
2. That the agency will invite the student; and
3. Identify any other agency that will be invited to send a representative.

34 .F.R. 300.322(a)-(b)

MEETING NOTICE

 <small>7/07</small>	NOTICE OF A TEAM MEETING		
Student Name: _____ Date: _____ School: _____ Grade: _____ DOB: _____ Dear _____:			
You are invited to attend a meeting to plan for _____'s education program. The meeting will be at _____ <small>(Student's Name)</small> _____ on _____ at _____ <small>Time Date Room Number - Building - Address</small> Please allow for _____ to meet. The purpose of this meeting is:			
The following persons are expected to attend:			
Name	Title	Name	Title
_____	/ Parent	_____	/ Special Education Teacher
_____	/ Parent	_____	/ General Education Teacher
_____	/ Student	_____	/ School District Representative
_____	/	_____	/ Service Coordinator
_____	/	_____	/
_____	/	_____	/
<p>A member of the IEP team may be excused from attendance at the meeting, in whole or in part, if the district and the parent(s) agree, in writing, that their attendance is not necessary because their area of the curriculum or related services is not being modified or discussed in the meeting. However, you and the district may excuse a member from attendance, in whole or in part, when their area of the curriculum or related services are involved, if: 1) you and the district agree, in writing, to the excusal, and 2) the excused member submits, in writing to you and the rest of the IEP team, input into the development of the IEP prior to the meeting.</p> <p>You may invite other people to the meeting that have knowledge or special expertise regarding your child, including related services staff as appropriate.</p> <p>If you have questions, please contact me:</p>			
Name	Position	Telephone	
<small>This form may be available in other formats. Contact the IEP manager for an alternate format.</small>			

A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place, such as:

1. Detailed records of telephone calls made or attempted and the results of those calls
2. Copies of correspondence sent to the parents and any responses received; and
3. Detailed records of visits made to the parent's home or place of employment and the results of those visits.

34 C.F.R. 300.322(d)

Independent Educational Evaluation

Each public agency must provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the agency criteria applicable for independent education evaluations.

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

Mediation & Other Alternative Dispute Resolutions

The public agency must inform the parent of any free or low-cost legal and other relevant services available in the area if:

1. The parent requests the information; or
2. The parent or the agency files a due process complaint under this section

34 C.F.R. 300.507(b)

Due Process Complaint

A party may not have a hearing on a due process complaint until the party, or the attorney representing the party, files a due process complaint.

34 C.F.R. 300.508(c)

[DUE PROCESS COMPLAINT FORM](#)



**DUE PROCESS HEARING
REQUEST NOTICE**

To initiate a special education due process hearing, you must send this completed form to the school district or parent(s) *and* to the MN Department of Education, Due Process Hearing Coordinator at 1500 Highway 36 West, Roseville, MN, 55113. It can be faxed to MDE at 651-582-8613. Keep a copy for your records.

Hearing Requested By (Check appropriate box): Parent(s), or District.

Child's Date of Birth: _____ Child's Primary Disability: _____

* Child's Name: _____ Parent's Name: _____

* Child's Address (or contact information if homeless): _____ Parent's Address, Phone, and E-mail: _____

* Name of School Attending: _____ School District: _____

Director of Special Education's Name, Address, and E-mail: _____

Attorney's (if represented) Name, Address, and E-mail: _____

Parents: Are you requesting an expedited hearing because you disagree with: a manifestation determination, an interim alternative educational placement, or a change in placement due to disciplinary or safety reasons? _____

District: Are you requesting an expedited hearing in order to protect the Student or others from injury? _____

* All information with an asterisk (*) is required and must be provided.

*Why are you requesting a hearing? Please specify the nature and facts of your complaint. (This should describe a violation that has occurred within the last two years.)

*If you are aware of a possible solution to the problem, please describe the solution here (what do you want to accomplish by requesting this hearing?):

Notice to Filing Party

Failure to provide a complete notice may result in a denial or delay in the due process hearing if the other party notifies the hearing officer, in writing, of an objection to the sufficiency of the hearing request notice within 15 days of receipt. If you have questions about the requirements for this request notice, please contact the MDE Due Process Hearing Coordinator at 651.582.8689.

This due process hearing request notice may only be amended if: 1) the other party agrees and is given the opportunity to resolve the complaint in a resolution session or mediation, or 2) the hearing officer grants permission to amend. An amended due process hearing request notice will result in the applicable timelines beginning anew.

Parent/Student E-mail permission

I permit the Minnesota Department of Education and the Hearing Officer to share information with me, including hearing notices and decisions, via electronic mail. I understand that electronic mail may not be a secure method of communication and release MDE and the Hearing Officer of any inadvertent breach of private data.

Parent(or Student if 18) Signature

Date

Date received by district or parent(s)

(to be completed by recipient only)

Date received by MDE:

(to be completed by MDE only)

This form is available in several languages, Braille, or other formats. Contact MDE.
651-582-8689

8.02.04 Parent Election for E-Mail Notice

Legal Citations

A parent of a child with a disability may elect to receive by an electronic mail communication, if the district makes that option possible.

34 C.F.R. 300.505

8.03 Procedural Safeguards Regarding Evaluation and Placement

8.03.01 Parent Participation

Legal Citations

The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child and the provision of FAPE to the child.

Each public agency must provide notice to ensure that parents of children with disabilities have the opportunity to participate in meetings. A meeting does not include informal or unscheduled conversations involving public agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision. A meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

34 C.F.R. 300.501(b)

Determination of Needed Evaluation Data

As part of an initial evaluation (if appropriate) and as part of any reevaluation, the IEP Team and other qualified professionals, as appropriate, must:

1. Review existing evaluation data on the child, including:
 - a) evaluations and information provided by the parents of the child;
 - b) current classroom-based local or State assessments and classroom-based observations; and
 - c) observations by teachers and related service providers; and
2. On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine:
 - a) Whether the child is a child with a disability, as described in § 300.8, and the educational needs of the child; or
 - b) In case of a reevaluation of a child, whether the child continues to have such a disability, and the educational needs of the child; or, in case of a reevaluation of a child, whether the child continues to have such a disability;
 - c) The present levels of academic achievement and related developmental needs of the child;
 - d) Whether the child needs special education and related services; or
 - e) In the case of a reevaluation of a child, whether the child continues to need special education and related services; and
 - f) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.

- g) IEP Team and other qualified professionals may conduct its review without a meeting

34 C.F.R. 300.305(a)-(b)

If an assessment of the family is carried out, the assessment must be based on information provided by the family through a personal interview.

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

Team Members

Each district must ensure that a parent of each child with a disability is a member of any group that makes decisions on the educational placement of the parent's child. At the discretion of the parent or the district, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate can be part of the IEP team.

34 C.F.R. 300.321(a)(6)

If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the district must use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing. A placement decision may be made by a group without the involvement of a parent, if the public agency is unable to obtain the parent's participation in the decision. In this case, the district must have a record of its attempt to ensure their involvement.

34 C.F.R. 300.501(c)

Evaluation Report

The determination of whether a child suspected of having a specific learning disability is a child with a disability as defined in [300.8](#), must be made by the child's parents and a team of qualified professionals, which must include:

- 1) The child's regular teacher; or
- 2) If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or
- 3) For a child of less than school age, an individual qualified by the SEA to teach a child of his or her age; and
- 4) At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher.

34 C.F.R. 300.308

Determination of Eligibility

Upon completion of the administration of assessments and other evaluation measures a group of qualified professionals and the parent of the child determines whether the child is a child with a disability, as defined in [300.8](#) and the public agency provides a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.

34 C.F.R. 300.306(a)

For a child suspected of having a learning disability, each group member must certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the group member must submit a separate statement presenting the member's conclusions.

34 C.F.R. 300.311(b)

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

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

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

Reevaluation

A public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with [300.304](#) through 300.311 if the child's parent or teacher requests a reevaluation. A reevaluation may occur not more than once a year, unless the parent and the public agency agree otherwise; and must occur at least once every 3 years, unless the parent and the public agency agree that a reevaluation is unnecessary

34 C.F.R. 300.303(a)(b)

8.03.02 Parent Consent

Legal Citations

The district must not proceed with the initial evaluation of a child, the initial placement of a child in a special education program, or the initial provision of special education services for a child without the prior written consent of the child's parent. A district may not override the written refusal of a parent to consent to an initial evaluation or reevaluation.

Minn. Stat. 125A.091, subd. 5

Refusal of Initial Assessment or Initial Placement

If the parent refuses to provide written consent for an initial assessment or placement within fourteen school days after receipt of the notice, the district shall offer the parent an opportunity to conciliate the matter. If the parent is willing to enter conciliation, the district shall arrange for a conference with the parent to review the parent's suggestions and concerns, and to conciliate the matter. The conference shall be held at a time and place mutually convenient to the parent and the school district representatives. If no response is received in cases of initial assessment or placement, the district shall offer a conciliation conference to be held within ten calendar days after the expiration of the 14 day period for parent response. In cases where the parent fails to attend the initial

conciliation conference, the district may choose to offer to schedule additional conciliation conferences.

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

Minn. R. 3525.2900, subp. 5(E)

8.03.03 Parents' Right to Examine Records

Legal Citations

The parents of a child with a disability must be afforded an opportunity to inspect and review all education records with respect to the identification, evaluation, and educational placement of the child and the provision of FAPE to the child.

34 C.F.R. 300.501(a)

8.04 Right to an Independent Educational Evaluation

Legal Citations

The parents of a child with a disability have the right to obtain an independent educational evaluation of the child. Each district must provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the district criteria applicable for independent educational evaluations.

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

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

Public expense means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with [300.103](#).

34 C.F.R. 300.502(a)(3)

8.04.01 Independent Evaluation at Public Expense

If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either file a due process complaint to request a hearing to show that its evaluation is appropriate or ensure that an independent

educational evaluation is provided at public expense, unless the district demonstrates in a hearing pursuant to [300.507](#) through [300.513](#) that the evaluation obtained by the parent did not meet agency criteria.

If the public agency files a due process complaint notice to request a hearing and the final decision is that the district's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

If a parent requests an independent educational evaluation, the district may ask for the parent's reason why he or she objects to the public evaluation. However, the district may not require the parent to provide an explanation and may not unreasonably delay either providing the independent educational evaluation at public expense or filing a due process complaint to request a hearing to defend the public evaluation.

34 C.F.R. 300.502(b)

8.04.02 Parent-Initiated Evaluation

If the parent obtains an independent educational evaluation at public expense or shares with the public agency an evaluation obtained at private expense, the results of the evaluation must be considered by the public agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child and may be presented by any party as evidence at a hearing on a due process complaint regarding that child.

34 C.F.R. 300.502(c)

8.04.03 Independent Evaluation Requested by Hearing Officer at Public Expense

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

34 C.F.R. 300.502(d)

8.04.04 Consistency with Agency Criteria

If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the district uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.

34 C.F.R. 300.502(e)

8.05 Dispute Resolution

Legal Citations

Parties are encouraged to resolve disputes over the identification, evaluation, educational placement, manifestation determination, interim alternative educational placement, or the provision of a free appropriate public education to a child with a disability through conciliation, mediation, facilitated team meetings, or other alternative process. All

dispute resolution options are voluntary on the part of the parent and must not be used to deny or delay the right to a due process hearing. All dispute resolution processes under this section are provided at no cost to the parent.

Minn. Stat. 125A.091, subd. 6

8.05.01 Alternative Dispute Resolution, Generally

Legal Citations

In addition to offering at least one conciliation conference, a district must inform a parent of other dispute resolution processes, including at least mediation and facilitated team meetings. The fact that an alternative dispute resolution process was used is admissible in evidence at any subsequent proceeding. State-provided mediators and team meeting facilitators shall not be subpoenaed to testify at a due process hearing or civil action under federal special education law nor are any records of mediators or state-provided team meeting facilitators accessible to the parties.

Minn. Stat. 125A.091, subd. 8

8.05.02 Conciliation Conference

Legal Citations

A parent must have an opportunity to meet with appropriate district staff in at least one conciliation conference. If the parent refuses district efforts to conciliate the dispute, the conciliation requirement is satisfied. Following a conciliation conference, the district must prepare and provide to the parent a conciliation conference memorandum that describes the district's final proposed offer of service. This memorandum is admissible in evidence in any subsequent proceeding.

Minn. Stat. 125A.091, subd. 7

Request to Conciliate

The conciliation process must not be used to deny or delay a parent's right to a due process hearing.

When the parent refuses efforts by the district to conciliate the dispute and notifies the district of the intent to go to an impartial due process hearing, the district must provide the parent with the procedures and time in which to request the hearing, and the identification of the district employee to whom the written request form or other written request for a hearing must be mailed, and to whom questions and legal documents or requests about the hearing may be directed.

After the parents and district agree the final conciliation conference was held, the district shall serve the parent with a written memorandum within seven days that informs the parent:

1. Of the district's proposed action following the conference;
2. That if they continue to object to the proposed action, they have the right to object to the proposed action at an impartial due process hearing and the procedure and

- time in which to do so, including a request form on which the parent may request the hearing, and the identification of the district employee to whom the written request form or other written request for hearing should be mailed, and to whom questions and legal documents or request relating to the hearing may be directed;
3. That if they do not request a hearing on the written request form or otherwise in writing within seven days after receipt of the notice, the district will proceed with the proposed action; unless the proposed action is an initial action. In cases of proposed initial actions, when a parent continues to refuse to provide written permission, the district shall schedule a hearing within seven days after the expiration of the seven days allowed for parent response. the district will proceed with the proposed action within **seven** calendar after the receipt of the notice unless the proposed action is an initial action; and
 4. That if a hearing is scheduled; the district will send a notice describing the rights and procedures available to parents relative to a hearing.

Minn. R. 3525.3700

8.05.03 Mediation

Legal Citations

Mediation is a dispute resolution process that involves a neutral party provided by the state to assist a parent and a district in resolving disputes over the identification, evaluation, educational placement, manifestation determination, interim alternative educational placement, or the provision of a free appropriate public education to a child with a disability. A mediation process is available as an informal alternative to a due process hearing but must not be used to deny or postpone the opportunity of a parent or district to obtain a due process hearing. Mediation is voluntary for all parties. All mediation discussions are confidential and inadmissible in evidence in any subsequent proceeding, unless the:

1. parties expressly agree otherwise;
2. evidence is otherwise available; or
3. evidence is offered to prove bias or prejudice of a witness.

Minn. Stat. 125A.091, subd. 9

Mediated agreements are not admissible unless the parties agree otherwise or a party to the agreement believes the agreement is not being implemented, in which case the aggrieved party may enter the agreement into evidence at a due process hearing. The parties may request another mediation to resolve a dispute over implementing the mediated agreement. After a due process hearing is requested, a party may request mediation and the commissioner must provide a mediator who conducts a mediation session no later than the third business day after the mediation request is made to the commissioner.

Minn. Stat. 125A.091, subd. 10

Mediation is conducted by a specially trained neutral third party. Although the mediator has no decision-making authority, the mediator acts as a facilitator to help reach a settlement all parties can agree to. When the parent agrees to mediate a dispute, the

building principal shall contact the Director of Special Education who will contact the [Minnesota Special Education Mediation Services](#) (MNSEMS), or the parents may contact MNSEMS directly. MNSEMS will then contact the parent and district to explain the mediation process and arrange the time and place for the mediation conference.

8.05.04 Facilitated Team Meeting

Legal Citations

A facilitated team meeting is an IEP, IFSP, or IIP team meeting led by an impartial state-provided facilitator to promote effective communication and assist a team in developing an individualized education plan.

Minn. Stat. 125A.091, subd. 11

8.05.05 Infants and Toddlers

Legal Citations

A parent may resolve a dispute regarding issues in section [125A.42](#), paragraph (b), clause (5), through mediation. If the parent chooses mediation, all public agencies involved in the dispute must participate in the mediation process. The parent and the public agencies must complete the mediation process within 30 calendar days of the date the Office of Dispute Resolution receives a parent's written request for mediation. The mediation process may not be used to delay a parent's right to a due process hearing. The resolution of the mediation is not binding on any party.

Resolution of a dispute through mediation, or other form of alternative dispute resolution, is not limited to formal disputes arising from the objection of a parent or guardian and is not limited to the period following a request for a due process hearing. The commissioner shall provide training and resources to school districts to facilitate early identification of disputes and access to mediation.

Minn. Stat. 125A.43(b)-(d)

8.06 Due Process Hearing Procedures

Parents, guardians, and the district shall have an opportunity to obtain an impartial due process hearing initiated and conducted by and in the school district responsible for assuring that an appropriate program is provided, if the parent or guardian continues to object to:

1. A proposed formal educational assessment or proposed denial of a formal educational assessment of their child;
2. The proposed placement of their child in, or transfer of their child to a special education program;
3. The proposed denial of placement of their child in a special education program or transfer of their child from a special education program;
4. The proposed provision or addition of special education services for their child; or

5. The proposed denial or removal of special education services for their child. The hearing must be held in the district responsible for ensuring that a free appropriate public education is provided according to state and federal law. The proceedings must be recorded and preserved, at state expense, pending ultimate disposition of the action.

Minn. Stat. 125A.091, subd

8.06.01 When a Hearing Must be Held

Legal Citations

A parent or a district is entitled to an impartial due process hearing conducted by the state when a dispute arises over the identification, evaluation, educational placement, manifestation determination, interim alternative educational placement, or the provision of a free appropriate public education to a child with a disability. The hearing must be held in the district responsible for ensuring that a free appropriate public education is provided according to state and federal law. The proceedings must be recorded and preserved, at state expense, pending ultimate disposition of the action. The due process hearing must be conducted according to the rules of the commissioner and federal law.

Minn. Stat. 125A.091, subd. 12

8.06.02 Initiation of a Hearing/Filing a Due Process Complaint

Legal Citations

A party may not have a hearing on a due process complaint until the party, or the attorney representing the party, files a due process complaint that meets the requirements of this section.

34 C.F.R. 300.508(c)

Due Process Complaint Format and Content

The due process complaint must allege a violation that occurred not more than two years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the due process complaint.

The public agency must inform the parent of any free or low-cost legal and other relevant services available in the area if the parent requests the information or the parent or district files a due process complaint.

34 .F.R. 300.507

A request for a due process hearing must:

1. be in writing;
1. describe the nature of the dispute about providing special education services to the student including facts relating to the dispute; and
2. state, to the extent known, the relief sought.

Minn. Stat. 125A.091, subd. 14

Complaint Filing Requirements for Both Parties

Any school district administrator receiving a request for a due process hearing must immediately forward the request to the commissioner. Within two business days of receiving a request for a due process hearing, the commissioner must appoint a hearing officer. The commissioner must not deny a request for hearing because the request is incomplete. A party may disqualify a hearing officer only by affirmatively showing prejudice or bias to the commissioner or to the chief administrative law judge if the hearing officer is an administrative law judge. If a party affirmatively shows prejudice against a hearing officer, the commissioner must assign another hearing officer to hear the matter.

Minn. Stat. 125A.091, subd. 14

Other Party's Response to Complaint

The party receiving a due process complaint must, within 10 days of receiving the due process complaint, send to the other party a response that specifically addresses the issues raised in the due process complaint.

34 C.F.R. 300.508(f)

If the district has not sent a prior written notice under [300.503](#) to the parent regarding the subject matter contained in the parent's due process complaint, the district must, within 10 days of receiving the due process complaint, send to the parent a response that includes:

1. An explanation of why the agency proposed or refused to take the action raised in the due process complaint;
2. A description of other options that the IEP Team considered and the reasons why those options were rejected;
3. A description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and
4. A description of the other factors that are relevant to the agency's proposed or refused action.
5. A response by a district shall not be constructed to preclude the district from asserting that the parent's due process complaint was insufficient, where appropriate.

A due process hearing shall be held whenever a parent or district requests a hearing. Upon receipt of the parent's request for a hearing, the case manager will immediately contact the building principal and the Director of Special Education. The district, under the direction of the Director, must serve the parent with written notice of rights and procedures relative to the hearing that informs the parent:

- A. That the hearing shall take place before an impartial hearing officer mutually agreed to by the school board and the parent. If the parties have not agreed upon a hearing officer, and the board has not requested that a hearing officer be appointed by the commissioner within four business days after the receipt of the request, the commissioner shall appoint a hearing officer upon the request of either party.

- B. That they will receive notice of the time, date, and place of the hearing at least **ten** days in advance of the hearing which will be held within 30 days after the written request.
- C. Of their right to receive a list of persons who will testify on behalf of the district concerning the proposed action within **five** days of the date the district receives their written request for the list of persons testifying.
- D. Of their responsibility, within **five** days after written request by the school district, to provide to the district a list of person(s) who will testify on the parent's behalf concerning the proposed action.
- E. Of their right, at least **five** days before the hearing, to receive from the district, a brief resume of additional material allegations referring to conduct, situations, or conditions which are discovered to be relevant and which were not contained in the original notice or memorandum; the hearing officer may prohibit evidence not disclosed five days before a hearing.
- F. Of the availability of mediation that is voluntary on the part of the parties, is conducted by a qualified and impartial mediator trained in effective mediation techniques and that may not be used to deny or delay a parent's right to a due process hearing.
- G. That at the hearing the burden of proof is on the district to show that the proposed action is justified on the basis of the person's educational needs or the person's current educational performance, or presenting disabilities taking into account the presumption that placement in a regular public school class with special education services is preferable to removal from the regular classroom.
- H. That the hearing officer will make a written decision based only on evidence received and introduced into the record at the hearing not more than 45 days from the receipt of the request for the hearing and that the proposed action will be upheld only upon showing by the school district by a preponderance of the evidence. A proposed action that would result in the pupil being removed from regular education program may be sustained only when, and to the extent the nature or severity of the disability is such that a regular education program would not be satisfactory and the pupil would be better served in an alternative program. Consideration of alternative educational programs must also be given.
- I. The decision of the hearing officer is binding on all parties unless appealed to the commissioner by the parent or the district and is effective upon issuance. Any party aggrieved by the findings and decisions made by a hearing review officer shall have the right to bring a civil action regarding the complaint and decision in any state court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.
- J. That unless the district and parents agree otherwise, the pupil shall not be denied initial admission to school and the student's education program shall not be changed in conformance with United State Code, title 20, section 1415 (i).

8.06.03 Sufficiency of Complaint

Legal Citations

The due process complaint required by this section must be deemed sufficient unless the party receiving the due process complaint notifies the hearing officer and the other party in writing, within 15 days of receipt of the due process complaint, that the receiving party believes the due process complaint does not meet the requirements.

Within five days of receipt of notification, the hearing officer must make a determination on the face of the due process complaint of whether the due process complaint meets the requirements and must immediately notify the parties in writing of that determination. A party may amend its due process complaint only if:

The other party consents in writing to the amendment and is given the opportunity to resolve the due process complaint through a meeting held pursuant to [300.510](#); or

The hearing officer grants permission, except that the hearing officer may only grant permission to amend at any time not later than five days before the due process hearing begins.

If a party files an amended due process complaint, the timelines for the resolution meeting and the time period to resolve begin again with the filing of the amended due process complaint.

34 C.F.R. 300.508(d)

8.06.04 Pre-Hearing Resolution Activities

Legal Citations

Within 15 days of receiving notice of the parent's due process complaint, and prior to the initiation of a due process hearing, the district must convene a meeting with the parent and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the due process complaint that includes a representative of the public agency who has decision-making authority on behalf of that agency and may not include an attorney of the district unless the parent is accompanied by an attorney.

The purpose of the meeting is for the parent of the child to discuss the due process complaint, and the facts that form the basis of the due process complaint, so that the district has the opportunity to resolve the dispute that is the basis for the due process complaint, so that the district has the opportunity to resolve the dispute that is the basis for the due process complaint. This meeting may not need to be held if the parent and the district agree in writing to waive the meeting or agree to use the mediation process.

The parent and the district determine the relevant members of the IEP Team to attend the meeting.

34 C.F.R. 300.510(a)

If the district has not resolved the due process complaint to the satisfaction of the parent within 30 days of the receipt of the due process complaint, the due process hearing must occur. Except where the parties have jointly agreed to waive the resolution process or to use mediation, the failure of the parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process

hearing until the meeting is held. If the district is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented), the district may, at the conclusion of the 30-day period, request that a hearing officer dismiss the parent's due process complaint. If the district fails to hold the resolution meeting within 15 days of receiving notice of a parent's due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline.

34 C.F.R. 300.510(b)

The 45-day timeline for the due process hearing in starts the day after one of the following events:

1. Both parties agree in writing to waive the resolution meeting;
2. After either the mediation or resolution meeting starts but before the end of the 30-day period, the parties agree in writing that no agreement is possible;
3. If both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later, the parent or district withdraws from the mediation process.

34 C.F.R. 300.501(c)

If a resolution to the dispute is reached at the meeting, the parties must execute a legally binding agreement that is:

- A. Signed by both the parent and a representative of the agency who has the authority to bind the agency; and
- B. Enforceable in any State court of competent jurisdiction or in a district court of the United States, or, by the State Education Agency, if the State has other mechanisms or procedures that permit parties to seek enforcement of resolution agreements.

If the parties execute an agreement, a party may void the agreement within 3 business days of the agreement's execution.

34 .F.R. 300.510(d)-(e)

8.06.05 Who is Responsible for Conducting a Hearing

Legal Citations

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

No resident of a district who is eligible for special instruction and services may be denied instruction and service on a shared time basis because of attending a nonpublic school. If a resident pupil with a disability attends a nonpublic school located within the district of residence, the district must provide necessary transportation for that pupil within the district between the nonpublic school and 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 attendance and where the special instruction and services are provided within 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.

Parties serving students on a shared time basis have access to the due process hearing system and the complaint system. In the event it is determined under these systems that the nonpublic school or staff impede the public school district's provision of a free appropriate education, the commissioner may withhold public funds available to the nonpublic school.

Minn. Stat. 125A.18

8.06.06 Additional Rights and Obligations

Legal Citations

Applicable to both Parents and Agencies:

Counsel, Evidence, and Witnesses

A parent must have an opportunity to meet with appropriate district staff in at least one conciliation conference if the parent objects to any proposal of which the parent receives notice under subdivision 2. If the parent refuses district efforts to conciliate the dispute the conciliation requirement is met. Following a conciliation conference the district must prepare and provide to the parent a conciliation conference memorandum that describes the district's final proposed offer of services. This memorandum is admissible in evidence in any subsequent proceeding.

Minn. Stat. 125A.091, subd. 7

In addition to offering at least one conciliation conference, a district must inform a parent of other dispute resolution processes, including at least mediation and facilitated team meetings. The fact that an alternative dispute resolution process was used is admissible in evidence at any subsequent proceeding. State-provided mediators and team meeting facilitators shall not be subpoenaed to testify at a due process hearing or civil action under federal special education law nor are any records of mediators or state-provided team meeting facilitators accessible to the parties.

Minn. Stat. 125A.091, subd. 8

Mediated agreements are not admissible unless the parties agree otherwise or a party to the agreement believes the agreement is not being implemented, in which case the aggrieved party may enter the agreement into evidence at a due process hearing. The parties may request another mediation to resolve a dispute over implementing the mediated agreement. After a due process hearing is requested, a party may request mediation and the commissioner must provide a mediator who conducts a mediation session no later than the third business day after the mediation request is made to the commissioner.

Minn. Stat. 125A.091, subd. 10

The hearing officer may admit all evidence that possesses probative value, including hearsay, if it is the type of evidence on which reasonable, prudent persons are accustomed to rely in conducting their serious affairs. The hearing officer must give effect to the rules of privilege recognized by law and exclude evidence that is incompetent, irrelevant, immaterial, or unduly repetitious.

Minn. Stat. 125A.091, subd. 17

Hearing Records and Decisions

The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint filed, unless the other party agrees otherwise

34 C.F.R. 300.511(d)

Any party to a hearing has the right to:

- A. Obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing; and
- B. Obtain written, or at the option of the parents, electronic findings of fact and decisions.

34 C.F.R. 300.512(a)(4)(5)

The public agency must ensure that not later than 45 days after the expiration of the 30 day period or the adjusted time periods:

1. A final decision is reached in the hearing; and
2. A copy of the decision is mailed to each of the parties.

34 .F.R. 300.515(a)

Burdens of Proof

The burden of proof at a due process hearing is on the district to demonstrate, by a preponderance of the evidence, that it is complying with the law and offered or provided a free appropriate public education to the child in the least restrictive environment. If the district has not offered or provided a free appropriate public education in the least restrictive environment and the parent wants the district to pay for a private placement, the burden of proof is on the parent to demonstrate, by a preponderance of the evidence, that the private placement is appropriate.

Minn. Stat. 125A.091, subd. 16

Parents Specific Rights:

Parents involved in hearings must be given the right to:

1. Have the child who is the subject of the hearing present;
2. Open the hearing to the public; and
3. Have the record of the hearing and the findings of fact and decisions provided at no cost to the parents.

34 C.F.R. 300.512(c)

Each hearing and each review involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents and child involved.

34 C.F.R. 300.515(d)

Nothing in [300.500](#) through [300.536](#) shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed.

34 C.F.R. 300.513(c)

Each lead agency shall ensure that the parents of eligible children are afforded the rights in any administrative proceedings. Any parent involved in an administrative proceeding has the right to:

1. Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention services for children eligible under this part;
2. Present evidence and confront, cross-examine, and compel the attendance of witnesses;
3. Prohibit the introduction of any evidence at the proceeding that has not been disclosed to the parent at least five days before the proceeding;
4. Obtain a written or electronic verbatim transcription of the proceeding; and
5. Obtain written findings of fact and decisions.

34 C.F.R. 303.422

Stay Put

Until a due process hearing under this section is completed or the district and the parent agree otherwise, the child must remain in the child's current educational placement and must not be denied initial admission to school.

Until an expedited due process hearing challenging an interim alternative educational placement is completed, the child must remain in the interim alternative educational setting until the decision of the hearing officer or the expiration of the 45 days permitted for an interim alternative educational setting, whichever occurs first, unless the parent and district agree otherwise.

Minn. Stat. 125A.091, subd. 22

During the pendency of any proceeding involving a complaint under this subpart, unless the public agency and parents of a child otherwise agree, the child must continue to

receive the appropriate early intervention services currently being provided. If the complaint involves an application for initial services under this part, the child must receive those services that are not in dispute.

34 C.F.R. 303.425

8.06.07 Hearing Officers

Prehearing Conference Duties

A prehearing conference must be held within five business days of the date the commissioner appoints the hearing officer. The hearing officer must initiate the prehearing conference which may be conducted in person, at a location within the district, or by telephone. The hearing officer must create a written verbatim record of the prehearing conference which is available to either party upon request. At the prehearing conference, the hearing officer must:

1. identify the questions that must be answered to resolve the dispute and eliminate claims and complaints that are without merit;
2. set a scheduling order for the hearing and additional prehearing activities;
3. determine if the hearing can be disposed of without an evidentiary hearing and, if so, establish the schedule and procedure for doing so; and
4. establish the management, control, and location of the hearing to ensure its fair, efficient, and effective disposition.

Minn. Stat. 125A.091, subd. 15

Decisions of Hearing Officer

The hearing officer's decision must:

1. be in writing;
2. state the controlling and material facts upon which the decision is made in order to apprise the reader of the basis and reason for the decision; and
3. be based on local standards, state statute, the rules of the commissioner, and federal law.

Minn. Stat. 125A.091, subd. 20

A district is not liable for harmless technical violations of this section or rules implementing this section if the school district can demonstrate on a case-by-case basis that the violations did not harm the student's educational progress or the parent or guardian's right to notice, participation, or due process.

Minn. Stat. 125A.091, subd. 28

That portion of a hearing officer's decision granting relief requested by the parent must be implemented upon issuance, except when the district and parent agree otherwise. Following a hearing officer's decision granting relief requested by the district, the child must remain in the current educational placement until the time to request judicial review under expires or, if judicial review is requested, at the time the Minnesota Court of Appeals or the federal district court issues its decision, whichever is later.

Minn. Stat. 125A.091, subd. 23

The commissioner must monitor final hearing officer decisions and ensure enforcement of hearing officer orders.

Minn. Stat. 125A.091, subd. 25

The hearing officer may require the resident school district to provide compensatory educational services to the child if the hearing officer finds that the school district has not offered or made available to the child a free appropriate public education in the child's educational program and that the child has suffered a loss of educational benefit. Such services shall take the form of direct and indirect special education and related services designed to address any loss of educational benefit that may have occurred. The hearing officer's finding shall be based on a present determination of whether the child has suffered a loss of educational benefit.

Minn. Stat. 125A.091, subd. 21

Decision Timelines

The hearing officer must issue a decision within 45 calendar days of the date on which the commissioner receives the request for a due process hearing. A hearing officer is encouraged to accelerate the time line to 30 days for a child under the age of three whose needs change rapidly and who requires quick resolution of a dispute. A hearing officer may not extend the time beyond the 45-day period unless requested by either party for good cause shown on the record. Extensions of time must not exceed a total of 30 calendar days unless both parties and the hearing officer agree or time is needed to complete an independent educational evaluation. Good cause includes, but is not limited to, the time required for mediation or other settlement discussions, independent educational evaluation, complexity and volume of issues, or finding or changing counsel.

Minn. Stat. 125A.091, subd. 20

8.06.07 Appeals

Legal Citations

The parent or district may seek review of the hearing officer's decision in the Minnesota Court of Appeals or in the federal district court, consistent with federal law. A party must appeal to the Minnesota Court of Appeals within 60 days of receiving the hearing officer's decision.

Minn. Stat. 125A.091, subd. 24

8.07 Expedited Due Process Hearings

8.07.01 General Hearing Provisions Related to Manifestation Determinations and Interim Alternative Placement Decisions

Legal Citations

A parent has the right to an expedited due process hearing when there is a dispute over a manifestation determination or a proposed or actual placement in an interim alternative

educational setting. A district has the right to an expedited due process hearing when proposing or seeking to maintain placement in an interim alternative educational setting. A hearing officer must hold an expedited due process hearing and must issue a decision within ten calendar days of the request for a hearing. A hearing officer may extend by up to five additional calendar days the time for issuing a decision in an expedited due process hearing. All policies in this section apply to expedited due process hearings to the extent they do not conflict with federal law.

Minn. Stat. 125A.091, subd. 19

8.07.02 Manifestation Determination Review

Legal Citations

The parent of a child with a disability who disagrees with any decision regarding placement under [300.530](#) and [300.531](#), or the manifestation determination under [300.530\(e\)](#), or an district that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to [300.507](#) and [300.508\(a\)](#) and (b).

A hearing officer hears, and makes a determination regarding, and appeal. In making the determination the hearing officer may:

- A. Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of [300.530](#) or that the child's behavior was a manifestation of the child's disability; or
- B. Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

These procedures may be repeated, if the district believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.

34 C.F.R. 300.532(a)-(b)

8.08 Attorneys' Fees

8.08.01 Awarding of Fees

Legal Citations

When Attorneys' Fees Are Awarded

In any action or proceeding brought under section [615 of the Act](#), the court, in its discretion, may award reasonable attorney's fees as part of the costs to:

- A. The prevailing party who is the parent of a child with a disability;
- B. To a prevailing party who is an State Education Agency or district against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or
- C. To a prevailing State Education Agency or district against the attorney or a parent, or against the parent, if the parent's request for a due process hearing or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

34 C.F.R. 300.517(a)(1)

When Attorney Fees Are Not Awarded

Attorney fees may not be awarded and related costs may not be reimbursed in any action or proceeding under section [615 of the Act](#) for services performed subsequent to the time of a written offer of settlement to a parent if:

- A. The offer is made within the time prescribed by Rule [68 of the Federal Rules of Civil Procedure](#) or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins;
- B. The offer is not accepted within 10 days; and
- C. The court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

34 C.F.R. 300.517(c)(2)(i)

Attorney fees may not be awarded relating to any meeting of the IEP Team unless the meeting is convened as a result of an administrative proceeding or judicial action, or at the discretion of the State, for a mediation described in [300.506](#).

34 C.F.R. 300.517(c)(2)(ii)

Exception

A meeting conducted pursuant to [300.510](#) shall not be considered a meeting convened as a result of an administrative hearing or judicial action or an administrative hearing or judicial action for purposes of this section.

34 C.F.R. 300.517(2)(iii)

8.08.02 Reduction of Fees

Legal Citations

When Attorneys' Fees Are Reduced

The court reduces, accordingly, the amount of the attorneys' fees awarded under section [615 of the Act](#), if the court finds that:

- A. The parent, or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

- B. The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;
- C. The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or
- D. The attorney representing the parent did not provide to the LEA the appropriate information in the due process request notice in accordance with [300.508](#).

34 C.F.R. 300.517(c)(4)

When Attorneys' Fees Are Not Reduced

The provisions of this section do not apply in any action or proceeding if the court finds that the State or local agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of section [615 of the Act](#).

34 C.F.R. 300.517(c)(5)

8.08.03 Measure of Fee Award

Legal Citations

A court awards reasonable attorneys' fees under section [615\(i\)\(3\) of the Act](#) consistent with the following:

1. Fees awarded under section [615\(i\)\(3\) of the Act](#) must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this paragraph.

34 C.F.R. 300.517(c)(1)

8.08.04 Prohibition on Use of Part B Funds

Legal Citations

Funds under Part B of the Act may not be used to pay attorneys' fees or costs of a party related to an action or proceeding under section [615 of the Act](#) and subpart E of this part. This does not preclude a public agency from using funds under Part B of the Act for conducting an action or proceeding under section [615 of the Act](#).

34 C.F.R. 300.517(b)

8.09 Interagency Dispute Procedures (Early Childhood)

Legal Citations

A dispute between a school board and a county board that is responsible for implementing the provisions of section [125A.29](#), regarding early identification, child and family assessment, service coordination, and IFSP development and implementation must

be resolved according to this subdivision when the dispute involves services provided to children and families eligible under the [Individuals with Disabilities Education Act](#).

Minn. Stat. 125A.45(a)

A dispute occurs when the school board and county board are unable to agree as to who is responsible to coordinate, provide, pay for, or facilitate payment for services from public and private sources.

Minn. Stat. 125A.45(b)

Written and signed disputes must be filed with the local primary agency.

Minn. Stat. 125A.45(c)

The local primary agency must attempt to resolve the matter with the involved school board and county board and may request mediation from the commissioner of state lead agency for this purpose.

Minn. Stat. 125A.45(d)

When interagency disputes have not been resolved within 30 calendar days, the local primary agency must request the commissioner of the state lead agency to review the matter with the commissioners of health and human services and make a decision. The commissioner must provide a consistent process for reviewing those procedures. The commissioner's decision is binding subject to the right of an aggrieved party to appeal to the state Court of Appeals.

Minn. Stat. 125A.45(e)

The local primary agency must ensure that eligible children and their families receive early intervention services during resolution of a dispute. While a local dispute is pending, the local primary agency must either assign financial responsibility to an agency or pay for the service from the early intervention account under section [125A.35](#). If in resolving the dispute, it is determined that the assignment of financial responsibility was inappropriate, the responsibility for payment must be reassigned to the appropriate agency and the responsible agency must make arrangements for reimbursing any expenditures incurred by the agency originally assigned financial responsibility.

Minn. Stat. 125A.45(f)

8.10 Complaints to the Minnesota Department of Education

8.10.01 Requirements

Legal Citations

An organization or individual may file a signed written complaint under the procedures described in [300.151](#) through [300.152](#). The complaint must include:

1. A statement that a public agency has violated a requirement of [Part B of the Act](#) or of this part;
2. The facts on which the statement is based;
3. The signature and contact information for the complainant; and

4. If alleging violations with respect to a specific child:
 - a) alleging violations with respect to a specific child, including the facts on which the complaint is based;
 - b) The name of the school the child is attending;
 - c) In the case of a homeless child or youth, available contact information for the child, and the name of the school the child is attending;
 - d) A description of the nature of the problem of the child, including facts relating to the problem; and
 - e) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

34 C.F.R. 300.153(a)-(b)

The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with [300.151](#).

34 C.F.R. 300.153(c)

The party filing the complaint must forward a copy of the complaint to the district or public agency serving the child at the same time the party files the complaint with the State Education Agency.

34 C.F.R. 300.153(d)

8.10.02 Procedures

Legal Citations

The commissioner of the state lead agency shall receive and coordinate with other state agencies the review and resolution of a complaint within 60 calendar days according to the state interagency agreement required under section [125A.48](#). The development and disposition of corrective action orders for nonschool agencies shall be determined by the State Agency Committee (SAC). Failure to comply with corrective orders may result in fiscal actions or other measures.

Minn. Stat. 125A.44(b)

8.10.03 Resolution and Implementation

Legal Citations

In resolving a complaint in which the State Education Agency has found a failure to provide appropriate services, a State Education Agency, pursuant to its general supervisory authority under Part B of the Act, must address:

1. The failure to provide appropriate services, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement); and
2. Appropriate future provision of services for all children with disabilities.

34 C.F.R. 300.151(b)

8.10.04 State Complaints Associated with Due Process Hearings

Legal Citations

If a written complaint is received that is also the subject of a due process hearing under [300.507](#) or [300.530](#) through [300.532](#), or contains multiple issues of which one or more are part of that hearing, the State must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing, in which time, the due process hearing decision is binding on that issue. However, any issue in the complaint that is not a part of the due process action must be resolved using the following time limit and procedures.

34 C.F.R. 300.152(c)(1)-(2).

8.11 Data Privacy

8.11.01 Safeguards and District Procedures

Legal Citations

Every government entity shall appoint or designate an employee of the government entity to act as the entity's data practices official. The data practices compliance official is the designated employee of the government entity to whom persons may direct questions or concerns regarding problems in obtaining access to data or other data practices problems. The responsible authority may be the data practices compliance official.

Minn. Stat. 13.05, subd. 13

For school districts, the school board shall appoint an individual who is an employee of the school district.

Minn. Rule 1205.0200, subp.14(C)

The district shall annually notify parents of students of their rights under the [Family Education Rights and Privacy Act](#). This notice is generally provided to parents in the district's student handbook which is provided to student on a yearly basis.

Parents have the right to review and inspect any educational records on their child upon request. A record must be maintained of the individuals, other than the parents and authorized employees of the district) that access special education files. The *Access to Education Records* log must be stapled in each Learner File and the person viewing the records must sign their name, date of viewing and the purpose for accessing the record.

8.11.02 Privacy of Records

Legal Citations

Educational data is private data on individuals and shall not be disclosed except [according to certain exceptions; refer to [statute](#) for list of exceptions].

Minn. Stat. 13.32, subd.3

"Educational data" means data on individuals maintained by a public educational agency or institution or by a person acting for the agency or institution which relates to a student.

Records of instructional personnel which are in the sole possession of the maker thereof and are not accessible or revealed to any other individual except a substitute teacher, and are destroyed at the end of the school year, shall not be deemed to be government data.

Records of a law enforcement unit of a public educational agency or institution which are maintained apart from education data and are maintained solely for law enforcement purposes, and are not disclosed to individuals other than law enforcement officials of the jurisdiction are not educational data; provided, that education records maintained by the educational agency or institution are not disclosed to the personnel of the law enforcement unit. The University of Minnesota police department is a law enforcement agency for purposes of section [13.82](#) and other sections of Minnesota Statutes dealing with law enforcement records. Records of organizations providing security services to a public educational agency or institution must be administered consistent with section [13.861](#).

Records relating to a student who is employed by a public educational agency or institution which are made and maintained in the normal course of business, relate exclusively to the individual in that individual's capacity as an employee, and are not available for use for any other purpose are classified pursuant to section [13.43](#).

Minn. Stat. 13.32, subd.1(a)

"Private data on individuals" means data which is made not public and accessible to the individual subject of that data.

Minn. Stat. 13.02, subd. 12

Consent Required for Disclosure

Parental consent must be obtained before personally identifiable information is disclosed to parties, other than officials of participating agencies, unless the information in contained in education records, and the disclosure is authorized without parental consent under [34 C.F.R. part 99](#)

Parental consent is not required before personally identifiable information is released to officials of participating agencies, except:

1. Parental consent, or the consent of an eligible child who has reached the age of majority under State law, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services in accordance with [300.321\(b\)\(3\)](#)
2. If a child is enrolled, or is going to enroll in a private school that is not located in the district of the parent's residence, parental consent must be obtained before any personally identifiable information about the child is released between officials in the district where the private school is located and officials in the district of the parent's residence.

34 C.F.R. 300.622

Refer to Minn. Stat. [13.32](#), subd. 3, and 34. C.F.R. [99.31](#) for a complete list of exceptions to the consent requirement.

AUTHORIZATION FOR RELEASE OF INFORMATION

Authorization for Release of Information	
Section I ¹	
Student's Name: _____	Date: _____
Date of Birth: ____/____/____ (mm/dd/yy) ID: _____	Grade: _____
School: _____	
Section II ²	
Parent/Guardian Name: _____	
Authorizes:	
District Name / Number _____	Staff Person Responsible _____
School Responsible _____	Address _____
<input type="checkbox"/> to release the specific information identified below <i>to</i> : <input type="checkbox"/> to obtain specific information identified below <i>from</i> :	
Name of individual or entity, Title: _____ Organization: _____	
Address: _____	
<input type="checkbox"/> Health Records	Created between ____/____/____ (mm/dd/yy) and ____/____/____ (mm/dd/yy)
<input type="checkbox"/> Medical Reports	Created between ____/____/____ (mm/dd/yy) and ____/____/____ (mm/dd/yy)
<input type="checkbox"/> Chemical Abuse/ Dependency Report	Created between ____/____/____ (mm/dd/yy) and ____/____/____ (mm/dd/yy)
<input type="checkbox"/> Psychological Reports	Created between ____/____/____ (mm/dd/yy) and ____/____/____ (mm/dd/yy)
<input type="checkbox"/> Psychiatric Report	Created between ____/____/____ (mm/dd/yy) and ____/____/____ (mm/dd/yy)
<input type="checkbox"/> Teacher, Counselor, Staff Observations	Created between ____/____/____ (mm/dd/yy) and ____/____/____ (mm/dd/yy)
<input type="checkbox"/> Special Education Records	Created between ____/____/____ (mm/dd/yy) and ____/____/____ (mm/dd/yy)
<input type="checkbox"/> Social Work Report	Created between ____/____/____ (mm/dd/yy) and ____/____/____ (mm/dd/yy)
<input type="checkbox"/> Others (specify) _____	Created between ____/____/____ (mm/dd/yy) and ____/____/____ (mm/dd/yy)
For the purpose of: _____ _____ _____	
Section III ³	
I understand this authorization: <ul style="list-style-type: none"> • takes effect the day I sign it, • cannot exceed one year, and expires either: <ul style="list-style-type: none"> <input type="checkbox"/> on ____/____/____ (mm/dd/yy), or <input type="checkbox"/> one year from the date of my signature, 	
* can be stopped any time by sending a written request to: _____ _____ _____	
I further understand: <ul style="list-style-type: none"> • I may refuse to sign this authorization and it will not affect my child's ability to receive educational services, • the laws that protect the information identified on this release, in some situations, may allow or require this entity to re-disclose this information, but only as permitted by law (Health Insurance Portability and Accountability Act [HIPAA], Family Educational Rights & Privacy Act [FERPA], Minnesota Government Data Practices Act [MGDPA] or Chapter 13), • a copy of this release form is as valid as an original, and • I will receive a copy of this authorization. 	
Signature: _____	Date: _____
Parent, legal representative or student	(mm/dd/yy)
References to regulations MDE-061406	

Districts do not need parental permission to release special education records to another Minnesota school district to which a student is or will attend. The parent or a student over the age of 18, must provide a signed and dated *Consent to Release Private Data* form prior to the district disclosing any personally identifiable information or records to other individuals or agencies. When staff is working with a student that is receiving services from other individuals or agencies (such as mental health or social services) it is

best practice to obtain a *Consent to Release Private Data* from the parent so that that programs and services can be coordinated and communication facilitated.

8.11.03 Parents' Right of Access to Records

Legal Citations

Upon request to a responsible authority, an individual shall be informed whether the individual is the subject of stored data on individuals, and whether it is classified as public, private or confidential. Upon further request, an individual who is the subject of stored private or public data on individuals shall be shown the data without any charge and, if desired, shall be informed of the content and meaning of that data. After an individual has been shown the private data and informed of its meaning, the data need not be disclosed to that individual for six months thereafter unless a dispute or action pursuant to this section is pending or additional data on the individual has been collected or created. The responsible authority shall provide copies of the private or public data upon request by the individual subject of the data. The responsible authority may require the requesting person to pay the actual costs of making, certifying, and compiling the copies.

The responsible authority shall comply immediately, if possible, with any request, or within ten days of the date of the request, excluding Saturdays, Sundays and legal holidays, if immediate compliance is not possible.

Minn. Stat. 13.04, subd. 3

8.11.04 Right to Challenge the Accuracy of Records and Request Changes

Legal Citations

An individual subject of the data may contest the accuracy or completeness of public or private data. To exercise this right, an individual shall notify in writing the responsible authority describing the nature of the disagreement. The responsible authority shall within 30 days either:

1. correct the data found to be inaccurate or incomplete and attempt to notify past recipients of inaccurate or incomplete data, including recipients named by the individual; or
2. notify the individual that the authority believes the data to be correct. Data in dispute shall be disclosed only if the individual's statement of disagreement is included with the disclosed data.

Minn. Stat. 13.04, subd. 4(a)

Hearings

The determination of the responsible authority may be appealed pursuant to the provisions of the Administrative Procedure Act relating to contested cases. Upon receipt

of an appeal by an individual, the commissioner shall, before issuing the order and notice of a contested case hearing, try to resolve the dispute through education, conference, conciliation, or persuasion. If the parties consent, the commissioner may refer the matter to mediation. Following these efforts, the commissioner shall dismiss the appeal or issue the order and notice of hearing.

Minn. Stat. 13.04, subd. 4(a)

Pursuant to Minnesota Statutes, section [13.04](#), subdivision 4 an individual may appeal an adverse determination of a responsible authority to the commissioner of administration. The appeal shall follow the procedures established in [Minnesota Statutes, chapter 14](#), as amended, and the rules of the Office of Administrative Hearings relating to contested case proceedings.

Notice of an appeal must be submitted to the commissioner within a reasonable time of the determination made by the responsible authority. For purposes of this subpart, “reasonable time” shall mean 180 days unless the responsible authority has provided the individual with a written statement which informs the individual of the right to appeal the determination to the commissioner. In the event this statement is provided, “reasonable time” for purposes of this subpart shall mean 60 days.

The notice shall be in writing and dressed to: Commissioner of Administration, State of Minnesota, 50 Sherburne Avenue, Saint Paul, Minnesota 55155.

The notice shall contain the following information:

- A. the name, address, and phone number, if any, of the appealing party;
- B. the name of the responsible authority and entity which he or she represents; a description of the nature of the dispute; including a description of the data; and
- C. a description of the desired result of the appeal; upon written request of the data subject stating reasons, the appeal may be processed under the name of a pseudonym.

The administrative law judge, at any stage of the proceedings, after all parties have had an opportunity to present their views, may recommend dismissal of any sham, capricious, or frivolous case, or any case not within the jurisdiction of the Department of Administration.

The Department of Administration shall be reimbursed for all costs associated with the contested case proceeding by the entity whose responsible authority has been the impetus for the individual’s appeal to the commissioner. The commissioner shall establish appropriate accounting procedures to provide the entity an itemized invoice.

Minn. Rule 1205.1600

8.11.05 Fees

Legal Citations

The responsible authority shall not charge the data subject any fee in those instances where the data subject only desires to view private data. The responsible authority may charge the data subject a reasonable fee for providing copies of private data.

In determining the amount of the reasonable fee, the responsible authority shall be guided by the criteria set out in part [1205.0300](#) concerning access to public data.

Minn. Rule 1205.0400, subp. 5

Unless the imposition of a fee effectively prevents a parent or eligible student from exercising the right to inspect and review the student's education records, an educational agency or institution may charge a fee for a copy of an education record which is made for the parent or eligible student. An educational agency or institution may not charge a fee to search for or to retrieve the education records of a student.

34 C.F.R. 99.11

8.12.06 Transfer of Parent Rights

Legal Citations

Under the regulations for [Family Educational Rights and Privacy Act of 1974](#) (FERPA), the rights of parents regarding education records are transferred to the student at age 18. If the rights accorded to parents are transferred to a student who reaches the age of majority, consistent with [300.520](#), the rights regarding educational records must also be transferred to the student. However, the public agency must provide any notice required under section 615 of the Act to the student and the parents

34 C.F.R. 300.625(b)-(c)