

LIVINGSTON SCHOOL DISTRICT

SPECIAL EDUCATION MANUAL

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GLOSSARY OF TERMS

Individuals with Disabilities Education Act (IDEA): The Individuals with Disabilities Education Act is the federal law governing special education for public school districts. Under the IDEA, K-12 public school districts are provided funding in return for making available to all eligible children with disabilities a free appropriate public education in the least restrictive environment appropriate to their individual needs. In Montana, a school district is responsible for the provision of special education services for eligible students with disabilities beginning at age 3 and through age 18 (or until the student reaches the age of 19 on or before September 10th of a school year) unless the district has a policy whereby students are educated up to age 21. The IDEA also requires school districts to implement specific procedural safeguards. The IDEA was formally known as the Education for all Handicapped Children Act. The IDEA was initially passed in 1990 and has been reauthorized twice in 1997 and 2004. K-12 school districts are subject to Part B of the IDEA. Part C of IDEA requires certain Early Intervention Program agencies, e.g., CDC (Centers for Disease Control and Prevention), to provide services to eligible children with disabilities prior to age 3.

Achievement in Montana System (AIM): Online special education student information system module maintained by OPI. AIM must be used to create and maintain special education documentation for each student referred for an evaluation.

Assistive Technology Devices: Any item, piece of equipment, or product system (software) used to increase, maintain, or improve the functional capabilities of a student with disabilities.

Assistive Technology Services: Services which directly assist a student with disabilities in the selection, acquisition, or use of an assistive technology device.

Aversive Treatment:

- The physical restraint (restriction of movement by others holding or applying physical pressure), except as otherwise permitted by Montana law under MCA § 20-4-302, when determined by the IEP Team that the frequency, intensity, or duration of the restraint is aversive treatment; or
- An isolation time-out in which a student is removed to an isolation room where:
 - the student is alone in the isolation room during the period of isolation;
 - the student is prevented from exiting the isolation room during the period of isolation;
 - the door to the isolation room remains closed during the period of isolation; and
 - the student is prohibited from participating in activities occurring outside the isolation room and from interacting with other students during the period of isolation.

Consent: Consent means that the parent – (1) has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or through another mode of communication; (2) understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and (3) understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

Free Appropriate Public Education (FAPE): Special education and related services provided at public expense, under public supervision and direction, without charge, which meet the standards of the state education agency and include an appropriate preschool, elementary or secondary school education provided in conformity with the IEP.

Individualized Education Plan (IEP): A written document that describes the special education and related services that make up a free, appropriate public education for a child with disabilities; the program is designed to meet the individual special education and related services needs of an eligible child (special education).

IEP Team: The IEP team is made up of the child’s parent, special education teacher, a general education teacher, and a representative of the school district. Other team members may include related service providers, professionals who evaluated the child and others with knowledge or special expertise regarding the child. The members of the team develop the initial IEP and meet subsequently to review progress and make changes in the written plan. Parents must be included as members of this team.

Least Restrictive Environment (LRE): To the maximum extent appropriate, students with disabilities, including students in public or private institutions or other care facilities, are educated with students who are not disabled. Special classes, separate schooling, or other removal of students with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

Local Education Agency (LEA): Local educational agency or LEA means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for a combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary schools or secondary schools. The Livingston School District is an LEA.

Multi-Tiered Systems of Support (MTSS): A general education systematic problem-solving process within a coordinated system of early intervening services that is designed to allow for early recognition of students’ difficulties and to provide for a data-based method for evaluating the effectiveness of the instructional approaches used for academics and behavior.

Parent: (1) a natural, adoptive or foster parent of a child; (2) a guardian; (3) a surrogate parent; or (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. It does not include employees of a state agency responsible for the welfare of the child. Unless there is a court order restricting the rights of the natural or adoptive parent or they are unable to be located, the natural or adoptive parent is the “parent.” Under Montana law, a foster parent can only act as a parent when the rights of the biological parents have been extinguished (i.e., terminated), the foster parent is willing to act as the parent, and no conflict of interest exists.

Prior Written Notice:

- A description of the action proposed or refused by the district.

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

Procedural Safeguards: Parents of children who receive special education have certain rights that are guaranteed by federal law, the Individuals with Disabilities Education Act (IDEA). These rights include the right to participate in meetings dealing with the identification, evaluation, and educational placement of their child and the provision of a free appropriate public education to their child. One of their rights is to be informed of all the rights available to them in writing, in their native language (unless it is clearly not feasible to do so), and at a level understandable to the general public. They are entitled to a copy of these procedural safeguards at least one (1) time per year, and: (1) upon initial referral or parental request for evaluation; (2) upon the initial filing of a complaint; (3) upon request by a parent. Procedural Safeguards booklets must be obtained from OPI: <http://opi.mt.gov/Portals/182/Page%20Files/Special%20Education/Guides/Procedural%20Safeguards%20EDITED%20APRIL%202017.pdf?ver=2017-08-31-125132-883>.

Referral: A referral begins the process through which the Evaluation Team conducts a comprehensive educational evaluation. Each public school must have an established referral method for collecting information to determine whether comprehensive educational evaluation is necessary and the types of evaluations needed. Each public school must have a referral or multiple forms to collect this required information.

Related Services: Transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education. These include speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, medical services for diagnostic or evaluation purposes, school health services and school nurse services, social work services in schools, and parent counseling and training.

Response to Intervention (RTI): A general education systematic problem-solving process within a coordinated system of early intervening services that is designed to allow for early recognition of students' difficulties and to provide for a data-based method for evaluating the effectiveness of the instructional approaches used.

Special Education: Specially designed instruction, at no cost to the parents, to meet the unique needs of a student with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings and instruction in physical education. The term

includes speech language pathology services and may include other related services, travel training, and vocational education, if they meet the definition of special education. These services may be provided in a variety of educational settings, but are required by IDEA to be delivered in the least restrictive environment.

Specially Designed Instruction: Adapting, as appropriate to the needs of an IDEA-eligible child, the content, methodology, or delivery of instruction to address the unique needs of that child that result from the child's disability and to ensure access of the child to the general curriculum, so that the child can meet the educational standards within school district that apply to all children.

State Education Agency (SEA): The Montana Office of Public Instruction.

Transition Services: A coordinated set of activities for a child with a disability that is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. Transition services are based on the child's needs, taking into account the child's strengths, preferences, and interests and includes instruction, related services, community experiences, employment and other post-school living objectives, and daily living skills and a functional vocational evaluation (if appropriate).

****Note: specific terms used within this manual are defined in the glossary****

CHILD FIND

Federal and Montana state law requires the District to identify, locate, and evaluate all children who are residents of the District who may have a disability and may be in need of special education and related services. Child Find applies to:

- Children under the age of 3 attending preschool
- Children under the age of 3 not attending any preschool
- Students between the ages of 3 and 19 enrolled and attending a school within the District
- Students between the ages of 3 and 19 enrolled and attending a private school located within the District.
- Children between the ages of 3 and 19 who are residents of the District.

Children Under 3

Because the District is responsible for the provision of special education services once an eligible child with a disability turns 3, Child Find activities to identify and locate these children must commence prior to the child's third birthday. There are two primary means of engaging in Child Find activities for children under the age of 3:

- Notification and transition of children from Part C Early Intervention Program Agencies.
- Preschool Screening Activities

Notification and Transition of Children from Part C

Part C of the IDEA provides funding to and services by Early Intervention Program agencies for infants and toddlers (under age 3) Part C of the IDEA requires Early Intervention Program agencies to annually notify schools districts of potentially eligible children. In Montana, Part C agencies provide two notifications per year: (1) children who will turn 3 in the months of September through the following August; and (2) children who will turn 3 in months of February through January. Some children will be listed twice in these notifications. Parents have the right to "opt out" of being a part of the notification, which means that not all potentially eligible children may be included in the notification. The purpose of this notification is to allow for planning; however, the District may not contact the family upon receiving the notice because the responsibility still remains with the Part C agency.

Not less than 90 days before the child's third birthday, the Part C agency should convene a transition meeting. The Part C agency can invite the school district only upon receiving consent from the parent. If the parents refuse consent, the District has no obligation to attend nor any obligation to evaluate or provide special education services to the student until and unless the child is separately referred after turning age 3. If the parent consents, the Family Support Specialist for the Part C agency should be notifying the District of a transition meeting and inviting a District representative to attend. The District must complete the meeting invite form and send a copy of procedural safeguards prior to the meeting.

The District is not responsible for running the transition meeting – a District representative should attend the meeting to provide information. The purpose of the District’s attendance at the transition meeting is to provide the parent of the potentially eligible child with information about the District’s special education services if the child is determined to be eligible. *This is not a meeting where the child’s eligibility for K-12 services is determined.* If appropriate, the District can obtain written consent to receive the child’s early intervention service records. The District can also obtain the parent’s consent to a special education referral if the parent and District personnel believe appropriate. If additional information is needed to determine if a referral for a special education evaluation is appropriate, the District should obtain written consent for the student’s early intervention records and review those records to determine whether proceeding with an evaluation is appropriate.

Preschool Screening

The District should coordinate with other agencies’ screening for preschool, including but not limited to local Head Start programs. Once the child is going to turn 3, the District and not Part C agency is responsible for completing the evaluation of the child. The District can also provide its own screening activities for children ages 3-5 for developmental problems in speech and language, vision, hearing, coordination, social and intellectual development, and general progress. The purpose of the screening is to determine whether a child needs further assessment or referral for a special education evaluation.

Screening does not require written parental consent.

The District must give notice of screening opportunities in local newspapers, other media, and through its website.

Children Attending School within the District

The District has an ongoing obligation to monitor its student population to determine whether any of the students in attendance may have a disability and be in need of special education services. The primary means of this is through prereferral.

Prereferral

This is a team-based process to identify struggling students with a multi-tiered system of academic and behavioral interventions and supports. The District should use student assistance teams and Multi-Tiered Systems of Support (MTSS) to provide tiered interventions and supports for both academics and positive behavior to assist students progress in the general education curriculum. The District must utilize both the academic and behavioral systems as pre-referral. Prereferral for academics and behavior occurs in the general education environment.

Data must be kept to determine the success or failure of the interventions and supports. As such, it is necessary to have data prior to the implementation of any interventions as well as consistent data after interventions and supports are provided to determine their effectiveness. Data must include the dates of interventions, who conducted the interventions, the types of interventions and supports used, and the results. This data is then used to determine if the student requires additional

interventions or supports or whether it may be appropriate to refer the student for a special education evaluation.

However, prereferral may not be used to delay or substitute for an evaluation. Prereferral should be used as a mechanism to gather more information if the need for an evaluation is not clear. If staff members have a reason to suspect the student has a disability and may be in need of special education, the child should be referred for an evaluation. Likewise, if a parent makes a request for an evaluation, the District cannot delay or refuse the evaluation in order to complete any prereferral processes.

Children Attending Private Schools

The District is obligated to identify, locate, and evaluate all children residing within its boundaries **or** attending a private school located within the District's boundaries who may have a disability and be in need of special education services. In Montana, private schools include home schools and any other school located within the District including any religious schools. This means that District is responsible for Child Find activities for any student who either lives within the District or is attending a private (or home) school within the District by decision of the parents.

The District must consult with representatives of the private schools located within the District's boundaries regarding its Child Find activities. If through its Child Find activities, a private school located within the District refers a student attending the private school or a parent of a student attending a private school requests a child be evaluated for special education, the District is either obligated to conduct the evaluation or provide prior written notice to the parent explaining the basis for the refusal to evaluate. The District may also be responsible to respond to a request to evaluate a student residing within its boundaries even if the student is attending a private school located in another district.

Although the District is responsible for Child Find activities for children attending private schools located within the District's boundaries, its responsibilities upon a finding of eligibility differ when the student resides in another district. As such, when the District receives a request to evaluate a student attending a private school located within the District but is believed to be a resident of another district, the District should obtain written consent from the parent to contact the district of residence to coordinate all subsequent efforts. Parent permission is required to share any information regarding the student with the district of residence. Moreover, regardless of whether the private school student may be a resident of another district, the District in which the private school is located has an obligation under the law for Child Find.

REFERRAL

A child must be referred for a comprehensive special education evaluation when (1) staff members know or have reason to suspect the student may have a qualifying disability; **AND** (2) staff members know or have reason to suspect the student may be in need of special education and related services.

A student must be referred for a special education evaluation when:

1. The District has reason to believe the student may have a disability and be in need of special education services as a result of a Part C agency referral.
2. The District has reason to believe the student may have a disability and be in need of special education services as a result of a preschool screening.
3. Staff members can show that interventions, if implemented, would be insufficient to address concerns and there is reason to believe the student may have a disability and be in need of special education services (i.e., student has significant orthopedic impairments and developmental disabilities).
4. Staff members have maintained data showing that interventions implemented as part of a pre-referral have been ineffective and the student may have a disability and be in need of special education services.
5. Staff members are aware that a student has engaged in high risk behavior and they suspect the student may have a disability and be in need of special education services.
6. Based upon objective information, staff members suspect the student may have a disability and be in need of special education services.
7. A parent of a student requests (verbally or in writing) that his or her child be evaluated for special education unless the District believes there is no reason to evaluate the student for special education and provide prior written notice to the parent explaining the basis for the refusal to evaluate. The District may not delay a parent request for an evaluation to conduct additional interventions or assessments. It must respond by either referring the student for an evaluation or denying the request through a prior written notice.

A referral is accomplished by completing a *Referral for Comprehensive Educational Evaluation* form on the AIM system. *See* Appendix F. The referral must contain:

- A statement of the reason(s) for referral;
- Documentation of the general education interventions tried and the results of such attempts; and
- The signature of the person making the referral (this includes if the parent makes the referral for the evaluation)

The District must provide a copy of the Procedural Safeguards to the parent at the time the referral is completed.

This information assists the Evaluation Team in determining the types of assessments necessary for a comprehensive evaluation. A representative of the District must fill out the form – if a District staff member is making the referral, that staff member should complete and sign the form. If the parent is making the referral, a designated District staff member should obtain the information to complete the form and have the parent sign the completed form.

Once a referral is completed (unless the District has refused to conduct an evaluation based upon a parent referral and provides prior written notice of such refusal), the District must seek consent from the parent to conduct the comprehensive special education evaluation within a reasonable time.

EVALUATIONS

The District must conduct a comprehensive evaluation to determine if a student is eligible for special education and related services under the IDEA. Until and unless a student is determined to be eligible under the IDEA, he or she is not entitled to FAPE through an IEP. The Evaluation (and associated assessments) must be provided at no cost to the parent.

The purpose of an evaluation is to: (1) collect information on a child's ability and achievement, and (2) carefully interpret the information that is collected. The Evaluation is used to determine not only if the student has a qualifying disability but also the nature and extent of the special education that a child needs. If the student is determined to be eligible, the evaluation assists in the development of the student's IEP.

The Evaluation is conducted using a team approach, which allows for examination of the student's strengths and weaknesses from various perspectives. An evaluation enables the team to determine the specific instructional and related service needs of the student.

After the referral is completed, District personnel must complete an *Evaluation Plan* on the AIM system. See Appendix F. Prior Written Notice is to be completed for every Evaluation Plan. The purpose of the Evaluation Plan is to notify the parent of the assessments the District intends to conduct, and to obtain the parent's informed consent for those assessments. For an initial evaluation, the evaluation plan provides written notice to the parent that the district suspects their child has a disability and needs special education; identifies the specific assessments that will be conducted to determine eligibility; and documents parental approval or denial of consent for the evaluation. The evaluation plan must correspond to the areas of concern raised in the referral. A meeting is not required in order to develop the Evaluation Plan.

The District must evaluate the student in **all** areas of suspected disability – this is the comprehensive evaluation. This does not mean that the student must be assessed in all areas and for all categories. Rather, the District's professionals must determine those assessments appropriate for those areas in which it is suspected the student may qualify. Screenings may be done if appropriate to determine whether there is a need to conduct a more comprehensive evaluation in a certain area.

The Evaluation must be based upon a variety of assessment tools and strategies used to gather relevant functional, developmental and academic information about the child. This includes information provided by the parent.

The Evaluation Plan lists the various types of tests and assessments to be conducted. Based upon the Referral completed, the District's professionals must determine whether any of the following should be conducted:

- Academic achievement
- Assistive technology/services
- Behavioral
- Communication
- Developmental
- Physical

- Psychological
- Social/emotional
- Transition

All evaluations must include classroom-based assessments and observations.

If there is a type of test or assessment that the District's professionals believe is appropriate and it is not specifically listed as one of the categories on the form, the assessment should be listed in the "other" category.

Screening does not require parental consent.

Assessments must be conducted in a non-discriminatory manner. This means:

- Testing and evaluation materials and procedures must be selected to be as free of racial, cultural, and language bias as possible.
- Tests must be appropriate for the age and stage of development of each student to whom they are administered.
- Procedures, tests, and other evaluation materials used for an evaluation must be selected and administered to ensure that for a child with impaired sensory, motor, or communication skills, the test results accurately reflect the child's aptitude and/or achievement level or whatever other factors the test purports to measure.
- Tests should be written and/or administered in the native language of the child or conducted in the mode of communication most familiar to the student being evaluated unless it is clearly not feasible to do so. If it is clearly not feasible to administer a test in the native language or mode of communication most frequently used by the student, or if you have any questions about how to assess a child who has limited English, contact the Director of Special Education and Pupil Services.

Observations are staff's objective impressions that document the student's overall functional, behavioral and academic progress during the school year. These observations do not have to be a "snapshot" of the student's behavior on a particular date and time.

Any assessor or teacher may conduct the observations. For a student attending a private school, a representative of the private school who participates at the Evaluation Team meeting could conduct the observation, or another member of the Evaluation Team could observe the student in the private school setting.

Evaluation Team

The Evaluation Team must include the following members:

- The parent(s) of the child;
- Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);

- Not less than one special education teacher of the child or, if appropriate, at least one special education provider of the child;
- If the student is being evaluated for a specific learning disability, at least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher;
- An administrator or designee who -
 - Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
 - Is knowledgeable about the regular curriculum; and
 - Is knowledgeable about the availability of resources of the public agency.
- An individual who can interpret the instructional implications of evaluation results, who may be one of the described members of the team;

In addition to the required members, the Evaluation Team may also include:

- At the discretion of the parent or the Livingston School District, other individuals who have knowledge or special expertise regarding the child, including Related Services personnel as appropriate; and
- The student, if appropriate.

An Evaluation Team meeting must occur for every:

- Initial Evaluation to determine eligibility
- Reevaluation to determine continued eligibility
- Reevaluation to determine whether student qualifies under new or different eligibility category
- Reevaluation to determine the student's special education needs.

An Evaluation Team does not need to convene before:

- The student is exited from special education because the parent has revoked consent for services; or
- The student will graduate from high school or will depart school because he or she exceeds the maximum age of students served.

Parent's Role in Evaluation Process

Parents participate in the decision about what types of evaluation are needed. Parents provide information about the child's developmental history. They can also provide information as to what the child can and cannot do at home, at play, and any special interests the child may have. Once the evaluation is completed, they participate as a member of the Evaluation Team in determining whether the student is eligible and determining the needs of the student to be considered for the IEP planning process. Parents may also file a dissenting report if they disagree with an evaluation or seek an Independent Educational Evaluation (IEE).

Initial Evaluations

The Initial Evaluation is the first evaluation conducted to determine the student's eligibility under the IDEA.

In order to proceed with an initial evaluation, the District must obtain the parent's written consent on the Evaluation Plan. If the parent refuses to provide consent or does not respond to attempts to obtain consent, the District may but is not required to pursue mediation or due process to obtain consent if it believes special education services are necessary for FAPE. The District does not violate IDEA if it does not pursue mediation or due process to obtain consent.

The Initial Evaluation must be completed within **60 days** of receipt of the signed Evaluation Plan. If the parent fails or refuses to produce the child for an Initial Evaluation, even after giving consent for this initial evaluation, the District must document its attempts to conduct the assessments and complete the assessments. The 60-day deadline for completion of the Initial Evaluation does not apply if there is documentation showing the parent refused or failed to produce the child for the Initial Evaluation. The 60-day deadline may be extended where both the parent and District agree to an extension in writing.

Initial Evaluations for Children under 3 who received Part C Services

For those children under age 3 who have received Part C services, the District must review existing evaluation data.

If the District believes, based upon the variety of assessments and data from the Part C agency, it has sufficient information to make an eligibility determination, it does not need to conduct its own assessments. The Part C assessments and data must be both current and relevant. In such case where the District and Evaluation Team determine that additional assessments are not necessary, the District representative must complete the *Evaluation Plan* with only classroom-based assessments and observations checked and ask the parent to sign this information. The classroom-based assessment and observation data can be gathered from the early intervention service providers, the child's home, or other child care environment.

Reevaluations

Reevaluations must occur at least once every three years, unless the parent and the District agree that a reevaluation is unnecessary. A reevaluation is not necessary if the IEP team determines that the child continues to be a child with a disability, and because of that disability needs special education and related services. This determination is documented on the IEP form and must be completed on an annual basis.

If the IEP Team determines a reevaluation is not necessary, this starts the 3-year deadline for a reevaluation over and a reevaluation is not required for an additional 3 years unless the parent requests one or IEP team determines otherwise. It is advisable that a student be reevaluated before high school if the student's only evaluation was completed before the student entered third grade.

Reevaluations may be requested by the child's parent or teacher who believe a reevaluation is necessary to identify additional needs, eligibility categories, or to reexamine eligibility status. The

District does not need to complete a Referral form for a reevaluation. Reevaluations may not be done more than once a year unless the District and parent agree otherwise.

For reevaluations, the District shall review existing evaluation data on the student (i.e., current year), including evaluations and information provided by the parents; current classroom-based assessments and observations, which include the student's involvement and progress in the general curriculum; and observations by teachers and related services providers. The District or parents can identify additional assessments if any are believed to be necessary.

The District must complete an Evaluation Plan for all reevaluations identifying the tests and assessments to be conducted. Classroom-based assessments and observations are required. Consent must be obtained from the parent. If there is a determination that no additional assessments are necessary for a reevaluation, the Evaluation Plan should be completed with just classroom-based assessments and observations checked for the parent's signature. The Evaluation Team can then convene a meeting to review the existing data, classroom-based assessments, and observations.

If a parent refuses to consent to a reevaluation, the student remains eligible for special education and related services and must continue to be served under the agreed-upon IEP. The parent's refusal to consent to a reevaluation must be documented.

If a parent fails to respond to requests for consent for a reevaluation, there must be multiple attempts through a variety of means to contact that parent to obtain consent. These attempts must be documented. If after multiple attempts, the parent still fails to respond to a request for consent, the Director of Special Education and Pupil Services must determine the appropriate course.

There is no specific timeline established to complete a reevaluation. Rather, reevaluations must be completed within a reasonable time of receipt of the signed Evaluation Plan. Unless extenuating circumstances exist, the 60-day time period for initial evaluations is a good benchmark for the time in which to complete a reevaluation.

The District must conduct a reevaluation to exit a student from special education services because the student no longer has a qualifying disability or is no longer in need of special education services. The determination to exit the student is made by the Evaluation Team after reviewing the results of the reevaluation.

Evaluation Report

The Evaluation Team must convene a meeting in which it will consider the assessments and tests conducted and to complete the Evaluation Report. The Evaluation Team must complete the *Evaluation Report* on the AIM System.

Written notice must be given to the parents of a child with a disability within a reasonable time before an evaluation meeting. The written notice is provided by completing the *Special Education Meeting Notice* on the AIM System. See Appendix F. The notice should identify that the meeting is an Evaluation Team meeting. The District is responsible for notifying parents of the meeting early enough to ensure that they will have an opportunity to attend and to schedule the meeting at a

mutually agreed on time and place. Generally, reasonable notice means five days prior to the meeting.

The Evaluation Report must include information provided by the parent. If the parent does not provide any comments, the Evaluation Report should reflect this.

The Evaluation Report must include all assessments performed by the District. These assessments must be summarized and/or a separate report/document explaining the results of the assessments may be attached to the Evaluation Report. Each assessment must be clearly identified and must identify the implications for educational planning in terms understandable to all team members.

The parent(s) may also provide documentation, assessments, testing, or reports from outside providers or professionals. The parent(s) may invite these outside providers or professionals to the meeting. The Evaluation Team is obligated to consider the information provided by the outside providers or professionals; it is not required to accept the “diagnosis” or conclusions of these outside providers or professionals.

After the Evaluation Team has reviewed the assessments and testing conducted, it must conduct an eligibility determination. The Evaluation Team must review the student’s eligibility for all categories of suspected disability. If the Evaluation Team determines that the student is eligible under one or more categories, the Evaluation Team must then identify recommendations for the special education and related services the student’s IEP Team should consider in developing an IEP.

At the end of the Evaluation Report, Evaluation Team members are instructed to sign as participating in the process. Montana’s Office of Public Instruction has interpreted the signature on the Evaluation Report as an agreement with the conclusion of the Evaluation Team. Regardless of whether they sign, the parent must be provided a copy of the Evaluation Report along with a prior written notice (embedded in the same form).

If the Evaluation Team determines that the student is not eligible for services, the Evaluation Team should consider referring the student for an evaluation under Section 504.

Disagreements

The Evaluation Team should reach a consensus regarding the outcome of the evaluation and eligibility. This does not mean that “majority rules.” If a parent or other Evaluation Team member disagrees with the conclusions of the Evaluation Team, that individual can provide a dissenting report.

In addition to having the option of providing a dissenting report, the parent has the right to seek an Independent Educational Evaluation (IEE) at public expense. Procedures governing IEEs are found in Appendix B.

In the alternative, the parent has the right to seek mediation or due process regarding the evaluation.

ELIGIBILITY DETERMINATIONS

At the Evaluation Team meeting for an Initial Evaluation, the Evaluation Team must make the determination whether the student:

- Has a disability recognized by IDEA; **and**
- Is in need of special education and related services.

The evaluation must include information from a variety of sources, which allows the Evaluation Team to avoid using any single measure or assessment as the sole criterion for determining whether the student has a disability and for determining an appropriate educational program for that student.

Montana recognizes the following disabilities for purposes of qualifying for special education services:

- Developmental Delay (at least age 3 and not yet 9 years old)
- Autism
- Cognitive Delay
- Deaf-Blindness
- Deafness
- Emotional Disturbance
- Hearing Impairment
- Orthopedic Impairment
- Other Health Impairment
- Specific Learning Disability (Severe Discrepancy or Response-to-Intervention)
- Speech-Language Impairment
- Traumatic Brain Injury
- Visual Impairment

OPI has identified criteria for each of these categories. The Evaluation Team must review and complete the checklists **for each area** in which it is suspected the student may qualify. The completed checklists must be attached to the Evaluation Report. The Eligibility Criteria Checklists are found on the AIM system. *See Appendix F.* This means that there may be multiple categories in which a student meets the criteria and qualifies for services.

In addition to meeting the criteria, the Evaluation Team must also determine whether that identified disability or disabilities adversely affect the student's educational performance. This means that there is evidence that measures of student performance (e.g., achievement tests, grades, behavioral or developmental assessments, classroom based assessment, observations, progress monitoring, or criterion-referenced tests, etc.) indicate a pattern of educational, developmental, or functional attainment or achievement below the student's age or grade-level based on state approved K-12 content standards that can wholly or in part be attributed to the disabling condition.

If the Evaluation Team determines that the student meets the criteria for one or more of the IDEA disability categories and that disability(ies) adversely affects the student's educational performance, the Evaluation Team must determine that the student is eligible for special education and related services under the IDEA. If the Evaluation Team determines that, even though the student falls

into one or more of the disability categories, the disability does not adversely affect the student's educational performance, the Evaluation Team must determine that the student is not eligible for special education and related services under the IDEA.

A student is not eligible under the IDEA if the student only requires related services.

Developmental Delay

See Eligibility Criteria for Developmental Delay, Appendix F.

A student who is at least age three (3) but not yet nine (9) years old may qualify under the category of Developmental Delay if the Evaluation Team determines the student meets the criteria of that category. Prior to the student turning nine, the Evaluation Team must complete a new Evaluation Plan and conduct a new evaluation to determine if the student continues to qualify for special education and related services and under which category(ies) the student qualifies. A Referral form does not need to be completed, but the student must meet the criteria for any other categories considered. If the student has been identified under other categories in addition to Developmental Delay, prior to turning nine, the Evaluation Team must convene to complete an Evaluation Report removing the Developmental Delay category.

Autism

See Eligibility Criteria for Autism, Appendix F. When Autism is being considered, the Evaluation Team must include (in addition to the other required members identified above), a school psychologist and speech-language pathologist.

Autism is both a psychiatric diagnosis and a recognized educational disability category. Thus, it is not uncommon for a parent to have a diagnosis by a private provider that a student has a psychiatric diagnosis of Autism (or Autism Spectrum Disorder, Asperger's Disorder, Childhood Disintegrative Disorder, or Pervasive Personality Disorder Not Otherwise Specified). These diagnoses are made pursuant to the Diagnostic and Statistical Manual of Mental Disorders (DSM). Under the prior version – the DSM-4 – children were diagnosed as being Autistic or having Asperger's Disorder, Childhood Disintegrative Disorder, or Pervasive Personality Disorder Not Otherwise Specified. Recently, the DSM was updated to the DSM-5. These four categories have now been incorporated into one category: Autism Spectrum Disorder. Thus, if a parent notifies the District that his or her child has been diagnosed with Asperger's Disorder, this information should be considered by the Evaluation Team in conjunction with consideration of the student under the Autism eligibility category.

Montana law states: "the student may not be identified as having autism if the student's educational performance is adversely affected primarily because the student has an emotional disturbance." OPI has interpreted this statement to mean that a student cannot be *primarily* affected by both Autism and an Emotional Disturbance, but a student can still be identified under both categories. In practice, this means that a student may be primarily affected by one disability – i.e., Autism – but also suffer from an emotional disturbance. In other words, the student cannot be found to have an

emotional disturbance if it is because of Autism and a student cannot have Autism because of an emotional disturbance.

Cognitive Delay

See Eligibility Criteria for Cognitive Delay, Appendix F. When Cognitive Delay is being considered, the Evaluation Team must include (in addition to the other required members identified above), a school psychologist.

Deaf-Blindness

See Eligibility Criteria for Deaf-Blindness, Appendix F. When Deaf-Blindness is being considered, the Evaluation Team must include (in addition to the other required members identified above), a speech language pathologist.

Deafness

See Eligibility Criteria for Deafness, Appendix F. When Deafness is being considered, the Evaluation Team must include (in addition to the other required members identified above), a speech language pathologist and an audiologist.

Emotional Disturbance

See Eligibility Criteria for Emotional Disturbance, Appendix F. When Emotional Disturbance is being considered, the Evaluation Team must include (in addition to the other required members identified above), a school psychologist.

Hearing Impairment

See Eligibility Criteria for Hearing Impairment, Appendix F. When Hearing Impairment is being considered, the Evaluation Team must include (in addition to the other required members identified above), a speech language pathologist and an audiologist.

Orthopedic Impairment

See Eligibility Criteria for Orthopedic Impairment, Appendix F.

Other Health Impairment

See Eligibility Criteria for Other Health Impairment, Appendix F.

A medical diagnosis is required for an eligibility determination under Other Health Impairment. A student is not automatically eligible for IDEA services even with a medical diagnosis. Only the Evaluation Team can make a determination based upon the assessments conducted and the eligibility criteria. The Evaluation Team must consider the medical diagnosis, but it cannot base its eligibility determination on that sole criterion.

The medical diagnosis can be provided by a physician, physician assistant, podiatrist, dentist, or nurse practitioner.

Unless the parent has brought a medical diagnosis to the Evaluation Team for consideration, the District is required to pay for the medical examination.

When a student identified with an Other Health Impairment is reevaluated, an updated medical diagnosis is not necessary unless the Evaluation Team believes it is appropriate.

Specific Learning Disability

See Eligibility Criteria for Specific Learning Disability, Appendix F. When Specific Learning Disability is being considered, the Evaluation Team must include (in addition to the other required members identified above), a school psychologist, speech language pathologist, or a remedial reading teacher.

Montana school districts must use either a Response to Intervention model or a severe discrepancy model to identify a student with a specific learning disability. The District uses the severe discrepancy model. A student is determined to have a specific learning disability based on the severe discrepancy between the students' intellectual ability and achievement in one or more of the following areas: basic reading skills, reading comprehension, reading fluency skills, listening comprehension, oral expression, written expression, mathematics calculation, and mathematics problem solving.

The District is currently using Multi-Tiered Systems of Support (MTSS) to provide tiered interventions and supports for both academics and positive behavior to assist students progress in the general education curriculum. Eventually, the District would like to be able to qualify students through the use of a process based on the student's response to scientific, research-based intervention(s). However, currently, the District uses the severe discrepancy model.

A student does not qualify with a specific learning disability if the student's lack of progress is the result of a lack of appropriate instruction, which means that the student has not received explicit and systematic instruction in reading or math that is aligned with state content standards.

Response to Intervention (RTI)

Generally, RTI involves a three-tiered model to describe the level of intervention. Tier 1 instructional strategies or interventions are those used with an entire classroom or at a schoolwide level. Students for whom the assessment data show little or no growth at this level would then move to Tier 2. Tier 2 interventions are used with small groups of students who have similar instructional

needs. Students who do not respond to the small group interventions move on to Tier 3 where they receive instruction designed to meet their specific individual needs.

Data collection and analysis are critical components of all interventions. This data will allow the RTI team to make a determination about which students need to move to a more intensive level of intervention, target specific skill deficits, and track student learning over time. When considering students for eligibility with specific learning disabilities, this data will provide the documentation that the interventions have not been effective. Second, well-designed interventions rely on proven instructional methodologies and are straightforward and can be implemented in the general education classroom by general education teachers. Interventions that are overly complex or require too much effort to maintain will not be implemented effectively and are not likely to produce improved learning on the part of the student.

The Evaluation Team must document that an insufficient response to interventions occurred when the student did not achieve adequately, despite the implementation of the interventions over a sustained period of time. The Evaluation Team must document that scientific, research-based interventions were matched to the specific needs of the student as identified through systematic, data-based processes for examining the presenting problem, including parental input on the problem, to identify instructional interventions that have a high likelihood of success. The documentation must also show that the interventions focused on changing the instructional strategies or techniques used with the student. The interventions must have been regularly monitored for student progress and correct implementation via regular and frequent data collection, and analysis and modification of interventions as necessary based on data analysis. The Evaluation Team must document that interventions were implemented by qualified personnel and compared the student's rate of learning and current levels of performance with the student's initial levels of performance. A student may be determined to have a specific learning disability if the student is making sufficient response to scientific, research-based interventions and the level of intervention necessary to sustain the response can only be provided through special education service.

Speech Language Impairment

See Eligibility Criteria for Speech Language Impairment, Appendix F. When Speech Language Impairment is being considered, the Evaluation Team must include (in addition to the other required members identified above), a speech language pathologist.

Traumatic Brain Injury

See Eligibility Criteria for Traumatic Brain Injury, Appendix F. When Traumatic Brain Injury is being considered, the Evaluation Team must include (in addition to the other required members identified above), a school psychologist and a speech language pathologist.

Visual Impairment

See Eligibility Criteria for Visual Impairment, Appendix F.

INDIVIDUAL EDUCATION PLANS (IEPs)

The purpose of an IEP is to provide a written document developed by a team familiar with the student and is based on the student's unique needs. It provides for the special education and related services that are implemented to meet the student's unique needs. This is the primary means by which FAPE is provided.

The IEP is developed by the IEP team at a meeting. The District must provide written notice in advance of the IEP meeting. The *Special Education Meeting Notice* form must be completed on the AIM system. See Appendix F. The notice of the meeting should be provided sufficiently in advance to ensure that the parent can participate in a meaningful manner in the meeting. Generally, five days notice is sufficient. The IEP Team meeting must also be scheduled at a mutually convenient time.

An IEP must be in effect at the beginning of each school year for each student eligible under the IDEA. An IEP may have a duration of no more than 12 months. For an initial IEP, the District must convene an IEP meeting within **30 calendar days** of the Evaluation Team meeting to develop the IEP.

The purpose of an IEP meeting is to provide an opportunity for communication between parents and District personnel and enable them to make joint, informed decisions regarding:

- the student's needs and appropriate goals;
- the extent to which the student will be involved in the general curriculum and participate in the regular education environment and district-wide assessments; and
- the services necessary to support the student's involvement in the general curriculum and regular education environment and the student's progress toward the goals.

IEP team decisions should be reached by consensus; majority does not rule. The parent is a vital member of the team and must be allowed to comment and participate in the development of the IEP; however, the parent does not have a "veto" right over recommendations by District personnel.

IEP Team

The following are required members of the IEP Team:

- The parent(s) of the child, or the adult student;
- Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);
- Not less than one special education teacher of the child or, where appropriate, at least one special education provider of the child;
- An administrator or designee who -
 - Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
 - Is knowledgeable about the general education curriculum; and

- Is knowledgeable about the availability of resources of the public agency and has the authority to commit district resources to implement the IEP and can ensure that the IEP can be implemented;
- An individual who can interpret the instructional implications of evaluation results, who may be one of the described members of the team.

The following may be included as members of the IEP Team:

- 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 (the knowledge or special expertise is determined by the parent or the District making the invite);
- If appropriate, the student; and/or
- A representative of any participating agency likely to be responsible for providing or paying for transition services with the consent of the parents or student who has reached 18.

If it is not appropriate for the student to attend the IEP meeting, the student's input should be obtained prior to the meeting for consideration by the IEP Team.

If the student is receiving related services, the related service provider should attend the IEP Team meeting, unless the parent consents prior to the meeting with sufficient time for the parent to consider the request.

The IDEA grants a parent the statutory right to participate in the development, review, and revision of his or her child's IEP. The IEP Team must provide opportunities for the parent to comment and participate throughout the meeting. All members of the team must come to IEP meetings with an open mind and be prepared to make decisions based on sound, educational data.

Excusal

Generally, it is advisable to schedule a meeting to ensure that all required members of the IEP team can attend. If a required member is unable to attend (not the parent), the meeting should be rescheduled. In the rare instance that a required member of the IEP Team cannot attend, the member can be excused provided the parent consents prior to the meeting with sufficient time for the parent to consider the request. The *IEP Team Member Excusal* form must be completed and the parent must consent. See Appendix F. The excused team member must submit written input into the development of the IEP to the parent and the IEP Team prior to the meeting. The written input must provide adequate information for the IEP team to address the student's educational needs and clearly identify the student's present level of academic achievement and functional performance in the member's area of the curriculum or related services. The written input must be attached to the IEP.

Meeting Rules

- A draft of the IEP should be sent home for parents to read prior to the IEP meeting. This requires service providers to have goals in the system early. The draft is ideally sent home at least two days prior to the meeting and attempts will be made to send a reminder email prior

to the meeting. Do not include any portion of a prior written notice in the draft – this should be left blank.

- The goal is to keep meetings to one hour; however, longer meetings may be necessary. If there are time constraints, it is recommended that the time constraints are communicated prior to the meeting.
- District personnel must be on time to meetings and should plan accordingly so that they can remain for the entire meeting.
- The meeting should remain student-focused and student-centered.
- If there is an agenda, it should be followed. If a time constraint has not been previously established, discuss how much time the team should spend at the beginning of the meeting. It may be necessary to hold multiple meetings.
- All relevant information should be shared prior to the meeting, including any new assessments.
- Participants must be encouraged to ask questions or seek clarifying information if information provided is not clear.
- The language and demeanor of participants should be respectful. If a meeting becomes heated, participants should take a break or reconvene the meeting at a later time.
- Side conversations during meetings should be avoided. It is difficult for IEP Team members to focus on the discussion when team members are having side bar conversations. Devices should be turned off or to “silent” mode and should be kept out of sight. District staff members should not be on their devices during a meeting.
- Discussions that do not directly relate to the IEP development should be curtailed. If a parent wishes to have a more lengthy discussion about activities, curriculum, scheduling, or program elements, this should be scheduled for a different time and does not require to be done at an IEP Team meeting. The discussion at the meeting should be limited to those issues which must be determined by the IEP Team.
- Participants must have an open mind and avoid making judgments.
- If an attorney shows up at a meeting without any advance notice to the District, cancel the meeting and reconvene until a later time when the District’s attorney can be present. If an attorney is to be present, advance notice to the District and parent should be provided.

Development of the IEP

The IDEA requires that the IEP be reasonably calculated to enable the student to receive educational benefit appropriate for that child's circumstances, which means personalized instruction with sufficient support services to permit the student to benefit educationally from that instruction.

The IEP must be developed on the AIM System. District personnel are encouraged to draft an IEP document prior to the IEP Team meeting to assist the team in developing the IEP. This may only be a draft and must be reviewed and revised, as appropriate, by the IEP Team at the meeting. The document should be marked clearly as "DRAFT." Failing to consider parental input is called predetermination (i.e., the District has predetermined a specific decision without input of the parent) and is a violation of the IDEA.

The IEP contains the following components:

- Student Information – name, initials, birthdate, age, gender, grade, race, date of last evaluation/reevaluation, IEP case manager, disability category(ies)
- Parent/Guardian Information – names, addresses, contact information, relationship to the student
- Strengths, Educational Concerns, and Preferences/Interests – narrative to be completed regarding the student's strengths, preferences, and interests (from the student's perspective), the parents' perceptions about the student's strengths and educational concerns, and District staff members' perceptions about the student's strengths and educational concerns
- Consideration of Special Factors – yes/no questions about the student's behavior impeding his/her or other students' learning, communication needs, assistive technology needs, whether the student is limited English proficient, and whether the student needs orientation and mobility services or Braille instruction due to blindness or a visual impairment (any "yes" answers must be addressed in some manner within the IEP)
- Transition Services – required for students who are or will turn 16 during the duration of the IEP
- Present Levels of Academic Achievement and Functional Performance and Measurable Annual Goals
- Progress Report Frequency – designated as quarterly, semester, or other
- Special Education and Related Services – listing of special education services, related services, service time, and dates of service
- Least Restrictive Environment
- Supplementary Aids and Services
- Statewide Assessments
- Districtwide Assessments
- Extended School Year (ESY)
- Need for Reevaluation to determine eligibility
- IEP Accessibility and Responsibilities – this describes how each teacher, related service provider, and others working with the student will be informed of his or her responsibilities for implementing the IEP
- IEP Approval
- IEP Meeting Participants
- Prior Written Notice (PWN)
- IEP Meeting Notes

Consideration of Special Factors

In the case of a student whose behavior impedes the student's own learning and/or that of others, the IEP Team must consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior. Interventions and supports must be addressed in the IEP, but can be addressed through goals, supplementary aids and services, or behavior plans.

A student with a communication need should be checked only if the student's language and communication difficulties impede or inhibit his or her communication with others. A student who receives speech language services to address pronunciation/articulation needs (i.e., pronouncing "lunch" as "wunch"), the student does not have communication needs that need to be addressed as a special factor.

The IEP Team must consider the communication needs of a student who is deaf or hard of hearing by considering the student's language and communication needs and opportunities for direct communications with peers and District personnel in the student's language and communication mode.

In the case of a student with limited English proficiency, the IEP Team must consider the language needs of the student as those needs relate to the student's IEP.

In the case of a student who is blind or visually impaired, the IEP Team must provide for instruction in Braille and the use of Braille unless the IEP Team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child.

Present Levels of Academic Achievement and Functional Performance (PLAAFPs)

A PLAAFPs describe the student's level of skill and ability at the time the IEP is developed. The PLAAFP must:

- Be written in language easily understood by all IEP Team members – acronyms should be avoided;
- Address both current academic achievement and current functional performance;
- Provide qualitative and quantitative information about current performance;
- Provide the basis for the measurable annual goal (i.e., baseline data) (if a level of performance is in the goal, the current level of performance is in the PLAAFP); and
- State how the student's disability affects involvement and progress in the regular curriculum or for preschool students, involvement in appropriate activities.

A PLAAFP should refer to the content standards (for academic areas) or expectations applicable for the student's grade level. If the student's disability is significant where consideration of content standards is not appropriate, alternative standards should be used.

OPI provides the following example of a PLAAFP:

Jackson can write numbers to 100 and he can add and subtract single digit numbers. Jackson does not consistently use borrowing and carrying, so he has difficulty adding and subtracting multi-digit numbers. His second grade classmates can solve two-digit addition and subtraction problems that require borrowing and carrying, averaging 17 out of 20 correct. Jackson solved 3 out of 20 correctly. Jackson needs to borrow and carry in order to solve higher-level math problems.

Given a story starter, June writes three sentences or less and makes approximately twice as many errors (spacing, spelling, punctuation) as she has words. Her classmates are writing 2-3 five sentence paragraphs. June understands the sequence words, first, next, and finally, however, she is not using them in her writing.

Measurable Annual Goals (MAGs)

Measurable Annual Goals (MAGs) set the direction for instruction and assist in determining the specific courses, experiences, and skills a student will need. The MAG is a desired outcome of performance that predicts how much the student will progress as a result of specialized instruction or intervention. There is a direct relationship between the MAG and the needs identified in the PLAAFP. Taken together, the PLAAFP and MAG specify how well the student performs today and how well the student is expected to perform in a year. The MAGs should be written to increase the student's successful participation in the general curriculum and meet the needs that result from the disability.

The IEP Team may develop goals in any service area (i.e., math, reading, etc.) in which the student has a need for special education or a related service in that area.

Measurable Annual Goals should:

- Be measurable without additional information;
- Allow a calculation of how much progress the student has made;
- Use the same method of measurement as the PLAAFP;
- Provide a way to measure whether the goal has been accomplished;
- Result in the SAME measurement of progress (has the goal been met) if measured by different people;
- Be connected to the content standards or expectations identified in the PLAAFP. This can include foundational skills necessary to achieve the content standard or expectation.

The components of a goal are:

- The condition: which describes the circumstances under which the behavior will occur and sometimes includes the environment in which the behavior will occur;
- The behavior: which identifies what is being measured; usually reflects an action or is directly observable, is measurable; and
- The criterion: which identifies the level of performance/behavior/skill required to meet the goal and may include a level of consistency (how often the student must meet the criterion) and will indicate what is success for this measurable annual goal.

A recommended format for a goal is: *Under what conditions, name of learner, will, name of behavior, to a specific criterion and consistency.*

Goals should be appropriately ambitious based upon the student's unique characteristics, but also must be achievable.

Benchmarks or Short Term Objectives

Benchmarks or Short Term Objectives are not required unless the IEP Team determines that the student will take an alternate assessment aligned to alternate achievement standards.

Benchmarks or Short Term Objectives may be included in IEPs for any student if the IEP Team agrees to provide for them.

If Benchmarks or Short Term Objectives are used, the Measurable Annual Goal does not need to contain all of the components as long as the information is in the Benchmark or Short Term Objective.

Related Services

Related services are those services necessary to assist a student with a disability to benefit from special education. Whether a related service for a student is necessary for that student to benefit from special education is an individualized decision based upon the students by the IEP Team.

Related services include speech-language pathology and audiology services; interpreting services; psychological services; physical and occupational therapy; recreation, including therapeutic recreation; early identification and assessment of disabilities in children; counseling services, including rehabilitation counseling; orientation and mobility services; medical services for diagnostic or evaluation purposes; related services also include school health services and school nurse services, social work services in schools, and parent counseling and training. The list of related services spelled out is illustrative and is not exhaustive.

The term "related services" does not include a medical device that is surgically implanted, the optimization of that device's functioning (e.g., mapping), maintenance of that device, or the replacement of that device. However, the District is responsible for checking the external components of this device to make sure it is working and notify the parent if there is a malfunction. If the device needs a change of battery during the school day to operate, the District is responsible for changing routine batteries.

The IEP Team must state the anticipated frequency, location, and duration of related services that will be provided. For those services that are variable in terms of frequency and/or duration – i.e., transportation or nursing services to be provided on an as-needed basis – the service time should be listed as 1 minute. This ensures that the service is provided, but also protects against requiring any minimal time when it is not possible to identify the exact duration of the service on a weekly basis.

Transportation

The District must provide transportation as a related service if it is required for the student to benefit from special education. Like any other related service, this is a determination made by the IEP Team. If transportation is provided as a related service, it must be provided at no cost to the parents. The IEP Team must consider how the student's disability affects the student's need for transportation, including determining whether the student's disability prevents the student from using the same transportation provided to children without disabilities, or from getting to school in the same manner as children without disabilities. This is a case-by-case determination.

If the student is able to use the same transportation or get to school in the same manner as children without disabilities, transportation would not be considered a related service.

Transportation as a related service may be provided via:

- School bus (if appropriate for the student's needs)
- Contracted services
- Individual Transportation Contract with parent

Under an Individual Transportation Contract, the parent is reimbursed at rates established by OPI. The Individual Transportation Contract must be obtained from OPI.

Preschool students with disabilities are entitled to transportation (including Individual Transportation Contracts) regardless of whether transportation is actually listed as a related service in the IEP.

Student disciplinary procedures apply to students receiving transportation as a related service.

Medical and Nursing Services

Medical services are not generally considered to be related services, and thus be required, unless these services relate to the evaluation of a student for purposes of determining eligibility. Nursing services, however, may be required to be provided to a student who requires nursing services to benefit from special education. These services can include assistance with medication needs, breathing needs, and other care within the scope of practice of a nurse. The IEP Team should reference if the student has an Individual Health Care Plan in the Supplementary Aids and Services. The Individual Health Care Plan should be developed in cooperation with the school nurse. If the student is in need of medical or nursing services, the school nurse should be invited to any IEP Team meetings to discuss such services.

Least Restrictive Environment

“To the maximum extent appropriate,” an IDEA-eligible student must be placed in the same classroom and school settings as non-disabled students. This is called the Least Restrictive Environment (LRE). The IEP Team must determine at the meeting the LRE for the student. The IEP Team may not determine to remove the student from age-appropriate regular classrooms solely because of needed modifications in the regular education curriculum.

The IEP Team may determine that the student requires special classrooms or removal from the regular education environment only when the nature and severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily as evidenced by data maintained regarding the student and information provided by IEP Team members. Thus, an IEP Team may determine that a student requires a different setting in order to benefit from special education.

The District is required to maintain a continuum of alternative placements, ranging from less restrictive to more restrictive. This means a range from regular education classes to special education/resource classes to isolated classes to special schools/day treatment to home instruction to hospitalization or institutionalization. The District's continuum of placements within its buildings include:

- General education classrooms (where the special education teacher provides consultative assistance to the classroom teacher)
- General education classrooms (where the special education teacher provides direct special education services to the student in the general education setting)
- General education classroom for the majority of the day and attends the special education resource setting for specialized instruction in areas of need
- Special education class for the majority of the day and attends general education class in subject areas consistent with capabilities
- Full-time special education class in the general education school
- Life skills
- Day treatment
- Homebound or other outside setting (i.e., public library) for all or a part of the day
- Hospital instruction program for all or a part of the day
- Placement by the District in another educational facility (i.e., residential facility, group home)

The placement is not the same as the location. Placement decisions (i.e., setting) are made by the IEP Team. Location decisions are made by the District (i.e., specific schools, grade). Parents may indicate a preference regarding location, but the location is determined by District administrators. However, location may be impacted by the setting where a particular placement is only located in one location.

The LRE must be determined based upon the individual needs of the student. This means that a student's LRE can be fluid to include a variety of settings throughout the school day if this is appropriate for the student's needs.

The following factors should be considered in determining the student's LRE:

- Academic Benefits (educational benefits available to the student in the regular classroom, with supplementary aids and services, as compared with the educational benefits of a special education setting):
 - Academic benefit to the student from being in the regular classroom;
 - Academic benefit to student from being in instructional setting outside regular classroom;
 - Progress on academic IEP goals and objectives in regular classroom;

- Degree to which student would be able to participate in general curriculum in regular classroom, with or without modifications; and
- Extent to which appropriate supplementary aids and services to support instruction in regular classroom have been considered or tried. Remember, removing a student from a less restrictive setting should only be done if, even with supplementary aids and services, the student cannot be educated satisfactorily.
- Nonacademic Benefits:
 - Other educational benefits the student has or would receive from placement in the regular classroom in areas such as language, social skills, behavior, self-esteem;
 - Progress student has or would make on nonacademic goals in the regular classroom;
 - Nonacademic benefit student would have or receives in special education setting;
 - Degree to which the student interacts with other students in the regular classroom;
 - Degree to which the student acquires appropriate communication and social skills modeled by non-disabled students; and
 - Extent to which appropriate supplementary aids and services to support placement in regular classroom have been considered or tried.
- Disruptive Effects (effect of the student's presence on the teacher and other students in the regular education classroom):
 - Degree to which the student would disturb or distract other students in the regular classroom or otherwise disrupt the learning environment;
 - Student's history or propensity of unruly, aggressive, violent, or assaultive behaviors, including injuries to others resulting from this behavior;
 - Student's history or propensity of sexually inappropriate behaviors or sexual harassment of teacher or other students;
 - Extent to which appropriate supplementary aids and services have been considered or used to control the disruption or detrimental impact on the regular education environment; and
 - Amount of time the regular education teacher would be required to devote to the student.

In determining the LRE, the IEP Team must answer the following questions in the IEP:

- Whether the student's educational placement is based upon the student's IEP;
- Whether the student's educational placement is as close as possible to the student's home;
- Whether the student's educational placement is in the school that the student would attend if the student did not have a disability;
- Whether the IEP team considered any potential harmful effect of the educational placement on the student or on the quality of needed services.

If the IEP Team answers any of these questions "no," it must provide a written explanation for its response.

The IEP Team must also explain the reasons for shortening or expanding the student's school day beyond what is attended by nondisabled students.

Special education and related services must be provided by or directed by qualified personnel (special education teacher, speech therapist, etc.) regardless of the setting. This means that even if a

student is receiving special education or related services in the regular education environment, these services must be provided by a special education teacher or licensed related service provider or someone under their direction.

Progress Reporting

The District must send periodic reports of the student's progress toward the goals in the IEP. The frequency of progress reporting is determined by the IEP Team, but must, at a minimum, align with the timing of when report cards or semester grades are provided to regular education students.

The District must complete the *Progress Report* form on the AIM System. The Progress Report form is automatically generated from the student's IEP on AIM. Caution should be used when generating the Progress Report on AIM to ensure that it contains the same goals agreed to by the parent.

Progress reporting is not required on short-term objectives or benchmarks provided that the progress is reported regarding the associated goal. Although progress reporting is not required on short-term objectives or benchmarks, it is recommended, so that parents are aware of the student's progress.

Progress reporting must be based upon the data maintained in accordance with the measurement tool identified in the goal. For example, if the goal states that the student's progress will be measured by teacher observation, the teacher must maintain data regarding observations.

Comments regarding progress should be limited to the information being reported and should be focused on the data gathered.

Supplementary Aids and Services

The IEP must include supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child:

- To advance appropriately toward attaining the annual goals;
- To be involved in and make progress in the general education curriculum and to participate in extracurricular and other nonacademic activities; and
- To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section.

The IEP does not have a section for accommodations necessary for the student (except for those specific for assessments); thus, accommodations and other aids and services and modifications must be listed in the Supplementary Aids and Services section. The IEP Team needs to also describe the settings in which the student requires the accommodations.

Accommodations change how something is done but does not change the learning standard for the student – the student is still expected to meet the same learning targets as nondisabled peers.

Modifications change the learning standards – these include the provision of alternate curriculum, assignments, and grading.

The Supplementary Aids and Services is where to address intensive paraprofessional support, which is referred to as adult support, the provision of a health plan (for a student with significant medical needs), the provision of a behavior intervention plan, and adaptive equipment. It is also where services provided on a consult basis are addressed. Consultation is not a special education or related service.

Although the supplementary aids and services to be provided need to be based upon peer-reviewed research to the extent practicable, this does not mean that the specific methodology employed need be determined by the IEP Team or stated in the IEP.

Assessments

The IEP Team must determine if the student will take the standard assessment or whether the student qualifies for the alternate assessment.

To qualify for the alternate assessment, **all** of the following questions must be answered “yes” by the IEP Team:

- Does the student have an active IEP and receive services under the Individuals with Disabilities Education Act (IDEA)?
- Do the student’s demonstrated cognitive abilities and adaptive behavior require substantial adjustments to the general curriculum?
- Do the student’s learning objectives and expected outcomes focus on functional application of skills, as illustrated in the student’s IEP annual goals and short-term objectives?
- Does the student require direct and extensive instruction to acquire, maintain, generalize and transfer new skills?

The determination of whether a student qualifies for an alternate assessments cannot be based upon the student’s:

- Excessive or extended absences;
- Disability category;
- Social, cultural or economic differences;
- Amount of time receiving special education services; and
- Academic achievement which may be significantly lower than his or her same age peers.

If the student does not qualify for the alternate assessment, the IEP Team must determine whether the student requires accommodations for the standard assessment. If the IEP Team determines it is necessary for the student to have accommodations for the standard assessment, it must list all accommodations needed in the IEP. The student will not be granted accommodations at the time of the assessment that are not contained within the IEP.

Extended School Year (ESY)

Extended School Year (ESY) is the provision of special education and related services beyond the normal school year. ESY services are provided when it is necessary for a student to maintain identified skills and to prevent or avoid substantial loss of previously acquired or emerging skills or behaviors. ESY is the exception, not the norm. ESY is also not the same as summer school.

The IEP Team must determine whether the student requires ESY for each Measurable Annual Goal. ESY is determined on the basis of regression/recoupment, which compares the amount of a student's regression as a result of an interruption in education services with the amount of time required to regain the prior level of skill. The IEP Team may use a variety of factors to assist in determining if the student has regression/recoupment needs:

- The nature and severity of the student's disability;
- The ability of the student's parents to provide educational structure in the home;
- Behavioral and physical impairments;
- The ability of the student to interact with peers;
- The student's vocational needs;
- The availability of alternative resources; and
- Whether there are "emerging skills" and "breakthrough opportunities," as when a student is on the brink of learning to read.

The IEP Team's decision regarding ESY must be made on the basis of data maintained by the District. Data should be maintained regarding the student's regression and recoupment of skills over school breaks (i.e., winter break, spring break). Data for documenting regression/recoupment may come from:

- Progress reports
- Behavioral data
- Data maintained regarding progression toward goals
- Parent reports regarding skill loss/retention over breaks
- Staff observations
- Curriculum-based assessments

Reasonable recoupment periods are:

- 20-30 instructional days if the break is 6-8 weeks
- 5-10 instructional days if the break is 3-5 weeks
- 3-5 instructional days if the break is 2 weeks
- 2-3 instructional days if the break is 1 week or less

See Sample ESY Data Form, Appendix C.

IEP Accessibility

The IEP must be accessible to each regular education teacher, special education teacher, related service provider and any other service provider who is responsible for its implementation. The case manager is responsible for informing all staff members responsible for implementation of the IEP their specific responsibilities related to that implementation. The case manager may do this by providing it electronically, verbally or on paper. If any of these individuals are given a copy of the IEP, she or he must ensure that confidentiality of the IEP is maintained at all times in the same manner as other special education records, including storage of and access to the IEP. Ongoing follow-up should occur to ensure that the accommodations, modifications and supports are provided in accord with the IEP.

Because of confidentiality requirements (only staff members with a legitimate educational interest are entitled to specific issues raised within the IEP), it may not be necessary to provide entire copies of the IEP to all staff members working with the student. The case manager may notify staff members who have an interest in a student's supplementary aids and services using the *Supplementary Aids and Services* form, see Appendix F.

Meeting Notes

IEP Meeting Notes should be used to record:

- Necessary information regarding IEP or services not recorded elsewhere in the IEP document; and
- If the meeting was rescheduled, reasons for rescheduling.

Notes may also be used to record discussions of options considered, options rejected, and reasons for rejection of proposals for initiating or changing the student's identification, evaluation, educational placement or the provision of FAPE. Notes can include the basis for rejecting any services by a member of the IEP Team or implications for educational planning recommended by the Evaluation Team (this includes the parent). These items must be addressed as part of the Prior Written Notice, but can be placed in the notes section with a reference to that in the prior written notice.

The IEP Notes section is not intended to be a verbatim recording of the IEP meeting, such as, who attended, when the meeting started, when the meeting ended, or what individuals shared. It is not necessary to record everything that is said. Information does not need to be in the IEP Notes unless the information is relevant to the development of the IEP and is not recorded in other sections of the IEP.

IEP Notes are generally kept by the case manager, but another designated staff member can take notes if requested by the case manager. Handwritten notes must be either attached to the IEP or typed into the Notes section.

Parents disagreeing with the IEP notes are not entitled to a change in the Notes unless the District agrees. If the parent disagrees with the IEP notes, he/she can provide notes that would be attached to the IEP.

IEP Meeting Participants

All IEP Team meeting participants must sign the portion of the IEP to indicate that they participated in the IEP Team meeting. Signing this section of the IEP is not consent to the implementation of the IEP. There is a separate section for a parent to consent to the IEP.

Review and Revision of IEP

The IEP Team must convene, at a minimum, a meeting on an annual basis that is within 12 months of the adoption of the IEP to consider the student's goals and placement. At a minimum, the District must provide a copy of the Procedural Safeguards at the annual IEP Team meeting and should document the provision of the Procedural Safeguards in the IEP Meeting Notes.

The District must convene an IEP Team meeting prior to the expiration of the IEP if:

- The student has achieved the Measurable Annual Goal prior to the expiration of the IEP;
- The student is not making expected progress toward the Measurable Annual Goal or in the general education curriculum;
- Staff members or the parents believe the student may have additional needs not previously served;
- There is a reevaluation which needs to be considered by the IEP Team regarding the student's needs; or
- There are changes to the student's needs as a result of a reevaluation or need for reevaluation that need to be considered by the IEP team.

Generally, it is advisable to convene an IEP upon the request of a parent for any reason or for any other reason it may be necessary to review and/or revise the student's IEP.

The IEP Team determines whether a reevaluation of a student is appropriate. It is not necessary to conduct a reevaluation of a student to add additional service areas within an IEP, including related services. The IEP Team must document and justify how the new service area is related to the student's needs and provide data to support this. The IEP Team can determine to provide these additional services through an IEP amendment.

If a meeting is reconvened prior to the expiration of an IEP, the IEP Team can amend the current IEP to address revisions in goals, placement or services. If the IEP is amended, the original IEP's expiration date (12 months from adoption) remains and the IEP Team must convene by the expiration. The IEP Team could also alternatively adopt a new annual IEP, in which case the 12-month deadline starts over upon the adoption of the new IEP. It is generally advisable to amend an IEP for a small number of revisions to the IEP, while significant revisions to an IEP may result in a new IEP being written.

Provided that the District convenes an IEP Team meeting on an annual basis (i.e., before the IEP expires), it is not necessary to convene an IEP Team meeting to revise an IEP before its expiration if both the parent and District agree. If the parent and District agree no meeting is necessary, an IEP amendment should be completed and sent to the parent for consent. While minor revisions to an IEP may not require a meeting, substantial revisions to an IEP should occur only after an IEP

Team meeting. However, even minor revisions to an IEP require parental consent prior to implementation.

PARENT PARTICIPATION AND CONSENT

Attendance at IEP Meetings

Districts are held to a very high standard when it comes to parent participation at an IEP meeting. Every reasonable effort should be made to include parents in an IEP meeting. The District must take action to ensure that a parent understands the proceedings of the IEP Team meeting, including arranging for and paying for an interpreter for a deaf parent or a parent whose native language is not English.

While the in-person attendance of a parent is preferable, the law permits an IEP Team meeting to convene with the parent appearing by telephone or videoconference. Efforts should be made first to secure the in-person attendance of a parent, but if not possible, the District should make arrangements for the parent to attend via telephone or videoconference. The parent's attendance through alternative means should be documented in the IEP Meeting Notes. A draft IEP should be sent to the parent in advance of the meeting. Following the meeting, the District must provide copies of all documents shared at the meeting and provide the parent with a copy of the IEP developed at the meeting.

In rare circumstances, an IEP Team meeting can proceed without the presence of a parent (in person or by other means). This can occur only when the District is unable to convince the parents they should attend. Before a meeting without a parent in attendance can proceed, the District must make multiple attempts to reach a mutually agreeable meeting time with the parent and must document such attempts. These attempts can be records of telephone calls made and the results of those calls, written correspondence sent to the parent and any responses received, and records of any personal visits to the parent's home or workplace and results of such visits. These contacts can be added to the contact log in AIM.

There are occasions when it is difficult to reach a mutually-agreeable time with a parent for an IEP Team meeting prior to the expiration of an IEP. Although the District is required to convene an IEP Team meeting to develop a new annual IEP before the previous one expires, the Ninth Circuit Court of Appeals has ruled that it is better to reschedule a meeting with a parent after the expiration of the IEP than to meet without a parent prior to the expiration. To avoid this, IEP Team meetings should be scheduled well in advance of the expiration of the IEP. In the event that this circumstance may arise, the case manager must promptly contact the Director of Special Education and Pupil Services .

If a meeting proceeds without a parent in attendance, the District must provide a copy of the IEP, with a detailed Prior Written Notice, to the parent following the meeting.

Consent

A parent is not required to consent to an IEP at the IEP Team Meeting; the parent must only sign as a participant at the IEP Team Meeting. Whether the parent consents to the IEP at the end of the meeting or requests time to consider the IEP, the District must provide the parent with a copy of the IEP.

A parent has three options in responding to a request to consent to an IEP drafted by the IEP Team at a meeting:

- Consent wholly to the IEP
- Consent with specific stated exceptions
- Reject the IEP

When a parent consents wholly to an IEP, the District must begin implementing the IEP upon receipt of the consent as it is set forth in the IEP document.

When a parent consents with specific-stated exceptions, the District must immediately begin implementing those areas in which the parent provided consent within the IEP. The District must also begin engaging in attempts to resolve the areas of disagreement with the parent (i.e., the specific stated objections) to reach resolution, including convening additional IEP Team meetings. If it is an initial IEP, the District can only implement the areas in which the parent has provided consent and must try to resolve the areas of disagreement. If it is an annual IEP and the student has previously had an IEP, the District implements the areas of agreement for the new IEP and continues to implement the prior IEP where there is currently disagreement while attempting to resolve these issues.

When a parent rejects an initial IEP, the District cannot implement any portion of that IEP. The District should attempt to resolve the disagreement with the parent. If the disagreements cannot be resolved, the District should notify the parents that its proposed IEP, with the Prior Written Notice explaining the reasons and bases for that IEP, remains its offer of FAPE.

When a parent rejects an annual IEP, the District must continue to implement the last-agreed upon IEP. The District should attempt to resolve the disagreement with the parent. If the disagreements cannot be resolved, the District should notify the parents that its proposed IEP, with the Prior Written Notice explaining the reasons and bases for that IEP, remains its offer of FAPE. Until the parent consents to a new IEP, the District must continue to implement the last-agreed upon IEP.

If a parent does not respond to attempts to obtain consent for an annual IEP – neither specifically consenting to or rejecting an IEP – the District must make informal (but documented) attempts to obtain consent. If, after the informal attempts and a reasonable amount of time has passed, a parent does not respond to the requests to obtain consent, the District must send written notice to the parent again requesting consent and informing the parent that it will implement the new IEP within 15 days of the notice if the parent does not respond. If there is no response within 15 days of the letter, the District must implement the new IEP unless the parent exercises his or her procedural rights (i.e., mediation or due process). *See* Sample 15-Day Letter, Appendix D. This does not apply to initial IEPs.

Unmarried or Divorced Parents

Unless there is a court order restricting the rights of a parent, unmarried or divorced parents have a right to the education records of their child. They also have the right to participate in the decision-making of their child.

The decision-making rights of unmarried or divorced parents, however, does depend upon the language of any parenting plans or court orders explaining those rights. Where there is no parenting plan or court order restricting a right or granting joint decision-making rights to both parents, either parent may grant consent to an evaluation or IEP. This means that upon receipt of one parent's consent, the District can proceed with an evaluation or implementation of an IEP.

If there is a parenting plan or court order providing joint decision-making, both parents must consent prior to proceeding with an evaluation or implementation of an IEP. If only one parent consents and the other refuses consent, the District must attempt to resolve the disagreement with both parents in order to obtain the consent of both parents. If the student has an IEP, the District will continue to implement the last-agreed upon IEP until such time as both parents consent to a new IEP.

See Unmarried or Divorced Parent Guidelines, Appendix E.

If the parents are married, either parent can provide consent.

Other Individuals who can be a “Parent”

In most cases, the “parent” is the student’s biological/adoptive parent. However, a “parent” under IDEA also includes:

- A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (this does not include DPPHS/CFS if the child is a ward of the State); or
- 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.

A foster parent can only act as a “parent” if state law permits. Montana law permits a foster parent to act as a “parent” only if the biological parents’ rights to make decisions have been “extinguished,” the foster parent agrees to act as the “parent,” and there is no conflict of interest. If a child is in foster care and parental rights have not been terminated, either the biological parent (if he or she is available) makes decisions or a surrogate parent may need to be appointed.

A “parent” also includes a surrogate parent.

An individual acting in the place of a biological or adoptive parent with whom the child lives should only be considered a “parent” when there has been no provision made for the child and the child is not under the care of DPPHS/CFS.

The biological or adoptive parent must be “presumed” to be the “parent” unless there is a judicial decree restricting that parents’ rights. However, this presumption is superseded if there is a court order identifying an individual as a “parent” or responsible for decision-making.

Revocation of Consent

A parent may revoke consent to the provision of special education and related services to his or her child at any time. The revocation of consent from the parent must be in writing. OPI has provided a sample revocation form. *See Revocation (Withdrawal) of Consent for Services*, Appendix F.

In conjunction with providing the revocation form, the District must send Prior Written Notice to the parent informing him or her of the implications of revoking consent. OPI has provided a sample prior written notice for revocations form. *See Prior Written Notice – Revocation of Consent*, Appendix F (this form should only be used for revocations). The District must identify a date services will cease.

Once the written revocation has been received and prior written notice has been provided, the District must cease providing all special education and related services to the student. The student is exited from special education and any IEP that was in place is no longer valid. No evaluation is necessary to exit the student from special education. The parent and student are also no longer protected by the IDEA procedural safeguards. Once revocation is effective, the District is not obligated to reconvene an IEP Team meeting to consider the student's IEP.

The District may not use mediation or due process to challenge the parent's revocation of services.

If the parent later requests an evaluation, the evaluation is an initial evaluation and requires a referral.

In the event that the parents are unmarried or divorced and there is no parenting plan or court order requiring joint decision-making, either parent can revoke consent to the provision of special education and related services. The revocation is effective in the same manner as any other revocation. The other parent may request the student be referred for special education services and consent to an evaluation. In this instance, the District must respect each parent's revocation or consent once provided even if it results in a student being exited from special education to being evaluated again for eligibility within a short time period.

Transfer of Rights

All parent rights under the IDEA transfer to the student upon reaching the age of 18 unless the parent provides a court order appointing the parent or another person as guardian of the student.

Prior to a student reaching the age of 18 (at least one year in advance), the District must provide notice to the parent and student about the transfer of rights. *See Transfer of Rights* (parent and student), Appendix F. The IEP also contains a section identifying the date upon which the rights transfer to the student (i.e., 18th birthday).

Surrogate Parents

The District must nominate a surrogate parent to ensure the rights of a student are protected if:

- No parent can be identified;

- After taking reasonable efforts to locate the parent, the District is unable to find the parent;
- The child is a ward of the state and the biological parents are not involved; or
- The child is an unaccompanied homeless youth as defined by the McKinney-Vento Act.

The District must file legal pleadings with the Youth Court for Park County within 10 calendar days of becoming aware the student is in need of a surrogate parent. The case manager must contact the Director of Special Education and Pupil Services promptly upon becoming aware that a student may need a surrogate parent and legal advice should be sought. The youth court may require that the District's legal counsel file the necessary paperwork.

The District designees to seek appointment of a surrogate parent are the Director of Special Education and Pupil Services or the Superintendent.

The person selected as a surrogate parent must be an adult who:

- Is not an employee of the Office of Public Instruction, the District or any other agency that is involved in the education or care of the student (including any case workers);
- Has no interest that conflicts with the interest of the student he or she represents; and
- Has the knowledge and skills that ensure adequate representation of the student.

Whenever practicable, the surrogate parent must be familiar with the cultural or language background of the child. The District may nominate as a surrogate parent a person who is an employee of a nonpublic agency that only provides non-educational care for the child and who meets the above standards.

The youth court must act within 20 calendar days of receipt of the legal pleadings. If the youth court fails to act within 20 days, the person nominated by the District will legally be authorized to act as a surrogate parent. The youth court must act within 20 calendar days of receipt of the legal pleadings if it wishes to reject the nominee.

The surrogate parent is required to:

- Whenever practicable, be knowledgeable about the educational system and special education requirements and the legal rights of the student in relation to the educational system;
- Represent the student in all decision-making processes concerning the student's education by becoming thoroughly familiar with the student's history contained in school or other records;
- Comply with all state and federal confidentiality laws;
- Approve or disapprove of the student's educational evaluation and placement; and
- When necessary, initiate any mediation, hearing, or appeal procedures in the best interests of the student.

A surrogate parent must be reimbursed by the school district for all reasonable and necessary expenses that are incurred in the pursuit of the duties of the surrogate parent, as outlined by the Superintendent of Public Instruction.

TRANSITION SERVICES

Beginning with the IEP that will be in effect when the student turns 16, the IEP Team must address postsecondary transition services for the student. This means that the IEP Team must address Transition Services if the student will turn 16 during the term of the IEP. If the IEP Team determines it is appropriate, it may address postsecondary transition services for a student prior to age 16.

For the IEP Team meeting for the development of the IEP that will be in effect when the student turns 16, the District must invite the student to the meeting for the discussion of Transition Services. If the student does not attend, the District must ensure that the student's strengths, preferences, and interests are provided in advance and considered by the IEP Team.

The IEP meeting notice must indicate that the purpose of the meeting will include the discussion of Transition Services. Because Transition Services are often provided by outside agencies after the student graduates, the District must identify all agencies that may be responsible for providing these services to the student and, with the prior consent of the parent, invite representatives of these agencies to the IEP Team meeting. This includes Vocational Rehabilitation.

The IEP must address the student's measurable postsecondary goals, which are designed to address the student's post-school goals after leaving school. The goals (and assessments upon which they are based) fall into four categories:

- Education
- Training
- Employment
- Independent Living Skills

Depending on the individual student, it may not be necessary to address all four areas. The goals and assessments given must be chosen based upon the unique characteristics and needs of the student.

The District does not have to complete progress reports on measurable postsecondary goals.

The measurable postsecondary goals must be based on age-appropriate transition assessments. These are formal and informal assessments which:

- Provide relevant information about the student in relation to key areas for transition planning
- Provide information about the student's current levels of functional performance
- Indicate appropriate accommodations to support student success
- Provide a basis for measurable postsecondary goals
- Provide a basis for measurable annual goals

They should also provide information about a student's strengths and needs to prepare for post-school activities, which could include (depending on the individual student): postsecondary

education, vocational education, integrated employment, adult or continuing education, adult services, independent living, participation in the community, self-determination, and/or parenting.

Educational assessments include:

- Classroom-based assessments
- Grade or school-wide assessments
- Academic assessments (i.e., subject area assessments)
- Observation reports by teachers, employers, parents, or other District personnel

Employment assessments include:

- Ratings of employability
- Vocational interest inventories
- Functional skills assessments
- Structured assessments in the work setting
- Evaluations of interview experience
- Work skills assessments (punctuality, work completion, dress, handling criticism)
- Employer references

Training assessments include:

- Armed Services Vocational Aptitude Battery (ASVAB)
- Computerized skills assessments
- Montana Career Information Service (MCIS)
- Self-determination scales
- Vocational Readiness Ratings

Independent Living Skills include:

- Daily living skills assessments
- Assistive technology evaluation
- Independent living skills assessments

Assessments may provide information on more than one area.

In addition to measurable postsecondary goals, there must also be a description of the Transition Services which are services provided to the student prior to leaving school to assist him or her to meet the measurable postsecondary goals. The Transition Services are to be provided in the following areas:

- Instruction – the academic/lifelong learning skills necessary for the student to complete needed courses, succeed in the general curriculum, and gain needed skills (i.e., development of self-advocacy skills, ability to use various means of communication, ability to address personal safety)
- Employment – instructional activities, techniques, and services to assist the student to find his/her desired job (i.e., work experiences, interview opportunities, career counseling)
- Community Experiences – experiences in the community that benefit the student to prepare for post-school life (i.e., participating in community events, field trips, volunteering)
- Post-school Adult Living – activities to assist the student in developing skills needed to live as an adult (i.e., shopping, money management)

- Related Services – activities to assist the student in seeking assistance from other agencies (i.e., researching and communicating with Vocational Rehabilitation services)
- Daily Living Skills (if appropriate) – activities to assist the student (if appropriate) with daily living skills (i.e., cooking)
- Functional Vocational Assessments – information gathered through situational assessment, observations, surveys, interviews, or formal measures with a focus on practical skills for job/career aptitudes and skills.

To address these required components, the IEP Team needs to describe the student’s wishes for post-school activities. This information should be gathered from the student, parent, and any staff members who may have discussed these wishes with the student. The IEP Team must also describe the assessments conducted and develop the measurable postsecondary goals.

The IEP Team must also describe those courses within the school the student needs to achieve the goals. This includes estimating the student’s graduation date, calculating the credits earned by the student at the time of the IEP development, and calculate the number of credits necessary. The courses listed include those in which the student is current enrolled as well as those courses which may be available for the student to achieve the goals and graduate. Courses listed for future school years are options; the courses listed for future school years are not to be treated as determinations that the student will be in those courses for that given school year. The list of courses is not an IEP team decision in the event that changes are made to the student’s schedule. For instance, if the student takes art instead of choir as indicated in the course of study section, this change does not require an IEP amendment.

The IEP Team must then address the Transition Services to be provided to meet the goals. These are services provided prior to the student leaving school. The IEP Team must designate those individuals responsible for providing the services, who can include the student, parent, and District staff members. While the IEP Team may designate other agencies as responsible for these services, the District is responsible for implementing alternative strategies if the outside agency fails to provide the service.

IMPLEMENTATION OF IEPs

The District is responsible for implementing the IEP as it is agreed upon by the IEP Team. Failure to implement the agreed-upon IEP is a violation of the IEP. The District also cannot unilaterally change a student’s IEP or placement without permitting parental participation and obtaining parental consent (except where the parent fails to respond to attempts to obtain consent and the District has sent the 15-day implementation notice- see *Appendix D Sample 15-Day Implementation Letter*).

If it becomes necessary to revise an IEP, including a student’s placement, to ensure that the District can implement it, the District must convene an IEP Team meeting or seek consent from the parent to amend the IEP without a meeting if the change is relatively minor and a team discussion is not necessary to ensure parental participation.

The licensed special education teacher is responsible for implementing special education services. In the alternative, the special education teacher may direct other personnel (i.e., paraprofessionals, regular education teachers) to provide the special education services to the student. Likewise, related service providers (i.e., physical therapists, speech-language pathologists, occupational therapists) are responsible for implementing related services or providing direction to other staff members to provide these services. Special education teachers and related service providers cannot wholly delegate their responsibilities to provide special education and related services to students – if they cannot provide the services directly, they must provide direction and supervision for the staff member providing the services.

Because the nature of the services to be provided may be reliant upon one staff member or provider, it is not unusual for a student to miss a session if the staff member or provider is absent. Infrequent, isolated absences are permitted under the IDEA and do not require a “make-up” session. Where the absences or missed sessions become more frequent, “make-up” sessions may be required if the student is harmed by the absences.

Missed sessions under the following categories would indicate there has not been educational harm:

- Educationally Justifiable – school related activities such as assemblies, field trips, PIR early outs, etc.
- Infrequent – not a significantly large number of missed sessions missed due to provider sick leave, personal leave, trainings, meetings, etc.

If student has missed a significant number of instruction or therapy sessions, the student’s progress over the period of time sessions were missed must be assessed. The staff member or provider must contact the Director of Special Education and Pupil Services if progress is not sufficient or the student has exhibited regression. Based upon the data gathered, reasons for the missed sessions, and nature of harm, the Director of Special Education and Pupil Services may provide “make-up” sessions or request an IEP Team meeting to discuss the issue.

PRIOR WRITTEN NOTICE

IDEA requires Prior Written Notice (PWN) to the parents/guardians of a student *a reasonable time before* the District:

1. Proposes to initiate or change the identification, evaluation, or educational placement or provision of a free appropriate public education to a student; OR
2. Refuses to initiate or change the identification, evaluation, or educational placement or provision of a free appropriate public education to a student.

The purpose of providing PWN to a parent is to:

- provide comprehensive documentation of the proposed or refused actions made;
- make sure the district and the parents are on the same page about a child's educational program;
- provide the parents with an opportunity to voice any concerns or suggestions;
- provide sufficient information to ensure that the parent understands the rationale behind a district's decision-making regarding a particular proposed or refused action;
- ensure that informed parental consent is obtained, as necessary; and
- assist the parent in determining the basis for any disagreements with the proposed and/or refused actions addressed in the prior written notice and whether to seek resolution of any dispute through local dispute resolution procedures, a state complaint, mediation or a due process hearing.

The PWN is drafted by District personnel – it should not be drafted with the assistance of the parent or the IEP team.

Requirements of Prior Written Notice

The PWN provided to the parent must contain the following seven elements:

1. A description of the action proposed or refused by the district.

This requirement does not require a separate notice for each proposed or refused action – the district can issue one PWN that addresses each action that was proposed or refused. It is necessary to draft a factually accurate and informative statement that describes what the district is proposing to do or not do. If the AIM system or District template limit the number of characters, use a supplementary document to complete the PWN and inform the parent that there is a supplementary document. It is never a good excuse that the computer program did not allow the user to fully complete the required sections.

2. An explanation of why the district proposes or refuses to take an action.

In this section, the District must detail its rationale for its proposed and/or refused actions. If the District is rejecting the opinions of outside providers or individuals, it must explain why. This is the time to be specific – the District must detail its decision in such a way that all of the factors it used in making a decision are available for the parent's review.

DO NOT cut and paste from prior PWN documents – the risk of making a mistake is too great.

3. A description of any other options the IEP team considered and the reasons for the rejection of those options.

In this section, the District must describe all other options and why there were rejected. If no other options were considered, don't just say "none" or "not applicable" without an explanation. An example is "There were no other factors that were considered by the IEP team. Neither the parents, nor any LEA personnel participating in the meeting, presented any other options that required consideration."

In order to avoid concerns regarding pre-determination, make sure the team identifies each request from the parent and explain how the team considered each request. Include reference to the parent's comments or written documentation if applicable.

4. A description of each evaluation procedure, assessment, record or report the District used as a basis for the proposed or refused action.

The PWN needs to identify each evaluation or other assessment it relied on when making the decision to propose or refuse a particular action. If the parent provides any oral or written information from a private provider, identify the provider and his or her opinion in the PWN to demonstrate that it was considered by the team.

5. A description of any other factors that are relevant to the District's proposal or refusal.

There may be other factors that are relevant to the District's decision-making process, like cultural factors, language issues, communication concerns, behavior concerns, consideration of the harmful effects of the program or placement proposed and/or refused, and assistive technology. If there are no other factors that are relevant, don't just say "none" or "not applicable."

6. A statement that the parent of a child with a disability has protection under the procedural safeguards of the Administrative Rules of Montana and if the notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; and

If the PWN is being provided as a result of the initial referral for evaluation, the District must advise the parent of his or her rights, and the provide a copy of the parental rights notification.

7. Sources for the parent to contact in order to obtain assistance in understanding the provisions of the notice requirements.

Every PWN must include sources for the parent to contact in order to obtain assistance in understanding the provisions of the notice requirements.

All PWN documents must be written in language that is understandable to the general public and provided in the native language of the parent (or other mode of communication used by the parent),

unless it is clearly not feasible to do so (cost cannot be a factor in feasibility). If the native language or other mode of communication used the parent is not a written language, the District must take steps to ensure that the notice is translated orally, that the parent understands the content of the notice, and that there is written evidence of the two preceding requirements.

Timing of Prior Written Notice

The District must provide PWN prior to implementation. “Prior” does not refer to before the meeting or the decision is made. It is vital that the PWN be provided after decisions are discussed but before anything is implemented.

While portions of a PWN may be drafted in advance, it is not recommended that any portion of the PWN be provided in any draft Evaluation/IEP documents provided to team members before the meeting. Providing the parent with anything in advance of the meeting on decisions is evidence of predetermination.

It is recommended that the PWN be developed after the meeting concludes. While the practice may have been to have the parents sign to consent to the IEP at the end of the meeting, this should not occur due to the need to have the PWN. It is not recommended that the case manager rush to complete the PWN so that the parent can sign the IEP that day or complete with PWN with the parent present.

It is recommended that the PWN be completed within five (5) days of the meeting (ER or IEP meeting). The PWN should be included in the completed version of the Evaluation Report or IEP with any changes made by the team during the meeting incorporated. It is not recommended that the document be sent home with the student but rather mailed and/or hand-delivered to the parent (or left at a school office). A self-addressed stamped envelope should be included to permit the parent to return the signed IEP. Upon receipt, the District can begin implementation of the new IEP.

It will be necessary for the District to track the Evaluation Reports and IEPs sent to parents to ensure that follow-up occurs. The case manager should make informal attempts over several days (10 school days or 2 school weeks) to seek a response of the parent regarding the proposed IEP. If the parent fails to respond, the District will need to send a 15-day implementation letter. *See Sample 15-Day Letter, Appendix D.* If the IEP sent is an initial IEP, the District must continue to attempt to seek parental consent and document its efforts. An initial IEP cannot be implemented if parental consent is not obtained.

Events Requiring Prior Written Notice

<i>Prior Written Notice Required</i>	<i>Yes</i>	<i>No</i>
Identification		
Child Find Activities		X
Screening		X
School-based team activities		X
Use of intervention strategies (RtI, MTSS)		X
Referral for initial evaluation	X	
Change in/addition or eligibility category	X	
Evaluation		
Collection of new data for initial eval or reeval	X	
Review of existing data		X
Evaluation of progress on annual goals		X
Administration of state or districtwide assessments		X
Request for an IEE		X
Determination of eligibility	X	
Refusal to conduct an evaluation	X	
Evaluations used in the performance of a FBA	X	
Educational Placement		
Initial placement into special education	X	
Relocation of sped program		X
Any change in educational placement/LRE	X	
Termination of special education and related services	X	
Transfer of student to another school		X
Graduation with a regular diploma	X	
Disciplinary removal for more than 10 school days	X	
Disciplinary removal for less than 10 school days		X
A change in placement due to a series of disciplinary removal (i.e.; pattern)	X	
Disciplinary removal to an alternative location	X	
Provision of FAPE		
Deletion or addition of a related services	X	
Change in annual goals on an existing IEP	X	
Increase or decrease in special education services or related services	X	
Change in how a student will participate in state and districtwide assessments	X	
Any revision of the IEP	X	
Increase or decrease in supplementary aids and services or supports to school personnel	X	
Refusal to increase or decrease a related service	X	
Consideration of ESY if done at a separate meeting	X	
Implementation of a BIP	X	

GRADING, PROMOTION, AND GRADUATION

Grading

Grading policies must be adopted and implemented on a nondiscriminatory basis. The District may offer pass/fail grading or grades awarded based on an alternate achievement standard, provided these options are available to all students.

The IEP Team may provide for modified grading for a student with a disability if appropriate for the student's needs. Modified grades are grades that are based on a curriculum that is modified for an individual student. A modified curriculum is one in which the expected learner outcomes are different from those of the student's grade-level peers. The IEP Team individualizes modified expected outcomes for the student. Modified grading may be provided by the IEP Team in the IEP regardless of the placement of the student. This means that modified grading may be provided to special education students placed in the regular education setting. If the student is placed in a regular education classroom, grading should be a collaborative effort between the regular and special education teachers. The standards for modified grading must be addressed in the IEP; teachers must only apply the standards for modification that are addressed in the IEP.

The IEP Team may also determine a student with disabilities should receive no credit in a regular education classroom. In such event, the IEP Team could establish grading or assessment criteria in the IEP or reference the modifications in the supplementary aids and services section. These criteria could include the student's progress toward meeting annual goals.

The District may not identify a student's special education classes on the student's transcript. The District may use other descriptive phrases for classes provided that the description does not identify the student or the class as special education. The transcript may also not reflect that a student was subject to modified grading or a modified curriculum.

A student receiving modified grading is eligible for honor roll, class ranking, or valedictorian/salutatorian honors based upon the same objective criteria to which nondisabled students are subject.

Promotion

When student is at a major transition point – preschool, elementary, middle school, and high school, the student will receive a new case manager. The transition “sending” case manager will provide the “receiving” case manager written summary of academic and behavioral assessment to assist in development of general education curriculum coursework, IEP goals and LRE options.

A student who reaches 14 on or before September 10th of the school year and is not receiving grades under his or her IEP should be promoted to high school.

In promoting a student from middle school to high school, the District should strongly consider the student's chronological age and physical development as well as the LRE.

Graduation

Under Montana law, the District is responsible for providing FAPE to a student until that student graduates or ages out of the system. Although IDEA provides that it applies to students through age 21, it permits individual states to adopt different age limits. Montana has done so. Under Montana law, a student ages out of the system if before the beginning of any new school year, the student has turned 19 on or before September 10th. An eligible student who is 18 at the time of the start of the school year through September 10th is entitled to special education and related services even if that student turns 19 during the school year unless the student has met the requirements for graduation. Staff members must contact the Director of Special Education and Pupil Services regarding students who are at risk of aging out.

Districts may, but are not required to, serve students beyond age 19. This may be done through policy or through board approval of exceptions to the age limit permitted under MCA § 20-5-101. Under current law, a district cannot receive A&B funding for a student over the age of 19. However, a district may permissively levy for costs of providing special education and related services under the tuition levy. MCA § 20-5-324(5)(a)(iii).

Graduation Requirements

Graduation is considered a change of placement, which means that the decision regarding an IDEA eligible student graduating must be made by the IEP Team. An evaluation is not required prior to determining whether a student is eligible to graduate.

The IEP form which includes Transition Services also includes a section regarding graduation. There is also a separate graduation form on the AIM system that contains the same information. If the separate form is used, the District must also provide Prior Written Notice explaining the graduation decision.

For each annual IEP starting with the IEP that will be effective when the student turns 16, the IEP Team must determine:

- Whether the student is projected to meet the District's graduation requirements (these are the same requirements to which nondisabled students are subject for purposes of being eligible to graduate); or
- Whether the student is projected to substantially complete his or her measurable annual goals and does not need new annual goals.

A student can meet District graduation requirements even if the student is receiving modified grading or modified curriculum. A student may seek a waiver of a graduation requirement pursuant to Board Policy 2410 and 2410P. If any graduation requirements are waived for the student, the student can still be considered to meet District graduation requirements.

If the IEP Team determines that the student will not meet the District's graduation requirements or will not substantially complete the measurable annual goals and does need new annual goals, the IEP Team will need to develop a new annual IEP with new measurable annual goals.

A third option available is where the student will not meet District graduation requirements or will not substantially complete his or her measurable annual goals, but will age out of the system. The case manager must contact the Director of Special Education and Pupil Services if the student is at risk of aging out of the system prior to meeting graduation requirements.

An IDEA-eligible student who is determined by the IEP Team will meet District graduation requirements or will substantially complete his or her measurable annual goals and does not need new annual goals is eligible to graduate.

Summary of Performance

The District must complete a Summary of Performance for an IDEA-eligible student who is graduating or is aging out of the system. The Summary of Performance must contain a summary of the student's academic achievement and functional performance, which shall include recommendations on how to assist the student in meeting the child's postsecondary goals

See Summary of Performance, Appendix F.

Diplomas

An IDEA-eligible student who has been determined to be eligible to graduate by his or her IEP Team is entitled to a regular diploma regardless of whether the student met District graduation requirements or substantially completed his or her measurable annual goals and is not in need of new annual goals.

TRANSFER STUDENTS

If a student moves into the District while in the process of being evaluated (regardless of the location from which the student moved), the District is required to complete an evaluation of the student. The District is not required to complete the evaluation within 60 days, but rather must complete the evaluation as soon as feasible.

Students moving within Montana

The District is not required to evaluate a student moving to a new school within Montana who has been determined by another district to be eligible.

For those students who have been determined to be eligible by another Montana school district and have an IEP in effect at the time of transfer, the District must continue to provide FAPE by providing services comparable to those services in the student's existing IEP. Within a reasonable time period after the student's transfer, the District should convene an IEP Team meeting to determine whether to:

- Adopt the IEP from the previous district;
- Amend the IEP from the previous district; or
- Develop a new IEP.

If the student's IEP is expired (i.e., over 12 months old), the District must convene an IEP Team meeting to develop a new IEP with the information available at the time of the transfer. The IEP Team should review and revise the new IEP with updated present level of performance information in order to develop more specific goals and services, within approximately 45 days.

Students moving from outside of Montana

For those students who have been determined to be eligible by another school district outside of Montana and have an IEP in effect at the time of transfer, the District must continue to provide FAPE by providing services comparable to those services in the student's existing IEP. Within a reasonable time period after the student's transfer, the District must either:

- Refer the student for a special education evaluation and send the parent an Evaluation Plan in which to seek consent to conduct an evaluation; or
- Convene an IEP Team meeting to develop a new IEP.

The District must continue to provide comparable services under the student's existing IEP until the parent consents to the implementation of a new IEP. If the existing IEP is being implemented at the time progress reporting is required, the case manager must develop a form that will report the student's progress on that existing IEP. The case manager will not be able to use AIM to generate a progress report because the existing IEP from another state was not developed through AIM.

If the District is aware that the student has been determined to be eligible for special education in the previous district (regardless of its location) but is unable to obtain a copy of the student's IEP, the District must promptly convene an IEP Team meeting to develop an IEP for the student.

See Transfer Student Documentation form, Appendix F.

PRESCHOOL SERVICES

Preschool services are part of the continuum of services the District must provide. The District offers a special education preschool program.

Under Montana law, the preschool program (for children between the ages of three and five) must be offered free of charge.

Pursuant to the District's Child Find activities, preschool aged children between ages three and five are identified either by transitioning from Part C services or through preschool screening activities. When the District conducts an evaluation of a student transitioning from Part C services, it must provide a copy of the Eligibility Determination from the Evaluation Report (with the written consent of the parent) to the Part C agency if it is not in attendance at the Evaluation Report meeting.

Unless the student is not located or identified prior to turning three, the District must ensure that an IEP has been adopted prior to an eligible child's third birthday. The IEP incorporates the same categories as an IEP for a K-12 student, including consideration of ESY services.

Although the law does not require school districts to provide preschool services to nondisabled students, the District must provide special education preschool services in the LRE. Thus, a preschool student must be educated along nondisabled peers to the maximum extent appropriate. The special education preschool student may only be removed from the regular education setting if the nature and severity of the child's disability prevents him from receiving a satisfactory education, even with the use of supplementary aids and services. To meet the LRE requirement, the District is required to place preschool students as appropriate with nondisabled peers. This can include placement in programs operated by the District that are open free of charge to nondisabled preschool students or in other programs with nondisabled peers.

Preschool Outcome Measures

Preschool outcome measures must be completed for preschool-aged children:

- Within 30 days of a determination of eligibility (provided it is at least six months prior to the child's sixth birthday); and
- Upon the occurrence of either:
 - The time a preschool-aged child is exited from special education and related services (if determined to no longer be eligible or in need of special education and related services);
 - or
 - Within 90 days of the child's sixth birthday for a child who will continue to receive special education and related services.

Preschool outcomes are measured through various assessments and/or a review of data in the child's file. Parental consent is not necessary to measure preschool outcomes.

Assessments can be conducted by the child's case manager, or anyone else with knowledge of the child's performance, including the child's parent. The District should request assessment and outcome measurement information during the transition meeting for any student transitioning from Part C services.

The Preschool Outcome Measures form must be completed separate from an IEP or Evaluation Report.

ASSISTIVE TECHNOLOGY

The IEP Team must determine whether the student requires Assistive Technology and/or Services as part of its consideration of special factors. A student requires Assistive Technology and/or Services it is necessary for FAPE and/or for the student to benefit from the educational services provided. The IEP Team must consider the individual student's Assistive Technology needs in relation to his or her education program.

The term "assistive technology" encompasses a broad range of assistive devices from "low tech" to "high-tech" learning tools.

- Low-tech examples: pencil grips, highlighters, paper stabilizers.
- High-tech examples: computers, voice synthesizers, Braille readers.

The IEP Team can determine it has sufficient information regarding the student's Assistive Technology needs and address those needs throughout the IEP as appropriate. Alternatively, if the IEP Team believes it needs additional information to determine whether and to what extent a student has Assistive Technology needs, it can seek an Assistive Technology Evaluation of the student. This evaluation is conducted pursuant to an Evaluation Plan signed by the parent.

Evaluation

OPI has not adopted licensing or certification standards for specialists in Assistive Technology. The evaluation must be conducted by an individual knowledgeable in assistive technology. If necessary, the District can contract an outside provider to conduct this evaluation.

The evaluation should determine whether the student requires Assistive Technology and/or Services to benefit from education and the nature of the student's needs, including how the student may use Assistive Technology in different environments. Information provided by the parent must be considered as part of this process.

Selection of Assistive Technology Device

If the IEP Team determines a student requires Assistive Technology, the Assistive Technology must be provided at no cost to the parent. The District cannot require the parent to provide an Assistive Technology device, but can agree to allow a student to use a family-owned device if appropriate and volunteered by the parent. The selection of the Assistive Technology is an IEP Team decision and should be assisted by an Assistive Technology assessment. The District is not required to provide the specific device or service requested by the parent, but should consider the parent's preference in determining the specific device or service. The District is not required to provide a state-of-the-art device if a less-advanced or less expensive device meets the needs of the student.

The parent and student, if appropriate, can provide valuable information regarding fitting, customizing, and adapting the technology for the student.

The IEP Team should not identify a brand of Assistive Technology in the IEP unless it is necessary for FAPE.

Disagreements about Assistive Technology are treated in the same manner as disagreements about any other component of the IEP.

Once the IEP Team determines that Assistive Technology is necessary for the student, the District must obtain the Assistive Technology without unnecessary delay. If a delay is anticipated, the District must inform the parent and explore alternatives to ensure the student is provided access to his or her education and is provided FAPE until the Assistive Technology can be obtained. These alternatives can include renting or borrowing a device.

The District is not required to purchase Assistive Technology if there are other options available for it to provide the Assistive Technology that will ensure the student with regular access. The District can seek payment of Assistive Technology through Medicaid (with parent approval), private insurance (with parent approval), renting or leasing, borrowing from outside groups, or funding through grants or foundations. If purchased by the District, the Assistive Technology becomes the property of the District. If the District pursues other options, the Assistive Technology is available for use of the District (to provide to the student) but is not property of the District.

District-purchased Assistive Technology remain with the District if the student transfers outside of or leaves the District. Assistive Technology purchased (with parent approval) through Medicaid or private insurance will likely belong to the parent and will go with the student if he or she transfers outside of or leaves the District. Assistive Technology obtained through other means will depend on the agreement with the provider if the student transfers outside of or leaves the District.

Use of Assistive Technology

The District is required to provide training to the student as well as anyone with whom the student may use the Assistive Technology regarding the device and/or services provided. This can include parents, special education teachers, bus staff, paraprofessionals, lunchroom staff, regular education teachers, related service providers, and others. Each teacher and provider involved with the student must be informed of the specific accommodations, modifications, and supports that must be provided for the student in accordance with the IEP.

Training and technical services to be provided in conjunction with Assistive Technology will depend on the nature of the technology and involvement of others but should include training about:

- The device and how it works;
- Programming and setting up the device;
- Recognizing and fixing minor problems;
- Integrating the device into the student's life at home;
- Integrating the device into the student's education goals and objectives;
- Maintenance of the device(s); and
- Resources within the local community for repair services.

The use of Assistive Technology must be incorporated, as appropriate, throughout the student's IEP. This can include the use of Assistive Technology in the student's measurable annual goals, as a related service, or as supplementary aids and services. The IEP Team must determine when and

how the student will use the Assistive Technology and in which settings the student requires the Assistive Technology.

The District is responsible for the maintenance, repair, and replacement of Assistive Technology devices it provides. If the student is using a family-owned device, the District must take measures to protect the device and should consult with the parent if maintenance or repair is needed. The IEP Team needs to address how reporting the needs for maintenance or repair should be handled and what is going to happen if the Assistive Technology is not available to the student because of the need for maintenance, repair, or replacement.

The District is not required to allow a student to take a District-provided Assistive Technology device home unless the IEP Team determines that the student needs access to that device in order to receive FAPE.

STUDENTS WITH BEHAVIORAL NEEDS

As part of its consideration of special factors, the IEP Team must determine if a student's behavior impedes his or her own learning or the learning of other students. If the IEP Team determines the student's behavior is an impediment, it must consider the use of positive behavioral interventions and supports or other strategies to address that behavior. Examples of positive behavioral interventions can include environmental changes, schedule changes, specific instructional methods, behavior intervention plans, and the use of reinforcement.

Functional Behavioral Assessments (FBA)

A Functional Behavioral Assessment (FBA) is a process used by a group of persons knowledgeable about the student to review and analyze the student's behavior. The FBA is used to form hypotheses of the relationships between events in a person's environment and the occurrence of specific behaviors.

An FBA is an evaluation that requires a parent to consent to an Evaluation Plan. The FBA analyzes the student's behaviors to target, the antecedents and consequences of these behaviors, hypotheses regarding the functions of the behaviors, and recommended strategies to address those behaviors. An FBA may be conducted by a behavior specialist, school psychologist, regular education teacher, special education teacher, counselor, or administrator. The FBA should involve a combination of input from many of these individuals as well as the parent. The FBA should be conducted in the environment in which the behaviors are intended to be targeted. Thus, FBAs about behaviors occurring in the school setting should be completed in the school setting.

The purpose of conducting an FBA is to develop a Behavior Intervention Plan (BIP), which is a written plan designed to address the student's behavioral needs. An FBA and BIP is one option – and best practice - for the IEP Team to consider to address a student's behavior that impedes the student's or other student's learning. Alternatively, the IEP Team can address positive behavioral supports and interventions through measurable annual goals, related services, and/or supplementary aids and services. It is advisable to conduct a FBA and BIP for students who demonstrate consistent and significant behavioral issues. Lack of a FBA to support a BIP may impact how the BIP is viewed if a parent challenges the District's actions.

Behavior Intervention Plans (BIP)

A BIP can be created to address students with behavioral issues after an FBA is conducted. The BIP must include positive behavioral interventions and supports.

The District can develop a BIP by crafting interventions that address the functions of the behavior, consideration of addressing the antecedents/consequences of the behaviors, teaching of acceptable replacement behaviors that serve the same function, and implementing strategies to address the behavior.

Because a BIP may require frequent revision to target problem behaviors, it is not advised that the BIP be developed by the IEP Team. Rather, the IEP Team can determine that a BIP is necessary

and include the implementation of a BIP in measurable annual goals or as a supplementary aid and service. In that event, District staff members with knowledge regarding the student and behavioral supports (school counselors, behavior specialists) should develop the BIP. The BIP must be provided to the parent.

Consent for the BIP is not necessary if referenced in the IEP – consent for the IEP serves as consent for the BIP. This allows staff members to have flexibility in revising the BIP if necessary to address current student needs. The parent is entitled to notice of the changes within the BIP and reviewing the revision. While specific consent is not required, the parent may object to the provisions of the BIP, which must be considered by the District. If a parent objects to a provision within a BIP to which the District does not agree, it is advisable that the District provide the parent with Prior Written Notice regarding the District’s disagreement and reasons for such disagreement.

If necessary and appropriate, a student’s BIP may need to include behavioral interventions and supports when the student is being transported as a related service. The BIP should be shared with bus drivers and aides who will be responsible for supervising the student while in transport. If a student experiences difficulties in the transportation setting with problem behaviors, the IEP Team should consider conducting an FBA and whether a BIP is necessary.

A FBA and BIP are required prior to adopting Aversive Treatment measures or when a student’s placement is changed due to disciplinary removals in excess of 10 days.

Positive Behavioral Supports

Positive behavioral supports must be used to address student behavior. Whether as part of a formal BIP or to address isolated or infrequent behaviors, the following are examples of positive behavioral supports. This list is not exhaustive.

- Posted classroom rules
- Problem-solving activities
- Pre-correction techniques – intentionally front-loading students by letting them know in advance about having an opportunity to demonstrate a specific expectation, social skill, or procedure.
- Appropriate instruction based upon the student’s abilities (students are more likely to engage in inappropriate behaviors if the curriculum/instruction is too easy or too difficult).
- Assistive technology – equipment, product, or system – that can be used to increase or improve functional capabilities.
- “Behavior momentum” – identifying and making three (or more) requests of the student in which there is a high degree of probability of the student completing and then following those with a request in which there is a lower degree of probability of complying and provide consequences for not complying. The individual requests must be based upon the individual student.
- “Chaining/sequencing” – reinforcement of responses in a sequential order. A task analysis is done to break down skills into specific tasks with reinforcement at each task. As new tasks are added, only the most recent task should be reinforced. If the student is not making progress on a task, the task should be broken down further.

- “Contingent observation” – having a student behaving inappropriately take a break and watch another student perform the same activity appropriately with the teacher reinforcing the appropriate behavior in front of the student. After allowing a period of observation, the teacher prompts the student to rejoin the group and reinforces the desired behavior.
- Reinforcement – using an effective system of reinforcements (can be verbal or nonverbal praise or actual reward) for desired or replacement behavior done at an interval determined appropriate for the student (continuous, interval, random). System of reinforcements should be made as student makes progress on frequency of engaging in desired behavior.
- “Differential reinforcement” – the reinforcement of one form of behavior or a response under one stimulus but not another (behavior or response). This involves ignoring undesired behaviors but reinforcing desired behaviors.
 - A modification of this could be reinforcing a replacement behavior and ignoring the undesired behavior.
- Parent training regarding behavioral supports.
- Prompting/cueing – use of a cue or prompt (visual, auditory, or physical) to facilitate a desired response.
- Social skills instruction – use of modeling, lessons, and practice of social skills
- Token economy – use of a system of reinforcement for appropriate/replacement behaviors in which tokens are given for a later exchange of a reward/reinforcer. Tokens are provided when desired behaviors occur.
- “Check in/check out” system – use of tracking system/report card for teachers to report on daily behavior at set intervals (hourly, class period, etc.)
- Peer modeling – use of peer “buddies” or peer groups to model appropriate behavior.
- Structured choices - providing students with two behavioral alternatives, each of which is directly linked to a specific outcome — one positive and one negative.

Data must be kept regarding the use of behavioral supports to determine the effectiveness of such supports.

Aversive Treatment

An IEP Team may consider Aversive Treatment for a student who exhibits behaviors which pose a risk of physical harm to the student or others, or a risk of significant damage to property, or significantly disruptive or dangerous behaviors which cannot be modified solely through the use of positive behavioral interventions. Before an IEP Team may consider Aversive Treatment, an FBA must have been conducted and no less than a series of two written positive behavioral intervention strategies designed to target the problem behaviors were previously implemented. If District staff members believe that Aversive Treatment may be appropriate, they must contact the Director of Special Education and Pupil Services .

Aversive Treatment does not exclude a District employee from placing his or her hands on a student in a manner that is reasonable and necessary to:

- Quell a disturbance;
- Provide self-protection;
- Protect the student or others from physical injury;

- Obtain possession of a weapon or other dangerous object on the student or within control of the student;
- Maintain the orderly conduct of a student including but not limited to relocating the student in a waiting line, classroom, lunchroom, principal's office, or other on-campus facility; or
- Protect property from serious harm.

However, if the frequency, intensity or duration of this type of restraint on a student warrants, the IEP Team may consider Aversive Treatment for the student. Aversive Treatment is either restraint or seclusion (isolation). Aversive Treatment does not include an exclusion time-out, which is a removal of a student from a regularly scheduled activity for disciplinary purposes and does not result in the student being placed in an isolation room (i.e., student is not left alone). "Isolation" is the removal of a student to a room where the student is alone in the room, prevented from exiting, the door to the room remains closed, and the student is prohibited from participating in activities outside of the room and interacting with students.

Aversive Treatment may not be used as punishment, for the convenience of staff, or as a substitute for positive behavioral interventions.

If it is necessary and appropriate for the IEP Team to consider Aversive Treatment, it must convene an IEP Team meeting to discuss the adoption of Aversive Treatment measures. The IEP Team meeting must include a person trained and knowledgeable about best practices in the application of positive behavioral interventions, aversive treatment procedures and nonaversive alternatives for de-escalation of behaviors.

If the IEP Team determines that Aversive Treatment is necessary and appropriate, it must provide for a BIP with Aversive Treatment measures to be developed and incorporated as part of the IEP.

The BIP with Aversive Treatment measures must be in writing and:

- Include a statement describing the minimum of two positive behavioral intervention strategies previously attempted and the results of these interventions;
- Describe the target behavior(s) that will result in the use of the aversive treatment procedure;
- Include short-term objective(s) with measurable criteria stating the expected change in the target behavior(s);
- Provide a written description of the aversive treatment measure(s);
- Specify a time limit for the use of the aversive treatment measure for any one instance;
- Include data collection procedures for recording each application of the aversive treatment(s);
- State when the IEP team will meet to review the ongoing use, modification or termination of the aversive treatment measure;
- Designate an individual responsible for ongoing review and analysis of the data on the target behavior;
- State how the student's parents will be regularly informed of the progress toward the short-term objectives in the BIP that is no less than the frequency of other progress reporting; and
- State whether any standard school disciplinary measures are waived.

If the Aversive Treatment measures include the use of an isolation time-out, the student must be under continual observation. Continual observation can be accomplished through use of a

peephole, window, one-way glass, or a video camera system. The isolation room should be designed so that the student is unlikely to injure his or herself by grates, lighting fixtures, electrical outlets, doorknobs, door hinges, walls or the floor of the room. Exit from the time-out room may be prevented through the use of a system that requires the presence of staff to keep the door from opening, but the room cannot be locked.

The District must inform the parent that consenting to the IEP includes consent for the BIP with Aversive Treatment because the BIP is incorporated into the IEP.

Following the adoption of a BIP with Aversive Treatment, the District must inform the parent as soon as possible but within 24 hours if an Aversive Treatment measure is used. This notice must be in the parent's native language and should be in writing but can be accomplished verbally if writing is not possible within the required time period.

The District is prohibited from using Aversive Treatment measures that:

- Are solely intended to cause physical pain;
- Involves the student being placed in isolation in a locked room or mechanical restraint (residential treatment facilities and psychiatric hospitals may use these measures if prescribed by a physician as part of a treatment plan and it is in accordance with state and federal law);
- Results in the withholding of a meal from the student for a period of greater than one hour from its scheduling start time;
- Involves the use of aversive mists, noxious odors, and unpleasant tastes applied by spray or other means to cause an aversive physical sensation;
- Involves a mechanical restraint that physically restricts a student's movement through the use upon the student of any mechanical or restrictive device which is not intended for medical reasons. The determination that a mechanical or restrictive device is necessary for medical reasons should be made and documented by the IEP Team, based on the advice of a medical professional. It is recommended the IEP Team obtain a record of the order or prescription for the use of the device.

DISCIPLINE

Unless the IEP Team waives standard disciplinary measures, an IDEA-eligible student is subject to the same disciplinary measures and code of conduct to which nondisabled students are subject. If an IDEA-eligible student violates the code of conduct, that student can be placed in detention, lose privileges, or be placed in a time-out in the same manner as a nondisabled student for the same conduct.

Consideration of special circumstances with students with disabilities

Disciplining a student with a disability for misconduct in the same manner as a non-disabled student, however, does not apply to all situations. The following exceptions apply and caution against discipline as an initial reaction:

- Where the student's misconduct is persistent and related to the disability – this may include aggression, outbursts, running, self-harm, avoidance, defiance. Evidence-based behavioral supports, rather than disciplinary actions, or modifications to the student's IEP need to be considered.
- Where the student's misconduct, as a result of the disability, is impeding the student's own learning or the learning of others. Evidence-based behavioral supports, rather than disciplinary actions, or modifications to the student's IEP need to be considered.
- Where the student's misconduct is so significant that prolonged suspension (in excess of 10 days) or expulsion is being considered. Certain procedural safeguards must be provided as well as behavioral supports and/or modification of the IEP.
- Where the student is engaging in a pattern of misconduct that results in multiple short-term suspensions. Certain procedural safeguards must be provided as well as behavioral supports and/or modification of the IEP.

This does not mean that students with disabilities cannot be disciplined for misconduct where the misconduct is isolated or infrequent (except where a suspension of more than 10 days or an expulsion is being considered certain procedural protections apply). Classroom teachers should implement classroom discipline to students with disabilities in the same manner as nondisabled students where the misconduct is isolated or infrequent.

Classroom Disciplinary Interventions

Classroom interventions can be either exclusionary or non-exclusionary.

Exclusionary disciplinary measures include:

- Office referrals where the student is taken out of the instructional setting
- "Time outs" out of the classroom, including to behavior intervention rooms
- Assignment to a study hall where the student is taken away from instruction

- Sending a student out of school on a “day off” or “leave day” (i.e., calling an exclusion of student from school something other than a suspension)
- Sending a student out of school with conditions placed on the student returning (such as a threat assessment)
- Sending students home early even if not technically a disciplinary measure (i.e., student acting out so significantly that parents are called and asked to pick student up from school)
- Short-term suspensions
- Long-term suspensions (over 10 days)
- Expulsions

The U.S. Department of Education’s Office of Special Education and Rehabilitative Services (OSERS) has cautioned districts about using exclusionary disciplinary measures against students with disabilities. If these exclusionary measures are used on an infrequent basis and are used in the same manner for nondisabled students engaging in the same or similar misconduct, there is likely no interference with a disabled student’s rights. However, if frequent or repeated, use of exclusionary measures may require the implementation of procedural safeguards.

New research indicates that disciplinary removals impede a district’s ability to implement a student’s IEP and also may not prevent reoccurrence of the misconduct. Some research indicates that students are more likely to repeat misconduct after being suspended, including in situations where the student is seeking to avoid school. Some research indicates that students who have been suspended have lower academic performance, are more likely to be behind, and to drop out. Consideration should be given regarding the appropriateness of excluding a student from instructional time.

While exclusionary disciplinary measures may be appropriate in situations, particularly those involving student safety, non-exclusionary measures should be considered in instances involving students with disabilities engaging in minor misconduct. The District’s positive behavioral intervention system – such as the Montana Behavioral Initiative – should be used to address behaviors occurring during the school day.

Non-exclusionary classroom interventions for minor infractions can be used and include:

- Teach and Re-Teach Expectations
- Verbal Warning
- Seating Change (except where student is provided specific seating as an accommodation)
- Parent/Guardian Contact
- Parent/Guardian/Student/ Teacher Conference
- In-class time out
- School-Based Community Service
- Classroom Behavior Plan
- Peer Mediation
- Mentoring
- Restorative Justice Practices (i.e., alternative to discipline usually involving some act to “make it right” or fix the problem right away – i.e., apologizing, admitting fault, some sort of

reflection about the incident. Some extend further into forums for students to discuss their problems and seek absolution).

If warranted, exclusionary disciplinary measures may be used for classroom misconduct that is isolated or infrequent. Major disciplinary infractions should be referred to an administrator.

Where students with disabilities engage in repeated and frequent misconduct – whether a pattern of behaviors or frequent but different isolated incidents – teachers should be documenting such behaviors and regularly updating the case manager and administrators.

Use of Law Enforcement

Law enforcement, including any School Resource Officers (SROs), should never be used to enforce school discipline rules or a Code of Conduct. Law enforcement should be used to ensure safety and security of students. This means that the main role of law enforcement, particularly the SROs, is to address and prevent serious, real, and immediate threats to the physical safety of the school. School administrators and teachers have the responsibility for maintaining order. SROs can also act as informal counselors and educators and support a positive school climate by developing positive relationships with students and staff and promoting safe and positive learning environments.

School staff can contact law enforcement to report suspected criminal activity or deal with actual emergencies. However, law enforcement should not be contacted to address ongoing student behavior or as an intervention for challenging behaviors by students with disabilities. For instance, law enforcement should not be immediately contacted if a student with a disability who is known to be aggressive engages in some physical aggression. However, if the student with a disability cannot be controlled and the safety of the student or other students or staff members is imminently threatened or the student has assaulted another person, law enforcement may be contacted. Law enforcement should not be contacted regularly for students with disabilities who regularly engage in verbal outbursts or defiance, except where the student legitimately and actually makes a threat toward him/herself, another student, staff member, or another person. Law enforcement should not be regularly contacted for students with disabilities who attempt to leave or run away from school property. Law enforcement should only be contacted if a student with a disability actually leaves school property.

When a student with a disability is reported by school staff to law enforcement for suspected criminal activity, the school must ensure that the student's special education and disciplinary records are transmitted to appropriate law enforcement authorities. 34 CFR 300.535. However, a school may only release the special education and disciplinary records for a student it reports for a crime if FERPA allows it. FERPA limits districts to transmitting special education and disciplinary records to appropriate law enforcement authorities under the following circumstances:

1. When a parent provides written consent to the disclosure of education records to law enforcement authorities.
2. When complying with a lawfully-issued subpoena after providing the parents with reasonable notice of the subpoena, unless notice is prohibited by the parents.
3. When the school district has reported the student for suspected criminal activity to law enforcement and one of the following exist:

- a. Information contained in the records is necessary in an emergency to protect the health and safety of the student or others; or
- b. The information to be released to the youth court or law enforcement regarding violations of law relates to the violation itself – investigation reports/documents created by a school staff member or administrator, special education documents created as a result of an incident that discuss the incident (i.e., manifestation determination documents, behavior plans, IEP revisions as a result of a behavioral incident), and disciplinary documents.

Required Procedural Protections for Suspensions over 10 Days or Expulsions

Students with disabilities may be “removed” from their educational programs for up to ten consecutive days for violating a rule in the code of student conduct. Like nondisabled students, they are not entitled to educational services during this time, nor are they entitled to any other procedural protections during that time, outside of what nondisabled students are entitled to receive. Additionally, the IDEA regulations permit a school to remove a disabled student for additional periods of time (up to ten consecutive days) for separate incidents of misconduct as long as the removals do not constitute a change of placement due to disciplinary removals.

An in-school suspension is not considered to be a removal provided that the student:

1. Is afforded the opportunity to continue to appropriately progress in the general curriculum;
2. Continues to receive the services specified in the IEP; and
3. Continues to participate with non-disabled children to the extent he would have in his current placement.

A District administrator may suspend an IDEA-eligible student (out of school suspension) for less than ten days. Unless this suspension is part of a pattern of removals as defined below, a suspension less than ten days is not a change in placement. A District administrator may also suspend an IDEA-eligible student for separate incidents less than ten days for any one suspension.

A change of placement for disciplinary removals occurs when there are several removals which demonstrate a pattern of removal based on the similarity of the behaviors warranting the removal, or where a pattern is shown by other factors, such as the length of the removals, their proximity in time, and the total amount of time the child has been removed, and the total number of days the student will have been suspended in the school year will exceed 10 days. A change of placement would also occur if a school wished to suspend a student with a disability for more than 10 consecutive days for one incident or expel the student from school.

Any time a student with a disability is removed for more than ten school days during one school year – regardless of whether there is a change of placement – the student is entitled to receive educational services that allow him or her to continue to participate in the general education curriculum and progress toward meeting IEP goals. When the additional removal does not constitute a change of placement because of separate and unrelated suspensions, school personnel, in conjunction with at least one of the child’s teachers, determine the extent of those services.

When the additional removal does constitute a change of placement, the IEP team has to determine those services as discussed below.

If a change of placement is possible – either because of considering discipline of more than 10 consecutive days or there has been a pattern of removal where an additional suspension would exceed 10 days total over a school year – the school must ensure the procedural safeguard identified below are provided.

If the disciplinary removal is a change in placement, the District must convene a Manifestation Review Meeting.

A Manifestation Determination is a review of the relationship between the student's IDEA-protected disability and the behavior subject to the disciplinary action. A Manifestation Determination Review Meeting must be conducted within ten days of the suspension/removal.

Manifestation Determination Review Meeting

- Who is at the meeting? The meeting is conducted by the District, parents and relevant IEP team members. **The District MUST give at least 5 days notice of the meeting.**
- What material is considered at the meeting? The team considers “all relevant material,” including by not limited to:
 - Relevant information provided by the parents;
 - Evaluation and diagnostic results;
 - Prior disciplinary history;
 - A description of the behavior;
 - Observations of the student;
 - The IEP; and
 - The placement.
- How does the team make a “manifestation determination?” During the meeting, the team reviews the “relevant material” to determine whether:
 - The conduct in question was caused by the student’s disability; or
 - Whether the conduct in question had a direct and substantial relationship to the child’s disability; or
 - If the conduct in question was the direct result of the local educational agency’s failure to implement the student’s IEP.

If **all** of these inquiries are answered “no,” the Manifestation Determination review must result in a determination that the student’s conduct was not a manifestation of the student’s disability.

If **any** of these inquiries are answered “yes,” the Manifestation Determination review must result in a determination that the student’s conduct was a manifestation of the student’s disability

See Manifestation Determination form, Appendix F.

Student's Conduct is not a Manifestation

If the Manifestation Determination review results in a conclusion that the student's conduct is not a manifestation of the student's disability, the student is disciplined as any other nondisabled student would be disciplined, but the District must provide the student with special education and related services in the student's IEP to enable the student to participate in the general education setting and meet his or her IEP goals. These services are provided in another setting during the period in which the student is removed from school (if the removal is a long-term suspension). In addition, the District must conduct an FBA (if one has not been conducted) and develop a BIP or revise an existing BIP to address the behaviors resulting in the discipline.

An IDEA-eligible student may be expelled by the District's Board of Trustees if the student's conduct was not a manifestation of his or her disability as determined through the Manifestation Review Meeting. The IDEA-eligible student is subject to the same expulsion procedures as a nondisabled student. If the District's Board of Trustees votes to expel an IDEA-eligible student, the District must provide the student with special education and related services in the student's IEP to enable the student to participate in the general education setting and meet his or her IEP goals. Following an expulsion decision, the District must convene an IEP Team meeting following the expulsion to address the student's change in placement, other IEP amendments warranted due to the change in placement. The District must conduct an FBA (if one has not been conducted) and develop a BIP or revise an existing BIP to address the behaviors resulting in the discipline.

Student's Conduct is a Manifestation

If the Manifestation Determination review results in a conclusion that the student's conduct is a manifestation of the student's disability, then the student may not be disciplined in the same manner as nondisabled students through a removal from school in excess of ten days. The District must conduct a FBA and implement a BIP if the District had not conducted the assessment prior to the determination. If the student already has a BIP, then the IEP team must review the BIP and modify it, as necessary, to address the student's conduct resulting in the need to consider a long-term removal.

The student must be returned to the placement from which he or she was removed, unless the IEP Team agrees to a change of placement for reasons separate from the disciplinary issue. In other words, the IEP team can consider a change in placement to address the student's needs.

Disciplinary Removals of Students Not Yet Identified as IDEA-Eligible

The procedural safeguards relating to disciplinary removals also apply to any student that the District suspected was a student with a disability prior to the behavior occurring.

The District has suspected a student has a disability prior to the behavior leading to discipline occurring if:

- The parent of the student expressed concern, in writing, to the District that the student may need special education and related services;

- The parent requested an evaluation for special education eligibility; or
- A teacher or other personnel expressed specific concerns about a pattern of behavior demonstrated by the student to the school district administration.

Interim Alternative Education Setting (IAES)

The District may remove an IDEA-eligible student to an Interim Alternative Education Setting (IAES) for up to 45 days without conducting a Manifestation Determination Review Meeting if:

- The student carries or possesses a “weapon” to school or to a school function;
- The student knowingly possesses or uses drugs at school or a school function;
- The student sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function; or
- The student inflicts serious bodily injury upon another person while at school, on school premises, or at a school function.

A weapon is defined as a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 ½ inches in length.

Serious bodily injury is defined as bodily injury which involves:

- Substantial risk of death;
- Extreme physical pain;
- Protracted or obvious disfigurement; or
- Protracted loss or impairment of the function of a bodily member, organ or mental faculty.

The 45-day IAES placement gives the IEP Team time to determine whether there will be a long-term change in placement.

The District must give the parent written notice of its intent to invoke the 45-day IAES placement on the date the decision is made. The District must include the Procedural Safeguards with the written notice.

Procedures for IAES:

- Ten-day suspension decision is made by the building administrator;
- Director of Special Education and Pupil Services and Superintendent are notified and provided relevant information;
- Local law enforcement or SRO is notified as necessary;
- School personnel determine whether IAES conditions are present. If there is a determination that one of the IAES conditions is present (drugs, weapons, or serious bodily injury as described above), the building administrator notifies the parents in writing that the student’s placement will be changed for a period up to 45 days because of the conduct and are provided the Procedural Safeguards;
- Within the initial 10-day period of suspension, the District convenes an IEP team meeting to discuss the alternative educational setting for services for the student;

- During the 45-day IAES placement, a manifestation determination review may be held regarding the student's conduct if a permanent change of placement is considered for disciplinary reasons;
 - If the team makes a "no manifestation" determination, the determination is reported to the Superintendent for further disciplinary action. The discipline can be implemented immediately, unless board approval is required (expulsion), without regard to the 45-day IAES. As with any expulsion of a student with disabilities, services must be continued;
 - If the team makes a "manifestation" determination, it must conduct a FBA if none was done prior to the behavior and implement a BIP or consider revisions to a current BIP in place to address the behaviors at issue. The IEP Team may also consider whether a change in placement of the student is appropriate at the end of the 45-day IAES;
 - Regardless of a manifestation determination, the student can remain in the IAES for up to 45 days;
 - If no manifestation determination review is conducted, the student returns to his or her placement set forth in the IEP at the time of the removal at the conclusion of the 45-day period unless the student's placement is otherwise changed through the IEP process.

The IEP Team must select the IAES so as to enable the student to continue to participate in the general curriculum, although in another setting, and to continue to receive the services and modifications called for in the student's IEP such that the student will meet the IEP goals. The setting must also include services and modifications designed to prevent recurrence of the behavior.

If the IEP team determines transportation is necessary to access special education and was not necessary prior to a change in placement resulting from discipline, transportation must be provided.

Bus Removals

If an IDEA-eligible student is removed from a bus due to a violation of the bus's rules, the removal may not exceed ten consecutive days if the student's IEP includes transportation as a related service. A removal from a bus in excess of ten consecutive days (or a pattern of removals in a cumulative excess of ten days) of an IDEA-eligible student who receives transportation as a related service constitutes a change in placement and requires a Manifestation Determination Review meeting.

If an IDEA-eligible student is receiving bus transportation because the student is otherwise eligible for this service in the same manner as nondisabled students, the student may be removed from the bus in the same manner as a nondisabled student for a violation of bus rules.

RECORDS

Confidentiality of Student Records

The District keeps confidential any record maintained on a student with a disability, protecting the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

The District designates one official responsible for ensuring the confidentiality of any personally identifiable information. The official responsible for ensuring the confidentiality of personally identifiable information is the Director of Special Education and Pupil Services .

The District ensures that each person collecting or using personally identifiable information shall receive training or instruction regarding the policies and procedures governing records and confidentiality of personally identifiable information in accordance with applicable laws and regulations.

With respect to students with disabilities, the District maintains for public inspection a current listing of the names and positions of those employees within the District or representatives of the District who have access to personally identifiable information based on a legitimate educational interest.

The District maintains a record of access of other parties. These other parties must be authorized and are required under the law to be recorded on the record of access if they are reviewing or receiving the personally identifiable information for students with disabilities in the same manner as for all students.

Access

The District permits a parent or adult student (age 18 or above) to inspect and review any educational records relating to the student that are collected, maintained, or used by the District to provide the student with special education and related services.

The District will comply with requests from a parent or adult student to inspect and review any special education records without unnecessary delay and before any meeting relating to the identification, evaluation, or placement of the student or regarding an IEP, hearing, or resolution session, and in no case more than 45 calendar days after the request has been made.

If requested, the District will provide a copy of the student's special education records to the parent, adult student, or other individual or entity authorized by law or by written consent of the parent or adult student. The District may charge for copying of these records unless charging the parent or adult student would effectively result in a denial of the records because of the parent's or adult student's inability to pay.

The District will obtain written consent before personally identifiable information is disclosed to officials of participating agencies providing or paying for transition services.

For children enrolled by their parents in private schools within the District but are not residents of the District, the District will obtain written parental consent before disclosing personally identifiable information to the district of residence.

Content of Special Education Record

The District maintains a special education record for each student receiving special education services. The special education record must be maintained in a separate location from the student's permanent record (in a locked cabinet with limited access - fire proof is not required).

The special education record must include:

- Access log
- Referral
- Request for initial evaluation
- Evaluation Plans (Permission for evaluations)
- Evaluation Reports with accompanying evaluation data
- Summaries of assessments
- Test protocols
- IEPs (including the permission from the parent for implementation of the IEP)
- Progress Reports
- Other special education records as required (but not records in the sole possession of the staff member)

Special education records must be maintained for at least seven (7) years from the date of the student's exit from special education services (usually graduation). The District will provide notice to the parent or adult student of its intention to destroy the student's special education records after this time has expired.

Transfer of Records

Montana law requires that the District transfer the original special education records for the student who transfers to another district with the certified copy of the permanent record.

Records for special education students who are transferring to another school district must be routed through the Administrative Assistant for the Department of Special Education and Pupil Services.

Amendment of Records

The District provides the parent or adult student the right to seek amendment of special education records in accordance with the procedures it has adopted for all student records under the Family Education Rights Privacy Act (FERPA).

PRIVATE SCHOOL STUDENTS

The IDEA requires the District to provide those students placed by their parents in private schools (home schools, nonpublic schools regardless of religious affiliation) an opportunity for equitable participation in services with designated portion of funds it has received under the IDEA. The District must complete a proportionate share calculation of the funds it receives under the IDEA to provide these private school students an opportunity for equitable participation in services.

Count

On the first Monday of October, the District must conduct a count of all IDEA-eligible students who are parentally enrolled in private elementary and secondary schools within the District's boundaries, regardless of whether they are receiving any type of services and regardless of where they reside. The District must maintain this count and transmit it to OPI each year.

The count serves as the basis to make the proportionate share calculation of the amount of IDEA funds the District must expend to provide services to parentally-placed private school students.

Consultation

The District must consult with private school representatives and representatives of parents of parentally placed private school children with disabilities; this includes representatives from home schools. The County Superintendent is responsible for notifying nonpublic/private school parents and schools of their opportunity to participate in this process. The County Superintendent is responsible to return these forms to the District. If the District has received a form from a nonpublic/private school parent or entity that he/she/it does not want to participate, the District does not need to include the parent or entity in the consultation process.

This consultation must occur annually in the spring. During the consultation, the following must be discussed:

- Child Find: How parentally placed private/nonpublic school children suspected of having a disability can participate equitably, including how parents, teachers, and private/nonpublic school officials will be informed of the process;
- Proportionate Share Calculation: How the proportionate share of IDEA Part B and IDEA Preschool federal funds is calculated, including the amount of the proportionate share funds available for the ensuing school year;
- Consultation Process: How the consultation process will operate throughout the school year to ensure that parentally placed private/nonpublic school children with disabilities identified through the child find process can meaningfully participate in special education and related services;
- Special Education and Related Services: How, where, and by whom special education and related services will be provided for parentally placed private/nonpublic school children with disabilities, including a discussion of types of services, including direct services and alternate service delivery mechanisms, how such services will be apportioned if funds are insufficient to serve all children, and how and when these decisions will be made; and

- Disagreement: How, if the District disagrees with the views of the private/nonpublic school officials on the provision of services or the types of services, whether provided directly or through a contract, the District shall provide to the private/nonpublic school officials a written explanation of the reasons why the District chose not to provide services directly or through a contract.

The District must maintain records and provide to OPI written affirmation signed by the participants in the consultation process that it has occurred.

The District makes the final decisions regarding all aspects of the services to be provided to parentally placed private school children with disabilities. If the District disagrees with the views of the representatives of the private schools or parents present regarding the provision of services or types of services, it must provide a written explanation of the reasons why it chose not to accept the recommendations of the private school representatives or parents.

Evaluation

The District is required to identify, locate, and evaluate all students attending private schools (including home schools) located within the District's boundaries. For those private school students located through the District's Child Find activities or referred for an evaluation, the District must complete a Referral for evaluation and conduct a comprehensive evaluation of that student or provide Prior Written Notice explaining its refusal to evaluate the student. District personnel should coordinate with the student's private school to complete the Referral and Evaluation Plan.

If a child resides within the District but attends a private school located outside of the District, the District should seek consent of the parent and contact the district in which the student's private school is located to coordinate the comprehensive evaluation.

Observations of the private school can be conducted (with consent) at the location of the private school.

The District must conduct reevaluations of private school students if it determines a reevaluation is warranted, it is requested by the student's parent or a teacher, or, at a minimum, every three years unless the District and parent agree a reevaluation is not necessary.

FAPE

The District is required to offer FAPE to any parentally-placed private school student identified through a comprehensive evaluation to be eligible under the IDEA who resides within the District's boundaries. The offer of FAPE should be made using the *Offer of FAPE to a Parentally-Placed Child with Disabilities in a Private School* provided by OPI, see Appendix F.

The parent has the choice to enroll the student within the District or not enroll the student. If the parent enrolls the student after an offer of FAPE is made, the District must convene an IEP Team meeting to develop an IEP for the student within the continuum of placements offered by the District. If the parent chooses to not enroll the student, the student is not entitled to FAPE.

The District is not required to offer FAPE to IDEA-eligible parentally-placed private school students who attend a private school within the District's boundaries but do not reside within the District's boundaries. For those parentally-placed private school students who attend a private school within the District's boundaries but reside in another school district, the District must seek consent from the parent and contact the school district of residence to notify it of the identification of the student as eligible under the IDEA.

Services

The District must determine the equitable services it will provide to parentally-placed private school students. The services to be provided are determined by the District after the consultation process and should be based on the needs of the children to be served and how the services will benefit them. The consultation process should include a discussion how the available funds (the proportionate share the District is required to expend based upon the count) can be utilized to provide these services, with the District making the final decision on how the proportionate share will be calculated.

The District must provide the opportunity to participate in the equitable services it determines it will offer to:

- IDEA-eligible parentally-placed private school students who attend a private school and reside within the District but have rejected the offer of FAPE; and
- IDEA-eligible parentally-placed private school students who attend a private school within the District.

Equitable services are not the same as FAPE. The District is not required to offer the same special education and related services provided to IDEA-eligible students enrolled within the District. The District determines the types and means of providing the equitable services after the consultation process. Equitable services may be direct or indirect services. If it is necessary for the private school student to benefit from the equitable services offered, the District may be required to provide transportation for the private school student to receive the equitable services.

Equitable services are offered through a Services Plan. The Services Plan reflects only those equitable services offered by the District, which means that the student is entitled to only those equitable services actually offered by the District regardless of whether the student has additional needs. To develop a Services Plan, the District must convene a meeting with the parent and representatives of the private school (if appropriate) to develop the plan. The Services Plan must be reviewed and revised, if appropriate, annually. The Services Plan should be created on the AIM System.

The District must include in its consultation process a discussion with private school representatives and parents regarding the provision of equitable services to those students identified as eligible after the count date has occurred. The District is not required to expend more than the proportionate share it is required to spend to provide services to parentally-placed private school students, including those identified after the count.

The District is not required to provide “make-up” sessions for equitable services missed by parentally-placed private school students unless the parent provides advance notice of the absence.

APPENDICES

APPENDIX A - SPECIAL EDUCATION EVALUATION CHECKLIST AND RESPONSIBILITIES

Tasks	Person Responsible	Notes
<p>1. Prereferral</p>	<p>Classroom Teacher and Team (MTSS Student Support Teams)</p>	<p>The Classroom Teacher must document interventions that are being used in the classroom for that specific student. He/She must document start and end dates. Also, the effectiveness of the intervention needs to be documented. At least one prereferral meeting should have occurred. Also, parents should have participated in at least one pre-referral meeting. Special education is not required to attend pre-referral meetings. Must review cumulative file.</p>
<p>2. Referral</p>	<p>Regular Education Teacher, MTSS Team, School Psychologist, and Special Education Teacher (sometimes referred to as the “Student Support Teacher”)</p>	<p>The Regular Education Teacher, MTSS Team, School Psychologist and the Special Education Teacher (sometimes referred to as the “Student Support Teacher”) are responsible for filling out the referral form. The decision to refer the child may come from a team, but the regular education teacher has this responsibility. In a middle school or high school setting the principal will request the form and decide which teachers fill out the referral form.</p>

3. Initial Parent Contact	Regular Education Teacher or MTSS Team	The Regular Education Teacher or MTSS Team member should call the parent and tell the parent that his/her child has been referred for evaluation.
4. Evaluation Plan Form/Procedural Rights	Special Education Teacher and School Psychologist	The Special Education Teacher and the School Psychologist should work together to contact all specialists and determine the areas needed for evaluation. The Special Education Teacher and the School Psychologist are responsible for getting this form to the parents and having it signed.
5. Cumulative File Review	School Psychologist	Teachers can also do this.
6. Classroom Based Assessment	Regular Education Teacher, MTSS Team and Special Education Teacher	The Regular Education Teacher and MTSS Team provide classroom-based assessment information. The Special Education Teacher is required to give the form to the general education teacher and enter information into AIM.
7. Observation	School Psychologist and/or Special Education Teacher	This can also be conducted by other members of the team.
8. Intelligence Testing And Report	School Psychologist	Only to be conducted by the School Psychologist. Must also fill out implications in AIM. Must put all attached reports in AIM.
9. Academic Testing and Report	Special Education Teacher	Some academic testing can be completed by the school psychologist, but the primary responsibility for this testing is the Special Education Teacher. Must also fill out

		implications in AIM. Must put all attached reports into AIM.
10. Social/ Emotional/ Behavioral Testing and Report	School Psychologist	Must put all attached reports in AIM.
11. SLP/OT/PT Testing and Report	Speech Language Pathologist/ Occupational Therapist/ Physical Therapist	Must also fill out Educational Implications in AIM. Put all attached reports in AIM
12. Eligibility Determination	Evaluation Team Decision School Psychologist completes AIM portion	The School Psychologist will review all of the evaluations and fill out the eligibility determination on AIM.
13. Reviewing Completed Evaluation in AIM	School Psychologist	It is the School Psychologist's responsibility to review the completed evaluation in AIM to make sure everyone put in the required components.
14. Scheduling Meeting	Special Education Teacher or School Psychologist	The Special Education Teacher or School Psychologist is responsible for making sure every specialist, outside agencies, parents, and the classroom teacher is notified of the meeting.
15. Evaluation Meeting	All Team Members Participate	
16. Copying and Filing	Special Education Teacher/ Administrative Assistant for the Department of Special Education and Pupil Services	The Special Education Teacher and the Administrative Assistant for the Department of Special Education and Pupil Services are responsible for making sure parents get a copy of signed evaluation and that all the necessary components are in the file. The Special Education Teacher is responsible for making

		sure all forms are uploaded on to AIM.
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APPENDIX B - PROCEDURES AND CRITERIA FOR INDEPENDENT EDUCATIONAL EVALUATIONS

PROCEDURE

Notice to Parents

- Please read this document before obtaining or paying for an independent educational evaluation. This document may limit your right to reimbursement.
- The District will not automatically reimburse parents who unilaterally obtain independent educational evaluations. Please review this document for further information about a parent's right to obtain independent educational evaluations at public expense.
- An independent educational evaluation, if not obtained in accordance with these procedures and criteria, may not be considered by your child's IEP team. Please ensure that any independent educational evaluation conforms to these requirements.

Definitions

“Independent educational evaluations” means an evaluation conducted by a qualified examiner who is not employed by the responsible local education agency.

“Public expense” means the local education agency either pays for the full cost of the evaluation or evaluation components or ensures that the evaluation or evaluation components are otherwise provided at no cost to the parent.

Parameters for Seeking Independent Educational Evaluations

If a parent disagrees with an evaluation conducted by the District and seeks an independent educational evaluation, the District may initiate a due process hearing to show that its evaluation is appropriate. In the alternative, the District will provide the parent an opportunity to obtain an independent education evaluation in accordance with these procedures by arranging for the independent evaluation. The parent must first inform the District in writing or communicate with the district at an IEP meeting that the parent:

1. Disagrees with the district's evaluation, and
2. Is requesting an independent educational evaluation at public expense.

The District may ask for the parent's reason(s) for disagreeing with the District's evaluation, but the parent is not required to provide those reasons. Parents may only request one publicly funded independent evaluation for each evaluation completed by the District.

Response to a Request for an Independent Educational Evaluation

If parents request an independent educational evaluation at public expense, the District through these procedures, which shall be provided without unnecessary delay, offers the parents the following options for obtaining an independent educational evaluation at public expense:

1. The District will provide a list of qualified individuals to perform the Independent Educational Evaluation, which may include a staff member from another school district in Park County or Gallatin County. The parents shall not be required to obtain an Independent Educational Evaluation from one of the individuals recommended by the District.
2. The parent may select a provider of his or her own choosing subject to the qualifications and requirements set forth in these procedures.

Once the parent chooses an option, the District will arrange for the alternative evaluator, contract with an independent examiner, or otherwise ensure that an Independent Educational Evaluation is provided at public expense.

If the District initiates a hearing and the final decision is that the District evaluation is appropriate, the parent still has the right to an Independent Educational Evaluation, but not at public expense.

Timeline Regarding Independent Educational Evaluations

In the interest of consistency between public and private evaluations, the District encourages parents to choose an option for additional assessment offered by the district within 15 days of receiving the options.

After the parent of the student with a disability chooses an option for an additional evaluation and signs an assessment plan, the District will arrange for or initiate a contract with an appropriate evaluator.

The District will make arrangements for a new evaluation, or contract with a qualified independent examiner who is able to provide a written report for an IEP meeting within a reasonable time of receipt of parent consent for assessment. If the evaluator cannot provide a written report within a reasonable timeframe, the District will inform the parent to discuss the timeframe or discuss the selection of another option.

Information Provided to Parents

Upon parent request for an independent educational evaluation, the District will provide the parents with a copy of its policy/procedures and criteria for independent educational evaluations.

CRITERIA

Consideration of the Independent Educational Evaluation

Independent Educational Evaluations are designed to determine the educational needs of disabled students. The District is responsible for determining placement and services. Therefore, the District will consider recommendations obtained in independent educational evaluation reports completed in accordance with these procedures and criteria. However, independent educational evaluations will not control District determinations and may not be considered if not completed by a qualified professional as described in herein for educational evaluations.

Local Limitations for Evaluators

Evaluators must be located within Park County or Gallatin County. Evaluators outside of this area will be approved only on an exceptional basis if the parents can demonstrate that there is a unique need for a specialized evaluation for their child and that there are no qualified evaluators within this identified geographical area who can appropriately assess their child's educational needs.

Requirements

Independent evaluators shall be required to:

- Obtain parent consent to allow communication between the evaluator and District staff;
- Obtain written parent consent for the evaluation;
- If appropriate, communicate with the child's teacher(s) and related service providers to gain a perspective on how the child is performing in school and/or observe the student in the educational setting;
- Send the evaluation report, including all legally required components, to parents and the District at least five (5) days prior to any meetings convened where the evaluation will be considered;
- Participate in any IEP team meetings in person or via telephone conference to discuss the results of the independent educational evaluation; and
- Release all test protocols, notes, etc. to a District representative at the time the evaluation report is provided.

These requirements shall apply both to independent evaluators with whom the District contracts for services or for reimbursement for an Independent Educational Evaluation obtained at parent expense.

Assessments

All Independent Educational Evaluators must utilize testing and assessment materials and procedures which are selected and administered so as to not be racially, culturally, or sexually discriminatory. Tests and other assessment materials must be provided and administered in the student's primary language or other mode of communications, unless a written explanation is provided as to why this provision and administration are not clearly feasible. All assessment instruments utilized must have been validated for the specific purpose for which they are used and be administered by trained personnel in conformance with the instructions provided by the publishers.

Minimum Qualifications for Evaluators

If the parent requests an Independent Educational Evaluation at public expense, the District will provide the parent with information about where an Independent Educational Evaluation can be obtained and these criteria. All Independent Educational Evaluations must be provided by a qualified specialist. Evaluators with credentials other than those listed below will not be approved unless the parent can demonstrate the appropriateness of using an evaluator meeting other qualifications.

<u>Type of Assessment</u>	<u>Qualifications</u>
Academic Achievement	Certified Special Education Teacher Licensed Educational or School Psychologist** Licensed Psychologist
Adaptive Behavior	Licensed Educational or School Psychologist** Certified Special Education Teacher Licensed Psychologist
Assistive Technology	Certified or Licensed Speech/Language Pathologist Certified Special Education Teacher Registered Occupational Therapist
Auditory Acuity/ Auditory Perception (CAP)	Licensed or Certificated Audiologist
Behavioral	Licensed Educational or School Psychologist** Licensed School Counselor Licensed Psychologist Licensed Psychiatrist Licensed Clinical Social Worker (LCSW) Board Certified Behavior Analyst
Cognitive	Licensed Educational or School Psychologist ** Licensed Psychologist
Motor	Licensed Physical Therapist Registered Occupational Therapist
Occupational Therapy	Registered Occupational Therapist
Physical Therapy	Registered Physical Therapist
Speech and Language	Certified or Licensed Speech/Language Pathologist
Social/Emotional	Licensed Educational or School Psychologist** Licensed School Counselor Licensed Psychologist Licensed Psychiatrist Licensed Clinical Social Worker (LCSW) Board Certified Behavior Analyst
Transition	Certified Special Education Teacher Licensed Educational or School Psychologist** Licensed Psychologist

Visual Acuity/Developmental Vision	Licensed Ophthalmologist Optometrist
Visual-Motor Integration/ Visual Perception	Licensed Educational or School Psychologist** Licensed Ophthalmologist Optometrist

** Credentialed

Note: Evaluators must be free from any conflict of interest.

Independent Educational Evaluators must agree to release their assessment information and results to the District prior to receipt of payment for services. The results of the Independent Educational Evaluation will be considered in the identification, program decisions and placement of the student with disabilities as required by the Individuals with Disabilities Education Act.

Cost Limitations

Reimbursement for Independent Educational Evaluations will be limited to the amount it would have cost the district to provide the same type of evaluation. Costs in excess of this amount will not be approved unless the parent can demonstrate that such costs reflect a reasonable and customary rate for such evaluative services, or if the parents can demonstrate that there are other factors that make the extraordinary costs necessary.

Costs beyond the Independent Educational Evaluation (i.e. transportation, lodging, food, etc.) are not covered in the cost of the independent evaluation and will not generally be approved, unless the parent can document that such travel costs reflect factors that make the extraordinary costs necessary.

APPENDIX C - EXTENDED SCHOOL YEAR DATA FORM

STUDENT NAME _____ DOB _____

SCHOOL _____ TEACHER _____ GRADE _____

Specific data are required whenever ESY is under consideration. Obtain and report data for each measurable annual goal. Data may be attached to this form if it is collected in another format or requires more explanation.

Measurable Annual Goal: _____

Break	Dates of Data	Performance Just Prior to Break*	Performance After Break and Recoupment Period **	Dates of Data	Outcomes
Summer					<input type="checkbox"/> Progress Maintained <input type="checkbox"/> Progress Not Maintained
Winter					<input type="checkbox"/> Progress Maintained <input type="checkbox"/> Progress Not Maintained
Spring					<input type="checkbox"/> Progress Maintained <input type="checkbox"/> Progress Not Maintained

*Document student's progress toward goal

** Document student's progress toward goal in relation to performance prior to break

Measurable Annual Goal: _____

Break	Dates of Data	Performance Just Prior to Break*	Performance After Break and Recoupment Period **	Dates of Data	Outcomes
Summer					<input type="checkbox"/> Progress Maintained <input type="checkbox"/> Progress Not Maintained
Winter					<input type="checkbox"/> Progress Maintained <input type="checkbox"/> Progress Not Maintained
Spring					<input type="checkbox"/> Progress Maintained

					<input type="checkbox"/> Progress Not Maintained
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*Document student's progress toward goal

** Document student's progress toward goal in relation to performance prior to break

Measurable Annual Goal: _____

Break	Dates of Data	Performance Just Prior to Break*	Performance After Break and Recoupment Period **	Dates of Data	Outcomes
Summer					<input type="checkbox"/> Progress Maintained <input type="checkbox"/> Progress Not Maintained
Winter					<input type="checkbox"/> Progress Maintained <input type="checkbox"/> Progress Not Maintained
Spring					<input type="checkbox"/> Progress Maintained <input type="checkbox"/> Progress Not Maintained

*Document student's progress toward goal

** Document student's progress toward goal in relation to performance prior to break

Measurable Annual Goal: _____

Break	Dates of Data	Performance Just Prior to Break*	Performance After Break and Recoupment Period **	Dates of Data	Outcomes
Summer					<input type="checkbox"/> Progress Maintained <input type="checkbox"/> Progress Not Maintained
Winter					<input type="checkbox"/> Progress Maintained <input type="checkbox"/> Progress Not Maintained
Spring					<input type="checkbox"/> Progress Maintained <input type="checkbox"/> Progress Not Maintained

*Document student's progress toward goal

** Document student's progress toward goal in relation to performance prior to break

APPENDIX D - SAMPLE 15-DAY IMPLEMENTATION LETTER

[Letterhead]

[Date]

[Parent Name]

[Address]

RE: Implementation of IEP

Dear [Parent]:

An IEP team meeting regarding your child [child's name]'s special education and related services was held on [date of meeting]. [At that time/On [date]], you were provided a copy of the IEP that was [developed/revised] for your review and consent. Since that time, the District has not received any communications from you regarding your intentions to consent to the proposed IEP. As you are aware, you may consent to the proposed IEP wholly, you may consent with exceptions, or you may refuse to consent. Again, I would request that you submit to me the signed consent page (with or without exceptions) provided in the proposed IEP or notification that you refuse to consent to the proposed IEP as soon as possible.

If you do not notify me of your response within 15 days of the date of this letter, which is [date 15 days from date of letter], the District will begin implementing the special education and related services detailed in that proposed IEP on that date.

If you have any questions or would like to discuss the proposed IEP further, please contact me. For your convenience, I am enclosing another copy of the proposed IEP.

Sincerely,

[Name]

[Title]

APPENDIX E - GUIDELINES FOR UNMARRIED/DIVORCED PARENTS

Livingston School District respects the rights of parents, regardless of their marital status. The District will abide by all court orders it is provided explaining the respective rights of each parent. These guidelines do not apply to married parents.

Livingston School District adopts the following guidelines regarding the rights of Unmarried/Divorced Parents:

1. District staff shall request a copy of the most recently-adopted parenting plan or court order addressing parenting rights upon:
 - a. Enrollment of the child
 - b. A referral of the child to special education or a request for consent for an initial evaluation of the child
 - c. Annual IEP review for the child
2. Parents have the right to refuse to provide a copy the parenting plan or court order addressing parenting rights.
3. If parents refuse to provide a copy of the parenting plan or court order addressing parenting rights, the District will presume that the parents share equally in decision-making. This means that only one parent has to consent to the evaluation or placement of the child, or that only one parent is needed to revoke consent for services.
4. In the event that a court order terminates the right of a parent, the District will not disclose any educational information to that individual or include that individual in any meetings regarding the child.
5. A biological parent who does not have any custodial rights but whose rights have not been terminated has the right of access to the student's education records. Upon request of this noncustodial parent for access to the student's education records, the District will provide the requested information unless the District is provided a court order terminating or limiting the noncustodial parent's rights or access to educational information.
6. Provided there is no court order restricting the rights of a parent, the District will share all educational information with both parents and will invite both parents to attend educational meetings regarding the child. The District will use reasonable efforts to ensure the attendance of both parents at meetings, including providing for alternate means of attendance.
7. Notification for meetings held pursuant to the Individuals with Disabilities Education Act (IDEA) will be accomplished by using IDEA-compliant notices sent to each parent separately via regular, U.S. mail.
8. Notification for any other meetings will be consistent with the methods used to communicate with all other parents.

9. Absent a prior request by one parent to reschedule the meeting, the District will hold the meeting as scheduled even if one parent is absent. In the event that one parent requests to reschedule a meeting, the District will use reasonable efforts to schedule a timely meeting that is convenient for both parents.
10. District staff members have the discretion to agree to hold separate parent-teacher conferences at the request of either parent. Absent extenuating circumstances, separate IEP meetings will not be scheduled.
11. Absent a court order restricting the rights of a parent, both parents have an equal right to participate in meetings regarding their child, including participating as a member of any team convened pursuant to IDEA.
12. If there is no parenting plan or court order addressing parenting rights, the District will presume that the parents share equally in decision-making. This means that only one parent has to consent to the evaluation for eligibility for special education services under IDEA or educational placement of the child under the IDEA. In these situations, the District will act in accordance with the consent provided by one parent.
13. If there is a parenting plan or court order requiring joint decision-making regarding educational matters, the District will require the consent of both parents before evaluating the student for eligibility and/or implementing any changes to the child's special education and related services when required by law.
14. In the event that joint decision-making is required by a parenting plan or court order and the parents do not agree, the District will implement changes in the provision of the child's special education and related services in any areas of agreement and will work with the parents to attempt to resolve any other areas of disagreement. If the parents previously agreed to the provision of special education and related services, the District will continue to provide special education and related services based upon the prior agreement in any other areas of disagreement. If the request to consent is for the initial provision of services, the District will not implement the provision of any special education or related services until consent of both parents has been obtained.
15. If neither parent has specifically refused to consent to changes in the provision of special education and related services, the District will make informal attempts to obtain consent from either or both parents (depending on the contents of any parenting plan or court order). After a reasonable time period has passed without response from either parent, the District will notify the parents in writing requesting approval and stating that if no response is received within 15 days, the District will implement the IEP as proposed pursuant to ARM 10.16.3505(2)(c).
16. Absent a court order restricting the rights of a parent, either parent has the right to challenge a decision by the IEP team in accordance with Montana law and the IDEA. Absent a court order restricting the rights of a parent, either parent may exercise his or her rights as set forth in the Procedural Safeguards.

APPENDIX F - FORMS

These are sample forms provided by OPI:

[Prior Written Notice](#)

[Referral for Comprehensive Educational Evaluation](#)

[Evaluation Plan](#)

[Meeting Notice for Evaluation Team and IEP](#)

[Eligibility Criteria Checklists](#)

- Autism
- Developmental Delay
- Cognitive Delay
- Deafness-Blindness
- Deafness
- Emotional Disturbance
- Hearing Impairment
- Orthopedic Impairment
- Other Health Impairment
- Specific Learning Disability
- Speech Language Impairment
- Traumatic Brain Injury
- Visual Impairment

[IEP Team Member Excusal](#)

[Revocation of Consent for Services](#)

[Revocation of Consent for Services - Written Notice](#)

[Transfer of Rights - Parent Notice](#)

[Transfer of Rights - Student Notice](#)

[Summary of Performance](#)

[Transfer Student Documentation](#)

[Manifestation Determination](#)

[Private School Offer of FAPE](#)