



Montana
Office of Public Instruction
Denise Juneau, State Superintendent

Special Education in Montana

Special Education Division

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This document is intended to provide guidance regarding special education in Montana. The document contains brief descriptions of various processes and procedures, and responses to the most frequently asked questions that the OPI staff have collected over time. This guidance document will only be available through the Special Education Division Web page. Anyone wishing to have a paper copy of this document will need to download and print the document; however this document will evolve and change as additional guidance is received. Check back to the OPI Web site frequently. It is hoped that this approach will allow for more frequent updating of the material contained in this guide.

Where appropriate, the responses to questions contain references to federal (CFR) and/or state (ARM) rules and regulations that the reader should review for more detailed information.

Table of Contents

IDEA/Section 504 of the Rehabilitation Act.....	28
1. If a student is eligible for services under both the IDEA and Section 504, must a school district develop both an Individualized Education Program (IEP) under the IDEA and a Section 504 plan under Section 504?	28
Child Find	28
Transition from the IDEA Part C Early Intervention Program	28
Notification of Potentially Eligible Children	29
1. What is the requirement for notification of the school district?.....	29
Initial Transition Planning Prior to the Conference	30
2. What is the role of the Family Support Specialist in the initial transition planning with the family prior to the Transition Conference?.....	30
3. What is the responsibility of school district staff during early transition planning process? .	31
Transition Conference Invitation to the School District	31
4. What are the preparation activities that need to occur by Part C Agency and school district staff prior to the Transition Conference?	31
5. What happens if a family declines to have the school district invited to the Transition Conference?.....	32
6. What happens if a family who previously declined to have the school district invited to the Transition Conference has changed their mind?.....	32
7. What should occur with late referrals (i.e., children referred to the Part C Agency program within 90 days of their third birthday)?.....	33
Transition Conference.....	33
8. Who convenes and attends the Transition Conference?.....	33
9. Does the school district need to complete any forms prior to their participation in the Transition Conference?.....	34
10. What occurs during the Transition Conference?	34

11. For families who are both interested in preschool special education services <i>and</i> ready to proceed with the possible Part B Eligibility Determination Process (including the steps above):	35
12. Can parental consent for Part B initial evaluation be obtained at the Transition Conference?	36
13. What happens if a family who has been referred to Part B declines to provide consent for an initial evaluation?	36
14. Can a child’s eligibility be determined at the Transition Conference?	37
15. Can school districts use assessments and evaluation information from the Part C Agency in determining a child’s eligibility for Part B services?	37
16. Can a district refuse to accept a Part C Referral?	37
17. What if the district doesn’t offer preschool special education services?	37
18. Who determines if Extended School Year (ESY) preschool special education services are necessary for a student with disabilities?	38
19. How does the IEP team determine if extended school year services are necessary?	38
Preschool Screening	38
1. What is a preschool screening?	38
2. Are Child Find and Preschool Screening the same thing?	38
3. How is a preschool screening conducted?	39
4. How do parents find out when preschool screening will occur?	39
5. Who should be involved in preschool screenings?	39
Prereferral	39
1. What is prereferral?	39
2. Does prereferral delay the special education process?	39
3. What prereferral data are collected?	39
4. What is done with prereferral data once it is collected?	40
Child Find and Private Schools	40

Consultation	40
1. How does the LEA determine how and when to carry out the child find for the private school children?	40
2. Does Part B require that consultations with private school representatives be done on an annual basis?	40
3. What is the obligation of the LEA to conduct child find activities?	40
4. If parents reside in one school district and enroll their child with a disability at a private school located in another school district, which school district is responsible for locating and evaluating that child?.....	41
5. Can the parent of a private school student request an evaluation by the school district in which they live if the child attends a private school located in another school district?.....	41
6. Is it possible for a parent to request evaluations from the school district where the private school is located as well as the school district where the parent resides?	41
7. Must child find for private school, including religious school and home school, children be comparable to child find for public school children?	41
8. If a school district determines through consultation with the private schools that it will only offer limited services, may the school district restrict the child find activities to children suspected of having specific disabilities?	41
9. Are LEAs required to conduct reevaluations of parentally placed private school children, and, if so, how often?	42
10. Does the parent of a student enrolled in the private school have the right to an independent educational evaluation?	42
11. Can the public school require the private school to conduct all or part of the evaluation or reevaluation?	42
Child Find and Head Start	42
1. If a child is attending Head Start, is the school district where the child resides still responsible for child find activities?	42
2. Who is responsible for conducting the evaluations for children enrolled in Head Start?.....	42
Referral for Comprehensive Educational Evaluation.....	43
1. When should a school district refer a child for a comprehensive evaluation?.....	44

Referral Requirements.....	44
2. What do Montana’s regulations require each referral to contain?.....	44
Referrals from Parents.....	44
3. Does the IDEA give the parent a right to refer a child for evaluation?.....	44
4. Can the school district delay the parent’s referral request in order to conduct classroom-based interventions?	44
5. Can a school district refuse to conduct a comprehensive educational evaluation when a parent requests one?.....	45
6. Who should fill out the Referral documentation?	45
7. Who can sign the <i>Referral</i> ?	45
8. Is there a required timeline between referral and the request for parental consent for evaluation?.....	45
Evaluation Plan.....	46
1. What is the purpose of the <i>Evaluation Plan</i> ?	46
2. Who develops the <i>Evaluation Plan</i> ?	46
3. Is a meeting necessary to develop an evaluation plan?	46
4. What notice must be provided to parents prior to an evaluation meeting?.....	46
5. How soon before the evaluation meeting must written notice be given?	46
6. When must the district provide parents with a copy of the <i>Procedural Safeguards in Special Education</i> ?.....	46
7. Must the <i>Evaluation Plan</i> be completed and signed by the parent for a reevaluation?.....	47
8. Is the district required to obtain parental consent for the Evaluation Report team to consider existing evaluation data (i.e., student records, reports from other sources, etc.)?	47
9. Who is considered to be a “parent”?.....	47
10. What is the school district’s role when parents do not agree with each other about the identification or educational program for their child?	48
11. Is parental consent for evaluation required for “screenings”?	48

12. What does a school district do if a parent refuses consent to an initial evaluation?.....	48
13. What options do the school district have if the parent refuses consent to a reevaluation?48	
14. What steps must a district take to exit a child from Special Education?.....	49
15. What does the school district do if the parent does not respond to a request for reevaluation?	49
16. Is there a timeline for the initial evaluation of a student?	49
17. What is the district’s responsibility if the parent repeatedly fails or refuses to produce the child for an initial evaluation?.....	50
18. Are there any circumstances (other than the parent not producing the child) that allow the district to exceed the 60 calendar day timeline?.....	50
19. How recent must classroom-based assessments and observations be?.....	50
20. Which assessments are required for an initial evaluation?.....	50
21. Are there factors that may prohibit a child’s identification as a student with a disability?.	50
22. When are reevaluations required?	51
23. What is the purpose of a reevaluation?.....	51
24. When a reevaluation has been determined necessary, what is the time requirement for conducting a reevaluation?.....	51
25. Which assessments are required for a reevaluation?	52
26. Can an evaluation report document information on assessments and implications by stating, "See previous report/eligibility determination?"	52
27. When a student is reevaluated must he or she meet the criteria required for initial determination of eligibility for special education and related services?.....	52
28. If a student who has been exited from special education will again be evaluated for special education eligibility, should the evaluation process be conducted as an initial evaluation or a reevaluation?	52
29. Who are the required members of the Evaluation Team?	53
30. When a student transfers within Montana, must the receiving district conduct a reevaluation to determine if the student continues to be eligible for special education services?.....	54

31. What must the school district do when an IDEA-eligible student from another state enrolls?.....	54
32. Is an Evaluation Meeting required prior to the student’s graduation from high school or due to exceeding the district’s maximum age of attendance?.....	54
33. Is a district required to conduct an evaluation to obtain assessment information to be used to qualify the student for post-school eligibility of other agency services?.....	54
Is an Evaluation Team meeting necessary to add or remove a related service??	54
34. Is an Evaluation Team meeting required to change a disability category determination? ..	54
Evaluation Report	55
1. Are Parent/Adult Student comments required on the evaluation report?.....	55
2. What is required if “See Attached” is checked?	55
3. Can multiple assessments (observations, cba, achievement, etc) be included in a single report (psychological, behavioral, etc)?	55
4. Are observations and classroom-based assesments required for both initial and reevaluation determinations of eligibility?	55
5. What are "observations by teachers and related service providers"?	55
6. Who can conduct the “Observation” of the student?	56
7. For a child who is less than school age or out of school, who determines the appropriate environment for the observation to occur?	56
8. If the Evaluation Team completes and attaches to the Evaluation Report a copy of the Disability Criteria Checklist, must the “Disability Criteria” section be completed?	56
9. Can a student meet disability criteria, but still not need special education services?	56
10. May a student be identified in more than one disability category?.....	56
11. When is “Speech/Language” a special education service and when is it a related service?57	
12. What is the difference between the special education services of “Communication” and “Speech-language pathology”?.....	57
13. If a recommended special education or related service area is checked by the Evaluation Team, must it be addressed in that student’s Individualized Education Program?	57

14. May the IEP Team add additional services without conducting a reevaluation?.....	58
15. What is the related service, “Parent Counseling and Training”?.....	58
16. Can a student qualify for services under IDEA if they need only a related service	58
17. What does a “lack of instruction in reading or math” mean?	58
18. Does signing the Evaluation Report reflect that each signer agrees with the conclusion of the team?.....	58
19. If parents or other required members of the Evaluation Team are unable to participate in a meeting in person, can other methods be used to ensure their participation?	58
Independent Education Evaluation.....	60
1. What can parents do if they disagree with an evaluation conducted by the school district?.....	60
2. How many Independent Education Evaluations (IEE) is a parent entitled to?	60
3. May a parent request an IEE in an area that was not previously assessed by the District?... ..	61
4. Are there certain criteria that must be met for an IEE obtained at public expense?.....	61
5. Must a district consider the results of an IEE?.....	62
Common Questions Regarding Eligibility Criteria	62
1. If a student has been diagnosed as having ASD Syndrome, must he or she still meet the special education criteria for a student having autism?.....	62
2. If a student has received a medical diagnosis does that student automatically qualify for special education services?	62
3. The criteria for the disability of Other Health Impairment states that a "medical diagnosis" of a chronic or acute health problem is required to initially determine that the student is Other Health Impaired. Who can make this medical diagnosis?	62
4. Must the medical diagnosis be "updated" for each reevaluation for that student?.....	63
5. Is a referral required to evaluate an eligible student for an additional category of disability?	63
6. If an IDEA-qualified student is evaluated for identification in an additional category of disability must they meet the initial criteria for the additional disability?.....	63

7. Must an IDEA-qualified student be identified as having a speech-language impairment for the IEP to provide speech and language pathology services?	63
8. Can a student identified as having a disability in speech-language receive special education services in reading or math or another service area?	63
9. Must the student be reevaluated once every three years?	63
10. How does the district document the agreement between it and the parent that a reevaluation is unnecessary?	63
11. Is a classroom-based assessment required for all preschool-aged students?.....	63
12. May a child younger than six be identified in a disability category other than developmental delay?.....	64
13. What must the IEP team do when a child with a Developmental Disabilities (DD) label turns six?	64
14. When a child turns six and the team removes the DD eligibility and conducts a new ER, is it an initial ER or a re-evaluation?	64
15. May the RTI process be used for identification of learning disability in a pre school child not yet in kindergarten?	64
16. Is the Eligibility Determination process for pre-school children different than for school-age students?	64
17. Can a school district choose to use either the severe discrepancy or Response to Intervention (RtI) methods to identify a child with LD?	64
18. Does Montana allow other methods of identifying a specific learning disability besides the discrepancy or response to intervention models?	65
Preschool Outcome Reporting	65
1. How are the preschool outcomes measured?	65
2. Who conducts the assessment(s)?	65
3. When are the assessments to be conducted?	65
4. How does a district obtain assessment and outcome measurement information for children who previously participated in an IDEA Part C program?.....	66
5. Must the child be reassessed each year?	66

6. Is parental consent required prior to conducting the assessments to complete Preschool Outcome Reporting?	66
7. Do these requirements apply to children whose IEP only provides speech and language therapy?	66
8. Must the IEP contain Measurable Annual Goals for each performance area reported on the outcome measures?.....	66
Response to Intervention (RtI).....	66
1. What is Response to Intervention?.....	66
2. What types of interventions are required?	67
3. What factors must the Evaluation Team consider when using the RtI method to identify a student as having a specific learning disability?	67
4. In what setting do the interventions occur?	68
Individualized Education Plans.....	68
1. Can the “Duration of the IEP” be for less than 12 months?	68
2. How do we include information from parents if they do not attend the IEP?	69
3. When should “Yes” be checked for “Does the student have communication needs”?	69
4. At what age must the IEP address postsecondary transition?	69
5. May postsecondary transition be included in the IEP for students younger than 16?	69
6. When could a student participate in their IEP meeting?.....	69
7. At what age must a student be invited to the IEP meeting?	69
8. What additional information must the IEP meeting notice contain for a transition IEP?	70
9. Must the IEP include transition services, even if someone other than the school district will provide those services?.....	70
10. What is the school district's responsibility if another agency fails to provide agreed-upon transition services?	70
11. Under what circumstances must a school district invite representatives from other agencies to an IEP meeting at which a student's transition services will be considered?	70

12. Is parental consent required for a district to invite a representative from a participating agency that may be responsible for providing or paying for transition services?.....	71
13. What are “Measurable Postsecondary Goals” for students aged 16 and older?	71
14. What is the difference between a measurable postsecondary goal (MPSG) and a measurable annual goal (MAG)?	71
15. Are IEP progress reports required for measurable postsecondary goals?	71
16. Must a parent receive notice prior to the student’s graduating with a regular diploma or exceeding the district’s age of attendance?	72
17. When is the Summary of Performance required?	72
18. What must the Summary of Performance contain?	72
19. What must a Present Level of Academic Achievement and Functional Performance (PLAAFP) statement include?.....	72
20. What must a Measurable Annual Goal (MAG) include?	72
21. Is a MAG considered complete if the short-term objectives contain the required components?	72
22. Are benchmarks and short-term objectives required for all students?	73
23. When must IEP progress reports on the measurable annual goals be provided to parents?	73
24. How is progress toward the IEP goals reported?.....	73
25. Is it required that progress toward each short-term objective or benchmark be..... reported?	73
26. Do the requirements for progress reports also apply to measurable annual goals for related services such as speech and language services or occupational therapy?.....	73
27. Who can provide “Special Education Services in the General Education Setting”?	74
28. How do we show changes in service minutes across school years for students moving from an elementary to middle school or to a high school schedule?	74
29. When must transportation be included in a student's IEP?	74
30. Is consultation a special education or related service?	74

31. What are some examples of program modifications or supports for school personnel?	75
32. If an accommodation is not in the IEP, but is being used with the student, can it be used in taking state and districtwide assessments?.....	75
33. Must a student's IEP contain short-term objectives and benchmarks in years when they are not participating in the alternate state wide assessment?	75
34. May a student's IEP contain short-term objectives and benchmarks if the student is not taking the alternate state wide assessment that year?.....	75
35. How may general education teachers, paraeducators and others who work with a student be informed of their specific responsibilities under the IEP?	75
36. Who are the required members of the IEP Team?	76
37. Who can serve as the “Designee” for an Administrator in the IEP meeting	76
38. May the parent or district invite others to participate in the IEP meeting?	77
39. How do schools meet the "general education teacher" requirements for participation in the IEP for children aged three, four or five who are receiving preschool special education?..	77
40. Who can participate as the “parent” in developing an IEP?.....	77
41. At an annual IEP meeting, if the parent does not sign approving the IEP, must the district continue to provide special education and related services?	78
42. What must the district do if the parent approves the IEP with exceptions?.....	78
43. If a parent or other member of the IEP Team is not physically present, but participates in the IEP by other means, how should this be documented?	79
Supplementary Aids and Services.....	79
1. What are supplementary aids and services designed to do?	79
2. What is a school district’s responsibility in regard to nonacademic services and extracurricular activities under the IDEA?	79
3. Do students with disabilities have the opportunity to participate in field trips and extracurricular activities?.....	79
4. Are there instances when a student with a disability can be denied the opportunity to participate?	80

5. Is a lack of district funds an allowable reason to deny a student the opportunity to participate?	80
6. Is the district obligated to provide accommodations, related services or services needed for a student to participate?.....	80
7. Can a district require a parent or family member accompany a student during an activity? 80	
8. Must notice of field trips and extracurricular activities be given equally to all students?	80
Parental Revocation of Consent for Continued Special Education and Related Services	81
1. May a parent or adult student revoke consent for special education and related services? 81	
2. What must the school district do when it receives a revocation notice from a parent/adult student?	81
3. May the school district challenge the revocation of special education and related services?	81
4. Does a child/student whose special education and related services have been revoked continue to have procedural safeguards under IDEA, including the discipline protections?.....	81
5. Is the school district required to conduct reevaluations for a child/student whose special education and related services have been revoked?	82
6. Should the school district amend the student’s records to remove references to the receipt of special education and related services?	82
7. If the parent revokes consent, does the school district need to conduct an evaluation report or IEP meeting to exit the student from special education prior to discontinuing services?.....	82
8. Does the revocation of consent for special education and related services prohibit the parent from subsequently requesting an evaluation to determine eligibility for special education and related services?	82
9. If more than one person can act as a “parent” of the student/child and they disagree about revocation, what must the school district do?	82
10. Does a subsequent request for evaluation require a referral?	82
11. Is a subsequent evaluation to determine eligibility for special education and related services considered a reevaluation or an initial evaluation?.....	82
IEP Meeting Excusal	83
1. May a required member be excused from attending an IEP team meeting?	83

2. Are there members of the IEP team who cannot be excused from an IEP Team.....	83
meeting?	83
3. What “written input” must the excused IEP Team member provide?	84
4. How is the excusal from the IEP meeting documented?	84
5. When should the request for excusal be presented to the parent?	84
6. What if the written input is not provided for prior review and consideration by the parent?	84
7. What if the parent does not return the request for the excusal of specific required IEP Team members?	84
8. What if the parent does not agree to the excusal of specific required IEP Team	84
members?	84
9. If the parent agrees to the excusal of specific required IEP Team members but does not attend the meeting, must a new request for the excusal of specific IEP Team members be done for the rescheduled IEP meeting?.....	84
10. Can the IEP Excusal form be used to excuse Evaluation Report Team members?.....	85
IEP MEETING NOTES	85
1. What should meeting notes include?	85
IEP Process	85
1. Can an Individualized Education Plan be changed without an IEP meeting?	85
2. When may an amended IEP be implemented?.....	86
3. How much of an IEP can an amendment change?	86
4. If a student needs specially designed physical education must this be included in the student's IEP?.....	86
5. Must a district provide specially designed physical education even when physical education is not offered to grade level peers or if the child is preschool age?.....	86
Transfer Students.....	86
1. What must a school district do when an IDEA-eligible student enrolls with a current IEP from another Montana school district within the same school year?	86

2. What must the school district do when an IDEA-eligible student from another state enrolls with a current IEP and documentation of eligibility from the previous state?	87
3. What if the transfer student has an IEP which is more than 12 months old?	87
4. What if a student moves to a school district and has an Evaluation Report or other documentation of IDEA eligibility, but does not have an IEP?	87
5. What if a student enrolls and the parent states that the student has received special education services, but there is no documentation of eligibility available (no Evaluation Report or IEP)?	87
6. May IEP meetings be electronically recorded.....	88
7. Is it permissible for a school district to develop a draft IEP before the IEP meeting?.....	88
8. May a district provide a copy of a draft IEP to the parents prior to the meeting?.....	88
9. What is a district's responsibility if it is not possible to reach consensus on which services should be included in a student's IEP?.....	88
Pre-Employment Transition Services (Pre-ETS) – Montana Vocational Rehabilitation and Blind Services	89
1. If a school receives Pre-ETS funding, does it raise the district's maintenance of fiscal effort (MOE) level?.....	89
2. What can Pre-ETS funds be used for?.....	89
3. What can Pre-ETS funds not be used for?	89
Students who are homeless.....	90
1. Do students receiving special education who are homeless have the right to remain in their school of origin?.....	90
2. Must schools provide special education services immediately to students experiencing homelessness who have IEPs from another school district or state?	90
3. If a student receiving special education services becomes homeless and elects to remain in the school of origin, who pays for transportation and any applicable tuition charges?	90
4. What obligations do private schools have under the McKinney-Vento Act? If the school of origin is a private school, must the student be allowed to continue attending?	91
TRANSITION ASSESSMENTS	91

1. What are age-appropriate transition assessments?.....	91
2. What are examples of age-appropriate transition assessments?	91
RESOURCES FOR TRANSITION ASSESSMENTS.....	92
Education	92
Training	93
Assessments which incorporate education, employment, training and independent living skills	93
Transition Service Area Examples.....	95
How to Write Present Levels of Academic Achievement and Functional Performance.....	96
How to Write Measurable Annual Goals	97
Examples of PLAAFP, MAG and STOB with Comments from OPI Reviewers.....	99
Extended School Year Services	106
1. What is an extended school year (ESY)?.....	106
2. May a student with a disability participate in summer school?	106
3. May ESY services be provided in conjunction with a district’s summer school?.....	106
4. Must ESY services be provided in conjunction with a district’s summer school?	106
5. Who determines if ESY services are necessary for a student with disabilities?	106
6. Must the IEP team for a newly eligible preschool student consider the student’s need for ESY?.....	106
7. What criteria are used to determine whether ESY services are necessary for a student with a disability?	107
8. What information may be used in making the determination of need for extended school year services?.....	107
9. Must all the special education and related services in the student’s IEP be provided during an ESY?	107
10. Is it possible for a student to receive only a related service as part of an ESY program? ..	108
11. Must a full continuum of placements be maintained during an ESY program?.....	108

12. What information should an IEP team request from an early intervention provider in considering a preschool child’s need for ESY?	108
Aversive Treatment Procedures	108
Common Questions about Aversive Treatment Procedures	108
1. What are “positive behavioral interventions” ?	108
2. What is a “functional behavior assessment”? Are there requirements for the content and complexity of the functional behavioral assessment?	108
3. Who determines when the use of aversive treatment procedures may be appropriate?... 109	
4. What is “physical restraint”?	109
5. What are the relevant provisions of MCA 20-4-302?	109
6. Would an Aversive Treatment Plan be required if the IEP team has determined that the frequency, intensity or duration of the restraint does not warrant an aversive treatment procedure?.....	109
7. Is the development of an aversive treatment plan required if physical restraint is used more than one time under the provisions of MCA 20-4-302?	110
8. Are the following procedures considered isolation time-out: in-school suspension, study carrels, having the student stand in a corner of the classroom, having the student go outside of the classroom to a hallway, being in an isolation room with the door open?	110
9. If school district personnel are in an isolation room with a student and the door is closed, is this isolation time-out?	110
10. Does the Office of Public Instruction have standards regarding the design of an isolation time-out room?	110
11. Can the use of a peephole, one-way glass or a video camera system meet the requirement for direct constant visual observation?	111
12. Who is the “designated staff person?”	111
13. Can a parent provide permission for the use of a procedure that is prohibited by this rule?	111
14. What is a “locked room?”	111
15. What are “aversive mists?” Would having a student take a shower be considered an aversive mist?	111

16. What is “mechanical restraint”?	111
17. What is the definition of residential treatment facilities and psychiatric hospitals in MCA 20-7-436?	112
18. How is the determination made that a mechanical or restrictive device is intended for medical reasons?	112
19. If a student uses a brace or belt-type support in order to maintain posture while seated in a wheelchair, chair or bus seat, would the device be considered a mechanical restraint?	112
20. If a student’s movement is physically restricted by a mechanical or restrictive device while the student is being transported by bus or car, would this be considered a mechanical restraint?.....	113
21. Must the aversive treatment procedures be written on the IEP forms or can these be included as an attachment to the IEP?	113
22. Must the two written positive behavioral intervention strategies be implemented before or after the functional behavior assessment is developed?.....	113
23. What is meant by “a series of no less than two” positive behavioral intervention strategies?.....	113
24. Is there a minimum period of time for which the positive behavioral intervention strategies must be implemented?.....	113
25. What documentation is required of the written positive behavioral intervention strategies previously implemented?	113
26. Can the aversive treatment procedures only address the behaviors that were targeted to be changed by the two written positive behavioral intervention strategies?.....	114
27. Who determines that the IEP team includes 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?.....	114
28. Must the target behaviors be discrete individual behaviors (hit, kick, bite) or can they be “classes” of behavior (self-abuse, physical aggression)?.....	114
29. Must the short-term objectives in the aversive treatment plan be included in the student’s IEP?.....	114
30. How detailed must the written description of the aversive treatment procedure(s) be? .	114

31. Can the IEP team establish additional limits for the use of aversive treatment procedures such as maximum amount of time per day in isolation time-out or how many times per day a student can be restrained?	115
32. What data should be collected for each application of the aversive treatment procedures?	115
33. Who should be the individual responsible for ongoing review and analysis of data on the target behavior?.....	115
34. How specific must the IEP team be in stating whether any standard school disciplinary measures are waived?	115
35. Can an IEP team waive standard school disciplinary procedures if the school district does not agree?	115
36. How does a school district inform the parents that their consent to the IEP includes consent for the aversive treatment plan?	115
37. If the student’s parents do not attend the IEP meeting at which consent is needed for the aversive treatment plan, how is consent for the IEP and aversive treatment plan obtained?	116
38. Does this rule, (ARM 10.16.3346(4)(e) Aversive Treatment Procedures), apply to students who have not been identified as students with	116
disabilities under IDEA?	116
39. If a student transfers between school districts in Montana with an existing aversive treatment plan, must the receiving district conduct a functional behavior assessment and implement two written positive behavioral intervention programs before the aversive treatment plan can be implemented?	116
40. What is a public agency's responsibility if the parents refuse to consent to the use of aversive treatment procedures?.....	116
41. If a child’s IEP includes behavioral strategies to address a particular behavior, can a child ever be suspended for engaging in that behavior?	117
42. Must the parents be notified each time aversive treatment procedures have been used?	117
43. Is parental consent required and must a district provide notice of and obtain permission for evaluation before conducting a functional behavior assessment for the purpose of developing an aversive treatment plan?	117
Aversive Treatment Plan.....	118

Common Questions about the Aversive Treatment Plan	118
1. What changes in the aversive treatment plan require an IEP team meeting?.....	118
2. How should changes to the aversive treatment plan be documented?.....	118
3. Is it necessary to complete the Aversive Treatment Procedures Checklist if an Aversive Treatment Plan has been completed?.....	118
ASSISTIVE TECHNOLOGY	120
1. What is an assistive technology device?	120
2. What is an assistive technology service?.....	120
3. Why is assistive technology important?	121
4. When should the assistive technology devices or services be provided for a student?	121
5. Must assistive technology be considered for all students with disabilities?.....	121
6. What kinds of devices qualify as assistive technology?.....	121
7. Who is qualified to assess a student’s need for assistive technology?	121
8. What is the role of the parent in determining a student’s need for an assistive device or service?	121
9. How is the determination made that an assistive technology device or service is educationally necessary for a student?	122
10. When are assistive technology or assistive technology services considered a related service?	122
11. Can an independent educational evaluation be requested by the parent to address a student’s need for assistive technology?.....	122
Choosing an Assistive Technology Device.....	122
1. What procedures should be followed when determining a student’s need for an assistive technology device?	122
2. Is a school district required to provide “state-of-the-art” assistive technology for a student?	122
3. Can school district administrators instruct personnel not to include assistive technology in the IEP?	123

4. What constitutes an unreasonable amount of time to obtain an assistive technology device?	123
5. Are there any places in Montana that offer the opportunity to try out equipment before a purchase is made?	123
6. If the IEP team cannot come to consensus regarding an assistive technology device or service, what should occur?.....	123
Purchasing an Assistive Technology Device	124
1. Who is required to provide assistive technology devices and services?	124
2. Can schools require the parents to pay for an assistive technology device or service?	124
3. Are there options for districts to consider other than purchasing the assistive technology device?	124
4. What resources are available to assist in obtaining appropriate assistive technology devices and services?.....	125
5. Who owns the assistive technology purchased for an individual student?	125
6. When a student moves from school to school within the same district, does the district-purchased assistive technology device follow the student?	125
7. When a student moves from one school district to a different school district, does the assistive technology device that was purchased by district A follow the student to district B?	125
8. If an assistive technology device is no longer needed by a student and the device was paid for by Medicaid or private insurance, can it be donated for use by another student?	125
Training in Using the Assistive Technology Device or Service	126
1. In addition to the student, who else should receive training on how to use an assistive technology device or service?.....	126
2. What kind of training and technical assistance should be provided to families, peers and professionals?	126
Using the Assistive Technology Device or Service	126
1. When can an assistive technology device be used in the regular education setting?	126
2. Can a student be required to bring a personal assistive device (such as a laptop computer) to school for use as assistive technology?	127

3. Can students take assistive technology devices owned by the school to their home?.....	127
4. Can an assistive technology device be used by more than one student?	127
5. Can students become too dependent on assistive technology?	127
6. Why do some students refuse to use an assistive technology device?	127
Device Repair and Maintenance	128
1. What are the responsibilities of the student, educators and parents in the maintenance and repair of assistive technology devices and reporting broken devices?	128
2. If an assistive technology device is lost or damaged beyond repair, who replaces the device?	128
3. Is the school liable for family owned assistive technology devices used at school to implement the student’s IEP?	128
4. What provisions could be made for the student while an assistive technology device is being repaired?	128
5. What is important to know about a warranty?	129
6. Should assistive technology devices be insured?	129
Legal Responsibilities Related to Assistive Technology	129
Assistive Technology As Part of the Special Education Process.....	130
Assistive Technology Consideration Process	130
Questions To Ask When Considering Assistive Technology Devices and Services	131
Assessment	131
Choosing an Assistive Technology Device.....	132
Purchasing an Assistive Technology Device	132
Training in Using Assistive Technology Device or Service.....	133
Using the Assistive Technology Device or Service	133
Repair and Maintenance of the Device	133
Assistive Technology IEP Goal Examples.....	133

Grades, Graduation and Diplomas.....	134
1. What are “modified grades”?	135
2. May a student with a disability who receives special education accommodations or modifications in a general education classroom be given modified grades?	135
3. May students with a disability enrolled in a general education class be excluded from grading?	135
4. Who should assign the modified grade for a student with a disability in a general education classroom, the general education teacher or a special education teacher?	135
5. May modified grades be used at the discretion of a teacher?	136
Transcripts.....	136
1. May classes be identified as special education classes on the high school student’s transcript?	136
2. May a high school student’s transcript reflect that the student had a modified curriculum in a general education class?	136
Grades, Class Ranking and Honor Roll	136
1. Must modified grades earned in special education or general education classes be included in districtwide Grade Point Average (GPA) standings for purposes of ranking of students by GPA for honor roll?	136
2. May a school district implement a weighted grading system that arbitrarily assigns lower grade weights to all special education courses?.....	137
Graduation	137
1. Is an Evaluation Report meeting required prior to graduation from high school?	137
2. Is an Individualized Education Program meeting required prior to graduation from high school?	137
3. What documentation must the district complete prior to the student leaving high school?	137
Diplomas	138
1. Are all special education students eligible to receive a regular diploma?	138

2. May specific requirements for granting a diploma be waived for students with disabilities?	138
3. May an IEP team waive graduation requirements for a specific student?	138
4. Does the districts’s responsibility for FAPE end if the student with a disability does not receive a regular diploma?.....	138
5. May a district award more than one form of diploma?.....	138
Surrogate Parents	139
1. When must a surrogate parent be nominated?	139
2. What are the responsibilities of a surrogate parent?.....	139
3. Who is considered to be a “parent”?.....	140
4. What is a Guardian Ad Litem?.....	140
5. Is a guardian ad litem considered a parent?.....	140
6. Does a surrogate parent need to be appointed for a child who is in the custody of the Department of Public Health and Human Services?.....	140
7. What must a school district do to have a surrogate parent appointed?.....	141
8. How many days does the school district have to file the nomination for appointment with the court?.....	141
9. How long does the court have to act on the nomination of the surrogate parent?	141
10. What occurs if the court denies the appointment?.....	141
11. What happens if the court does not act within 20 calendar days?	141
12. Who may the district nominate to be a surrogate parent?.....	141
13. Must a surrogate parent be a resident of the school district?	142
14. Are surrogate parents reimbursed by the school district?	142
15. Does receipt of payment to act as a surrogate parent make the surrogate parent an employee of the school district?.....	142
16. Can someone from an agency responsible for the child (i.e., Department of Family Services, group home, etc.) act as the parent or be nominated as the surrogate parent?.....	142

17. Can the child’s social worker act as the parent or be nominated as the surrogate parent?	142
18. If parental rights have been temporarily removed, can a surrogate parent be appointed?	142
19. If the court action granting temporary custody to the state stipulates that parent rights regarding education have been removed, must the district nominate a surrogate?	142
20. May a school district use IDEA Part B federal funds for recruitment and/or training of surrogate parents?.....	142
Disciplinary Removals In Special Education	143
Change of Current IEP Placement for Disciplinary Purposes	143
1. What is meant by a "change of current placement" in reference to disciplinary removals?	143
2. What constitutes a day of removal?	143
3. Do in-school suspension days count towards the 10 day total?.....	143
4. May authorized school district personnel suspend a student with an IDEA protected disability?	144
5. Do these protections apply to a student prior to the Evaluation Team determination that the student is a student with a disability and needs special education and related services?	144
6. What is the basis of “suspected”?	144
7. Does IDEA require that a school district always provide educational services to a student with an IDEA-protected disability who has been suspended for disciplinary reasons?	144
8. If a student is suspended from riding a bus to school and does not attend school during the suspension, do the school days missed count toward the 10-day limit per school year that a student may be suspended without the provision of FAPE?.....	144
Manifestation Determination	145
1. What is an IDEA manifestation determination and when is one required?	145
2. Is a manifestation determination required each time a student is removed for more than 10 consecutive school days or each time that the school district determines that a series of removals constitutes a change of placement?	145

3. Who conducts the manifestation determination and what are the requirements of a manifestation determination?	145
4. What questions must be answered when making a manifestation determination?	145
5. Are there special circumstances that effect the district’s ability to suspend/expel a student without regard to the behavior being a manifestation of the disability?	146
7. What is the definition of a “weapon”?	146
8. What is the definition of controlled substance and illegal drug?	146
9. What is a Functional Behavioral Assessment (FBA)?	147
10. When is an FBA required during disciplinary actions?.....	147
EVALUATION REPORT	147
ASSESSMENT SUMMARIES AND IMPLICATIONS EXAMPLES.....	147
DISABILITY CRITERIA AND NEED FOR SPECIAL EDUCATION EXAMPLES	149

IDEA/Section 504 of the Rehabilitation Act

Section 504 of the Rehabilitation Act is administered and regulated by the Office of Civil Rights (OCR) in the U.S. Department of Education (ED). Even though the Montana Office of Public Instruction (OPI) has no authority in administering, regulating, or offering guidance on Section 504 issues, this guide contains questions about Section 504 as it relates to IDEA issues.

<http://www2.ed.gov/about/offices/list/ocr/504faq.html>

1. If a student is eligible for services under both the IDEA and Section 504, must a school district develop both an Individualized Education Program (IEP) under the IDEA and a Section 504 plan under Section 504?

No. If a student is eligible under IDEA, he or she must have an IEP. Under the Section 504 regulations, one way to meet Section 504 requirements for a free appropriate public education is to implement an IEP.

<http://www2.ed.gov/about/offices/list/ocr/504faq.html#interrelationship>

Child Find

Child find includes:

- Transition from the IDEA Part C Early Intervention Program;
- Preschool screening activities that reach out to the community at large, including private and home schools, as well as local Head Start programs;
- School-based prereferral activities for school-age students; and
- Referral and evaluation of students.

Transition from the IDEA Part C Early Intervention Program

Steps for Early Childhood Transition

The IDEA requires a smooth transition for young children who receive services from Part C of the IDEA to services provided under Part B of the law.

- **Notification of Potentially Eligible Children**
- **Initial Transition Planning Prior to the Conference**
- **Transition Conference Invitation to the School District**
- **Transition Conference**

Notification of Potentially Eligible Children

1. What is the requirement for notification of the school district?

Notification is required in accordance with 34 CFR § 303.209(b) which states

The Part C Agency will provide school districts two notifications of potentially eligible children per year: (1) the first notification will be for children who will turn three years old in September through the following August, and (2) the second notification will be for children who will turn three years old in February through the following January. It is okay that some children will be listed on two notifications during a 12-month time period.

The notification must include the child's legal first name, last name, middle initial, date of birth, the school district in which the child resides, contact information for the parent(s) and contact information for the Part C Agency Family Support Specialist who currently works with each child/family. In accordance with OSEP's guidance, the disclosure of limited personally identifiable information is allowed without parental consent under FERPA (Family Educational Rights and Privacy Act). The school district must protect this information as educational records under FERPA in a manner which will not permit personal identification of Part C children and their parents to anyone other than the school district. The Part C Agency must also maintain in the child's file a record that there has been a disclosure to the school district.

However, parents have the right to "opt out" of having the school district informed that their child will be turning three years old in the next 12 months. Prior to notification of the school district, the Part C Agency must inform parents whose children will be turning three within the next 12 months that the parents can "opt out" of the school district notification about their child. The Part C Agency must explain to parents that their privacy is protected at the school district by FERPA, that this notification is **not a referral** for Part B preschool special education services, and the potential benefits of special education services for their child. Parents, who want to "opt out" of school district notification, must sign an "opt out" form which will be placed in the child's/family's file. Further, if a parent who had signed an "opt out" form changes their mind about exploring special education services for their child, the Part C Agency can assist the family in making the appropriate notification to the school district. If the family changes their mind within four months before the child turns three, the Part C Agency should inform the school district that the family had only recently decided to explore special education services.

The Part C Agency will complete the school district Notification of Potentially Eligible Children Form and send it to the Special Education Director of the district or special education cooperative where the child resides. The address on the envelope should include: "Attention: school district Notification of Potentially Eligible Children from Part C."

This notification provides the school district with a list of children who will potentially transition to their school district within the next year. The list helps the school district to project future allocation of resources, as well as the school district and the Part C Agency plan for upcoming transition conferences through out the year. The school district should work with the Family Support Specialist (FSS) for the child/family who will schedule the transition conference. The school district should not directly contact the family at this early stage of the transition process.

The school district needs to understand that families may change their mind about exploring special education services, move or leave Part C services prior to planning for a transition conference. While the Part C Agency will try to provide a timely notification to the school district of these situations, the Part C Agency did not expect the situation either.

IDEA, 20 U.S.C. § 1437(a)(9)(A) (or Pub. L. No. 108-446, § 637(a)(9), 118 Stat. 2647,752 (2004))

Initial Transition Planning Prior to the Conference

2. What is the role of the Family Support Specialist in the initial transition planning with the family prior to the Transition Conference?

While it might seem very early when a family starts Part C services, the FSS begins to talk to the family about the fact that Part C services will end when their child turns three years old and that there may be other service options for their child after Part C services end. The FSS meets with the family to identify and document the specific steps and actions that will support the child and family through the transition process. These individualized steps and actions are documented on the transition plan as an outcome and objectives and are included in the Individualized Family Service Plan (IFSP). The transition plan outcomes and objectives must be in the IFSP that will be in place when the child reaches **two years, three months of age** (or their first IFSP for a child who enters Part C services after two years, three months of age). All of these children in Part C must have a transition plan in their IFSP, even when the family is not interested in pursuing other services and the child will be at home.

The FSS ensures that the family is fully informed of the array of service and program options available for their child, including: staying home; Part B preschool special education services; Head Start; childcare centers; private preschools or other community-based settings, etc. These options include settings for all children in order for the child to be with typically developing peers. When appropriate, the transition outcome in the IFSP will include the steps for the family to explore these service options and inviting personnel from these programs to the Transition Conference.

In addition to the discussion of future service options discussed above, the transition outcome in the IFSP will consist of, as appropriate, procedures to prepare the child for changes in service delivery, including steps to help the child (and family) adjust to and function in a new setting, and with parent consent, the transmission of information about

the child (i.e., current IFSP, child assessment, and diagnosis, if appropriate) to ensure continuity of services.

34 CFR. §303.344 (h) Content of an IFSP

3. What is the responsibility of school district staff during early transition planning process?

School district staff are highly encouraged to participate in the meetings between the Part C Agency FSS and the family members preceding the Transition Conference. School districts are encouraged to routinely communicate with the Family Support Specialists about public school programs, activities and resources. School districts should coordinate with the FSS to allow parents to learn more about services available, and support parent and family involvement in the transition planning process. School district staff is encouraged to be responsive to requests by the FSS and families for information and opportunities to meet with school personnel, visit school programs and tour facilities.

Transition Conference Invitation to the School District

4. What are the preparation activities that need to occur by Part C Agency and school district staff prior to the Transition Conference?

The FSS, with parental permission, will complete and submit the Transition Conference Invitation Form to the school district for a child who is currently eligible for Part C services under "Established Condition" or "Developmental Delay." The Transition Conference Invitation Form is an invitation to the school district to participate in transition planning, including determining if the child will be referred to the school district to determine if the child is eligible for preschool special education services. Each invited school district will participate in the transition planning conference arranged by the Part C Agency under Section 635(a)(10) of the IDEA (34 CFR 300.124).

The ideal (recommended practice) time period for the Transition Conference to occur is between **four and nine months** before the child turns three years of age. The **Transition Conference Invitation Form** should be sent **at least 30 days** prior to the Transition Conference.

The FSS will work with the family to determine a **date, time and location for the Transition Conference. However, the FSS will still need to provide prior written notice of the Transition Conference to the family.** With parent consent, the FSS will send a Transition Conference Invitation Form (Appendix C) as a **written invitation to the school district** and any other potential service providers (for preschool-aged children, such as Head Start, child care, etc.) with the details about the conference. The family and FSS should make an effort to set up the Transition Conference to be as convenient as

possible for all involved; thus, the original Transition Conference date, time and place can be rearranged as long as the Transition Conference occurs absolutely **no later** than 90 days before the child turns three years of age.*

The school district's responsibility after receiving the Transition Conference Invitation Form is to send the family a copy of the procedural safeguards afforded the child and family, as required in Part B of the IDEA, before the transition conference date. During the transition planning process, one responsibility of the FSS will be to inform the family that they will be receiving from the school district a copy of Part B's procedural safeguards prior to the meeting.

With the parent's written consent, the FSS will provide the school district pertinent assessment/evaluation reports, child's diagnosis (if appropriate), IFSPs, and other information that may support Part B eligibility determination. Only information that originates with the Part C Agency shall be made available.

* The Part C of IDEA requires "In the case of a child who may be eligible for preschool services under Part B of the Act, with the approval of the family of the child, convene a conference among the lead agency, the family, and the school district at least 90 days, and at the discretion of the parties, up to nine months, before the child is eligible for the preschool services...". In order to ensure that the transition conference occurs before the 90 days prior to the child turning three years of age, Montana guidelines require the transition conference to occur four to nine months prior to the child's third birthday.

34 CFR 300.124 Transition of children from the Part C program to preschool programs

5. What happens if a family declines to have the school district invited to the Transition Conference?

If a family whose child is potentially eligible for IDEA B (i.e., the child is eligible for Part C under the "established condition" or "developmental delay" categories) declines to have the Part C Agency invite the school district about the Transition Conference, the parent is then choosing not to continue with services through the Individuals with Disabilities Education Act (IDEA) after the child turns three years of age.

Therefore, if a parent declines the Transition Conference notification to Part B, the FSS should provide the parent(s) with prior written notice that Part C services will end at the time of their child's third birthday. The FSS will also provide the family a copy of the Part C procedural safeguards at this time.

If, after the child turns three years of age, the family changes their mind about exploring special education services, the family can directly contact the school district.

6. What happens if a family who previously declined to have the school district invited to the Transition Conference has changed their mind?

The parent(s) can change his/her mind and provide consent for the invitation of a school district to a Transition Conference or referral for initial evaluation by the school district if

the child is still under the age of three. In this case the FSS may send the Transition Conference Invitation or referral for initial evaluation to the school district.

34 CFR. §303.344 (h) Content of an IFSP

7. What should occur with late referrals (i.e., children referred to the Part C Agency program within 90 days of their third birthday)?

If a child is referred to Part C **fewer than 45 days prior to the child's third birthday**, the Part C Agency may, but is not required to, conduct an initial evaluation, assessment and initial IFSP meeting for that child. The Part C Agency is not required to develop a transition plan or conduct school district notification for that child. However, the Part C Agency can assist the family in making a referral for initial evaluation for preschool special education services.

If a child is referred to Part C **between 45 and 90 days or even greater than 90 days prior to the child's third birthday**, the Part C Agency must conduct the initial evaluation, assessment and initial IFSP meeting. If that child is determined eligible and is receiving services under Part C (which includes service coordination services), the Part C Agency must develop a transition plan (with the appropriate transition steps and services), and provide the school district with the child's information since they will not fall within the timelines of when the "Notification of Potentially Eligible Children Form" would go out to schools. Generally, in these instances, the transition plan would be part of the initial IFSP. The Part C Agency will notify the school district of the Transition Conference and will inform the school district that the child was referred very late to Part C.

34 CFR §636(a)(3) and (d)(8) Individualized family service plan

34 CFR §637(a)(9)(C) State application and assurances

34 CFR §303.148(b)(4) Transition to preschool programs

34 CFR §303.344(h) Content of an IFSP

Transition Conference

8. Who convenes and attends the Transition Conference?

The Part C Agency is legally responsible for convening the Transition Conference. It is the responsibility of the FSS to invite a school district representative to the Transition Conference with the approval of the family. It is the legal responsibility of the school district representative to respond to the Part C Agency provider's invitation and participate if it is determined that the child is potentially eligible for Part B services. Minimally, attendees to the Transition Conference should include the family, Family Support Specialist, school district representative and any other agency considered for future services. Examples of other agencies might include Head Start or Child Care programs.

The FSS and the family should schedule the Transition Conference **four to nine months** before the child's third birthday. Family Support Specialist should communicate frequently with school district personnel to promote school district participation and attendance.

If any party is unable to attend the Transition Conference, the meeting may be rescheduled, but it must absolutely occur 90 days before the child's third birthday. Part C is required by the IDEA to convene the Transition Conference 90 days before the child's third birthday and school districts are required to participate **[each invited school district will participate in the transition planning conference arranged by the Part C Agency under Section 635(a) (1) of the IDEA (34 CFR 300.124)]**. Part C must document instances when the school district does not notify the FSS within 14 days of the invitation to the Transition Conference that the school district cannot attend or reschedule within the transition timelines. If Part C fails to schedule the Transition Conference 90 days prior to the child's third birthday, the school district must document this information in the Achievement in Montana (AIM) system.

34 CFR § 300.124 Transition of children from the Part C program to preschool programs.

9. Does the school district need to complete any forms prior to their participation in the Transition Conference?

Yes. The school district must return the Montana's Part C Transition Conference Meeting Invite form showing their intent to attend or not attend the meeting. The school district should review the Transition Conference Invitation Form and any other documents/information about the child that was provided by the Part C Agency before attending the meeting.

10. What occurs during the Transition Conference?

At a minimum, as described in the federal statute, the purpose of the Transition Conference is to: *"discuss any such services that a child may receive"* in the future, which includes school district special education services and/or other community services for preschool-aged children; to examine *"options for the period from the child's third birthday through the remainder of the school year"* for children who may be eligible for school district special education services; and *"to establish a transition plan, including, as appropriate, steps to exit from the program."* In most cases the current IFSP for the child will include a transition outcome and objectives that constitute the transition plan, but at the Transition Conference, with the parent's approval, additions or modification of the transition outcomes and objectives may take place. These modifications may include: (1) making parents aware of information about future placements, services and other matters related to the child's transition; (2) procedures to prepare the child (and family) for changes in service delivery, including steps to help the child (and family) adjust to and function in a new setting; (3) with parental written consent, the transmission of additional information about the child to the school district to ensure continuity of services, including evaluation and assessment information and copies of IFSPs. In addition, the parents can approve in writing of a referral to the school district to complete the initial evaluation for

eligibility for preschool special education services; and (4) other steps that promote a smooth transition for the child and family.

The Transition Conference provides an opportunity for families to learn in more detail about their school district's programs and services and for the school district representative to learn about the child and the family. Representatives from the school district and other appropriate agencies and programs should provide information about their services and answer questions. Ideally, the family should already know some of this information prior to the Transition Conference as transition planning occurs over time as a responsibility of the FFS's role. Learning about program options and services in advance of the Transition Conference facilitates the development and implementation of transition steps and services outlined in the child's IFSP. As a result of prior planning and conversations, many parents will have signed consent for the FSS to send other relevant child information to the school district.

Some families are ready to move forward with the school district referral for initial evaluation of eligibility for preschool special education services, while other families may need more time before making a decision. It is important to schedule Transition Conferences more than 90 days in advance of a child's third birthday, as families often need more time to consider their options.

For families *interested* in preschool special education services, the school district representative must provide written prior notice (for all children who are going through a Transition Conference) regarding consent to evaluate. The contents of the prior notice (PWN) must include:

- A description of the actions proposed by the school district;
- An explanation of why the school proposes or refuses the action;
- A description of each evaluation, assessment, record, or report the school used as a basis for its decision;
- A statement regarding Part B Parent and Students Rights and a copy of the Part B Procedural Safeguards;
- Sources for parents to contact to obtain assistance in understanding their rights; and
- A description of other options considered, and why they were rejected; and a description of any other factors relevant to the school's decision.

11. For families who are both interested in preschool special education services *and* ready to proceed with the possible Part B Eligibility Determination Process (including the steps above):

- Complete a Part C to Part B Referral Form;
- Review Part B Evaluation Plan form (Notice of Intent to Conduct an Evaluation or Reevaluation and Permission for Evaluation or Reevaluation) ;

- Obtain written consent for education evaluation (This starts the timeline of 60 days to complete the initial evaluation for Part B) ;
- Review current evaluation and assessments and determine if additional assessments will be needed;
- Determine next steps (including visits to the possible future settings); and
- Part C Family Support Specialist addresses additions/changes to the transition plan outcome and objectives in the child's IFSP (if needed).

34 CFR § 300.124 Transition of children from the Part C program to preschool programs.

34 CFR § 300.503 Prior notice by the public agency; content of notice

34 CFR § 300.504 Procedural safeguards notice

12. Can parental consent for Part B initial evaluation be obtained at the Transition Conference?

Yes. The school district representative may secure parental consent for initial evaluation during the Transition Conference. Parents must fully understand what signing consent means and the resulting actions that will occur. Therefore, the school district representative is responsible for providing and describing Part B Procedural Safeguards to the parents. The initial evaluation must be completed by the school district within 60 days of the parental consent. It is the choice of the parent as to whether they sign the consent during the Transition Conference, as it is not a legal requirement of the Transition Conference. Parents may need more time to consider their options and should not be pressured to make a decision during the conference. Allowing time for decision-making is one reason why the conference should be held more than 90 days before a child's third birthday. Parents have a right to withhold consent if they decide to not proceed with a Part B initial evaluation and eligibility determination process.

34 CFR § 300.300 Parental Consent

34 CFR § 300.9 Consent

13. What happens if a family who has been referred to Part B declines to provide consent for an initial evaluation?

Parents have a right to withhold consent if they decide to not proceed with a Part B initial evaluation and eligibility determination process.

If the parent denies consent in writing to proceeding with the Part B evaluation and eligibility determination process, access to special education services under the IDEA will not be available to the child upon turning three. Parents may reinstate the evaluation and eligibility process at a later date if they desire.

Therefore, if a parent denies consent in writing to the Part B evaluation and eligibility determination, the Part C Agency will provide them with prior written notice that Part C services will end at the time of their child's third birthday. The Part C Agency will also provide the family with a copy of the Part C procedural safeguards at this time, as well as contact information for the school district in which they reside.

34 CFR § 300.300 Parental consent
34 CFR § 300.9 Consent

14. Can a child's eligibility be determined at the Transition Conference?

No. The Transition Conference is not the time to determine eligibility for IDEA Part B services. The Transition Conference provides an opportunity for the family to meet a representative of the school district and learn more about the steps in the process of determining possible eligibility. An initial review of a child's records and assessments could occur during the conference, but not an initial evaluation for determination of Part B eligibility.

34 CFR§ 300.306 Determination of Eligibility

15. Can school districts use assessments and evaluation information from the Part C Agency in determining a child's eligibility for Part B services?

Yes. The school district must review *existing* evaluation data as part of the initial evaluation. The school district is required to draw information from a variety of sources such as parent input and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior. This may include existing IDEA Part C assessment data. In some instances the information from the Part C Agency may be sufficient in determining eligibility. If not, it is the responsibility of the school district to conduct any further evaluations in order to determine eligibility for Part B services. The school district must ensure that a full and individual initial evaluation has been conducted before determining the child's eligibility for special education. The initial assessments must be conducted within 60 days of parent consent.

34 CFR § 300.305 Additional Requirements for Evaluations and Reevaluations
34 CFR §300.301(c)(1)(i) Initial Evaluations

16. Can a district refuse to accept a Part C Referral?

No. Regardless of the time of year it is received, a district must accept and act upon a referral from a Part C Agency.

34 CFR §300.124 Transition of children from the Part C program to preschool programs

17. What if the district doesn't offer preschool special education services?

The IDEA requires all school districts to offer a full continuum of services. If a district does not have preschool special education services available at the time of a Part C to Part B referral, it must either develop preschool special education services or participate with a program that has services available.

34 CFR §300.115 Continuum of alternative placements

18. Who determines if Extended School Year (ESY) preschool special education services are necessary for a student with disabilities?

In accordance with 10.16.3324, ARM, the student's IEP team shall decide annually whether ESY preschool special education services are necessary for a student. If a student turns three years old during the summer, the student's IEP team shall decide whether the student needs ESY preschool special education services during that summer in order to benefit from a Free Appropriate Public Education (FAPE). If, at that initial IEP meeting, the IEP team determines that the preschool-age student does not need ESY preschool special education services, the IEP team shall identify the date of initiation of services as the first day of the school year.

19. How does the IEP team determine if extended school year services are necessary?

Local educational agencies shall provide extended school year services in accordance with 34 CFR 300.106. The IEP teams shall use recoupment and regression as the criteria for determining eligibility for extended school year services. In the absence of the opportunity to collect data to determine regression, the IEP team may conclude that ESY services are necessary based on data that research has shown to predict regression and difficulty with recoupment. Extended school year services must be provided only if a child's IEP team determines, on an individual basis, in accordance with 34 CFR 300.320 through 300.324, that the services are necessary for the provision of FAPE to the child.

34 CFR §300.106 Extended school year services
34 CFR §300.320 through 300.324 Individualized education programs
ARM 10.16.3324 Extended school year services

Preschool Screening

1. What is a preschool screening?

Preschool screening addresses the child's status not only with respect to general health, hearing and vision, speech and language development, but also regarding general development, fine and gross motor skills, or behavior. Screening procedures are a brief look at a child to determine whether he or she needs further assessment. Screening may lead to referral for a comprehensive educational evaluation.

2. Are Child Find and Preschool Screening the same thing?

No, but they can overlap. Since children as young as three are eligible to receive free, appropriate public education from the public school, the local district's child find activities

should coordinate with Head Start's screening procedures. This coordination is typical throughout Montana.

3. How is a preschool screening conducted?

Montana's regulations prescribe no specific procedures for screening; therefore, each public school designs its preschool screening procedures. Screening activities are not individualized assessments requiring prior parental consent.

4. How do parents find out when preschool screening will occur?

Notices of preschool screenings are published in local newspapers or other media.

5. Who should be involved in preschool screenings?

Frequently, the public school's special education teachers and specialists and family support specialists from an early intervention agency conduct preschool screening activities as a team. An effective and efficient preschool screening requires interagency cooperation and collaboration. The IDEA Part C clearly mandates collaborative child find efforts.

Prereferral

1. What is prereferral?

Prereferral activities go by a number of names (schoolwide assistance team, teacher assistance team, Response to Intervention (Rtl), etc.), and the methods differ from school to school.

Prereferral is a series of academic and/or behavioral interventions used with students struggling in school. These interventions are examined as to their effectiveness and form the basis of additional actions up to and possibly including an evaluation for special education and related services.

2. Does prereferral delay the special education process?

No. Prereferral is a required general education process to determine if a referral for special education and related services is necessary for the student.

3. What prereferral data are collected?

The student's performance data prior to and after the prereferral interventions and data on the success or failure of those interventions. This would include dates of the interventions, who conducted the interventions, the interventions used and the results.

4. What is done with referral data once it is collected?

Data gathered during the prereferral process is used to determine if a referral for evaluation is appropriate and help establish whether a child needs special education and related services during the evaluation process.

Child Find and Private Schools

Consultation

1. How does the LEA determine how and when to carry out the child find for the private school children?

The LEA must consult with appropriate representatives of parentally placed private school children with disabilities on how and when child find procedures will be carried out.

34 CFR 300.451(b) Child find for private school children with disabilities

2. Does Part B require that consultations with private school representatives be done on an annual basis?

The IDEA Part B regulations do not specifically state that consultations must be done on an annual basis. As there is no specific schedule for consultations, the LEA is able to determine the appropriate period between consultations based on circumstances within their boundaries. Many LEAs have found that it works well when consultation takes place to review the child find process, discuss the child count, and plan the services being offered prior to each school year.

OSEP Memorandum 00-14

3. What is the obligation of the LEA to conduct child find activities?

Under IDEA and state administrative rules, each LEA is required to locate, identify and evaluate all children with disabilities in private, including religious, schools. This applies to children living within the boundaries of the LEA or attending a private school within the boundaries of the district. In Montana, home school children are considered to be private school children.

ARM 10.16.3125 LEA Child Find Responsibilities

34 CFR 300.131 Child find for parentally placed private school children with disabilities

4. If parents reside in one school district and enroll their child with a disability at a private school located in another school district, which school district is responsible for locating and evaluating that child?

If a student is parentally enrolled in a private school outside the boundaries of the school district in which the student resides, the school district where the private school is located is responsible for child find activities through referral.

ARM 10.16.3125 LEA Child Find Responsibilities
ARM 10.16.3122 LEA responsibility for students with disabilities
34 CFR 300.146 Responsibility of SEA

5. Can the parent of a private school student request an evaluation by the school district in which they live if the child attends a private school located in another school district?

Yes. In that circumstance, the school district where the parents reside should coordinate the child find activities with the district where the private school is located to ensure the required services are provided.

6. Is it possible for a parent to request evaluations from the school district where the private school is located as well as the school district where the parent resides?

Yes. In that circumstance, the school district where the parents reside should coordinate the child find activities with the district where the private school is located to ensure the required services are provided.

7. Must child find for private school, including religious school and home school, children be comparable to child find for public school children?

Yes. Child find activities for private school children must be comparable to activities undertaken for children with disabilities in public schools. This would include the timing of these activities, including individual evaluations. The LEAs may not delay conducting child find and individual evaluations of children enrolled in private schools.

34 CFR 300.131 Child find for parentally placed private school children with disabilities.

8. If a school district determines through consultation with the private schools that it will only offer limited services, may the school district restrict the child find activities to children suspected of having specific disabilities?

No. School districts must evaluate all children suspected of having any disabilities specified in Part B. The child find requirement for parentally placed private school child is the same as for students enrolled in the public school.

34 CFR 300.111 Child Find

9. Are LEAs required to conduct reevaluations of parentally placed private school children, and, if so, how often?

The requirements for reevaluations of parentally placed private school children are the same as for children enrolled in public schools.

34 CFR 300.305 Additional requirements for evaluations and reevaluation

10. Does the parent of a student enrolled in the private school have the right to an independent educational evaluation?

Yes. The parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the LEA. Children suspected of having disabilities are entitled to IDEA procedural safeguards and evaluations regardless of whether they are enrolled in public or private schools.

34 CFR 300.502(b) Independent educational evaluation

11. Can the public school require the private school to conduct all or part of the evaluation or reevaluation?

No. If a private school does perform its own assessments of the child, the Evaluation Report Team must consider the results of the private school's assessments.

Letter to Burr, 30 IDEALR 146

34 CFR 300.131 Child find for parentally placed school children with disabilities

Child Find and Head Start

1. If a child is attending Head Start, is the school district where the child resides still responsible for child find activities?

Yes.

2. Who is responsible for conducting the evaluations for children enrolled in Head Start?

The district. While both Head Start and the district conduct screening activities, evaluations for determination of special education eligibility are the responsibility of the district. That being said, Head Start may be able to provide the district with valuable supporting information.

In many ways, Head Start and local education agencies have overlapping responsibilities for children with disabilities. Head Start's requirements emphasize the need to establish collaborative relationships with local education agencies, especially those involving children with disabilities. Federal Head Start regulations require each program to screen all enrolled children for referral to components of its program. Head Start screenings occur in the early fall and may also occur later in the year. This screening aims at identifying children who may have delays severe enough to suggest that the child may have a disability. Head Start screening, like other developmental screening activities, examines one or more of the following areas: cognitive development, physical development, communication development, social and emotional development, or adaptive functioning skills. Since children as young as three are eligible to receive free, appropriate public education from the public school, the local district's child find activities should coordinate with Head Start's screening procedures. This coordination is typical throughout Montana.

In many cases, the public school's special education personnel conduct preschool screening at or in conjunction with the local Head Start program. In other cases, after Head Start conducts its screening, it sends a referral to the public school. Concerns have arisen throughout the state when the district's established child find procedures conflicted with Head Start's referral procedure. Sources of concern reported include:

- The district's schedule for developing an Evaluation Plan, conducting evaluations and assessments, and holding an Evaluation Report meeting have not met Head Start's expectations;
- Referrals were based on medical diagnoses not directly linked to the IDEA and Montana's disability categories;
- Head Start did not present evidence of interventions prior to referral;
- The district's child find schedule and Head Start screening schedules were not coordinated and did not suit each other's obligations or preferences; and
- Head Start directed referrals to the district in which the program was located, not the district in which the child resided.

Because no method for resolving differences between Head Start and local education agencies exists at the state government level, establishing effective, collaborative, mutually responsive child find procedures at the local level is absolutely necessary. For children with disabilities, transitions from IDEA Part C Early Intervention programs into Head Start may be less than satisfactory when public school personnel are not involved in the transition plan development. This outcome results from Head Start's reliance on the public school's resources to actually provide the individualized services and supports the child needs in the Head Start environment.

Referral for Comprehensive Educational Evaluation

A referral begins the process through which a public school district conducts a comprehensive educational evaluation. Local needs and resources vary widely across Montana. As a result, each public school district has policies and procedures designed to

compile the information necessary to determine whether comprehensive educational evaluation is warranted and the types of evaluations needed. Public schools in Montana are required to create and maintain all special education documentation in the special education module of the Achievement in Montana (AIM) student information system. The *Referral* is the initial documentation of the concern that a student may be a child with a disability.

1. When should a school district refer a child for a comprehensive evaluation?

A student should be evaluated for special education eligibility when the school has reason to suspect the student may be a child with a disability. This involves two inquiries:

- Do we suspect the student may have a disability that qualifies under the IDEA?
- Do we suspect the student may need specially designed instruction and related services?

Referral Requirements

2. What do Montana's regulations require each referral to contain?

- Statement of the reason(s) for referral;
- Documentation of general education interventions tried and the results; and
- Signature of the person making the referral.

The referral establishes the concern that the child may have a disability that adversely affects educational performance and, as a result, may need special education and related services. This information assists the Evaluation Team in determining the types of assessments necessary for a comprehensive evaluation.

ARM 16.3320 Request for initial evaluation

Referrals from Parents

3. Does the IDEA give the parent a right to refer a child for evaluation?

Yes, the IDEA regulations indicate that either the parent of a child, or a public agency, may initiate a referral for an initial evaluation.

34 CFR 300.301 Initial Evaluations

34 CFR 300.111 Child Find

ARM 10.16.3320 Request for initial evaluation

4. Can the school district delay the parent's referral request in order to conduct classroom-based interventions?

No.

ARM 10.16.3125 LEA Child Find Responsibilities
ARM 10.16.3320 Request for Initial Evaluation

5. Can a school district refuse to conduct a comprehensive educational evaluation when a parent requests one?

Yes. However, if the district refuses, it must provide Prior Written Notice to the parent. The refusal to conduct an evaluation gives the parent the right to request a due process hearing and ask the hearing officer to order the district to conduct the evaluation. The parent also may request an Independent Educational Evaluation at the district's expense.

Ignoring a parent's request for a comprehensive evaluation may result in the district being found to have denied providing a Free Appropriate Public Education, even if the child is found not eligible for special education and related services.

34 CFR 300.503 Prior notice by the Public Agency; Content of Notice
34 CFR 300.504 Procedural Safeguards Notice
34 CFR 300.300 Parental Consent
ARM 10.16.3125 LEA Child Find Responsibilities
ARM 10.16.3320 (2) Referral

6. Who should fill out the Referral documentation?

A representative of the public school should fill out the Referral. No regulation governs who should complete the Referral; however, the person who requests the referral must sign the form.

ARM 10.16.3320 Request for Initial Evaluation

7. Who can sign the *Referral*?

Either a parent of the child or an authorized person from the district.

8. Is there a required timeline between referral and the request for parental consent for evaluation?

No. However it should be done within a reasonable time.

The Department of Education in their comments to the federal regulations declined to specify a time period from referral to evaluation and parental consent. However, it is the Department's longstanding policy that evaluations be conducted within a reasonable period of time. *U.S. Dept. of Educ. Discussion of the Federal Regulations*, 71 Fed. Reg. 46637 (August 14, 2006).

Evaluation Plan

1. What is the purpose of the *Evaluation Plan*?

The purpose of the evaluation plan is to notify the parent of the assessments the school 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 the parents approval or denial of consent for the evaluation.

2. Who develops the *Evaluation Plan*?

The child's Evaluation Team, and other qualified professionals as appropriate, are responsible for developing the Evaluation Plan.

3. Is a meeting necessary to develop an evaluation plan?

No.

4. What notice must be provided to parents prior to an evaluation meeting?

The OPI form **Special Education Meeting Notice** serves to provide the parent with written notice of the upcoming meeting. This form is available in the student data system. The use of this form, along with the information provided in the **Referral** form, meets the requirements of the IDEA regulations regarding Prior Written Notice.

34 CFR 300.503 Prior notice by the public agency; content of notice.

5. How soon before the evaluation meeting must written notice be given?

Written notice must be given to the parents of a child with a disability a reasonable time before an evaluation meeting. Although the phrase "reasonable time" is not defined in rule, 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.

34 CFR 300.503 Prior notice by the public agency; content of notice.

34 CFR 300.322 Parent participation.

6. When must the district provide parents with a copy of the *Procedural Safeguards in Special Education*?

- At least once per year
- Upon initial referral or parental request for evaluation

- Upon request by a parent
- Upon the first occurrence of the filing of a complaint with the OPI
- Upon disciplining a student and the decision is made to change the student's placement because of the student's violation of a school code.

34 CFR 300.504 Procedural Safeguards Notice
34 CFR 300.530 Authority of School Personnel

7. Must the *Evaluation Plan* be completed and signed by the parent for a reevaluation?

Yes. Every evaluation must include, at a minimum, Classroom-Based Assessments and Observations which require parent consent.

34 CFR 300.300 Parental Consent
34 CFR 300.305 Additional Requirements for Evaluations and Reevaluations

8. Is the district required to obtain parental consent for the Evaluation Report team to consider existing evaluation data (i.e., student records, reports from other sources, etc.)?

No.

34 CFR 300.305 Additional Requirements for Evaluations and Reevaluations

9. Who is considered to be a “parent”?

Under IDEA the term “parent” means:

- a biological or adoptive parent of a child;
- a foster parent;
- a guardian, but not an employee of the state if the child is a ward of the state;
- a person acting in the place of a parent such as a grandparent or stepparent with whom the child lives;
- a person who is legally responsible for the child's welfare (caretaker relative); or
- a surrogate parent who has been appointed in accordance with 34 CFR 300.519 and 20-7-461 MCA.

The biological or adoptive parent is presumed to be the parent unless such parent does not have legal authority to make educational decisions.

If a judicial order identifies a specific person (one who qualifies for surrogate appointment) to act as parent to make educational decisions for the child, that person or persons shall be determined to be parent(s) for the child. A judicial order which identifies only an agency or organization is not sufficient to allow any representative of that agency/organization to act as the parent.

34 CFR 300.30 Definition of parent.
34 CFR 300.519 Surrogate parents.
MCA 20-5-501 through 503 Caretaker Relative
MCA 20-7-461 Surrogate Parents
10.16.3504 ARM Surrogate Parents

10. What is the school district’s role when parents do not agree with each other about the identification or educational program for their child?

The procedural safeguards apply equally to each person who meets the definition of parent. The school district must ensure that each parent has all the information available regarding the identification or placement of the child and should encourage the parents to work together in the best interests of the child.

34 CFR 300.30 Definition of parent.

11. Is parental consent for evaluation required for “screenings”?

No. The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation is not an evaluation for eligibility for special education and related services.

34 CFR 300.302 Screening for instructional purposes is not evaluation.

12. What does a school district do if a parent refuses consent to an initial evaluation?

If, in the opinion of the school district, the provision of special education services is necessary for the child to receive a free appropriate public education, the school district may pursue mediation or due process to obtain consent for the evaluation. If the district does not pursue the evaluation it is not in violation of child find responsibilities. Contact the OPI Early Assistance Program at 444-5664.

34 CFR 300.300 Parental consent

13. What options do the school district have if the parent refuses consent to a reevaluation?

If the school district believes a reevaluation is necessary and the parents refuse consent to reevaluate, the school district may, but is not required to, pursue the reevaluation by using the IDEA’s consent override provisions included in the procedural safeguards. This would include the school district filing a request for mediation or a request for a due process hearing.

If the school district does not wish to pursue the reevaluation by using the consent override procedures, and the school district believes, based on a review of *existing* evaluation data on the child, that the child does not continue to have a disability and does not need the provision of special education and related services, the school district may determine through an evaluation report meeting to not continue the provision of special education and related services. The school district must provide the parent with prior written notice of its intent to discontinue providing special education services. The parent may then use the procedures in the procedural safeguards if they disagree with the school district's decision.

34 CFR 300.303 Reevaluations

34 CFR 300.300(a)(3)(i)

Questions and Answers on Individualized Educ. Programs (IEPs), Evaluations, and Reevaluations.
Question D-4, 111 LRP 63322 (OSERS 9/1/2011)

14. What steps must a district take to exit a child from Special Education?

The district must conduct a comprehensive reevaluation of the child and hold an evaluation team meeting to make the determination that the child no longer qualifies for special education.

34 CFR 300.305(B)

15. What does the school district do if the parent does not respond to a request for reevaluation?

Parental consent need not be obtained to conduct a reevaluation if the school district can demonstrate that it has taken reasonable measures to obtain that consent and the student's parent has failed to respond. If unsuccessful after several attempts the district may proceed with the evaluation.

34 CFR 300.300 Parental consent

16. Is there a timeline for the initial evaluation of a student?

Yes. The school district must complete all of the assessments indicated on the *Evaluation Plan* within 60 calendar days of receiving parental consent for an **initial** evaluation. The district documents the date upon which it received the signed *Evaluation Plan: Notice of Intent to Conduct an Evaluation or Reevaluation and Permission for Evaluation or Reevaluation* form. Once the assessments are completed the school district must conduct the Evaluation Report meeting as soon as possible.

34 CFR 300.301 Initial Evaluations

17. What is the district’s responsibility if the parent repeatedly fails or refuses to produce the child for an initial evaluation?

The district must maintain documentation of its attempts to conduct the assessments and complete the assessments as soon as possible. The 60-day timeline does not apply if the parent repeatedly fails or refuses to produce the child for evaluation.

34 CFR 300.301 Initial Evaluations

18. Are there any circumstances (other than the parent not producing the child) that allow the district to exceed the 60 calendar day timeline?

Yes. The only other circumstance is for students who transfer to another school district while in the process of being evaluated. In this case the new school district should complete the evaluation as soon as possible, but is not bound by the timeline requirement.

34 CFR 300.301 Initial Evaluations

19. How recent must classroom-based assessments and observations be?

They must be current at the time of the consideration of eligibility for special education and related services.

20. Which assessments are required for an initial evaluation?

The IDEA regulations and Montana Administrative Rules require the Evaluation Team to assess the child in any area of suspected disability. This means that the Evaluation Team must conduct the assessments necessary to address the disability criteria for each suspected disability.

34 CFR 300.304 Evaluation procedures

34 CFR 300.306 Determination of eligibility

ARM 10.16.3321 Comprehensive educational evaluation process and reevaluations

21. Are there factors that may prohibit a child’s identification as a student with a disability?

Yes. The criteria checklist for each disability category lists the specific exclusionary factors for that disability. The link to the criteria checklist is as follows: [..\..\WEB DOCUMENTS\FY2014\Criteria Checklists - November 2013 WITH watermark.pdf](..\\..\\WEB DOCUMENTS\FY2014\Criteria Checklists - November 2013 WITH watermark.pdf)

34 CFR 300.306 Determination of eligibility

ARM 10.16.3019

ARM 10.16.3019A

ARM 10.16.3019B

ARM 10.16.3019C

22. When are reevaluations required?

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; and additions or modifications to enable the child to meet the measurable annual goals of the IEP and to participate, as appropriate, in the general education curriculum are not needed. This determination is documented on the IEP form.

Reevaluations may be requested by the child's parent or teacher, but may not be done more than once a year unless the district and parent agree otherwise.

34 CFR 300.303 Reevaluations

23. What is the purpose of a reevaluation?

The reevaluation determines whether the child continues to need special education and related services; and whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.

34 CFR 300.305 Additional Requirements for evaluations and reevaluations

24. When a reevaluation has been determined necessary, what is the time requirement for conducting a reevaluation?

Although there is not a specific timeframe, the reevaluation must be conducted within a reasonable timeframe, similar to the timeframe for an initial evaluation. Once the decision is made that a reevaluation is necessary, delaying proceeding with the evaluation to determine continued eligibility for special education and related services and whether additions or modifications to the IEP are needed could result in the child not receiving a FAPE.

34 CFR 300.305

25. Which assessments are required for a reevaluation?

For reevaluations, the IEP team shall review existing evaluation data on the student, including evaluations and information provided by the parents of the student; 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.

On the basis of the review and input from the child's parents, the IEP team shall identify what additional assessments, if any, are needed.

34 CFR 300.305 Additional Requirements for evaluations and reevaluations
ARM 10.16.3321 Comprehensive educational evaluation process and reevaluations

26. Can an evaluation report document information on assessments and implications by stating, "See previous report/eligibility determination?"

No. All assessments and implications must be summarized within or attached to the current evaluation report.

27. When a student is reevaluated must he or she meet the criteria required for initial determination of eligibility for special education and related services?

The team does not have to consider the initial criteria to determine that a student continues to have a disability. The purpose of the reevaluation is to determine that the student continues to have a disability and needs special education and related services.

34 CFR 300.305 Additional requirements for evaluations and reevaluations

28. If a student who has been exited from special education will again be evaluated for special education eligibility, should the evaluation process be conducted as an initial evaluation or a reevaluation?

If the evaluation report, which previously exited the student from special education services, states that the student was no longer eligible for special education and related services under IDEA because the student no longer met the disability criteria, then the evaluation must be conducted as an initial evaluation and address the results of evaluations in all areas related to the suspected disability.

If the evaluation report, which previously exited the student from special education services, states that the student was no longer eligible for special education and related services under IDEA because the student no longer demonstrated the need for special education, then the evaluation must be conducted as a reevaluation. The evaluation must be sufficient enough in scope to provide the documentation necessary for the Evaluation Team to make its decisions.

If the parent revokes consent in writing for special education and related services and the student is subsequently referred for evaluation, the evaluation must be conducted as an initial evaluation.

If a copy of the evaluation report, which previously exited the student from special education services, is not available, then the evaluation must be conducted as an initial evaluation.

ARM 10.16.3321 Comprehensive educational evaluation process and reevaluations

34 CFR 300.301 Initial evaluations

34 CFR 300.304 Evaluation Procedures

34 CFR 300.305 Additional requirements for evaluations and reevaluation

29. Who are the required members of the Evaluation Team?

- 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;
- At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and
- The student, if appropriate.

The following specialists are required for the initial evaluation only									
	SLD	CD	SI	ED	HI	TBI	DE	DB	AU
School Psychologist	X*	X		X		X			X
Speech-Language Pathologist	X*		X		X	X	X	X	X
Audiologist					X		X		

* A required team member for the determination of a learning disability must be a school psychologist, speech-language pathologist or a remedial reading teacher, each of whom is qualified to conduct individual diagnostic examinations of children.

30. When a student transfers within Montana, must the receiving district conduct a reevaluation to determine if the student continues to be eligible for special education services?

No.

31. What must the school district do when an IDEA-eligible student from another state enrolls?

The school district must continue to provide a free appropriate public education, including providing services comparable to those services in the student's existing IEP. The school district, in conjunction with the parents, then must either implement the IEP, amend the IEP or develop a new IEP within a short period of time (normally within one week).

The school district must then decide if it is necessary to conduct an evaluation to determine if the child is eligible as a student with a disability under the eligibility criteria established by Montana administrative rules. This determination must be documented on the Transfer Student Documentation form.

If the school district determines that an evaluation is necessary, the evaluation is considered an initial evaluation which requires informed parental consent.

34 CFR 300.323 When IEPs must be in effect

32. Is an Evaluation Meeting required prior to the student's graduation from high school or due to exceeding the district's maximum age of attendance?

No.

34 CFR 300.305 Additional requirements for evaluations and reevaluations

33. Is a district required to conduct an evaluation to obtain assessment information to be used to qualify the student for post-school eligibility of other agency services?

No. However, the district may conduct assessments as determined appropriate in the Secondary Transition services.

Is an Evaluation Team meeting necessary to add or remove a related service??

No. The IEP team determines the student's needs.

34. Is an Evaluation Team meeting required to change a disability category determination?

Yes. A student may be exited from special education only after an Evaluation Team has determined that either the student no longer has a disability and/or the student no longer needs special education services. The Evaluation Team must reevaluate the student before determining that the child is no longer a child with a disability or no longer needs special education and related services. Exiting from special education is an Evaluation Team decision and cannot be done by an IEP Amendment.

An evaluation is also required to identify the student in an additional disability category.

34 CFR 300.303 Reevaluations

34 CFR 300.304 Evaluation procedures

34 CFR 300.305 Additional requirements for evaluations and reevaluations

34 CFR 300.306 Determination of eligibility

34 CFR 300.308 Additional group members

Evaluation Report

1. Are Parent/Adult Student comments required on the evaluation report?

Yes. The report needs to reflect either information provided by the parent/adult student, that the parent/adult student was not in attendance, or that they had no comments.

2. What is required if “See Attached” is checked?

The information/document must be uploaded in AIM as an attachment to the ER and physically attached to each hard copy of the ER.

3. Can multiple assessments (observations, cba, achievement, etc) be included in a single report (psychological, behavioral, etc)?

Yes. When included in a single report, all assessments must be clearly identified and include implications for educational planning in terms understandable to all team members.

4. Are observations and classroom-based assessments required for both initial and reevaluation determinations of eligibility?

Yes.

5. What are "observations by teachers and related service providers"?

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.

6. Who can conduct the “Observation” of the student?

Any member of the Evaluation Team 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.

34 CFR 300.310 Observation

ARM 10.16.3321 Comprehensive Educational Evaluation Process And Reevaluations

7. For a child who is less than school age or out of school, who determines the appropriate environment for the observation to occur?

The Evaluation Team.

34 CFR 300.310 Observation

ARM 10.16.3321 Comprehensive Educational Evaluation Process And Reevaluations

8. If the Evaluation Team completes and attaches to the Evaluation Report a copy of the Disability Criteria Checklist, must the “Disability Criteria” section be completed?

No. However, the report must indicate that the Criteria Checklist(s) is/are attached.

..\..\WEB DOCUMENTS\FY2014\Criteria Checklists - November 2013 WITH watermark.pdf

9. Can a student meet disability criteria, but still not need special education services?

Yes. If the Evaluation Team determines that the disability does not adversely affect the student’s educational performance, then the student does not need special education and is not eligible under the IDEA.

34 CFR 300.8 Child with a disability

10. May a student be identified in more than one disability category?

Yes. A student should be identified in each category of disability for which the student meets the disability criteria and needs special education and related services.

34 300.111 Child Find

11. When is “Speech/Language” a special education service and when is it a related service?

The term “special education” means specially designed instruction to meet the unique needs of a child with a disability. The term “related service” means developmental, corrective and other supportive services as are required to assist a child with a disability to benefit from special education. If “Speech/Language” is required to assist a child with a disability to benefit from special education, it would be identified as a related education service. If “Speech/Language” is the sole special education service, it is considered the special education service. Speech and language pathology services are special education services when they are the only services identified on the IEP.

34 CFR 300.34 Related services
34 CFR 300.39 Special education

12. What is the difference between the special education services of “Communication” and “Speech-language pathology”?

“Communication” includes the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode.

“Speech-language pathology” services include identification of children with speech or language impairments; diagnosis and appraisal of specific speech or language impairments; referral for medical or other professional attention necessary for the rehabilitation of speech or language impairments; provision of speech and language services for the habilitation or prevention of communicative impairments; and counseling and guidance of parents, children, and teachers regarding speech and language impairments.

34 CFR 300.34 Related services
34 CFR 300.324 Development, review, and revision of IEP
34 CFR 300.8 Child with a disability
34 CFR 300.34 (15) Related services

13. If a recommended special education or related service area is checked by the Evaluation Team, must it be addressed in that student’s Individualized Education Program?

Yes. The IEP must address all the recommended services from the Evaluation Report (ER) or provide documentation in the IEP Notes as to why that service area will not be addressed. The service area can be addressed through goals, supplementary aids and services, or other means that the team deems appropriate.

14. May the IEP Team add additional services without conducting a reevaluation?

Yes. The IEP team may develop IEP goals and objectives in any service area (i.e., math, reading, etc.) noting the student's current level of performance and need for special education services in this area. This could be done with an IEP amendment.

34 CFR 300.324(a)(4)

34 CFR 300.324(a)(6)

15. What is the related service, “Parent Counseling and Training”?

Parent counseling and training means assisting parents in understanding the special needs of their child; providing parents with information about child development; and helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP.

34 CFR 300.34(c)(8) Related services

16. Can a student qualify for services under IDEA if they need only a related service?

No.

34 CFR 300.8 Child with a disability.

17. What does a “lack of instruction in reading or math” mean?

A "lack of instruction" means that the student has not received explicit and systematic instruction in reading or math that is aligned with state content standards.

34 CFR 300.309(3)b Determining the existence of a specific learning disability

18. Does signing the Evaluation Report reflect that each signer agrees with the conclusion of the team?

Yes, unless the member submits a separate dissenting report presenting the member's conclusions.

34 CFR 300.311 Specific documentation for the eligibility determination

19. If parents or other required members of the Evaluation Team are unable to participate in a meeting in person, can other methods be used to ensure their participation?

Yes. Other methods may include individual or conference telephone calls, or video conferencing. It should be documented in the Notes that the person participated by phone

or other means. When that person is provided with a copy of the Evaluation Report, they can sign and return an additional copy of the signature page as a means of documenting their participation.

34 CFR 300.322 Parent participation

20. Is dyslexia considered one of the disability categories recognized by the IDEA?

No. Dyslexia is defined by the International Dyslexia Association (IDA) and the National Institutes of Health (NIH) as a specific learning disability that is neurological in origin. It is characterized by difficulties with accurate and/or fluent word recognition and by poor spelling and decoding abilities. These difficulties typically result from a deficit in the phonological component of language that is often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction. Secondary consequences may include problems in reading comprehension and reduced reading experience that can impede the growth of vocabulary and background knowledge.

34 CFR 300.309 Determining the existence of a specific learning disability
OSERS Dear Colleague Letter, October 23, 2015
OSERS Letter to Unnerstall, April 25, 2016

21. What is the relationship between dyslexia and a specific learning disability?

Dyslexia can make it difficult for a child to succeed in a typical academic environment; therefore, in its more severe forms, dyslexia may be part of a specific learning disability in basic reading skills.

34 CFR 300.309 Determining the existence of a specific learning disability

22. Can the term dyslexia be used or referenced in an Evaluation Report and/or an IEP?

Yes. If a student has been evaluated specifically for dyslexia by an outside agency, the Evaluation Report (ER) team and/or the IEP team should consider the results. The results of the assessment can be noted in the Assessment section of the ER or in the notes section of the ER or the IEP.

34 CFR 300.311 Specific documentation for the eligibility determination
OSERS Dear Colleague Letter, October 23, 2015
OSERS Letter to Unnerstall, April 25, 2016

23. Can a student with dyslexia, who does not qualify for special education, be placed on a 504 plan?

Yes. A 504 plan refers to Section 504 of the Rehabilitation Act of 1973. If found eligible through the 504 evaluation process, a team that includes parents and school staff will determine which accommodations are appropriate to help support the student in the school setting. The accommodations will be included in the written 504 plan.

24. Does using the label of specific learning disability, in addition to or instead of dyslexia, result in inadequate interventions for children with dyslexia?

No. The appropriate areas of specific need identified through the evaluation process will provide the most specificity for planning the educational program of each child. The IDA concurs that the broad term of specific learning disability, when paired with specifiers identifying the areas of skill deficit, should not have a negative impact upon children with dyslexia and may, in fact, “increase awareness that dyslexia typically encompasses far more difficulties than those related to decoding and spelling words.”

34 CFR 300.309 Determining the existence of a specific learning disability

25. Does the OPI have further information concerning dyslexia?

Yes. The OPI has prepared an informational document concerning dyslexia. The document, entitled *Dyslexia*, can be found on the OPI Web site at: http://www.opi.mt.gov/Programs/SpecialEd/Index.html?gpm=1_7 under the guides tab.

Independent Education Evaluation

1. What can parents do if they disagree with an evaluation conducted by the school district?

Parents have the right to request an independent education evaluation (IEE) at public expense. An IEE is “an evaluation conducted by a qualified examiner who is not employed by the school district responsible for the education of the student.” At public expense “means that the school district either pays for the full cost of the evaluation or ensures that the evaluation is provided at no cost to the parent...”. If a parent requests an IEE the school district must, without unnecessary delay, either 1) file a due process complaint to request a hearing to show the district’s evaluation is appropriate or 2) ensure an IEE is provided at public expense.

34 CFR 300.502(3) and 300.502(b)(4) Independent Educational Evaluation

2. How many Independent Education Evaluations (IEE) is a parent entitled to?

A parent is entitled to one IEE at public expense each time the school district conducts an evaluation if it meets district criteria in any decision with regard to the provision of FAPE and may be presented as evidence at a hearing in a due process complaint.

3. May a parent request an IEE in an area that was not previously assessed by the District?

Yes, if an evaluation was conducted in accordance with 34 CFR 300.304 through 300.311 and a parent disagrees with the evaluation because the student was not assessed in a particular area, the parent may request an IEE to assess the child and determine whether the child is a child with a disability and the nature and extent of the special education and related services that child needs. The school district must ensure an evaluation is sufficiently comprehensive to assess the child in all areas of suspected disability and must identify all of the child's special needs whether they are commonly linked to the disability category to which the child has been classified. If the parent makes a request for an IEE under these circumstances, the school district must, without unnecessary delay, either 1) file a due process complaint to request a hearing to show the school district's evaluation is appropriate or 2) ensure an IEE is provided at public expense.

Letter to Baus, 65 IDELR 81 (2015)
34 CFR 300.304(c)(4) Evaluation Procedures
34 CFR 300.502(b)(4) Independent Educational Evaluation

4. Are there certain criteria that must be met for an IEE obtained at public expense?

If an independent education evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the public agency uses when it initiates an evaluation, to the extent those criteria are consistent with a parent's right to an independent education evaluation. The school district must provide the parents, upon request, for an IEE, information about where an IEE may be obtained and the school district criteria applicable for IEEs. School districts may establish a reasonable cost containment criteria, but the school district must allow parents to demonstrate that unique circumstances justify selection of an evaluator whose fees fall outside the school district's cost containment criteria. Similarly, OSEP has said that districts must allow parents the opportunity to prove extraordinary circumstances justify an IEE at public expense that doesn't meet district criteria.

5. Must a district consider the results of an IEE?

Yes. The evaluation results must be considered by the school district if it meets district criteria in any decision with regard to the provision of FAPE and may be presented as evidence at a hearing on a due process complaint.

34 CFR 300.502(c) Independent Educational Evaluation

Common Questions Regarding Eligibility Criteria

1. If a student has been diagnosed as having ASD Syndrome, must he or she still meet the special education criteria for a student having autism?

Yes. To be eligible under IDEA, the student must meet the criteria for a disability category(ies) as defined in the Administrative Rules of Montana and need special education and related services. Neither federal nor Montana regulations refer to the term "ASD."

ARM 10.16.3011 Criteria for autism
34 CFR 300.306 Determination of Eligibility

2. If a student has received a medical diagnosis does that student automatically qualify for special education services?

No. To qualify for special education and related services the student must meet the criteria for a disability category(ies) as defined in the Administrative Rules of Montana **and** demonstrate a need for special education and related services.

ARM 10.16.3007 Eligible Students Under the Individuals with Disabilities Education Act
34 CFR 300.306 Determination of Eligibility

3. The criteria for the disability of Other Health Impairment states that a "medical diagnosis" of a chronic or acute health problem is required to initially determine that the student is Other Health Impaired. Who can make this medical diagnosis?

The medical diagnosis may only be made by a person who has been licensed or approved by the Board of Medical Examiners and/or Board of Nursing to provide medical services that include diagnosis. These individuals are physicians, physician-assistants, podiatrists, dentists, and nurse practitioners. The Office of Public Instruction has determined that a copy of a medical report establishing the diagnosis of a chronic or acute health problem must be attached to the initial evaluation report.

ARM 10.16.3018 Criteria for identification of a student as having other health impairment

4. Must the medical diagnosis be "updated" for each reevaluation for that student?

The IEP Team determines what information is necessary for the reevaluation.

5. Is a referral required to evaluate an eligible student for an additional category of disability?

No. Once the student has had an initial evaluation and been determined to be a student with a disability, all subsequent eligibility determinations are reevaluations.

6. If an IDEA-qualified student is evaluated for identification in an additional category of disability must they meet the initial criteria for the additional disability?

Yes.

7. Must an IDEA-qualified student be identified as having a speech-language impairment for the IEP to provide speech and language pathology services?

No. An IEP may provide speech and language pathology services as a related service when the team determines that a student needs these services to receive a free appropriate public education.

8. Can a student identified as having a disability in speech-language receive special education services in reading or math or another service area?

Yes. The Evaluation Team and/or IEP Team must clearly document through assessment results that the need for these additional services is related to the student's speech-language difficulties.

9. Must the student be reevaluated once every three years?

Yes, unless the parent and district agree at any time during the three year period that a reevaluation is unnecessary.

10. How does the district document the agreement between it and the parent that a reevaluation is unnecessary?

The district must document this agreement in the annual IEP or an IEP Amendment. This then establishes a new three year time period.

11. Is a classroom-based assessment required for all preschool-aged students?

Yes. Classroom-based assessments are required for all initial evaluations and reevaluations regardless of age or placement. For a preschool-age student, a classroom setting may be the child's home or child care environment. Evaluation should include assessments of development, behavior and/or social skills that provide information about the student's performance as compared to same-age peers.

12. May a child younger than six be identified in a disability category other than developmental delay?

Yes. A 3, 4, or 5-year-old child could be identified under any disability category(ies).

34 CFR 300.8 Child with a disability

13. What must the IEP team do when a child with a Developmental Disabilities (DD) label turns six?

The IEP team is required to get a new Evaluation Plan signed by the parents and conduct a new evaluation to determine if the child continues to qualify for special education services under a new category or should be exited.

If a child has a disability category identified in addition to DD, the team must conduct an Evaluation Report meeting to remove the DD eligibility.

ARM 10.16.3010 Criteria for identification of a child aged three through five having a developmental delay

14. When a child turns six and the team removes the DD eligibility and conducts a new ER, is it an initial ER or a re-evaluation?

It is a re-evaluation. However, if any new eligibility category is added, it needs to meet the initial disability criteria (i.e. criteria check list).

15. May the RTI process be used for identification of learning disability in a pre school child not yet in kindergarten?

No. The RTI criteria require the team to track the child's progress based on the K-12 Content Standards.

16. Is the Eligibility Determination process for pre-school children different than for school-age students?

No.

17. Can a school district choose to use either the severe discrepancy or Response to Intervention (Rti) methods to identify a child with LD?

Yes. The district or cooperative/consortium must have on file with the OPI an approved Program Narrative which indicates the district's intention to use Rtl methods and/or a severe discrepancy to identify a child as having a specific learning disability.

18. Does Montana allow other methods of identifying a specific learning disability besides the discrepancy or response to intervention models?

No.

10.16.3019 Criteria For Identification Of Student As Having Specific Learning Disability
10.16.3019C Documentation Requirements In Learning Disability Identification

Preschool Outcome Reporting

1. How are the preschool outcomes measured?

Preschool outcomes are measured through various assessments and/or a review of data in the child's file. Following this, the Outcome Measures Form is completed. It is important to note that this is not a part of the IEP or the Evaluation Report, but a separate form that must be completed.

2. Who conducts the assessment(s)?

The 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. If done by someone other than the case manager, the information must be given to the case manager for reporting of outcomes and to be placed in the child's Special Education File.

3. When are the assessments to be conducted?

For children who are newly identified, the assessment(s) and the Outcome Measures Form must be completed within 30 days of the determination of eligibility, as long as more than 6 months will pass before they will be turning 6 years of age.

For children 3, 4 or 5 years of age who are exiting special education and related services completely, the assessment(s) and Outcome Measures Form must be completed at the time the child is determined to be no longer eligible for services.

For children who are turning 6, but are continuing to receive special education and related services, the assessment(s) and Outcome Measures Form must be completed within 90 days of the child's 6th birthday.

4. How does a district obtain assessment and outcome measurement information for children who previously participated in an IDEA Part C program?

Assessment and outcome measurement information for children who previously participated in an IDEA Part C program can be requested by the district from the Part C Agency and the parents at the Transition Conference Meeting conducted by Part C, or at the eligibility determination meeting conducted by the district.

5. Must the child be reassessed each year?

No. The outcome measures reporting covers two points in time – when the child is initially found to be eligible for Part B Preschool Services under IDEA, and when the child is no longer eligible for services under the preschool umbrella of Part B (either because of leaving services completely, or because of turning six years of age and moving into the school-aged portion of Part B regulations).

6. Is parental consent required prior to conducting the assessments to complete Preschool Outcome Reporting?

No.

7. Do these requirements apply to children whose IEP only provides speech and language therapy?

Yes. All children who are 3, 4, or 5 years of age are included in this requirement, regardless of disability category or setting of service.

8. Must the IEP contain Measurable Annual Goals for each performance area reported on the outcome measures?

No. Measurable Annual Goals must address the performance area(s) only when the IEP team decides that the child has needs in one or more of the areas after reviewing the Outcome Measures Form.

Response to Intervention (RtI)

1. What is Response to Intervention?

The term “Response to Intervention” is used to describe 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. The focus in this process is on the instructional methodologies used rather than on identifying individual student differences. This approach relies on the use of scientific, research-based instructional practices and frequent assessments or probes to provide the data necessary to make decisions about student progress and the need for more intensive intervention. Generally, a three-tiered model is used 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.

2. What types of interventions are required?

The IDEA gives the school district the authority to “use a process that determines if the child responds to scientific, research-based intervention as a part of the evaluation procedures” for determining whether a child has a specific learning disability. The IDEA does not further define standards for appropriate interventions.

There are some fundamental aspects of intervention design that are important to remember. First, data collection and analysis are critical components of all interventions. These data will allow the 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. For students 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. Lastly, effective interventions are straightforward and can be implemented in the general education classroom. 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. When this happens, it is not evidence that the student did not respond to the intervention, rather it merely shows that the intervention was not well designed.

3. What factors must the Evaluation Team consider when using the RtI method to identify a student as having a specific learning disability?

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 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.

10.16.3019 Criteria For Identification Of Student As Having Specific Learning Disability
10.16.3019A Response To Scientific, Research-Based Intervention In LD Identification
10.16.3019B Severe Discrepancy In Learning Disability Identification
10.16.3019C Documentation Requirements In Learning Disability Identification

4. In what setting do the interventions occur?

Most of the activities involved in a response to intervention instructional model are implemented by general educators and occur in the general education setting. The aim of this instructional model is to quickly identify those students who are not benefiting from the whole group instructional model and to implement instructional strategies which will facilitate their academic growth without removing them from the general education setting.

Individualized Education Plans

1. Can the “Duration of the IEP” be for less than 12 months?

Yes. However, a better plan is to schedule the duration of the IEP for 12 months, since the IEP team may meet or amend the IEP at any time within the duration of the IEP to review and revise the IEP.

An IEP must be in effect at the beginning of each school year for each child with a disability and before special education and related services are provided to an eligible child. If the IEP team is unable to meet (due to scheduling conflicts or for other reasons), prior to the end of the school year, the district will not have an IEP in effect for that student

at the beginning of the following school year. An IEP may have a duration of no more than 12 months

34 CFR 300.323 When IEPs must be in effect

34 CFR 300.324 Development, review, and revision of IEP

2. How do we include information from parents if they do not attend the IEP?

This area of the IEP form can include information that was obtained from parents prior to the IEP meeting, as well as at the IEP meeting. Information might be gathered from discussion with parents, as well as from parent surveys or other methods. If the parent does not attend and you were unable to obtain information, document that in the appropriate section of the IEP.

3. When should “Yes” be checked for “Does the student have communication needs”?

“Yes” should be checked only if the student’s language and communication difficulties impede or inhibit his or her communication with others. For example, if a student is receiving speech and language services for substitutions (pronouncing “frog” as “fwog”), the student would likely be able to communicate with others.

34 CFR 300.324 Development, review, and revision of IEP

4. At what age must the IEP address postsecondary transition?

Beginning with the annual IEP that will be in effect when the student turns age 16.

34 CFR 300.320(b) Definition of IEP

5. May postsecondary transition be included in the IEP for students younger than 16?

Yes. If the team determines it is appropriate.

6. When could a student participate in their IEP meeting?

At any age. Student participation in the development of their IEP, either through attendance at the meeting or through input from the student obtained prior to the meeting, is essential to the development of an appropriate IEP.

34 CFR 300.321 IEP Team

7. At what age must a student be invited to the IEP meeting?

The district must invite a student with a disability to attend the IEP meeting if a purpose of the meeting will be the consideration of the postsecondary goals for the student and the transition services needed to assist the student in reaching the postsecondary goals. If the student does not attend, the district must take other steps to ensure that the student's strengths, preferences and interests are considered.

34 CFR 300.321 IEP Team

8. What additional information must the IEP meeting notice contain for a transition IEP?

The notice must indicate that a purpose of the meeting will be the consideration of the student's postsecondary goals and transition services, that the district will invite the student and other agencies that have been invited to send a representative.

34 CFR 300.322 Parent Participation

9. Must the IEP include transition services, even if someone other than the school district will provide those services?

The IEP for each child with a disability must include all needed transition services, as identified by the IEP team, regardless of whether the school district or some other agency will provide those services.

34 CFR 300.43 Transition Services

34 CFR 300.320(b) Definition of individualized education program

10. What is the school district's responsibility if another agency fails to provide agreed-upon transition services?

If an agreed-upon service by another agency is not provided, the district must implement alternative strategies to meet the student's needs. This requires that the district provide the services, or convene an IEP meeting as soon as possible to identify alternative strategies to meet the transition services objectives and to revise the IEP accordingly.

Alternative strategies might include the identification of another funding source, referral to another agency, the identification of other districtwide or community resources that can meet the student's identified needs appropriately, or a combination of these strategies.

34 CFR 300.324 Development, review, and revision of the IEP

11. Under what circumstances must a school district invite representatives from other agencies to an IEP meeting at which a student's transition services will be considered?

The school district must identify all agencies that are likely to be responsible for providing or paying for transition services for each student and must invite each of those agencies to the IEP meeting. If an agency invited to send a representative to a meeting does not do so, the school district must take other steps to obtain the participation of that agency in the planning of any transition services.

If, during the course of an IEP meeting, the team identifies additional agencies that are likely to be responsible for providing or paying for transition services for the student, the public agency must determine how to obtain participation of the additional agencies in the planning of any transition services.

34 CFR 300.320 Definition of individualized education program

34 CFR 300.324 Development, review, and revision of IEP

12. Is parental consent required for a district to invite a representative from a participating agency that may be responsible for providing or paying for transition services?

Yes. The district must obtain written consent for each meeting the agency will be invited to attend.

34 CFR 300.321 IEP Team

13. What are “Measurable Postsecondary Goals” for students aged 16 and older?

These goals are based on age-appropriate transition assessments and identify the student’s post-school goals related to training and/or education, employment and, if appropriate, independent living skills.

34 CFR 300.320(b) Definition of IEP

14. What is the difference between a measurable postsecondary goal (MPSG) and a measurable annual goal (MAG)?

The MPSGs are goals for what the student wants to do after leaving school. The MAGs address what the student needs in the next 12 months to be involved in and make progress in the general education curriculum and meet each of the child’s other educational needs that result from the child’s disability to be prepared to attain their postsecondary goals.

34 CFR 300.320(a)(2)(i)

15. Are IEP progress reports required for measurable postsecondary goals?

No.

34 CFR 300.320 Definition of individualized education program

16. Must a parent receive notice prior to the student's graduating with a regular diploma or exceeding the district's age of attendance?

Yes. The graduation form must indicate whether the student will graduate with a general diploma, require a new IEP, or exceed the district's age of attendance.

17. When is the Summary of Performance required?

When a child's eligibility for special education terminates due to the child graduating with a regular diploma or exceeding the district's age of attendance.

34 CFR 300.305 Additional Requirements for Evaluations and Reevaluations

18. What must the Summary of Performance contain?

It must contain a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals.

34 CFR 300.305 Additional Requirements for Evaluations and Reevaluations

19. What must a Present Level of Academic Achievement and Functional Performance (PLAAFP) statement include?

The PLAAFP must:

- address both academic achievement and functional performance;
- provide qualitative and quantitative information about current performance;
- provide the basis for the measurable annual goal (if a level of performance is in the goal, the current level of performance is in the PLAAFP); and
- state how the disability affects involvement and progress in the regular curriculum or for preschool students, involvement in appropriate activities.

20. What must a Measurable Annual Goal (MAG) include?

A MAG must:

- Be aligned with the PLAAFP (meets needs identified in PLAAFP)
- Describe expected level of performance to be met
- Indicate how performance will be measured
- Address enabling the child to be involved in and make progress in the general curriculum, or for preschool children, to participate in appropriate activities.

21. Is a MAG considered complete if the short-term objectives contain the required components?

Yes.

22. Are benchmarks and short-term objectives required for all students?

No. Benchmark or short-term objectives are required only for children who take an alternate assessment aligned to alternate achievement standards. Short-term objectives and benchmarks may be included in IEPs for any student if the parent and district agree to include them.

34 CFR 300.320(a)(2)(ii) Definition of IEP

23. When must IEP progress reports on the measurable annual goals be provided to parents?

The IDEA regulations state that parents must be notified of their child’s progress “periodically.” The OPI interprets this language to mean that progress reports must be sent at least two times per year. The number of progress reports sent must be in compliance with the frequency indicated in the student’s IEP and with local district policy. The regulations use report cards and quarterly reports as examples of when periodic reports on the child’ progress toward their IEP goals are made.

34 CFR 300.320(a)(3)

24. How is progress toward the IEP goals reported?

The districts are required to use the Progress Report Form located in the state’s student data system.

34 CFR 300.320 Definition of Individualized Education Program

25. Is it required that progress toward each short-term objective or benchmark be reported?

No. However, the progress report for the MAG should be inclusive of the progress toward the short-term objectives or benchmarks.

34 CFR 300.320 Definition of Individualized Education Program

26. Do the requirements for progress reports also apply to measurable annual goals for related services such as speech and language services or occupational therapy?

Yes. Progress reports are required for all measurable annual goals contained within the IEP.

27. Who can provide “Special Education Services in the General Education Setting”?

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

34 CFR 300.18 Highly qualified special education teachers

28. How do we show changes in service minutes across school years for students moving from an elementary to middle school or to a high school schedule?

The special education and/or related services editors in the AIM system are used to identify start and end dates and minutes for each service. The IEP team may identify different dates and minutes for the same service for each school year the IEP covers. This method of documentation may also be used for students changing classes across semesters.

29. When must transportation be included in a student's IEP?

A district must provide transportation as a related service if it is required for the child to benefit from special education. The district must ensure that any transportation service included in a student's IEP as a related service is provided at no cost to the parents, and that the student's IEP describes the transportation arrangement.

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. 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.

The district has a variety of options for how they provide transportation including school buses, contracted services, transportation contracts with parents, or others. If the IEP team determines that transportation is needed, it should be listed in the related services section of the IEP with a service time of one (1) minute and not the actual time of transportation the child receives. This is necessary to ensure the correct calculation of this child's setting of service.

34 CFR 300.34 Related Services

30. Is consultation a special education or related service?

Consultation is not a special education or related service. Consultation is not direct instruction of the student and may only be included in the IEP as a supplementary aide or service.

34 CFR 300.42 Supplementary Aides and Services

31. What are some examples of program modifications or supports for school personnel?

Examples include, but are not limited to, providing information on a student's specific disability and implications for instruction; staff training in use of specific positive behavioral interventions; training on how to use a student's communication device or methods for correcting or addressing speech production errors. School personnel can include special and regular education teachers, food service staff, paraeducators, bus drivers, administrators, office staff, etc.

32. If an accommodation is not in the IEP, but is being used with the student, can it be used in taking state and districtwide assessments?

No. All accommodations to be used in taking both state and districtwide assessments must be identified in the IEP. If the accommodation is necessary for the state and/or districtwide assessments, the IEP must be amended to document the need for the accommodation in the IEP.

ARM 10.56.101 Student Assessment

33. Must a student's IEP contain short-term objectives and benchmarks in years when they are not participating in the alternate state wide assessment?

No.

34 CFR 300.320 Definition of individualized education program

34. May a student's IEP contain short-term objectives and benchmarks if the student is not taking the alternate state wide assessment that year?

Short-term objectives and benchmarks may be included in IEPs for students if the parent and district agree to include them.

35. How may general education teachers, paraeducators and others who work with a student be informed of their specific responsibilities under the IEP?

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 implementation. They must be informed of their specific responsibilities related to

implementing the IEP. These may be provided 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.

34 CFR 300.323 When IEPs must be in effect

34 CFR 300.614 Record of access

36. Who are the 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 -
 - (i) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
 - (ii) Is knowledgeable about the general education curriculum; and
 - (iii) 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;
- At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and
- Whenever appropriate, the child.
- To the extent appropriate, with consent of the parents or a child who has reached 18, a representative of any participating agency likely to be responsible for providing or paying for transition services.

34 CFR 300.321 IEP Team

37. Who can serve as the “Designee” for an Administrator in the IEP meeting?

A representative of the school district 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.

The person designated by the district must meet these three requirements and be able to act in the role of the administrator. It is important, however, that the agency representative has the authority to commit district resources and is able to ensure that whatever services

are set out in the IEP will actually be provided. In Montana an administrative designee, in the absence of an administrator, could be a special education director, a properly endorsed or certified special education administrator, a school psychologist, a speech language pathologist, a special education teacher, or other staff member properly endorsed or certified in one of the previous areas.

34 CFR 300.321 IEP Team

38. May the parent or district invite others to participate in the IEP meeting?

Yes. At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate may be invited. The determination of the knowledge or special expertise of any individual must be made by the party (parents or district) who invited the individual to the meeting. These individuals then become a member of the IEP team.

Guidance from the Office of Special Education Programs regarding the participation of the parent's attorney in an IEP meeting indicates that a school district may not automatically reschedule an IEP meeting if the parent invites their attorney to attend without notifying the district. If the parent does not agree to reschedule the meeting or rescheduling the meeting would interfere with the timely provision of FAPE, the meeting must be held at the scheduled time.

34 CFR 300.321 IEP Team
Letter to Andel

39. How do schools meet the "general education teacher" requirements for participation in the IEP for children aged three, four or five who are receiving preschool special education?

If a school district provides general education to children without disabilities in the age group, then all of the requirements related to IEP development, review, and revision apply as they do in the case of school-age children with disabilities. If a district makes kindergarten available to children without disabilities, then the kindergarten teacher could appropriately be the general education teacher on the IEP team. Consequently, when a preschool-age child is, or may be, participating in the general education environment, the district's general education teacher who would be the child's teacher would participate on the IEP team.

34 CFR 300.321 IEP Team

40. Who can participate as the "parent" in developing an IEP?

A "parent" is defined as:

- a biological or adoptive parent of a child;
- a guardian, but not the state if the child is a ward of the state;

- a person acting in the place of a parent (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare); or
- a surrogate parent who has been appointed in accordance with CFR 300.519 Surrogate parents; or
- a foster parent.

When more than one party is qualified to act as the parent, the biological or adoptive parent must be presumed to be the parent unless such parent does not have legal authority to make educational decisions.

34 CFR 300.30 Parent

34 CFR 300.519 Surrogate Parents

20-7-461 MCA Appointment and Termination of Appointment of Surrogate Parent

ARM 10.16.3504 Surrogate Parents

41. At an annual IEP meeting, if the parent does not sign approving the IEP, must the district continue to provide special education and related services?

Yes. If the parent does not provide consent the most recent agreed-upon IEP remains in effect.

When parental consent for annual placement has not been obtained and has not been specifically refused or revoked, the district shall informally attempt to obtain consent from the parent. If parental consent cannot be obtained within a reasonable time, the district shall send written notice to the parent requesting approval and stating that the student with disabilities shall be provided special education and related services according to the student's individualized education program (IEP) as developed by the district 15 days from the date of the notice.

If no response from the parent is obtained, the district shall provide the student special education and related services according to the student's IEP without parental consent subject to the parent's right to an impartial due process hearing.

ARM 10.16.3505 Parental Consent

42. What must the district do if the parent approves the IEP with exceptions?

For an initial IEP, the district must implement the agreed-upon services and continue to meet with the parent to resolve the differences. If after a reasonable effort, the differences are not resolved and the district believes that FAPE will not be provided, the district must file a due process complaint.

For an annual IEP, the district must implement the agreed-upon services and continue to meet with the parent to resolve the remaining differences. Services prescribed in the prior IEP that are not agreed upon, must continue as they were until differences are resolved.

If after a reasonable effort, the differences are not resolved and the district believes that FAPE will not be provided, the district must file a due process complaint.

ARM 10.16.3505 Parental Consent

43. If a parent or other member of the IEP Team is not physically present, but participates in the IEP by other means, how should this be documented?

In the IEP Notes, record how the parent or other member participated by other means. If the parent is the one participating by other means, when providing a copy of the IEP to the parent, include an extra copy of the signature/approval page for the parent to sign and return to the district. This signed signature/approval page should then be attached to the IEP.

Supplementary Aids and Services

1. What are supplementary aids and services designed to do?

The IEP team must identify and provide appropriate services to enable the student:

- 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 extracurricular and other nonacademic activities.

34 CFR 300.320(a)(4)(i)

34 CFR 300.320(a)(4)(ii)

34 CFR 300.320(a)(4)(iii) & 300.107

2. What is a school district's responsibility in regard to nonacademic services and extracurricular activities under the IDEA?

Under the IDEA districts are required to take the steps, including the provision of supplementary aides and services determined appropriate and necessary by a student's IEP Team, to afford students with disabilities an equal opportunity for participation in these activities.

34 CFR 300.107 Nonacademic services

3. Do students with disabilities have the opportunity to participate in field trips and extracurricular activities?

Yes. Districts must supply the related aids or services necessary for a student to participate in a school program, including a field trip.

34 CFR 300.107 Nonacademic services

4. Are there instances when a student with a disability can be denied the opportunity to participate?

Yes. Such decisions must be made on an individual basis. The district has the burden of demonstrating that the student should not participate. Such exclusion may be related to student anxiety, academic content of activity not related to student's educational program, violation of disciplinary code, or medical condition.

34 CFR 300.107 Nonacademic services

5. Is a lack of district funds an allowable reason to deny a student the opportunity to participate?

No.

34 CFR 300.107 Nonacademic services

6. Is the district obligated to provide accommodations, related services or services needed for a student to participate?

Yes.

34 CFR 300.107 Nonacademic services

7. Can a district require a parent or family member accompany a student during an activity?

No.

34 CFR 300.107 Nonacademic services

8. Must notice of field trips and extracurricular activities be given equally to all students?

Yes. Failure to provide equal notice about planned activities can result in illegal exclusion of students with disabilities.

34 CFR 300.107 Nonacademic services

Parental Revocation of Consent for Continued Special Education and Related Services

1. May a parent or adult student revoke consent for special education and related services?

Yes. The written notice of revocation must be signed and dated by the parent/adult student and given to the school district. A sample parental notice of revocation of services is available on the OPI Web site.

34 CFR 300.300(b)(4)2

2. What must the school district do when it receives a revocation notice from a parent/adult student?

The school district superintendent must provide prior written notice to the parent/adult student stating the specific date when special education and related services will stop. A sample school district prior written notice for revocation of services is available on the OPI Web site.

34 CFR 300.300(b)(4)

3. May the school district challenge the revocation of special education and related services?

No. The IDEA regulation specifically states that the school district may not use due process or mediation procedures to challenge the parent/adult student's revocation.

34 CFR 300.300(b)(4)

4. Does a child/student whose special education and related services have been revoked continue to have procedural safeguards under IDEA, including the discipline protections?

No.

5. Is the school district required to conduct reevaluations for a child/student whose special education and related services have been revoked?

No.

6. Should the school district amend the student's records to remove references to the receipt of special education and related services?

No.

7. If the parent revokes consent, does the school district need to conduct an evaluation report or IEP meeting to exit the student from special education prior to discontinuing services?

No.

8. Does the revocation of consent for special education and related services prohibit the parent from subsequently requesting an evaluation to determine eligibility for special education and related services?

No.

9. If more than one person can act as a "parent" of the student/child and they disagree about revocation, what must the school district do?

The IDEA provides that anyone who meets the requirement of being a 'parent' under 34 CFR 300.30, has the right to make educational decisions for the student/child. Therefore, any eligible parent may revoke consent for special education and related services. Likewise, any eligible parent may refer a student for evaluation. The district is required to respond and react to any such requests from a "parent".

10. Does a subsequent request for evaluation require a referral?

Yes. The parent should request the evaluation using the referral form.

11. Is a subsequent evaluation to determine eligibility for special education and related services considered a reevaluation or an initial evaluation?

It is considered an initial evaluation.

34 CFR 300.300 Parental Consent

12. May a school district consider a student for a Section 504 plan after a parent has revoked consent for special education under IDEA?

Yes, a school district may consider a student for a 504 plan, by following the relevant procedural requirements under Section 504 of the Rehabilitation Act of 1973, after the parent has revoked consent under IDEA.

The IDEA regulations only implement provisions of the IDEA and do not attempt to address any overlap between the protections and requirements of IDEA and Section 504. Additionally, after a parent revokes services under IDEA for their child, the school district still has an ongoing child find responsibility for that student. A parent may choose, however, to continue to refuse special education and related services.

Letter to McKethan, 25 IDELR 295 (OCR 1996), stated the rejection of IDEA services amounts to a rejection of services under Section 504. However, there seems to be some debate as to if it still applies following the comments of the 2008 amended IDEA regulations and subsequent legal decisions. The courts appear split on this matter and the Ninth Circuit has not ruled on this issue. The OPI Special Education Division has been advising districts that they may be subject to a due process complaint for denial of a FAPE under Section 504 if they do not offer a 504 plan following parental revocation of special education and related services under the IDEA.

U.S. Dept. of Educ. Discussion of the Federal Regulations, 71 Fed. Reg. 73007-73013 (December 1, 2008).

IEP Meeting Excusal

1. May a required member be excused from attending an IEP team meeting?

Yes. A required member of the IEP Team may be excused from attending an IEP meeting, in whole or in part, when the meeting involves a modification to, or discussion of, the member's area of the curriculum or related services if the parent consents in writing to the excusal. The excused member must submit written input into the development of the IEP to the parent and the IEP Team prior to the meeting. The parent has the right to not agree or consent to the excusal of the IEP team member if they need additional time or information to consider the request.

34 CFR 300.321 IEP Team

2. Are there members of the IEP team who cannot be excused from an IEP Team meeting?

No. As long as the excusal is documented prior to the meeting.

34 CFR 300.321 IEP Team

3. What “written input” must the excused IEP Team member provide?

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.

4. How is the excusal from the IEP meeting documented?

The OPI IEP team member excusal form must be used. The form must be completed in full and the parent’s consent for excusal must be obtained prior to the IEP meeting. Copies of the written input from excused IEP Team members must be included in the IEP document.

5. When should the request for excusal be presented to the parent?

The IEP Team Member Excusal form must be completed in full and provided to the parent far enough in advance of the meeting to allow the parent to meaningfully consider the information and request.

6. What if the written input is not provided for prior review and consideration by the parent?

The IEP Team member must attend the meeting or the meeting must be rescheduled.

7. What if the parent does not return the request for the excusal of specific required IEP Team members?

The members must attend the IEP meeting or the meeting must be rescheduled.

8. What if the parent does not agree to the excusal of specific required IEP Team members?

The members must attend the IEP meeting or the meeting may be rescheduled.

9. If the parent agrees to the excusal of specific required IEP Team members but does not attend the meeting, must a new request for the excusal of specific IEP Team members be done for the rescheduled IEP meeting?

Yes. The excusal is for a specific meeting, date and time.

10. Can the IEP Excusal form be used to excuse Evaluation Report Team members?

No. The requirements for Evaluation Report Team meeting attendance are separate from the requirements for IEP meeting attendance.

ARM 10.16.3321 Comprehensive Educational Evaluation Process and Reevaluation
34 CFR 300.305 Additional Requirements for Evaluations and Reevaluations

IEP MEETING NOTES

1. What should meeting notes include?

Meeting Notes should be used to record:

- any discussion 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;
- necessary information regarding IEP services not recorded elsewhere in the IEP document; and
- if the meeting was rescheduled, reasons for rescheduling.

The Notes section is not intended to be a recording of the IEP meeting, such as, who attended, when the meeting started, when the meeting ended, or what individuals shared. 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.

34 CFR 300.320 Definition of individualized education program.

IEP Process

1. Can an Individualized Education Plan be changed without an IEP meeting?

Yes. In making changes to the IEP after the annual IEP meeting, the parent and the district may amend the current IEP. The amendment does not change the date of the required annual review.

The district must ensure that all members of the IEP Team are informed of any changes to their responsibilities based on the amended IEP.

34 CFR 300.324 Development, review, and revision of IEP

2. When may an amended IEP be implemented?

Only when the IEP amendment has been signed by the parent and the district.

3. How much of an IEP can an amendment change?

The IDEA does not place a limit on what an IEP amendment can change. However, substantive changes to services, placements, goals, etc., would likely benefit from meaningful participation of the whole IEP team. Changes of placement because of disciplinary removals must always be made by the IEP team.

34 CFR 300.324 Development, review, and revision of IEP

34 CFR 300.530 Authority of school personnel

34 CFR 300.536 Changes of placement because of disciplinary removals

4. If a student needs specially designed physical education must this be included in the student's IEP?

Yes. Students with disabilities must be included in physical education. If a student needs specially designed physical education, the student's IEP must describe the adaptive physical education services the student will receive.

34 CFR 300.108 Physical education

5. Must a district provide specially designed physical education even when physical education is not offered to grade level peers or if the child is preschool age?

Yes, if the IEP team has determined that specially designed physical education is necessary for the student to receive FAPE.

Transfer Students

1. What must a school district do when an IDEA-eligible student enrolls with a current IEP from another Montana school district within the same school year?

The district must, in consultation with the parents, provide free appropriate public education, including services comparable to those described in the child's IEP from the former district until the new district either adopts the IEP from the previous district or develops and implements a new IEP. This decision to adopt the existing IEP should be documented using the Student Transfer Documentation form. Any changes made to the existing IEP should be documented using the Amendment of Current IEP form. If the new school district does not implement the pre-existing IEP, but chooses to amend it or

develop a new IEP, it must work with the parents to develop an IEP within a short period of time (normally within one week).

34 CFR 300.323 When IEPs must be in effect

2. What must the school district do when an IDEA-eligible student from another state enrolls with a current IEP and documentation of eligibility from the previous state?

The school district must continue to provide a free appropriate public education, including providing services comparable to those services in the student's existing IEP. The school district, in conjunction with the parents, then must either amend the IEP or develop a new IEP within a short period of time (normally within one week).

The new school district must then decide if it is necessary to conduct an evaluation to determine if the child is eligible as a student with a disability under the eligibility criteria established by Montana administrative rules. This can be documented on the Transfer Student Documentation form.

If the new school district determines that an evaluation is necessary, the evaluation is considered an initial evaluation which requires informed parental consent.

34 CFR 300.323 When IEPs must be in effect

3. What if the transfer student has an IEP which is more than 12 months old?

The school district must continue to provide a free appropriate public education, including providing services that are comparable to those services in the student's existing IEP. The district must review and, if appropriate, revise the IEP within a short time (normally within one week) after receiving a copy of the student's existing IEP and develop an annual IEP for the student. The Amendment of Current IEP form cannot be used to amend an IEP in this instance since the district must complete an annual review of the IEP.

4. What if a student moves to a school district and has an Evaluation Report or other documentation of IDEA eligibility, but does not have an IEP?

If the school has knowledge that the student has a disability and needs special education, but is unable to obtain a copy of the student's IEP within a short period of time (normally one week) the school district must develop an IEP.

34 CFR 300.323 When IEPs must be in effect

5. What if a student enrolls and the parent states that the student has received special education services, but there is no documentation of eligibility available (no Evaluation Report or IEP)?

A transfer student is considered to be a regular education student until the district has knowledge that the student is IDEA eligible and needs an IEP. There is nothing in the IDEA regulations that would prevent the receiving public agency from providing special education services to the child while the determination of the child's eligibility is pending, subject to an agreement between the parent and the receiving public agency.

34 CFR 300.323 When IEPs must be in effect
OSEP IEP Q and A, 2011

6. May IEP meetings be electronically recorded?

The OPI neither requires or prohibits the electronic recording of a meeting. If a recording of an IEP meeting is maintained by the public agency that recording is an "education record" within the meaning of the Family Educational Rights and Privacy Act (FERPA), and would be subject to confidentiality requirements.

7. Is it permissible for a school district to develop a draft IEP before the IEP meeting?

Yes. A district may come to an IEP meeting prepared with evaluation findings and proposed recommendations regarding IEP content, but must make it clear to the parents at the outset of the meeting that the services proposed are only recommendations for review and discussion with the parents. Parents have the right to bring written questions, concerns, and recommendations to an IEP meeting as part of a full discussion of the student's needs and the services to be provided to meet those needs before the IEP is finalized.

8. May a district provide a copy of a draft IEP to the parents prior to the meeting?

Yes. It is also advised to inform the parent that the draft is only recommendations and that nothing has been predetermined by the district.

9. What is a district's responsibility if it is not possible to reach consensus on which services should be included in a student's IEP?

The IEP team should work toward consensus, but the district has ultimate responsibility to ensure that the IEP includes the services that the child needs in order to receive FAPE. It is **never appropriate** to make IEP decisions based upon a majority "vote." If the team cannot reach consensus, the school district must:

- Inform the parents of the district's proposals or refusals, or both, regarding the child's educational program; in this case, provide the parents with a written copy of the IEP that includes not only those items upon which the parents and district agree in addition to those items the district proposes as essential for the provision of FAPE; and

- Advise the parents that they have the right to seek resolution of any disagreements by initiating an impartial due process hearing.
- The district must implement those portions of the IEP where agreement has been reached and continue to provide services in the disputed areas as provided for in the most recent agreed upon IEP.
- The district must continue to seek resolution of disputed areas.

Every effort should be made to resolve differences between parents and school staff through voluntary mediation or some other informal step, without resorting to a due process hearing. One informal step is to contact the OPI Early Assistance Program (444-5664). The Early Assistance Program will discuss concerns impartially and suggest strategies to prevent an impasse.

Mediation or other informal procedures may not be used to deny or delay a parent's right to a due process hearing, or to deny any other rights afforded under IDEA. Similarly, any initiation of due process will begin with a resolution session, at which the district and parent will attempt to resolve the concern before resorting to more intensive due process procedures.

Pre-Employment Transition Services (Pre-ETS) – Montana Vocational Rehabilitation and Blind Services

1. If a school receives Pre-ETS funding, does it raise the district's maintenance of fiscal effort (MOE) level?

No. Pre-ETS funds are federal monies. Only state and local funds are used to calculate MOE.

2. What can Pre-ETS funds be used for?

Pre-ETS funds must be used to support the specific activities that are identified in the school's Pre-ETS work plan. Each district develops a work plan as part of their contract with Vocational Rehabilitation and Blind Services. The funds that the district receives can pay expenses incurred to provide the services in their plan or to expand their school's capacity to provide Pre-ETS services. This may include staff time, curriculum that supports the delivery of the Pre-ETS service, transportation to participate in a Pre-ETS activity or the school can also use their funds to subcontract with an outside entity to provide any of the Pre-ETS services.

3. What can Pre-ETS funds not be used for?

The intention of the funds is to expand what the school is currently doing to increase career and college readiness for ALL of their students with disabilities. These funds must

not supplant IDEA funds to provide special education and related services as identified in the IEP.

Students who are homeless

1. Do students receiving special education who are homeless have the right to remain in their school of origin?

Yes. The McKinney-Vento Act applies to students receiving special education services the same way it applies to other students. In addition, any state receiving IDEA funds must ensure that the requirements of the McKinney-Vento Act are met for all children with disabilities in homeless situations in the state. 20 U.S.C. §1412(a)(11)(A)(iii); 34 CFR §300.149(a)(3). Therefore, a student receiving special education who is homeless must remain in the school of origin, unless it is not feasible or against the parent's/guardian's wishes. More often than not, the feasibility equation will weigh in favor of keeping a special education student in the same school, because changing schools and educational programs can be particularly detrimental to students with special needs. Of course, if the distance is such that the commute would be more detrimental than changing schools would be, then the student may have to change schools. There are additional legal requirements under the IDEA, 20 U.S.C. §§1400 et seq., that might come into play. However, IDEA does not supersede the McKinney-Vento Act; a special education student retains all McKinney-Vento rights.

2. Must schools provide special education services immediately to students experiencing homelessness who have IEPs from another school district or state?

Yes. When children with current IEPs change school districts during the school year, the new district must provide the children with a free, appropriate public education (FAPE) immediately, "including services comparable to those described" in the previous IEP, in consultation with the parents. While such services are being provided, the district can either adopt the existing IEP or implement a new IEP. If the new school district is in a different state, the district can choose to conduct a new evaluation and develop a new IEP, while services are being provided.

20 U.S.C. §1414(d)(2)(C)(i).

3. If a student receiving special education services becomes homeless and elects to remain in the school of origin, who pays for transportation and any applicable tuition charges?

School districts must provide transportation to the school of origin upon request. 42 U.S.C. §11432(g)(1)(J)(iii). This is true regardless of the services the student receives, including special education and related services. Transportation can be included as a related service in a student's Individualized Education Program (IEP), when appropriate.

If transportation is listed as a related service in a student's IEP, the student's transportation should be funded from the special education budget. If transportation is not an appropriate related service, the student's transportation should be funded in the same manner as that of other students experiencing homelessness. Tuition charges should not be incurred for out-of-district public schools because the student has the right under the federal McKinney-Vento Act to remain in his or her school of origin during the school in which homelessness occurred.

4. What obligations do private schools have under the McKinney-Vento Act? If the school of origin is a private school, must the student be allowed to continue attending?

The McKinney-Vento Act does not apply to schools that are entirely privately funded. Therefore, private schools are not required to allow children who become homeless to continue to attend, to waive tuition or to provide transportation.

TRANSITION ASSESSMENTS

1. What are age-appropriate transition assessments?

Formal and/or 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

Transition assessments can provide information about a student's strengths and needs in preparing for:

- postsecondary education
- vocational education
- integrated employment – including supported employment
- continuing and adult education
- adult services
- living independently
- community participation
- self-determination
- parenting

2. What are examples of age-appropriate transition assessments?

Educational—individual classroom-based assessments, grade or schoolwide assessments, academic assessments (reading, written language, mathematics), reports of observations made by teachers, employers, parents or school personnel

Employment—ratings of employability, vocational interest inventories, functional skills assessments, structured assessments in the work setting, evaluations of interview experience, work skills assessments (e.g., punctuality, work completion, social skills, ability to accept criticism, appropriate appearance for work), employer references

Training—Armed Services Vocational Aptitude Battery (ASVAB), computerized skills assessments, Montana Career Information Service (MCIS), Self-determination scales, vocational readiness ratings

Independent Living Skills—daily living skills assessments, assistive technology evaluation, independent living skills assessments

Remember

- Assessments may be formal or informal and are determined by student need.
- Assessments may also overlap in providing information relevant to more than one area required for transition planning.
- Review with colleagues what assessments may already be used in your school.
- Some assessments can be repeated and used for progress monitoring.

RESOURCES FOR TRANSITION ASSESSMENTS

This is not a comprehensive list of transition assessments, and the OPI does not endorse any particular publisher or product.

Education

- Statewide Assessments
- College View www.collegeview.com
- Information from current evaluations such as WIAT II, Woodcock Johnson III, Statewide assessments
- C.I.T.E. Academic Learning Styles www.harding.edu/arc/PDF/CITE.pdf
- Employment
- Occupational Aptitude Survey and Interest Schedule (OASIS -3) www.proedinc.com
- Self-Directed Search (Form E): SDS www.self-directed-search.com
- Wide Range Interest and Occupation Test (WRIOT 2) Second edition www.proedinc.com
- ASVAB
- Brigance Employability Skills Inventory www.brigance.net

- Reading Free Vocational Interest Inventory: 2 www.proedinc.com
- Work Adjustment Inventory www.proedinc.com
- Career Game/Red Hot Jobs www.careergame.com
- Career Decision-Making System – Revised www.agsnet.com

Training

- Skills Assessment Module (SAM) www.pineymountain.com
- ASVAB
- Informal Assessments for Transition Planning www.proedinc.com includes Transition Health Care Assessment and Self-Determination/Self-Advocacy Checklist
- Social Skills Rating System (SSRS) www.PearsonAssessments.com
- Independent Living Skills
- Checklist of Adaptive Living Skills (CALS) www.riverpub.com
- Skillstreaming Checklist (in Skillstreaming the Adolescent and the Prepare Curriculum) - www.researchpress.com
- Vineland Adaptive Behavior Scales www.agsnet.com
- Brigance Life Skills Inventory www.brigance.net
- Informal Assessments for Transition Planning www.proedinc.com includes Assessment of Financial Skills and Abilities

Assessments which incorporate education, employment, training and independent living skills

- Responsibility and Independence Scale for Adolescents www.riversidepublishing.com
- The Transition Planning Inventory (TPI) www.proedinc.com
- The Transition Behavior Scale www.hes-inc.com
- Enderle-Severson Transition Rating Scale www.estr.net
- Transition Skills Inventory www.proedinc.com
- Informal Assessments for Transition Planning www.proedinc.com includes
 - a) Comprehensive Informal Inventory of Knowledge and Skills for Transition,
 - b) Employability/Life Skills Assessment
- Gates to Adventure (for students who are deaf or partially hearing) www.pepnet.org/train.asp

EXAMPLES OF MEASURABLE POSTSECONDARY GOALS	
EDUCATION	<ul style="list-style-type: none"> • John will attend a two-year community college course and gain a qualification in auto body repair. • After graduation from high school, Cassie will complete a one-year course at beauty school.

	<ul style="list-style-type: none"> • Within two years of graduation from high school, Jamie will have completed a basic course in culinary arts. • Within two years of graduating from high school, Bobby will have completed an on-line course as a gunsmith.
EMPLOYMENT	<ul style="list-style-type: none"> • Within one year of graduation from high school, Bob will join the Marines. • After graduation from high school, Nica will be employed for at least one year in the local meat packing plant. • After graduation from high school, Jackie will plan self-employment through Voc. Rehab. Services as a Web site designer. • After graduation from high school, Taylor will pursue employment as an apprentice carpenter for at least two years. • After graduation from high school, Jill will work for at least one year as a trainee veterinary technician in order to gain relevant employment experience. • After graduation from high school, Jackson will gain experience in a part-time job related to the food industry.
TRAINING	<ul style="list-style-type: none"> • After graduation from high school, Kelli will attend Job Corps to receive training as a heavy equipment operator. • After graduation from high school, Habib will undertake a 5-month training course in dog grooming. • Ellie will complete a training course as a Certified Nursing Assistant. • Within one year of graduating from high school, Jack will participate in on-the-job training as a painter and decorator.
INDEPENDENT LIVING SKILLS	<ul style="list-style-type: none"> • Kyle will live independently for at least one year in a college dorm or share an apartment with friends. • For one year after graduation from high school, Susan will maintain her current bank account and save at least \$50 a month toward college expenses. • Within one year of graduating from high school, Chris will have achieved his driving license. • Within one year of graduating from high school, Steve will have accessed relevant services from the Developmental Disabilities Program and maintained contact with his case worker.

Written in collaboration with Big Sky Special Needs Cooperative, Conrad, Montana

Transition Service Area Examples

Instruction

What academic/lifelong learning skills are necessary for the student to complete needed courses, succeed in the general curriculum and gain needed skills? This should include not only academics, but functional competencies which will help the student benefit from a range of educational and learning opportunities, e.g., safety procedures, self-advocacy skills.

- Learn about the American with Disabilities Act (ADA) during the 11th grade
- Describe his/her disability and self-advocate during the 11th grade
- Use various communication modes (e-mail, voicemail, etc.) by the end of the school year
- Demonstrate personal safety (stranger danger, sexually transmitted diseases, etc.) by the time of graduation
- If appropriate, take a high school equivalence pre-test by the end of the school year

Employment

What instructional activities, techniques, and services will the student need to help him/her find a desired job or career? The school, businesses, or others can provide the activities and services that the student needs. Some students may need to work on basic employee behaviors to succeed in the workplace such as staying on task, responding appropriately to instructions, and working under pressure. Workplace readiness skills may be gained through part-time (supported or non-supported) employment or involvement in a School-to-Work program.

- Participate in two job shadow experiences in different industries during the 11th grade
- Complete two practice job interviews during the 11th grade
- Participate in career counseling to learn about job options
- Work with father during the summers, remodeling and installing gutters
- Learn job skills (first impressions, timeliness, communication, time cards)

Community Experiences

What experiences in the community would benefit the student as he/she prepares for life after high school? What organizations and activities in the community would the student enjoy? Recreation activities and team or individual sports may be relevant in this area. Job shadowing, shopping, visiting colleges, opening a bank account and taking responsibility for routine appointments can also be included.

- Attend a variety of community events (e.g., craft show, concert, ball game) each year
- Participate in three class field trips before graduation
- Volunteer at least one afternoon in two different community organizations by the end of the 2008-2009 school year

Functional Vocational Assessment

Does the IEP team need information about student aptitudes and skills in relation to job and career interests? A functional vocational assessment is information gathered through situational assessment, observations, surveys, interviews, or formal measures, and focuses on practical skills related to job/career aptitudes and skills. Information can be collected about personal social interactions, ability to manage money, mobility, personal hygiene, following directions, ability to complete a task, etc. This assessment may be undertaken by an outside agency or school staff.

- Gather information from a designated situational vocational assessment site in the community prior to last year of high school
- Arrange assessment of fine motor skills during final year of high school

How to Write Present Levels of Academic Achievement and Functional Performance

Present Levels of Academic Achievement and Functional Performance (PLAAFP) describe a student's level of skill and ability at the time of the IEP. The PLAAFP explains what the student can do and identifies the student's unique needs. The PLAAFP creates a baseline and provides information from which to write measurable annual goals. The PLAAFP should be specific and include units of measurement (number, percentage, prompt level, etc.).

PLAAFP statements must:

- Provide information about current performance;
- Be related to the Measurable Annual Goals;
- Provide baseline information for the development of Measurable Annual Goals; and
- State how the disability affects the student's involvement and progress in the general curriculum or, for preschool children, involvement in appropriate activities.

Examples of PLAAFP statements:

◆ 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.

How to Write Measurable Annual Goals

Measurable Annual Goals (MAGs) set the direction for instruction and assist in determining the specific courses, experiences, and skills a student will need. Measurable annual goals and short-term objectives and benchmarks are similar in their design and construction. Each 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 Present Level of Academic Achievement and Functional Performance (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.

A well-written MAG 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

Components of a Goal:

Condition: describes the circumstances under which the behavior will occur and sometimes includes the environment in which the behavior will occur.

Example: "Across all settings, . . . "

Behavior: identifies what is being measured; usually reflects an action or is directly observable, is measurable.

Example: "Ian will read aloud 20 major warning words and symbols (e.g., Stop, Poison, Danger, Hazard, etc.)..."

Criterion: 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.

Example: "with 95% accuracy."

Use a format: **Under what conditions, name of learner, will name of behavior to a specific criterion and consistency.**

Examples:

Condition Behavior

When given a verbal cue by an adult, Nica will begin to comply with the cue within 10 seconds

Criterion

on 80% of opportunities for 3 consecutive days.

Condition Behavior

Across all settings, Sadie will identify 20 major warning words and symbols (e.g., Stop, Poison)

Criterion Consistency

with 100% accuracy for five consecutive times.

Behavior Criterion Consistency

Savannah will read a minimum of 75 wpm of a 2nd grade reading passage on 2 out of 3 trials.

(No Condition needs to be specified.)

PLAAFP:

Habib writes a weekly journal entry in the regular classroom scoring 7 out of 50 points, as compared to his classmates who averaged 36 points, using the fourth-grade rubric which measures fluency, content and mechanics. Habib has difficulty with punctuation, sentence structure and composition of an idea.

Measurable Annual Goal:

In 30 weeks, when given a choice of topics, Habib will write a weekly journal entry in the regular classroom setting scoring 40 out of 50 points for a period of four consecutive weeks using the fourth-grade written language rubric.

PLAAFP:

John has creative ideas, but does not understand sentence construction or how to develop paragraphs. He does not use punctuation and capitalization consistently. John received 12 out of 50 points on the district's assessment for expressive writing (the average is 42). His classmates can write the four different sentence types (simple, compound, complex, and compound-complex) correctly and use them in a paragraph and he cannot.

Measurable Annual Goal:

Given a story starter, John will write a six-sentence paragraph using at least three different sentence types scoring 45 out of 50 on the district assessment.

Key Points to Remember:

- MAGs enable the student to make progress in the general education curriculum.
- MAGs address needs identified in the PLAAFP.
- MAGs are statements of anticipated outcomes to be achieved in a year or shorter if the IEP team chooses.
- MAGs are written with high expectations.
- MAGs must be clear since they are used to report on the student's progress.
- Goals are measurable and meaningful.

Examples of PLAAFP, MAG and STOB with Comments from OPI Reviewers

Reviewer comments are underlined and bolded. In some instances, suggested re-writes accompany strikeouts with underlined suggestions.

Special Education Service Area: Reading

PLAAFP: Student seems calmer and more settled this year in the school, but she is still stumbling over some of the difficult words in her 6th grade textbooks. **This is not specific enough about what the student is doing and why she needs help. Is she reading at a 6th grade level? What does, "stumbling over" mean?**

MAG: Student word/reading skills will improve with the continued use of Davis Dyslexia techniques. **Will improve to what level? What is the student's current level?**

STOB:

Student will read all stories out loud in an isolated setting with another teacher unless it is a graded reading experience shared with the rest of the class. **Why is student doing**

this? Is this a STOB or an accommodation? Is she expected to read with a minimum of errors? At what grade level is she reading?

Student will be able to read all science and social studies sections of the 6th grade reading textbooks with 80 percent accuracy.

With minimal teacher's guidance, student will implement Davis Dyslexia techniques to assist with her reading skills. **How will you know when this is met?**

Student will read all assignments out loud in an isolated setting with another teacher in an isolated setting. **Why is student doing this? Is this a STOB or an accommodation?**

Special Education Service Area: Reading

PLAAFP: Currently, student is receiving a D average on her daily reading. Student reads slowly and lacks basic phonetic skills. Her oral comprehension skills are high, but she needs to increase her word attack skills and reading fluency (WJ3 = Broad Reading 2.6, SS 82; Basic Reading 2.6, SS 86).

It's better to write out "Woodcock Johnson III" than to use an acronym. Also, what does the number "2.6" mean to the parent? You could include it as "2.6 grade equivalent" to give the parent a reference of what the number means. It is not usually necessary to include scaled scores in the IEP, as they have meaning only to other educators, who can access the test results in the special education file.

MAG: Student will increase her basic reading skills by one year as measured by achievement tests on 11/04.

Or, "Student will score at the 3.5 grade equivalent on the Woodcock Johnson test." Of course, then you have to give the Woodcock every reporting period to see if she is at a 3.6 level. It is not necessary to include a date unless the date is different from the annual IEP date.

STOB:

Student will be able to read the Dolch sight words to 95 percent accuracy for 5 trials by 11/04.

Given a list of reading vocabulary, student will use strategies to decode words with 90 percent accuracy up to 11/04.

When given a paragraph, student will demonstrate improved fluency, accuracy up to 11/04.

How will you know when this goal is achieved? How much improvement are you looking for?

Student will read one accelerated reader at the appropriate grade level and pass the corresponding test every month up to 11/04.

It is not necessary to include a date unless the date is different from the annual IEP date.

This is a good goal and objectives.

Special Education Service Area: Written Language

PLAAFP: Student has also improved in written language. She sometimes missed deadlines/due dates on written work, even with extended time. She needs to continue use of proofreaders and assistive technology devices. Ideas are good, mechanics need work. Her progress may be slowed when not given extended time for writing.

Improved in written language from where to where? (no level given) Which mechanics need work and how is that addressed by the STOB below?

MAG: By graduation in 2004, student will earn passing grades on written assignments.

Is a “D” a passing grade and is that acceptable?

STOB:

Student will complete assignments in a timely manner. **How long is “timely”? On due date?**

Student will proofread and revise using assistive devices before handing in work.

Make sure the “assistive devices” are clearly identified and included in the accommodations/modifications.

Student will complete any research paper with a passing grade. **“D” or better?**

Special Education Service Area: Transition

PLAAFP: Student is a hands-on person who enjoys outdoor activities and computers. She plans to attend a postsecondary school to pursue a career in mechanics, electronics and computers. She needs to complete the required school-to-work paperwork in order to earn her graduation credits.

Good PLAAFP, Benchmarks.

MAG: By graduation, student will complete the necessary requirements to enter the post secondary school of her choice.

STOB:

Student will complete the school-to-work paperwork to receive two credits required to graduate.

Student will complete any college entrance exams required (ACT, SAT or FAFSA).

Special Education Service Area: Math

PLAAFP: Student is unable to function with peers her age and grade level. Math testing on Woodcock showed a Kgt level (9/03). **What exactly can the student do? “Function with peers” could be anything.**

MAG: Student will increase her functional math skills. **To what level?**

STOB:

Given a situation/problem, student will know when to add or subtract using manipulative devices (i.e., calculator).

Will identify correctly name coins and bills and be able to combine coins to create amount up to \$1 when “buying” something.

Will make correct change up to \$1.

Will learn basic methods of measurement (ruler): inch, feet, measuring cup, practical skills, life skills. **What about, “Student will measure to the inch, foot, and ¼ cup amounts with X% accuracy for X out of X times.”**

Special Education Service Area: Speech

PLAAFP: Student strengths are in her ability to communicate her wants and needs. Student is very bright and is always asking questions to learn more. However, she misarticulates the /s/, /z/, /sh/ and /s/ clusters, which decreases her intelligibility and may cause frustration.

MAG: Student will produce the /s/, /z/, /sh/ and s clusters in sentences.

STOB:

Student will produce say(?) the target phoneme in isolation with 90 percent accuracy in three consecutive sessions.

Student will produce the target phoneme in all word positions with 90 percent accuracy in three consecutive sessions.

Student will produce the target phoneme in phrases and sentences with 90 percent accuracy in three consecutive sessions.

Good PLAAFP/MAG/STOB

Special Education Service Area: Speech

PLAAFP: Student is currently struggling in the classroom. Her language skills continue to be deficient for her age. She has difficulty with expressive and receptive language. She has difficulty with concepts, grammar and understanding how things are associated. **It**

would be good to know if there are other things she is struggling with, exactly how deficient her language skills are, and the specific difficulties with grammar, expressive language, etc.

MAG: To increase student's expressive and receptive language skills by one age level. **And what is her current level? (not in PLAAFP)**

STOB:

Student will use correct grammar (complete sentences, possessives, present, present progressive, past and future verb tenses, etc.) during structured activities with the clinician with 80 percent accuracy in three consecutive sessions.

Student will show, explain or answer questions that demonstrate an understanding of concepts (position, size, quantity, time, sequencing) while with the clinician with 80 percent accuracy in three consecutive sessions.

Student will label categories when given 3-4 items and identify items that belong to a category when given the label while with the clinician with 80 percent accuracy in three consecutive sessions. **Good STOB**

Special Education Service Area: Speech/Language

PLAAFP: Student's expressive language is limited (approximately 30 words) and babbling during play has the melodic characteristics of speech but few true words. Her understanding of language is below normal for age levels. Her below normal communication skills could affect her involvement in daycare and preschool settings and interactions with peers and adults. **How far below normal is she?**

MAG: To increase student's receptive and expressive communication to appropriate levels for age as measured by the PLS-4 (#) age level.

STOB:

Student will identify (by pointing) to named object/picture with 80 percent accuracy by this date. **Dates are not needed in STOB unless they differ from the annual IEP dates.**

Student will verbalize on cue objects/pictures with 80 percent accuracy by this date. **Dates are not needed in STOB unless they differ from the annual IEP dates.**

Student will use two-word phrase (attribute + object, e.g., "big ball") with 80 percent accuracy by this date. **Dates are not needed in STOB unless they differ from the annual IEP dates.**

Student will remain compliant during activity changes 90 percent of the time by this date. **Does "remain compliant" mean "follow directions" or "not spit on clinician"? Dates are not needed in STOB unless they differ from the annual IEP dates.**

Student will attend to activities 80 percent of the time, as judged by clinician, by this date. **How are you measuring this percentage? Could you have a STOB of “Student will be prompted to participate in therapy activities no more than three times in a 20-minute session (4/5 sessions).”?** **Dates are not needed in STOB unless they differ from the annual IEP dates.**

Special Education Service Area: Speech/Language

PLAAFP: The REEL-2 (Receptive-Expressive Emergent Language Scale –2) was administered on this date, and based on information from parents, student’s receptive age is 14 months, and expressive language at 16 months. Parent reports that student makes needs known by sitting by the desired object and vocalizing/whining. Student can sign “more” and she can imitate simple mouth movements/sounds modeled by clinician. Student does become frustrated when she cannot make needs known. Student would benefit from learning how to communicate her needs to parents, siblings and peers. **Excellent PLAAFP.**

MAG: To increase expressive communication skills to the child’s level of potential, as measured by the REEL-2. **This should include yy/mm level, as the PLAAFP does.**

STOB:

Student will exchange PECS/photo symbol for desired object on a consistent basis. **What is a consistent basis? 80 percent? 100 percent?**

Student will discriminate between a desired and non-desired PECS/photo in exchange for a desired object on a consistent basis. **Is “discriminate” the same as “choose”?** Clinician will include a sign to augment auditory presentation. **This sounds like an accommodation, not a student objective.**

Student will increase oral motor imitation skills as modeled by clinician for improving proper placement for sound.

Student will increase sound/syllable repertoire, as measured informally. **If you will measure it informally, it’s not a STOB.**

Student will decrease negative behaviors related to frustration over expressive language deficits.

These three goals specify an increase or decrease but don’t tell what you want the student to do when the objective is achieved. How will you know when negative behaviors have decreased? Which negative behaviors?

Good MAGs

Special Education Service Area: Reading

Given a list of fourth-grade-level words with the same phonetic sounds, Amanda will read 110 words per minute with two or fewer errors.

By the end of the first quarter of school, 2008, after independently reading two 3rd grade level stories from the same literary genre (historical fiction, fairy tales, folktales, etc.) for each story, Todd will state the main idea, recall five details, provide one example of cause and effect, and use this information to compare and contrast the two stories.

Special Education Service Area: Written Language

Nadia will identify types of sentences (simple, compound, complex) when editing, scoring 75 percent on the MCAS Scoring Guide for Standard English Conventions.

Nica will write the letters in the alphabet, her last name and five three-letter words between lines that are two inches apart with 80 percent accuracy.

Special Education Service Area: Math

Ted will independently identify a set and count objects 1-10 using a variety of objects and settings with 90 percent accuracy.

The student will apply trigonometric ratios (sine, cosine and tangent) to problem situations involving triangles with 100 percent accuracy for three assignments.

Special Education Service Area: Life Skills

In response to student selected help-wanted advertisements, Johnny will independently write five letters responding to the advertisements in appropriate business style with 100 percent accuracy in spelling and punctuation after editing.

Monday through Friday, Jillian will use the public transportation system to get to and from her job placement, independently arriving at work on time, for any five consecutive days.

Special Education Service Area: Transition (*These are not measurable postsecondary goals.*)

Given application forms from three businesses, the student will complete job applications with accurate personal and employment information in all appropriate sections of all three applications.

Special Education Service Area: Social/Behavior

When provided with an agenda book, Jose will independently record his homework assignments in English Language Arts, Math, Social Studies and Science with 100 percent accuracy for three consecutive weeks.

Brianna will stand at least two feet away from the other person while conversing.

Extended School Year Services

1. What is an extended school year (ESY)?

Extended school year services are special education and related services that are provided to a student with a disability beyond the normal school year. Extended school year services are provided to maintain identified skills and to prevent or avoid substantial loss of previously acquired or emerging skills or behaviors. The ESY services are not summer school. The school district is not required to provide a summer school or other non-ESY services if such services are not available to other non-disabled students.

ARM 10.16.3324 Extended School Year Services

2. May a student with a disability participate in summer school?

Yes. Even if a student's IEP team has determined that ESY services are not necessary, the student may still participate in the district's summer school program.

3. May ESY services be provided in conjunction with a district's summer school?

Yes.

4. Must ESY services be provided in conjunction with a district's summer school?

No. If the IEP team determines that the student needs ESY services, those services may be provided independently of the summer school.

5. Who determines if ESY services are necessary for a student with disabilities?

The student's IEP team shall decide annually whether ESY services are necessary for a student.

6. Must the IEP team for a newly eligible preschool student consider the student's need for ESY?

Yes. If a student turns 3 years old during the summer, the student's IEP team shall decide whether the student needs ESY services during that summer in order to benefit from a FAPE. If, at that initial IEP meeting, the IEP team determines that the preschool-age

student does not need ESY services, the IEP team shall identify the date of initiation of services as the first day of the school year.

7. What criteria are used to determine whether ESY services are necessary for a student with a disability?

The IEP team shall determine on an individual basis that ESY services are necessary to avoid a loss of skills that the student could not otherwise regain within a reasonable period of time. The basic standard for this determination is regression/recoupment analysis. This analysis 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 help it determine whether regression/recoupment of skills requires ESY services:

- 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.

When the IEP team does not have sufficient data regarding recoupment and retention issues for a student, the IEP team may consider other information that would indicate the likelihood of regression based on individual student factors.

A family's need for child care is not a factor the IEP team must consider regarding ESY.

8. What information may be used in making the determination of need for extended school year services?

The IEP team's evaluation of student progress, as reported to parents on a regular basis, is crucial to determining the need for an ESY. The IEP team may use records of ongoing assessment of the IEP goals and objectives as they relate to regression and recoupment of a student's progress. Work samples, test results, report cards, homework, progress reports and parent observations are examples of typical information used when determining eligibility for ESY services.

9. Must all the special education and related services in the student's IEP be provided during an ESY?

No. The IEP team will determine which measurable annual goals will be addressed in the ESY program.

10. Is it possible for a student to receive only a related service as part of an ESY program?

Yes. Related services may be provided as a sole ESY service when necessary.

11. Must a full continuum of placements be maintained during an ESY program?

No. ESY services are provided during a period of time when the full continuum of alternative placements is not normally available for any student. Therefore, the school district is not required to maintain a full continuum of placements.

12. What information should an IEP team request from an early intervention provider in considering a preschool child's need for ESY?

As part of its evaluation, the IEP team should consider the student's progress throughout early intervention services provided prior to an initial IEP. The IEP team may also consider the results of concurrent, ongoing interventions conducted by qualified personnel including information regarding the intensity and duration of services. An IEP team should request the family support specialist to send written progress reports, evaluations, and other information to the IEP team regarding the student's services and performance that may be relevant to the evaluation of student progress.

Aversive Treatment Procedures

Common Questions about Aversive Treatment Procedures

1. What are "positive behavioral interventions" ?

Positive behavioral interventions are nonaversive treatment procedures used to address student problem behavior(s). Examples of positive behavioral intervention might include environmental changes, schedule changes, specific instructional methods and the use of reinforcement.

2. What is a "functional behavior assessment"? Are there requirements for the content and complexity of the functional behavioral assessment?

A functional behavior assessment (FBA) is a process used by a group of persons who know the student to review and analyze student behavior. The functional behavior assessment is used to form hypotheses of the relationships between events in a person's environment and the occurrence of specific behaviors. There are many different tools for completing functional behavior assessments, but common components of a functional behavior assessment may include (but are not limited to):

- Description of the student
- Description of the target behaviors to be changed
- Identification and description of the antecedents and consequences of problem behaviors
- Hypotheses as to the functions of the behavior
- Suggested strategies for addressing the problem behaviors

The IEP team must determine if the functional behavior assessment was sufficient to develop written positive behavioral intervention strategies that were designed to target the behavior to be changed.

3. Who determines when the use of aversive treatment procedures may be appropriate?

The student's IEP team, which includes the student (as appropriate), the student's parents, a special education teacher, a regular education teacher, an administrator and 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.

ARM 10.16.3346 Aversive Treatment Procedures

4. What is "physical restraint"?

Physical restraint is not defined in the Aversive Treatment Procedures rule. ARM 37.34.1404 defines physical restraint as ". . . the restriction of a person's movement by one or more persons holding or applying physical pressure."

5. What are the relevant provisions of MCA 20-4-302?

MCA 20-4-302 reads in part:

(4) (a) A person who is employed or engaged by a school district may use physical restraint, defined as the placing of hands on a pupil in a manner that is reasonable and necessary to: (i) quell a disturbance; (ii) provide self-protection; (iii) protect the pupil or others from physical injury; (iv) obtain possession of a weapon or other dangerous object on the person of the pupil or within control of the pupil; (v) maintain the orderly conduct of a pupil including but not limited to relocating a pupil in a waiting line, classroom, lunchroom, principal's office, or other on-campus facility; or (vi) protect property from serious harm.

6. Would an Aversive Treatment Plan be required if the IEP team has determined that the frequency, intensity or duration of the restraint does not warrant an aversive treatment procedure?

No. The determination as to whether the use of physical restraint warrants an aversive treatment procedure is left to the IEP team.

7. Is the development of an aversive treatment plan required if physical restraint is used more than one time under the provisions of MCA 20-4-302?

No. The determination as to whether the use of physical restraint warrants an aversive treatment procedure is left to the IEP team. However, the IEP team is required by 34 CFR 300.346 (a)(2)(i) that “In the case of a child whose behavior impedes his or her learning or that of others, consider, if appropriate, strategies, including positive behavioral interventions, strategies, and supports to address that behavior.”

8. Are the following procedures considered isolation time-out: in-school suspension, study carrels, having the student stand in a corner of the classroom, having the student go outside of the classroom to a hallway, being in an isolation room with the door open?

To determine if a procedure is isolation time-out, answer the following questions:

Is the student taken to another room?

Is the student alone in that room?

Is the student prevented from leaving that room?

Is the door closed while the student is in that room?

Is the student prohibited from participating in activities occurring outside the room and from interacting with other students during the period of isolation?

If the answer to any of these questions is “No,” the procedure is probably not considered to be isolation time-out. ARM 10.16.3346 (5) provides a definition of exclusion time-out. If you are unsure if a procedure is isolation time-out, contact the Division of Special Education at 444-5661.

9. If school district personnel are in an isolation room with a student and the door is closed, is this isolation time-out?

No. The student must be alone in the isolation room with the door closed for the procedure to be isolation time-out.

10. Does the Office of Public Instruction have standards regarding the design of an isolation time-out room?

The OPI does not have specific standards regarding the design of an isolation time-out room. However, the room should be designed so that the student is unlikely to injure his or herself by inappropriately interacting with such items as 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 will allow the door to be opened if the staff person is not actively engaging the system.

11. Can the use of a peephole, one-way glass or a video camera system meet the requirement for direct constant visual observation?

Yes, as long as the student is continually observed when using such a system. If the student is videotaped while in isolation time-out, the videotape would be considered to be a portion of the student's record and would be subject to the requirements of FERPA and state rules regarding the confidentiality of student records.

12. Who is the "designated staff person?"

The term "designated staff person" means the staff person who has been designated to provide direct constant observation of the student during the time that the student is in isolation time-out. The designation of this person is a district decision.

13. Can a parent provide permission for the use of a procedure that is prohibited by this rule?

No. Prohibited procedures may not be used under any circumstance.

14. What is a "locked room?"

The use of a locking system that does not require the presence of staff to keep the door from opening is considered a locked room. Any system used to prevent exit from the isolation time-out room must allow the door to be opened if a staff person is not actively engaging the system.

15. What are "aversive mists?" Would having a student take a shower be considered an aversive mist?

An example of the prohibited procedure of "aversive mists" could be the use of a spray bottle filled with water. The water would be sprayed in a child's face upon the occurrence of a target behavior, with the intended effect of reducing the rate of the target behavior. Taking a shower would not be considered an aversive mist unless the student was required to shower as a consequence to a target behavior and the shower was intentionally made aversive (i.e., no hot water, excessive water pressure).

16. What is "mechanical restraint"?

The use upon the student of any mechanical or restrictive device, that is not intended for medical reasons, that physically restricts a student's movement.
ARM 10.16.3346(4)(e) Aversive Treatment Procedures.

17. What is the definition of residential treatment facilities and psychiatric hospitals in MCA 20-7-436?

MCA 20-7-436 reads in part:

(1) (a) "Children's psychiatric hospital" means a freestanding hospital in Montana that: (i) has the primary purpose of providing clinical care for children and youth whose clinical diagnosis and resulting treatment plan require in-house residential psychiatric care; and (ii) is accredited by the joint commission on accreditation of healthcare organizations, the standards of the health care financing administration, or other comparable accreditation. (b) The term does not include programs for children and youth for whom the treatment of chemical dependency is the primary reason for treatment. (3) (a) "Residential treatment facility" means a facility in the state that: (i) provides services for children or youth with emotional disturbances; (ii) operates for the primary purpose of providing residential psychiatric care to individuals under 21 years of age; (iii) is licensed by the department of public health and human services; and (iv) participates in the Montana medicaid program for psychiatric facilities or programs providing psychiatric services to individuals under 21 years of age; or (v) notwithstanding the provisions of subsections (3)(a)(iii) and (3)(a)(iv), has received a certificate of need from the department of public health and human services pursuant to Title 50, chapter 5, part 3, prior to January 1, 1993. (b) The term does not include programs for children and youth for whom the treatment of chemical dependency is the primary reason for treatment.

18. How is the determination made that a mechanical or restrictive device is intended for medical reasons?

The determination that a mechanical or restrictive device is necessary for medical reasons should be made and documented by the student's IEP team, based on the advice of a medical professional. It is helpful if the IEP team has a record of the order or prescription for the use of the device. The IEP team may also wish to address the use of the device in an Individualized Health Care Plan. A form for this plan is included in the technical assistance manual "Serving Students With Special Health Care Needs" that is available from the Office of Public Instruction.

19. If a student uses a brace or belt-type support in order to maintain posture while seated in a wheelchair, chair or bus seat, would the device be considered a mechanical restraint?

If the use of the mechanical device is for medical reasons, the device would not be considered a mechanical restraint. The determination that the device is necessary for medical reasons should be documented by the student's IEP team. It is helpful if the IEP team has a record of the order or prescription for the use of the device.

20. If a student's movement is physically restricted by a mechanical or restrictive device while the student is being transported by bus or car, would this be considered a mechanical restraint?

Not if the device is used for the safety and protection of the student and others while being transported by bus or car. The use of the device should be identified by the IEP team as specialized equipment used during transportation. The use of a standard seat belt or built-in device that prevents a wheelchair from moving during transport is not considered a mechanical restraint or specialized equipment.

21. Must the aversive treatment procedures be written on the IEP forms or can these be included as an attachment to the IEP?

The rule states that the IEP must include the aversive treatment procedures. This may be accomplished by attaching the completed Aversive Treatment Plan as a part of the IEP.

22. Must the two written positive behavioral intervention strategies be implemented before or after the functional behavior assessment is developed?

They must be implemented after the functional behavior assessment is developed.

23. What is meant by "a series of no less than two" positive behavioral intervention strategies?

At least two positive behavioral intervention strategies must have been implemented in sequence; that is, first one strategy, then a second strategy.

24. Is there a minimum period of time for which the positive behavioral intervention strategies must be implemented?

No. The determination as to whether the strategies were implemented for a sufficient length of time is left to the IEP team that is considering the use of aversive treatment procedures.

25. What documentation is required of the written positive behavioral intervention strategies previously implemented?

The dates of implementation, a description of the strategies, the rate of the target behavior(s) prior to the implementation of the strategies and the effect of the strategies on the rate of the target behavior(s) and a copy of the functional behavioral assessment on which the positive behavioral intervention strategies were based are required. The IEP team may determine the need for additional documentation.

26. Can the aversive treatment procedures only address the behaviors that were targeted to be changed by the two written positive behavioral intervention strategies?

Yes. However, behaviors that have a similar topography (e.g., scratching and pinching) and antecedent(s) may be included in an existing aversive treatment plan at the discretion of the IEP team.

27. Who determines that the IEP team includes 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?

The IEP team determines if a member or members of the team are trained and knowledgeable in these areas. There is no certification or licensure that specifically addresses this requirement.

28. Must the target behaviors be discrete individual behaviors (hit, kick, bite) or can they be “classes” of behavior (self-abuse, physical aggression)?

The target behaviors must be described so that members of the IEP team understand which target behaviors will be consequented by aversive treatment procedures and the persons implementing the plan will document and consequent the target behaviors in a consistent manner. This is best done through describing discrete behaviors.

29. Must the short-term objectives in the aversive treatment plan be included in the student’s IEP?

Yes. The IEP must include short-term objective(s) with measurable criteria stating the expected change in the target behavior(s). The IEP team may choose to develop additional measurable criteria of progress as part of the aversive treatment plan.

30. How detailed must the written description of the aversive treatment procedure(s) be?

The description must be sufficiently detailed so that all members of the IEP team, as well as those persons implementing the aversive treatment procedures, are able to understand the actual procedures and under which circumstances they will be implemented. Examples are included in the section, Examples of Aversive Treatment Plan.

31. Can the IEP team establish additional limits for the use of aversive treatment procedures such as maximum amount of time per day in isolation time-out or how many times per day a student can be restrained?

Yes. The IEP team should also determine and document what actions will be taken when a maximum limit is reached.

32. What data should be collected for each application of the aversive treatment procedures?

This data could include antecedents to the target behavior, attempted intervention or redirection strategies other than aversive treatment procedures, the target behavior(s) that the student exhibited, the time at which the physical restraint/isolation time-out began, the student's behavior while in physical restraint/isolation time-out and the time at which the student was released from physical restraint/isolation time-out.

33. Who should be the individual responsible for ongoing review and analysis of data on the target behavior?

This individual should be someone who is able to review and analyze the data on the target behavior on an ongoing basis and interpret data, if necessary, to team members. This individual does not have to be a member of the IEP team, but may be designated by the team.

34. How specific must the IEP team be in stating whether any standard school disciplinary measures are waived?

The IEP team should be as specific as possible in referencing the measures to be waived. The IEP team may wish to review and include a copy of the standard school disciplinary measures as a part of any IEP at which these measures are discussed or waived.

35. Can an IEP team waive standard school disciplinary procedures if the school district does not agree?

MCA 20-5-201 requires that "a pupil shall be subject to the control and authority of the teachers, principal, and district superintendent while the pupil is in school or on school premises, on the way to and from school, or during intermission or recess." A school district may determine that waiving a standard school disciplinary measure(s) would be in conflict with the above administrative rule. In this instance, the IEP team may choose to use informal dispute resolution through the Office of Public Instruction Early Assistance Program.

36. How does a school district inform the parents that their consent to the IEP includes consent for the aversive treatment plan?

By developing the aversive treatment plan as part of the IEP process and document.

37. If the student's parents do not attend the IEP meeting at which consent is needed for the aversive treatment plan, how is consent for the IEP and aversive treatment plan obtained?

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

When parental consent for the IEP has not been obtained and has not been specifically refused or revoked, the district shall informally attempt to obtain consent from the parent. If parental consent cannot be obtained within a reasonable time, the district shall send written notice to the parent requesting approval and stating that the student with disabilities shall be provided special education and related services according to the student's IEP as developed by the district 15 days from the date of the notice. If no response from the parent is obtained, the district shall provide the student special education and related services according to the student's IEP, including the aversive treatment plan, without parental consent subject to the parent's right to an impartial due process hearing under ARM 10.16.3507 through 10.16.3523.

ARM 10.16.3505 Parental consent
CFR 300.345 Parent participation

38. Does this rule, (ARM 10.16.3346(4)(e) Aversive Treatment Procedures), apply to students who have not been identified as students with disabilities under IDEA?

No. The rule only applies to students who have been identified as IDEA-qualified students.

39. If a student transfers between school districts in Montana with an existing aversive treatment plan, must the receiving district conduct a functional behavior assessment and implement two written positive behavioral intervention programs before the aversive treatment plan can be implemented?

No. When an IDEA-eligible student moves to a new school district within the state and the student's current IEP is available, the new school district shall ensure that there is no interruption of special education and related services. If a student with an aversive treatment plan transfers from another state, contact the Office of Public Instruction for guidance.

34 CFR 323 When IEP's must be in effect

40. What is a public agency's responsibility if the parents refuse to consent to the use of aversive treatment procedures?

The IEP team should work toward consensus, but the public agency has ultimate responsibility to ensure that the IEP includes the services that the child needs in order to receive FAPE. It is not appropriate to make IEP decisions based upon a majority "vote." If the team cannot reach consensus, the district must provide the parents with prior written notice of the agency's proposals or refusals, or both, regarding the child's educational program, and the parents have the right to seek resolution of any disagreements by initiating an impartial due process hearing. Every effort should be made to resolve differences between parents and school staff through voluntary mediation or some other informal step without resorting to a due process hearing.

10.16.3505 Parental consent

41. If a child's IEP includes behavioral strategies to address a particular behavior, can a child ever be suspended for engaging in that behavior?

Yes. MCA 20-5-201 states that a pupil who continually and willfully shows open defiance of the authority vested in school personnel, defaces or damages any school building, school grounds, furniture, equipment, book belonging to the district, or harms or threatens to harm another person or the person's property is liable for punishment, suspension, or expulsion. Whether suspension is ever appropriate for behavior that is addressed in a child's IEP will have to be determined on a case-by-case basis in light of the particular circumstances of that incident.

42. Must the parents be notified each time aversive treatment procedures have been used?

No; however, the IEP team may include this practice in the aversive treatment plan.

43. Is parental consent required and must a district provide notice of and obtain permission for evaluation before conducting a functional behavior assessment for the purpose of developing an aversive treatment plan?

Yes. If the purpose of a functional behavior assessment is to determine the nature and extent of the special education and related services that the child needs, informed parental consent must be obtained unless the evaluation is administered to all children.

If a request is for individualized behavior assessment for a particular child, the request for a behavioral assessment is to be treated as a request for evaluation or reevaluation and consent is required.

53 IDELR 231 (2009), DOE Q & A on Discipline Procedures

34 CFR 300.500 General responsibility of public agencies; definitions

34 CFR 300.503 Prior notice by the public agency; content of notice

Aversive Treatment Plan

Common Questions about the Aversive Treatment Plan

1. What changes in the aversive treatment plan require an IEP team meeting?

The following changes in the aversive treatment plan require an IEP team meeting:

- Adding or removing target behaviors that will be consequented by aversive treatment procedures
- Changing the short-term objectives stating the expected change in the target behaviors
- Adding or removing aversive treatment procedures (isolation time-out or physical restraint)
- Changing the time limit for the use of the aversive treatment procedures in any one instance
- Discontinuing any data collection procedure
- Changing the frequency of IEP team meetings to review the ongoing use or modification of aversive treatment procedures
- Changing the frequency of the reporting of the progress toward the short-term objectives
- Changes in standard school disciplinary procedures that are waived
- Terminating the use of aversive treatment procedures

2. How should changes to the aversive treatment plan be documented?

Changes which require the approval of the IEP team should be documented in the student's IEP. Depending on the changes being made in the Aversive Treatment Plan document, it may not be necessary to rewrite the entire Aversive Treatment Plan. On a new Aversive Treatment Plan, complete the portion(s) of the ATP which are being changed (be sure to note the IEP Date and Revision Date on page 1) and attach a copy of the revisions to the IEP at which the revisions are approved.

3. Is it necessary to complete the Aversive Treatment Procedures Checklist if an Aversive Treatment Plan has been completed?

No. The Aversive Treatment Procedures Checklist is intended to serve as an additional means of documenting that the requirements of the administrative rule on Aversive Treatment Procedures have been met. If the Aversive Treatment Plan form developed by

the Office of Public Instruction has been completed correctly, it is not necessary to use the Aversive Treatment Procedures Checklist.

If an Aversive Treatment Plan form other than the one developed by the Office of Public Instruction has been used, the OPI Aversive Treatment Procedures Checklist may be used to document that the requirements of administrative rule have been addressed. In either instance, if the Aversive Treatment Procedures Checklist was used, it should be included in the IEP that includes the Aversive Treatment Plan.

Aversive Treatment Plan – Example

Example Description of Restraint Procedure

After Robert has hit someone, he will be told, “Robert, when you hit someone you have to be restrained until you are calm.” The staff person will, while standing behind Robert, gently push Robert’s left elbow forward. The staff person will reach between Robert’s right arm and body, grasping Robert’s left wrist with the staff person’s right hand and holding Robert’s left arm loosely against Robert’s body. The staff person will reach between Robert’s left arm and body and place his or her left hand on Robert’s left forearm below the elbow.

If necessary, the staff person will grasp Robert’s right wrist with the staff person’s left hand, holding Robert’s right arm and wrist loosely against Robert’s body. Robert will be restrained until he has been calm (no struggling or shouting) for two minutes.

If, after 5 minutes of restraint, Robert has not met the requirement for two minutes of calm (no struggling or shouting), the criteria for release from the restraint will be lowered to 90 seconds of calm. After 10 minutes of restraint, the criteria will be lowered to one minute of calm. After 15 minutes, if Robert is still in restraint, he will be given the cue to be calm and will be released from the restraint when he has been calm for two seconds.

Example Description of Isolation Time-out Procedure

After Seth has hit someone, he will be told, “Seth, when you hit someone you have to go to time-out.” He will be escorted to the isolation time-out room using the least assistance possible. If it is necessary to restrain Seth to take him to the isolation-time out room, he will be restrained as described in his aversive treatment plan.

Once Seth has entered the isolation time-out room, he will be told, “Seth, you have to stay in the time-out room until you are calm* for three minutes.” The staff person will then leave the isolation time-out room and close the door. Seth will be under the direct constant visual observation of a staff person while he is in the isolation time-out room.

If, after 10 minutes of isolation time-out, Seth has not met the requirement for three minutes of calm, the criteria for release from the isolation time-out will be lowered to 90 seconds of calm. After 15 minutes of isolation time-out, the criteria will be lowered to one minute of calm. If Seth is still in isolation time-out after 20 minutes, he will be given the

cue to be calm and the isolation time-out room door will be opened when he has been calm for two seconds.

When Seth has met the criteria for calm, the staff person will open the door of the isolation time-out room and tell Seth that time-out is over. If, after one minute, Seth has not left the isolation time-out room, the staff person will follow the prompting procedures in his behavior intervention plan.

*(Calm is defined as not hitting or kicking the walls and not talking in a voice that can be heard outside of the isolation time-out room.)

ASSISTIVE TECHNOLOGY

For all students, technology makes things easier.

For students with disabilities, technology makes things possible.

The decision whether a student with disabilities requires an assistive technology service and/or device in order to benefit from her or his education program is an Individualized Education Program (IEP) team decision. In making this decision 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.

Assistive Technology

1. What is an assistive technology device?

Assistive technology devices are any item, piece of equipment, or product system (software) used to increase, maintain, or improve the functional capabilities of a student with disabilities.

CFR 300.5 Assistive technology device

2. What is an assistive technology service?

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

3. Why is assistive technology important?

Assistive technology is important because, for some students, without assistive technology they would not have access to or be able to benefit from their educational program.

4. When should the assistive technology devices or services be provided for a student?

When the student is not successful in his or her educational program and the IEP team has determined that the use of assistive technology device(s) and service(s) are necessary for the student to be successful in his/her educational program.

Assessment

5. Must assistive technology be considered for all students with disabilities?

Yes.

CFR 300.324 Development, review, and revision of IEP

6. What kinds of devices qualify as assistive technology?

Any item, piece of equipment, or product system that is used to increase, maintain, or improve the functional capabilities of a student with disabilities and which the IEP team specifies is necessary for the student to receive a free, appropriate public education (FAPE).

7. Who is qualified to assess a student's need for assistive technology?

Montana does not have licensing or certifications standards for specialists in assistive technology. If a district does not have personnel who are knowledgeable in assistive technology, the district can obtain assistance by contacting knowledgeable providers (e.g., MonTECH, PLUK, etc.).

8. What is the role of the parent in determining a student's need for an assistive device or service?

Parents, and the student, if appropriate, should be invited to participate in all aspects of the process. They can provide valuable information regarding fitting, customizing, and adapting the technology to their child.

9. How is the determination made that an assistive technology device or service is educationally necessary for a student?

The student's IEP team determines that an assistive technology device or service is educationally necessary for a student to benefit from his or her education program.

34 CFR 300.324 Development, review, and revision of IEP

10. When are assistive technology or assistive technology services considered a related service?

Assistive technology devices or services are considered to be related services when the IEP team determines that the service(s) is required to assist a student with disabilities to benefit from his or her educational program.

34 CFR 300.34 Related services

11. Can an independent educational evaluation be requested by the parent to address a student's need for assistive technology?

Yes. The school district is required to evaluate a student in all areas of suspected disability, including, if appropriate, evaluating the student's need for assistive technology. A parent has the right to an independent educational evaluation if the parent disagrees with an evaluation obtained by the school.

34 CFR 300.304 Evaluation Procedures

34 CFR 300.502 Independent Educational Evaluation

Choosing an Assistive Technology Device

1. What procedures should be followed when determining a student's need for an assistive technology device?

Many factors will need to be addressed because of the unique needs of each individual student. Districts are encouraged to develop a process for this determination. An example [Assistive Technology Consideration Process](#) can be later in this section.

2. Is a school district required to provide "state-of-the-art" assistive technology for a student?

The decision as to what type of assistive technology is appropriate should be based on the assistive technology assessment and IEP team decision. The school must provide appropriate technology for the student's needs to ensure FAPE. If specific assistive technology is necessary to ensure FAPE for a student and no other assistive technology can meet the student's educational needs, the district must provide the required assistive technology. If a less expensive assistive technology would accomplish the same goals, the school district is under no obligation to choose a more expensive option.

3. Can school district administrators instruct personnel not to include assistive technology in the IEP?

No. The IEP team determines a student's need for assistive technology devices and services. A school may not prevent IEP teams from identifying a student's need for assistive technology.

34 CFR 300.324 Development, review, and revision of IEP

4. What constitutes an unreasonable amount of time to obtain an assistive technology device?

It is not possible to set a specific time period. However, once an assistive technology device is determined necessary for the student's instructional program, the district must implement procedures necessary for obtaining the device without unnecessary delay. When a delay is anticipated (e.g., equipment is on backorder from the company) it is best practice for the school to inform the parent and to implement procedures to ensure that the student has access to the instructional program. It may be possible for the district to rent, borrow or lease an appropriate device in the interim.

5. Are there any places in Montana that offer the opportunity to try out equipment before a purchase is made?

Possibly. Contact the OPI, the Rural Institute of the University of Montana, or Parent's Let Unite for Kids for assistance.

6. If the IEP team cannot come to consensus regarding an assistive technology device or service, what should occur?

The IEP team should work toward consensus, but the public agency has ultimate responsibility to ensure that the IEP includes the services that the student needs in order to receive FAPE. It is never appropriate to make IEP decisions based upon a majority "vote." If the team cannot reach consensus, the public agency must:

- Inform the parents of the district's proposals or refusals, or both, regarding the student's educational program; in this case, provide the parents with a written

copy of the IEP that includes not only those items upon which the parents and district agree in addition to those items the district proposes as essential for the provision of FAPE; and

- Advise the parents that they have the right to seek resolution of any disagreements through informal processes such as the OPI's Early Assistance Program, or requesting formal mediation or initiating an impartial due process hearing.

Every effort should be made to resolve differences between parents and school staff through voluntary mediation or some other informal step without resort to a due process hearing. However, mediation or other informal procedures may not be used to deny or delay a parent's right to a due process hearing, or to deny any other rights afforded under Part B of IDEA.

The IEP meeting serves as a communication vehicle between parents and school personnel, and enables them, as equal participants, to make joint, informed decisions regarding the:

- Student's needs and appropriate goals;
- Extent to which the student will be involved in the general curriculum and participate in the regular education environment and state and districtwide assessments; and
- Services needed to support that involvement and participation and to achieve agreed-upon goals.

Parents are considered equal partners with school personnel in making these decisions, and the IEP team must consider the parents' concerns and the information that they provide regarding their child in developing, reviewing, and revising IEPs.

Purchasing an Assistive Technology Device

1. Who is required to provide assistive technology devices and services?

Once the IEP team has determined the need for assistive technology, the school district is obligated to provide or purchase the assistive technology device(s) and/or services.

2. Can schools require the parents to pay for an assistive technology device or service?

No. Special education and related services must be provided "at no cost to the parent."

34 CFR 300.39 Special education

3. Are there options for districts to consider other than purchasing the assistive technology device?

- Medicaid, with parent approval
- Private insurance with parent approval
- Renting or leasing
- Community and service groups
- Grants and private foundations

4. What resources are available to assist in obtaining appropriate assistive technology devices and services?

There are a number of parent, professional and advocacy organizations or associations that offer assistance regarding assistive technology devices and services. Contact the OPI, the Rural Institute of the University of Montana, or Parent's Let Unite for Kids for assistance.

5. Who owns the assistive technology purchased for an individual student?

If the school purchased the device(s), it is the property of the school. If the assistive technology was purchased using the student's Medicaid or private insurance funds, the device belongs to the student. If the device was donated, ownership would be determined by the conditions of the donorship. If the parents or third party pays for a portion of a device, and the school pays a portion of a device it is advisable that a written agreement be drawn up between the school and the parents regarding ownership.

6. When a student moves from school to school within the same district, does the district-purchased assistive technology device follow the student?

If an assistive device is included in a student's IEP, it must be provided in whichever school the student attends in that district. The same device may not necessarily follow the student from one school to the next, but a device that fulfills the assistive technology needs identified in the IEP would need to be provided.

7. When a student moves from one school district to a different school district, does the assistive technology device that was purchased by district A follow the student to district B?

Since District A owns the device, it may keep the assistive technology device for use by other students. Or District A may decide to transfer or sell the assistive technology device to District B.

8. If an assistive technology device is no longer needed by a student and the device was paid for by Medicaid or private insurance, can it be donated for use by another student?

Yes. A student's parents could donate the assistive technology to the school for use by other students or to any other program, organization or individual of their choosing such as the MonTECH program, PLUK, etc.

Training in Using the Assistive Technology Device or Service

1. In addition to the student, who else should receive training on how to use an assistive technology device or service?

Anyone with whom the student may use the device. This includes parents, special education teachers, bus staff, paraprofessionals, lunchroom staff, general education teachers, relevant peers and others. It is the district's responsibility to train appropriate staff members in proper use of the technology. 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.

34 CFR 300.6 Assistive technology service

2. What kind of training and technical assistance should be provided to families, peers and professionals?

Depending on the technology and the involvement of the family, peers and professionals with the child, training and technical assistance should include, but not be limited to, providing information and 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.

Using the Assistive Technology Device or Service

1. When can an assistive technology device be used in the regular education setting?

The IEP team determines when and how the student will use the assistive technology device in the regular education setting. Following the development of the IEP this information must be shared with all of the student's classroom teachers and other service providers who have need of such information.

34 CFR 300.323 When IEPs must be in effect

2. Can a student be required to bring a personal assistive device (such as a laptop computer) to school for use as assistive technology?

No. However, the family may wish for the student to use his or her own equipment in school, since he or she may be most familiar or comfortable with that equipment.

3. Can students take assistive technology devices owned by the school to their home?

This decision must be made on a case-by-case basis. The use of school-purchased assistive technology devices in a child's home or in other settings is required if the child's IEP team determines that the child needs access to those devices in order to receive a free appropriate public education.

4. Can an assistive technology device be used by more than one student?

If the device is the property of the school, it can be used by more than one student so long as each student who requires use of the device has access to it as identified in his or her IEP. If the device is owned by an individual student, parent approval must be obtained before other students may use the equipment.

5. Can students become too dependent on assistive technology?

Proper assessment, assistive technology choice, implementation, and periodic reviews of assistive technology usage and the need for the assistive technology can prevent inappropriate dependency. Assistive technology is appropriate when it compensates for disabilities so that the individual can function as independently as possible. The IEP team should determine the student's need for assistive technology based on the results of assessment and annual reviews.

6. Why do some students refuse to use an assistive technology device?

When this occurs, it is important to discuss the reasons with the student, teachers, parents and others. Following are some reasons why a student may not use an assistive technology device:

- The student was not involved in decision-making.
- The device was not appropriate for the intended purpose.
- The device is inconvenient or impractical to use.

- The device inhibited some other important function.
- The device can't be modified or upgraded to meet changing needs.
- The device is cumbersome or unattractive.
- The functional needs of the student changed.
- Medical intervention (surgery, medications) made it unusable.
- Use of the technology increased medical or safety risk.
- Training on the device and its use was not provided.
- Technical support was not readily available.
- Student was self-conscious about using it.
- For communication devices, the student may continue to use previous communication methods (gestures, eye gaze) rather than the new device or system, if she or he is able to get what they want by using the previous method rather than by using the new method.

Device Repair and Maintenance

1. What are the responsibilities of the student, educators and parents in the maintenance and repair of assistive technology devices and reporting broken devices?

It is the joint responsibility of the parent, student and school personnel to take reasonable care of assistive technology devices. The IEP should identify methods for reporting problems and completing repairs prior to using the assistive technology device.

2. If an assistive technology device is lost or damaged beyond repair, who replaces the device?

The school district is responsible to arrange for the repair or replacement of assistive technology devices. The district should ensure that proper safeguards are taken to protect the device if the student has a history of losing or damaging assistive technology devices.

3. Is the school liable for family owned assistive technology devices used at school to implement the student's IEP?

The IDEA doesn't specify the responsibility of the school. The school district should take proper precautions to protect the equipment while it is in school buildings or being transported between home and school.

4. What provisions could be made for the student while an assistive technology device is being repaired?

During the development of the IEP, the IEP team should identify the steps to be taken if the device needs repairs; how a substitute device will be provided; and other temporary options would offer an acceptable substitute to the student's device. It may not be possible to provide the same device in the interim. Parents, Let's Unite for Kids (PLUK), MonTech or other parents/districts may be contacted about a loaner device.

5. What is important to know about a warranty?

The manufacturer's warranty should be reviewed prior to purchasing an assistive technology device and before making any repairs or modifications to the device. In some cases, warranties may be voided if persons other than the manufacturer or authorized service representatives attempt to repair a device.

6. Should assistive technology devices be insured?

It is the school district's decision to carry insurance. School district insurance policies may cover an assistive technology device purchased by the district for student use or may offer additional coverage that includes assistive technology devices. Assistive technology devices purchased by funding sources other than the school may or may not be covered while the student is on school premises or involved in school activities. It is important for school staff to investigate the district's insurance to determine what the policy currently covers and whether or not the policy insures against loss or damage of assistive technology devices.

Legal Responsibilities Related to Assistive Technology

In accordance with the IDEA, the school district must ensure that assistive technology devices or assistive technology services are made available to a child with a disability if required as a part of the child's special education or related services in order to receive a free appropriate public education (FAPE). The determination as to what is an appropriate program for each student must be identified in the IEP. There must be a relationship between the educational needs of the student and the assistive technology device and/or service. Assistive technology services and devices must be provided for the student, in accord with the IEP, at no cost to the parent.

The school district is responsible for ensuring that the assistive technology device(s) identified in the student's IEP is in working order and if it is lost or stolen that the device is replaced. If the device is broken, the district must provide repair or replacement, as appropriate.

Assistive Technology As Part of the Special Education Process

The process used to identify a student's need for assistive technology under IDEA is the same as is used for determining the need for special education and the development of an IEP. The following narrative illustrate how assistive technology considerations can be addressed in the special education process.

A. Pre-referral/School-Based Support Team

The pre-referral/school-based support team should consider assistive technology as a tool to address educational problems in the general education program prior to special education referral.

B. Child Find/Referral to Special Education

If the school-based support team determines that the student is not able to function within the general education curriculum even with the intervention(s) tried, the team should refer the student for a comprehensive evaluation.

Notice and Consent (Permission For Evaluation)

Permission to evaluate is needed before evaluation occurs.

C. Comprehensive Evaluation

The evaluation team may determine that an assistive technology evaluation is necessary.

D. Evaluation Report Meeting

The Evaluation Team determines whether the student has a disability that adversely affects the student's educational performances and because of that disability needs special education. Students who do not meet the eligibility criteria may meet the eligibility requirements of Section 504.

E. Individualized Education Program (IEP)

If an assistive technology evaluation was conducted as part of the comprehensive evaluation, the IEP team members must consider the results and recommendations of the evaluation when developing the IEP.

F. Review

The IDEA requires that each student's IEP be reviewed at least annually. This should include a review of the effectiveness of the assistive technology and strategies and whether further assessment is required and/or revisions need to be made.

Assistive technology and strategies should also be reviewed when:

- the assistive technology is thought to be ineffective;
- the student is ready to use a new assistive technology device or service; and
- the student is transitioning to a new educational environment. The new setting should be analyzed to ensure the assistive technology is compatible to that setting.

Assistive Technology Consideration Process

- Identify possible need for assistive technology devices or services.
- Collect and analyze information about the student and her/his environments (playground, classroom, lunchroom, etc.) and how possible assistive technology devices could be used.
- Collect and analyze information about the tasks the student is expected to complete in each environment (be specific).
- List all previous assistive technology strategies and devices, including no-tech, low-tech, and instructional strategies.
- If needed, include persons with expertise in specific areas, e.g., behavior, technology, etc.
- Identify and select strategies and assistive technology devices to be used in each environment.
- Develop a plan for trials of devices and strategies being considered.
- Create a plan for obtaining devices that are successful.
- Create a plan for training the student, staff, parents and others in the use of the assistive technology strategies and device(s).
- Develop maintenance and repair plan.
- Routinely evaluate the effectiveness of the assistive technologies and strategies, including from the student.
- Repeat any of the above steps and make changes as necessary to ensure success.

Questions To Ask When Considering Assistive Technology Devices and Services

The following are questions to answer when considering a student's need for assistive technology. Each person* involved with the student should have the opportunity to review these questions before making choices about the student's assistive technology needs.

*(Student, paraeducators, special education teachers, parents, regular education teachers, principals, peers, maintenance staff, office staff, lunchroom staff, home service providers, transportation staff, etc.)

Assessment

- What will happen if the student does not have assistive technology?
- What is the purpose of the device?
 - (handwriting, computer access, communication, hearing, writing, reading, studying, math, seating and positioning, mobility, vision, etc.)
- What devices/methods have been used in the past with this student to address this need?
- For each device/method, what has been the success?
- If devices/methods failed, why did they fail?

- What devices/methods is the student currently using to meet his or her needs?
- What are the student's current abilities?
- What will the device do that the student currently cannot do or has trouble doing?
- What current IEP goals are related to the student's needs for assistive technology?
- What will limit the student's use of the device? (mobility, availability, physical limitations, etc.)
- How often will the student use the device/method?

Choosing an Assistive Technology Device

- What device is needed?
- How often will the student use the device/method?
- Is the considered device/modification the least restrictive technology?
- Where will the student use the device?
 - (Home/ sped classroom/regular ed classroom – which classes?/on the bus/physical education /lunchroom /recess, etc.)
- Who will the student use the device with? Peers? Teachers?
- Will the assistive technology device be “test-driven” prior to purchase?
- Are there other people in the school/district/community who have used similar devices?
- How easy is the device to set up, learn to use, operate, maintain and repair for the student, teachers and parents?
- Is the device portable and flexible enough that the student can/will use the device?
- Is the device portable and flexible enough for moving around the school?
- Is the device portable and flexible enough to use on transportation?
- Is the student concerned about the appearance of the technology device or using it around peers?
- Have plans been made for use of the assistive device in other environments and during transition times?
- Is the considered device/modification the most cost-effective approach to meeting the student's need?

Purchasing an Assistive Technology Device

- Who will purchase the device?
- What is the effectiveness, reliability, durability, safety, comfort, and long-term use of the assistive technology device?
- When will the device need to be replaced or updated?
- How easy is the device to store and transport? Will there be a need for any additional equipment such as carrying cases, mounting systems, etc.?
- If software is to be used, do you know the memory, operating system and speed of the computers on which the software is to be used?
- What is the compatibility and expandability of the device(s)?

- Have assistive technology manufacturers or other organizations (MonTECH, PLUK) been contacted about loan programs?

Training in Using Assistive Technology Device or Service

- What training will the student receive to use the assistive technology device?
- Who will deliver the training(s)?
- Who else will be trained to use the device or trained about the device?
 - (Paraeducators, special education teachers, parents, regular education teachers, peers, principals, maintenance staff, office staff, lunchroom staff, home service providers, transportation staff, etc.)
- How will substitute staff be trained in the use of the device?
- How will future needs for training be identified?

Using the Assistive Technology Device or Service

- Who will determine if the device is being used successfully?
- What IEP goals will be developed for the use of the assistive technology device?
- How will the IEP include assistive technology services?
- When will the success or failure of the device be reviewed? By whom?
- How will the student provide feedback on the use of the assistive technology device?

Repair and Maintenance of the Device

- Who will pay for repairs?
- Are local resources available to provide technical support or repair of the device(s)?
- When the device breaks, who will repair the device?
- Who will be responsible to contact the repair provider? To get the device to the repair location? To make sure that the repairs occur?
- How will the need for the assistive technology be addressed while repairs are occurring?

Assistive Technology IEP Goal Examples

The use of assistive technology should be integrated throughout the IEP. Citing specific equipment or software in goals and objectives is not recommended. Rather, include the specific target skill (independent writing, composition skills, etc.) and note the assistive technology device or service that is necessary for the student to succeed in the accommodation/modification section of the IEP.

PRESENT LEVEL OF EDUCATIONAL PERFORMANCE

Susan uses Morse code and two head switches to access her computer and complete writing assignments. Accuracy is currently at 70 percent, speed is eight words per minute.

MEASURABLE ANNUAL GOAL

Susan will use a computer to complete writing assignments and increase writing speed to 15 words per minutes and accuracy to 80 percent.

SHORT-TERM OBJECTIVES OR BENCHMARKS

Susan will complete writing assignments using Morse code with 80 percent accuracy on two of three assignments.

Susan will write at a minimum rate of 15 words per minute on two of three writing assignments.

PRESENT LEVEL OF EDUCATIONAL PERFORMANCE

Based on handwriting assessment, Mike's legibility score is 50 percent and his speed is 15 letters per minute using a pencil. He touch types at 10 words per minute with 90 percent accuracy.

MEASURABLE ANNUAL GOAL

Mike will increase his handwriting legibility to 75 percent and his touch typing to 15 words per minute with 95 percent accuracy.

SHORT-TERM OBJECTIVES OR BENCHMARKS

Using a pencil grip and a slant board, Mike will write legibly 75 percent of the time for 10 consecutive classroom samples.

Mike will touch type 15 words per minute at 95 percent accuracy using electronic keyboarding assistive technologies.

PRESENT LEVEL OF EDUCATIONAL PERFORMANCE

Rebecca demonstrates knowledge of basic computer functions using a standard keyboard and word processor. She dictates sentences and uses a scribe for transcription. She uses a spell checker to write short sentences. Typically, she makes five spelling, four punctuation, and three grammar errors per page of familiar material.

MEASURABLE ANNUAL GOAL

Rebecca will compose paragraphs and classroom assignments using a word processor for correction of spelling, punctuation and grammar.

SHORT-TERM OBJECTIVES OR BENCHMARKS

Using a word processor, Rebecca will compose a complete paragraph consisting of four sentences, with fewer than a total of three spelling, punctuation, or grammar errors on a final report completed in the resource room on a topic identified the previous day.

Using a word processor, Rebecca will correct spelling on selected classroom assignments at 90 percent accuracy for five or more consecutive assignments.

Grades, Graduation and Diplomas

The Board of Public Education and local school districts have the authority to set graduation standards, grading policies and conditions for awarding diplomas, as long as those policies do not violate individual rights. The Individuals with Disabilities Education Act (IDEA) mandates that awarding other than a regular diploma to a graduating student with disabilities may require a district to provide free appropriate public education (FAPE) after graduation. Section 504 of the 1973 Rehabilitation Act prohibits discrimination in the implementation of grading policies, setting of graduation requirements, and awarding of diplomas.

Grades

1. What are “modified grades”?

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 their grade-level peers. These modified expected outcomes are individualized for the student as determined by the IEP team. Modified grading is appropriate, as long as the school district ensures that the grading policies and practices of the district are not discriminatory. For example, a school district may offer pass/fail grading or grades awarded based on an alternate achievement standard, if available to all students.

2. May a student with a disability who receives special education accommodations or modifications in a general education classroom be given modified grades?

Yes. Students with disabilities enrolled in general education classes for the purpose of learning the subject matter or working on the objectives identified in the IEP may receive modified grades if the IEP team has determined that the student needs modified grades as outlined in the IEP.

3. May students with a disability enrolled in a general education class be excluded from grading?

Yes. If the IEP team determines that a student with disabilities enrolled in a general education class should receive no credit, the student would not be graded in the content area, but would receive grading or evaluation based upon criteria outlined in the IEP, such as progress toward meeting annual goals.

4. Who should assign the modified grade for a student with a disability in a general education classroom, the general education teacher or a special education teacher?

Local school district policy and administrative practices determine which teacher is responsible for assigning the grade. When modified grades are used, grading should be

a collaborative effort between the general and special educators. The standards for modified grading should be addressed in the IEP.

5. May modified grades be used at the discretion of a teacher?

No. They must be specified in the IEP.

Transcripts

1. May classes be identified as special education classes on the high school student's transcript?

No. Phrases such as "Special Education English," "Inclusion Math," or "Resource Math" should not appear on the transcript. Phrases such as "English Essentials," or "Practical Math Applications" or other descriptive phrases that do not identify the class or student as special education must be used.

2. May a high school student's transcript reflect that the student had a modified curriculum in a general education class?

It depends. While not specifically prohibited by law, there are significant risks to doing so. The school district must be careful in providing any information on the transcript that may later have a discriminatory impact on the student's admission to postsecondary educational institutions or future employment. School district policy must address that all students who participate in a class with a modified curriculum will receive a modified grade by notation of an asterisk or another symbol on their transcript.

Grades, Class Ranking and Honor Roll

1. Must modified grades earned in special education or general education classes be included in districtwide Grade Point Average (GPA) standings for purposes of ranking of students by GPA for honor roll?

An honor roll policy may not use participation in special education as a basis for exclusion from the honor roll. In determining GPA or class ranking, a school district may not exclude students receiving modified grades, special education services or assign these students a lower ranking.

Any policy and practice related to a student's honor roll status must be based on objective criteria, implemented districtwide for all students. A school district must use uniform standards for measuring academic achievement even though some students with

disabilities may not be able to perform at higher levels. A school district policy may not use participation in special education as a reason to bar students from competition for valedictorian, salutatorian or class ranking.

2. May a school district implement a weighted grading system that arbitrarily assigns lower grade weights to all special education courses?

No. For purposes of determining grades, weighting of courses based solely on the status of the class as a special education class or the classification of the student as having a disability would be discriminatory.

Graduation

1. Is an Evaluation Report meeting required prior to graduation from high school?

No.

2. Is an Individualized Education Program meeting required prior to graduation from high school?

No.

3. What documentation must the district complete prior to the student leaving high school?

The district must provide prior written notice to the parent/adult student regarding the projected graduation status of the student. This is accomplished using the High School Graduation Form in AIM as a component of the IEP or by providing the High School Graduation form along with the Prior Written Notice form to the parent/adult student.

If the IEP team determines that the student is projected to meet the district's graduation requirements or to substantially complete the measurable annual goals and will not need new measurable annual goals, then the IEP team would not develop a new Individualized Education Program. The student would graduate with a regular diploma at the end of the current school year.

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 the student is not expected to graduate with a regular diploma at the end of the current school year and will not exceed the district's age limitations, the IEP team will develop a new

Individualized Education Program for the next school year with new measurable annual goals.

34 CFR 300.102(a)(3)(iii) Limitation- Exception to FAPE for certain ages

4. May a student who has graduated from high school continue to receive special education services under IDEA?

No. Graduation with a regular diploma ends the district's obligation to provide special education and related services.

34 CFR 300.102

Diplomas

1. Are all special education students eligible to receive a regular diploma?

Yes. The Administrative Rules of Montana require that a student who has successfully completed the goals identified on an IEP shall be awarded a regular diploma.

ARM 10.55.805 Special Education

2. May specific requirements for granting a diploma be waived for students with disabilities?

Yes.

3. May an IEP team waive graduation requirements for a specific student?

No. Only the school district (Board of Trustees or designee) is permitted to waive specific course requirements based on individual student needs and performance levels. The IEP team must follow local district policy when considering waivers for students with disabilities.

4. Does the districts' responsibility for FAPE end if the student with a disability does not receive a regular diploma?

No. If a school district awards a diploma other than a regular diploma to a student with disabilities, the district is still responsible for providing FAPE beyond graduation.

5. May a district award more than one form of diploma?

The diploma awarded to each student must be similar in all significant respects. If a school district offers different types of diplomas based upon a specific course of study, then all

diploma options must be available to all students, regardless of whether the student has a disability. The language on the diploma may differentiate between the student who “has completed the course of study prescribed by the board of trustees” or who “has completed a prescribed course of study in accord with requirements established by the board of trustees.”

Surrogate Parents

The Individuals with Disabilities Education Act (IDEA) requires that, in certain circumstances, a surrogate parent be appointed for a child to protect the child’s rights to a free appropriate public education. When a school district or institution determines that a child is in need of a surrogate parent, Montana law requires that the school district or institution that provides education to the child nominate a person for appointment by the Montana Youth Court as a surrogate parent.

1. When must a surrogate parent be nominated?

There are four situations that require a school to have a surrogate parent appointed to ensure the rights of a child with a disability are protected. These are

- No parent can be identified;
- After taking reasonable efforts to locate the parent the school is unable to find the parent; and
- The child is a ward of the state and the rights of the child’s parents have been permanently terminated by a court of competent jurisdiction.
- The child is an unaccompanied homeless youth as defined by the McKinney-Vento Act.

20-7-461 MCA Appointment and termination of appointment of surrogate parent

34 CFR 300.30 Parent

34 CFR 300.519 Surrogate Parents

10.16.3504 Surrogate Parents

2. What are the responsibilities of a surrogate parent?

The surrogate shall:

- whenever practicable, be knowledgeable about the educational system and special education requirements and the legal rights of the child in relation to the educational system
- represent the child in all decision-making processes concerning the child’s education by becoming thoroughly familiar with the child’s history contained in school or other records
- comply with all state and federal confidentiality laws
- approve or disapprove of the child’s educational evaluation and placement

- when necessary, initiate any mediation, hearing, or appeal procedures in the best interests of the child

34 CFR 300.519 Surrogate Parents
 MCA 20-7-401(6) Definitions
 MCA 20-7-462 Responsibilities of surrogate parent

3. Who is considered to be a “parent”?

Under the IDEA the term “parent” means:

- a biological or adoptive parent of a child;
- a foster parent;
- a guardian, but not an employee of the state if the child is a ward of the state;
- a person acting in the place of a parent such as a grandparent or stepparent with whom the child lives;
- a person who is legally responsible for the child’s welfare (caretaker relative); or
- a surrogate parent who has been appointed in accordance with 34 CFR 300.519 and 20-7-461 MCA.

The biological or adoptive parent is presumed to be the parent unless such parent does not have legal authority to make educational decisions.

If a judicial order identifies a specific person (one who qualifies for surrogate appointment) to act as parent to make educational decisions for the child, that person or persons shall be determined to be parent(s) for the child. A judicial order which identifies only an agency or organization is not sufficient to allow any representative of that agency/organization to act as the parent.

34 CFR 300.30 Parent
 MCA 20-5-501 through 503 Caretaker Relative
 MCA 20-7-461 Surrogate Parents

4. What is a Guardian Ad Litem?

A person appointed by the courts to represent the best interests of the child.

MCA 41-3-112 Guardian Ad Litem

5. Is a guardian ad litem considered a parent?

The guardian ad litem may only be considered to be the parent when the school district has nominated them and they have been appointed as the surrogate parent by the court.

6. Does a surrogate parent need to be appointed for a child who is in the custody of the Department of Public Health and Human Services?

It depends. A surrogate parent needs to be appointed only if all rights of the parents have been permanently terminated. If the parents' rights have not been permanently terminated, no surrogate parent is permitted to be appointed unless the parents cannot be located or identified.

7. What must a school district do to have a surrogate parent appointed?

The school district must submit a legal pleading and supporting documents to the youth court.

20-7-461 MCA Appointment and termination of appointment of surrogate parent

8. How many days does the school district have to file the nomination for appointment with the court?

The school district must file within 10 calendar days of determining the child is in need of a surrogate parent. School districts should have knowledge of individuals qualified and willing to serve as a surrogate parent prior to needing to obtain one to comply with the required timelines.

9. How long does the court have to act on the nomination of the surrogate parent?

The court should act within 20 calendar days of receipt of all necessary documents.

10. What occurs if the court denies the appointment?

The school district shall nominate another person as the surrogate parent.

11. What happens if the court does not act within 20 calendar days?

The individual nominated becomes the surrogate parent.

12. Who may the district nominate to be a surrogate parent?

The district shall ensure that a person selected as a surrogate parent is 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 child;
- Has no interest that conflicts with the interest of the child he or she represents; and
- Has the knowledge and skills that ensure adequate representation of the child.

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.

13. Must a surrogate parent be a resident of the school district?

No.

14. Are surrogate parents reimbursed by the school district?

A surrogate parent must be reimbursed for all reasonable and necessary expenses incurred in performing their duties.

15. Does receipt of payment to act as a surrogate parent make the surrogate parent an employee of the school district?

No. A person is not an employee of the school district solely because he or she is reimbursed by the school district for reasonable costs to serve as a surrogate parent.

20-7-463 MCA Surrogate Parent-Immunity from liability-reimbursement

16. Can someone from an agency responsible for the child (i.e., Department of Family Services, group home, etc.) act as the parent or be nominated as the surrogate parent?

No.

17. Can the child's social worker act as the parent or be nominated as the surrogate parent?

No.

18. If parental rights have been temporarily removed, can a surrogate parent be appointed?

No, unless the parent cannot be located or identified, or the parental rights regarding education have been removed.

19. If the court action granting temporary custody to the state stipulates that parent rights regarding education have been removed, must the district nominate a surrogate?

Yes.

20. May a school district use IDEA Part B federal funds for recruitment and/or training of surrogate parents?

Yes.

Disciplinary Removals In Special Education

Change of Current IEP Placement for Disciplinary Purposes

1. What is meant by a "change of current placement" in reference to disciplinary removals?

A change of current IEP placement occurs if:

- (a) The suspension/expulsion is for more than 10 consecutive school days; or
- (b) The child is subject to a series of suspensions that constitute a pattern because;

- they accumulate to more than 10 school days in a school year and because of factors such as the length of each suspension, the total amount of time the child is suspended and the proximity of the suspensions to one another
- the child's behavior is substantially similar in the series of suspensions
- additional factors such as the length of time the child has been suspended and the frequency of the suspensions

34 CFR 300.536 Change of placement because of disciplinary removals.

2. What constitutes a day of removal?

Removing the child from school for any part of the day is considered a whole day suspension with respect to the 10 day limit.

3. Do in-school suspension days count towards the 10 day total?

If the student is provided with services that allows them to progress toward their IEP goals and participate in the general curriculum, it does not count as a day of suspension. When a student is removed from their regular setting and isolated from instruction, it is a day of suspension.

4. May authorized school district personnel suspend a student with an IDEA protected disability?

Yes. To the extent removal would be applied to students without disabilities, a student with a disability may be suspended for not more than 10 consecutive school days for any violation of school rules, and additional suspensions of not more than 10 consecutive school days in the same school year for separate incidents of misconduct (as long as those suspensions do not constitute a change of placement –

34 CFR 300.530 Authority of school personnel

5. Do these protections apply to a student prior to the Evaluation Team determination that the student is a student with a disability and needs special education and related services?

The IDEA procedural safeguards apply to any student that a school district suspected was a student with a disability prior to the behavior occurring.

6. What is the basis of “suspected”?

- The parent of the child expressed concern, in writing, to the school district that the child may need special education and related services.
- The parent requested an evaluation for special education eligibility.
- A teacher or other personnel expressed specific concerns about a pattern of behavior demonstrated by the student to the school district administration.

7. Does IDEA require that a school district always provide educational services to a student with an IDEA-protected disability who has been suspended for disciplinary reasons?

A student with an IDEA-protected disability may be suspended from his/her current IEP placement for 10 school days or less in a school year without the provision of educational services. Beginning on the 11th day of suspension/expulsion, the school is required to provide the necessary services to allow the student to progress toward their IEP goals and participate in the general curriculum although in another setting.

34 CFR 300.530 Authority of school personnel

8. If a student is suspended from riding a bus to school and does not attend school during the suspension, do the school days missed count toward the 10-day limit per school year that a student may be suspended without the provision of FAPE?

If bus transportation is not part of the student's IEP, the student and his/her parents would have the same obligations to get to and from school as a nondisabled student who is suspended from the bus. If transportation is a related service in the student's IEP and the district does not provide alternative transportation, then the school days missed count toward the 10 days.

Manifestation Determination

1. What is an IDEA manifestation determination and when is one required?

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 must be conducted within 10 school days after the date on which the decision to change the student's IEP placement based on the student's conduct.

34 CFR 300.530 Authority of school personnel

2. Is a manifestation determination required each time a student is removed for more than 10 consecutive school days or each time that the school district determines that a series of removals constitutes a change of placement?

Yes.

3. Who conducts the manifestation determination and what are the requirements of a manifestation determination?

The school district, the parent, and relevant members of the IEP team conduct the manifestation determination review.

34 CFR 300.530 Authority of school personnel

4. What questions must be answered when making a manifestation determination?

The school district and parent must determine:

- If the conduct in question was caused by or had a direct and substantial relationship to the student's IDEA qualifying disability(ies) or
- If the conduct in question was the direct result of the school district's failure to implement the IEP.

The conduct must be determined to be a manifestation if the answer to either question is yes.

34 CFR 300.530(e) Authority of School Personnel

5. Are there special circumstances that effect the district’s ability to suspend/expel a student without regard to the behavior being a manifestation of the disability?

There are three special circumstances.

1. If the student carries or possesses a weapon at school, on school premises, or at a school function under the jurisdiction of the school district or the OPI;
2. Knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school, on school premises, or at a school function under the jurisdiction of the school district or the OPI;
3. Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the school district or the OPI.

Under these circumstances, the student may be removed to an interim educational setting for not more than 45 school days without regard to whether the behavior is a manifestation of the student’s disability(ies).

34 CFR 300.530(g) Authority of School Personnel

6. What is the definition of a “serious bodily injury” for these purposes?

The term “serious bodily injury” is defined in Section 1365(h)(3) of Title 18, U.S. Code, to mean a bodily injury that involves a substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

7. What is the definition of a “weapon”?

A weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 1/2 inches in length.

18 U.S. Code § 930
34 CFR 300.530

8. What is the definition of controlled substance and illegal drug?

A controlled substance means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)). An illegal drug means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

34 CFR 300.530

9. What is a Functional Behavioral Assessment (FBA)?

A functional behavioral assessment is a comprehensive and individualized strategy to:

- Identify the purpose or function of a student's problem behavior(s).
- Develop and implement a plan to modify variables that maintain the problem behavior.
- Teach appropriate replacement behaviors using positive interventions.

10. When is an FBA required during disciplinary actions?

If it is determined that the conduct that resulted in the student's suspension/expulsion was a manifestation of the student's disability(ies), the IEP team is required to conduct an FBA unless one has previously been completed regarding the same or similar conduct.

11. If the IEP team determines that the behavior was a manifestation of the student's disability(ies), what other step must be taken by the school district?

The school district must develop and implement a positive behavior intervention plan or review an existing positive behavior support plan and modify it as necessary to address the behavior.

34 CFR 300.530(f) Authority of School Personnel

EVALUATION REPORT

ASSESSMENT SUMMARIES AND IMPLICATIONS EXAMPLES

Assessment Area: Classroom-Based Assessment

Results:

Amanda is reading at 44 words per minute in a beginning second-grade basal, compared to a class mean of 85 words per minute in the same materials. Amanda's written production is approximately 10 percent of her classmates. Handwriting is nearly illegible. Amanda's math score on a chapter test on addition was 87 percent compared to the class mean of 89 percent. Daily work is seldom completed because of distractibility. Amanda's spelling average is 76 percent on the same list as her classmates, but scores vary greatly from week to week and writing is laborious.

Implications for Educational Planning:

Amanda will need additional support in the area of reading, with grade-level materials read to her as needed. She will need to dictate written assignments or use a computer, and, whenever possible, take spelling and math tests orally. She will require assistance with the development of handwriting skills. The team should consider a behavior plan to help improve work completion that takes into consideration writing difficulties.

Assessment Area: Psychological**Results:**

On the Wechsler Intelligence Scale for Children (3rd Ed.) Amanda scored well within the average range, scoring near the 66th percentile. Very significant subtest variability was noted with verbal-comprehension scores being significantly higher (97th percentile) than perceptual-organizational scores (23rd percentile). Her score on the Processing Speed index was near the low end of the average range (near the 18th percentile).

Implications for Educational Planning:

Amanda's verbal-comprehension skills will likely be a great asset in the classroom, particularly in discussion activities. Her difficulties with visual-spatial tasks will likely cause some frustration and she will require more time for non-verbal processing. Written assignments may take longer as she works to process visual information. Classroom support and modifications will be necessary to accommodate her needs.

Assessment Area: Academic Achievement**Results:**

WIAT standard scores:

Reading: 1.5 grade equivalent

Mathematics: 1.8 grade equivalent

Language: 4.8 grade equivalent

Writing: 1.4 grade equivalent

Implications for Educational Planning:

Amanda is functioning significantly below her same-age peers in the areas of reading, math, and written language. She will need added support and some individualized instruction in the classroom and/or the resource room to help strengthen her skills and her ability to meet with a greater level of success. She will need adapted and/or shortened assignments.

Assessment Area: Observations**Results:**

Amanda was observed to be well on task (92%) during a listening activity. During independent seatwork she was observed to be much less engaged (42%). She seemed to have difficulty organizing materials and needed a great deal of individual direction from the classroom teacher.

Implications for Educational Planning:

Amanda's positive attention to task during oral activities indicates an area of strength. It would be helpful to include auditory directions and cues when expecting her to complete tasks. She may require individual assistance with organization and independent seatwork.

Assessment Area: Social/ Emotional/Behavioral

Results:

Amanda reports a generally positive attitude toward school, although some frustrations were noted regarding tasks requiring writing (which is a significant portion of her day). Socially, Amanda reports having several friends at school, which is consistent with teacher report and observations. No significant difficulties were noted regarding her social-emotional adjustment.

Implications for Educational Planning:

Although Amanda's attitude toward school is quite positive at this time, her frustration with writing will have to be carefully watched so as not to develop into greater general frustration with school. Accommodations for writing will help to alleviate some of the difficulties that Amanda is experiencing.

Assessment Area: Speech/Language

Results:

Amanda has numerous speech sound errors because of distortions and substitutions. The following sounds are ones used incorrectly at word level and in connected speech: a, k, sh, l, r, dz, th, v, s, and voiced th. Amanda is difficult to understand at times because of these speech errors. Her performance is two standard deviations below the norm.

Implications for Educational Planning:

Because of Amanda's speech errors she may be difficult to understand and she may have difficulty with phonics in her reading program. She becomes upset when she can't be understood and may require some accommodations in her classroom. Amanda needs speech therapy services to assist her in learning correct sounds. She may also need assistance with phonetics as part of her basic reading program.

DISABILITY CRITERIA AND NEED FOR SPECIAL EDUCATION EXAMPLES

Basis for making the determination that the student has a disability and needs special education and related services:

Initial Evaluation: Learning Disabilities

Disability Criteria:

Robin shows a significant two standard deviation discrepancy between cognitive ability scores and academic achievement test results in the areas of reading and written language. Despite interventions and the provision of appropriate learning experiences, she is achieving below her age level in both areas.

Need for Special Education:

Robin requires individually designed assignments, special accommodations, and the support of a special education teacher in the classroom to help her acquire the information from the second grade curriculum.

Reevaluation: Learning Disabilities

Disability Criteria:

A discrepancy continues to exist between Bonnie's cognitive abilities and her achievement, particularly in the areas of reading and written language.

Need for Special Education:

Bonnie continues to require individually designed assignments and support from the resource teacher to help her acquire the information from the second grade curriculum.

Initial Evaluation: Emotional Disturbance

Disability Criteria:

Steve exhibits inappropriate behaviors in the classroom, which are atypical for a child his age. His behaviors include extended periods of kicking and hitting that are difficult to control. He has difficulty controlling inappropriate comments to peers and maintaining interpersonal relationships. The behaviors have persisted over a marked period of time and are affecting his performance in school. Prior interventions to decrease behaviors have not proven successful.

Need for Special Education:

Steve's behavior interferes with his ability to perform in the classroom. He is approximately two years behind his peers in the areas of reading and math. He requires individual assistance with behavior and academic supports from the special education teacher.

Reevaluation: Emotional Disturbance

Disability Criteria:

Matt continues to demonstrate an inability to maintain satisfactory relationships with peers and teachers in school. He also continues to display periods of major depression. His behavior affects educational performance in all subject areas.

Need for Special Education:

Matt's emotional and behavioral symptoms continue to interfere with classroom performance. He needs a structured setting with continued individualized support and group counseling to help him meet with success in school.

Initial Evaluation: Speech/Language

Disability Criteria:

Speech/Language testing indicates that Shauna falls below the first percentile on the Arizona Articulation Proficiency Scale and on the Word Articulation Subtest on the TOLD-3. She is 50 percent intelligible with careful listening to the normal listener. Evaluation results indicate a significant deviation in articulation errors. Observations indicate the speech-language impairment is affecting communication in the classroom.

Need for Special Education:

Shauna is having difficulty making herself understood in the classroom. She requires speech services to help remediate the misarticulations. She also needs special accommodations and support from the speech/language pathologist to assist with oral communication in the classroom.

Reevaluation: Speech/Language

Disability Criteria:

Misarticulations continue to negatively impact overall intelligibility with adults and peers in the classroom. Reevaluation data indicates that Kevin continues to deviate from the norm and despite interventions, there continues to be an adverse educational effect of the speech-language impairment in the classroom.

Need for Special Education:

Kevin continues to have difficulty with intelligibility and is experiencing some frustration when he is unable to make himself understood. He requires direct services and support from the speech/language pathologist in order to improve oral communication with adults and peers in the classroom.