



# SPECIAL EDUCATION IN MONTANA

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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

<b>IDEA/Section 504 of the Rehabilitation Act .....</b>	<b>1</b>
1. <i>How is a Free Appropriate public education (FAPE) defined in the IDEA?.....</i>	<i>1</i>
2. <i>What is the standard for determining if a local education agency or district has met its FAPE obligation to offer an IEP that is sufficient to confer educational benefit on a student with a disability?.....</i>	<i>1</i>
3. <i>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 .....</i>	<i>2</i>
<b>Least Restrictive Environment .....</b>	<b>2</b>
1. <i>What is Least Restrictive Environment (LRE)?.....</i>	<i>2</i>
2. <i>Does Least Restrictive Environment (LRE) always mean the general education classroom?.....</i>	<i>2</i>
3. <i>How is the Least Restrictive Environment (LRE) determined? .....</i>	<i>2</i>
<b>Child Find .....</b>	<b>3</b>
<b>Transition from the IDEA Part C Early Intervention Program Steps for Early Childhood Transition .....</b>	<b>4</b>
<b>Notification of Potentially Eligible Children .....</b>	<b>4</b>
1. <i>What is the requirement for notification of the school district?.....</i>	<i>4</i>
<b>Initial Transition Planning Prior to the Conference .....</b>	<b>5</b>
1. <i>What is the role of the Family Support Specialist in the initial transition planning with the family prior to the Transition Conference?.....</i>	<i>5</i>
<b>Transition Conference Invitation to the School District.....</b>	<b>6</b>
1. <i>What are the preparation activities that need to occur by Part C Agency and school district staff prior to the Transition Conference?.....</i>	<i>6</i>
2. <i>What happens if a family declines to have the school district invited to the Transition Conference? .....</i>	<i>7</i>
3. <i>What happens if a family who previously declined to have the school district invited to the Transition Conference has changed their mind? .....</i>	<i>8</i>
4. <i>What should occur with late referrals (i.e., children referred to the Part C Agency program within 90 days of their third birthday)?.....</i>	<i>8</i>
<b>Transition Conference.....</b>	<b>8</b>
1. <i>Who convenes and attends the Transition Conference? .....</i>	<i>8</i>
2. <i>Does the school district need to complete any forms prior to their participation in the Transition Conference? .....</i>	<i>9</i>
3. <i>What occurs during the Transition Conference? .....</i>	<i>9</i>
4. <i>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): .....</i>	<i>10</i>
6. <i>What happens if a family who has been referred to Part B declines to provide consent for an initial evaluation? .....</i>	<i>11</i>
7. <i>Can a child's eligibility be determined at the Transition Conference? .....</i>	<i>11</i>
8. <i>Can school districts use assessments and evaluation information from the Part C Agency in determining a child's eligibility for Part B services? .....</i>	<i>12</i>
9. <i>Can a district refuse to accept a Part C Referral? .....</i>	<i>12</i>

10. <i>What if the district doesn't offer preschool special education services?</i> .....	12
11. <i>Who determines if Extended School Year (ESY) preschool special education services are necessary for a student with disabilities?</i> .....	12
12. <i>How does the IEP team determine if extended school year services are necessary?</i> .....	13
13. <i>When must an IEP be in effect for a child who transitions from Part C to Part B Preschool services?</i> .....	13
14. <i>Does the 30-day timeline from the initial determination of eligibility to the development of an IEP apply to children who are transitioning from Part C to Part B Preschool Services?</i> .....	13
15. <i>What steps can the district take if it will be unable to develop and implement an IEP by the child's third birthday?</i> .....	13
16. <i>What happens if the parents do not agree to have the IFSP act as the IEP and the district does not develop and implement an IEP by the child's third birthday?</i> .....	14
<b>Preschool Screening.....</b>	<b>14</b>
1. <i>What is a preschool screening?</i> .....	14
2. <i>Are Child Find and Preschool Screening the same thing?</i> .....	14
3. <i>How is a preschool screening conducted?</i> .....	14
4. <i>How do parents find out when preschool screening will occur?</i> .....	14
5. <i>Who should be involved in preschool screenings?</i> .....	14
<b>Prereferral.....</b>	<b>15</b>
1. <i>What is prereferral?</i> .....	15
2. <i>Does prereferral delay the special education process?</i> .....	15
<b>Child Find and Private Schools .....</b>	<b>15</b>
1. <i>How does the LEA determine how and when to carry out the child find for the private school children?</i> .....	15
2. <i>Does Part B require that consultations with private school representatives be done on an annual basis?</i> .....	15
3. <i>What is the obligation of the LEA to conduct child-find activities?</i> .....	16
4. <i>If parents reside in one school district and enroll their student with a disability at a private school located in another school district, which school district is responsible for locating and evaluating that student?</i> .....	16
5. <i>Can the parents of a private school student request an evaluation by the school district in which they live if the student attends a private school located in another school district?</i> .....	16
6. <i>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?</i> .....	16
7. <i>Must child find for private school, including religious school and home school, students be comparable to child find for public school students?</i> .....	16
8. <i>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 students suspected of having specific disabilities?</i> .....	17
9. <i>Are LEAs required to conduct reevaluations of parentally placed private school students, and, if so, how often?</i> .....	17
10. <i>Does the parent of a student enrolled in a private school have the right to an independent educational evaluation?</i> .....	17
11. <i>Can the public school require the private school to conduct all or part of the evaluation or reevaluation?</i> .....	17

12. <i>Are parentally placed private school students with disabilities entitled to receive special education and related services?</i> .....	17
13. <i>What is included in the Services Plan for parentally placed students with disabilities in a private/home school?</i> 18	
14. <i>What is the “availability of a free appropriate public education (FAPE)?</i> .....	18
15. <i>What is the process for the LEA developing a services plan?</i> .....	18
16. <i>Do the parents of a parentally placed private school student participate in the development of the service plan?</i> 19	
17. <i>How is the location of the services provided to parentally placed private school student determined?</i> .....	19
18. <i>Is the district required to provide transportation to private school students who have a service plan?</i> .....	19
19. <i>What is the private school consultation process?</i> .....	19
20. <i>Are homeschooled students considered parentally placed private school students?</i> .....	20
21. <i>Are preschool age children considered parentally placed private school children?</i> .....	20
<b>Child Find and Head Start.....</b>	<b>20</b>
1. <i>If a child is attending Head Start, is the school district where the child resides still responsible for child find activities?</i> .....	20
2. <i>Who is responsible for conducting the evaluations for children enrolled in Head Start?</i> .....	20
<b>Prior Written Notice .....</b>	<b>21</b>
1. <i>What is Prior Written Notice (PWN)?</i> .....	21
2. <i>How does the district document the PWN when it proposes to take an action, or agrees with an action requested by the parent?</i> .....	22
3. <i>What are the seven components of Prior Written Notice?</i> .....	22
4. <i>How does the district document describe each component?</i> .....	22
5. <i>Where could each component of the PWN be in the Evaluation Report (ER)and IEP?</i> .....	24
6. <i>How does the district document the PWN when it refuses to take an action that the parent has requested?</i> .....	26
7. <i>Must an IEP Amendment contain all seven components of the PWN?</i> .....	26
8. <i>How does the district document PWN for a student initially referred for evaluation regardless of the source?</i> .....	26
9. <i>If a parent requests a re-evaluation and the district refuses this request, how is PWN documented?</i> .....	26
10. <i>Who is responsible for completing the PWN forms?</i> .....	26
11. <i>When should a PWN be provided to the parents?</i> .....	26
12. <i>Must PWN be provided when a student transfers into the district?</i> .....	26
13. <i>If the IEP team takes notes during the IEP or ER meeting, may the team bypass the PWN and use the meeting notes?</i> .....	26
14. <i>If an ER and IEP meeting occur consecutively, are two separate PWNS required to be completed?</i> .....	26
15. <i>If a placement change occurs due to disciplinary action, when is PWN required to be provided to the parent?</i> .....	26
16. <i>When must PWN be provided to parents of Private/Home School students?</i> .....	27
17. <i>May I put “Not applicable” or leave a section blank if it does not apply?</i> .....	27

18. In a draft IEP or ER should the PWN section be included?.....	27
19. Is PWN required when a student progresses from elementary to middle school or middle school to high school?.....	27
<b>Meeting Notices .....</b>	<b>27</b>
1. How far in advance should a meeting notice be sent to parents?.....	27
2. How many attempts should the district make to schedule an IEP meeting with parents before conducting the meeting without a parent in attendance?.....	27
<b>Referral for Comprehensive Educational Evaluation.....</b>	<b>28</b>
1. When should a school district refer a student for a comprehensive evaluation?.....	28
<b>Request for Initial Evaluation.....</b>	<b>28</b>
1. If a request for an initial evaluation by the local education agency is made, what do Montana's regulations require to be in the request?.....	28
2. What do Montana's regulations require a request for initial evaluation by a parent contain? .....	28
3. Is there a specific form that a request for an initial evaluation must be made on? .....	28
4. Can the school district delay a request for an initial evaluation to conduct classroom-based interventions?.....	29
5. Who should fill out the Referral for Comprehensive Educational Evaluation form and is it required for all students when an initial evaluation is requested?.....	29
6. Can a school district refuse a parent's request for an initial evaluation?.....	29
7. What happens after a local education agency decides to evaluate the student for special education eligibility? .	29
<b>Evaluation Plan.....</b>	<b>30</b>
1. What is the purpose of the Evaluation Plan? .....	30
2. Who develops the Evaluation Plan? .....	30
3. Is a meeting necessary to develop an evaluation plan? .....	30
4. What notice must be provided to parents prior to an evaluation meeting? .....	30
5. How soon before the evaluation meeting must a written notice be given? .....	30
6. When must the district provide parents with a copy of the Procedural Safeguards in Special Education? .....	30
7. Must the Evaluation Plan be completed and signed by the parent for a reevaluation?.....	31
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.)? .....	31
9. Who is considered to be a "parent"?.....	31
10. What is the school district's role when parents do not agree with each other about the identification or educational program for their student? .....	32
11. Is parental consent for evaluation required for "screenings"? .....	32
12. What does a school district do if a parent refuses consent to an initial evaluation? .....	32
13. What options do the school district have if the parent refuses consent to a reevaluation?.....	32
14. What steps must a district take to exit a student from Special Education? .....	33
15. What does the school district do if the parent does not respond to a request for reevaluation?.....	33

16. <i>Is there a timeline for the initial evaluation of a student?</i> .....	33
17. <i>What is "informed consent"?</i> .....	33
18. <i>How does the parent give informed consent for a comprehensive evaluation?</i> .....	33
19. <i>What is the district's responsibility if the parent repeatedly fails or refuses to produce the student for an initial evaluation?</i> .....	33
20. <i>Are there any circumstances (other than the parent not producing the student) that allow the district to exceed the 60-calendar day timeline?</i> .....	34
21. <i>How recent must classroom-based assessments and observations be?</i> .....	34
22. <i>Which assessments are required for an initial evaluation?</i> .....	34
23. <i>When is parental consent needed for a transition assessment?</i> .....	34
25. <i>When are reevaluations required?</i> .....	35
26. <i>What is the purpose of a reevaluation?</i> .....	35
27. <i>When a reevaluation has been determined necessary, what is the time requirement for conducting a reevaluation?</i> .....	35
28. <i>Which assessments are required for a reevaluation?</i> .....	35
29. <i>Can an evaluation report document information on assessments and implications by stating, "See previous report/eligibility determination?"</i> .....	36
30. <i>When a student is reevaluated, must he or she meet the criteria required for initial determination of eligibility for special education and related services?</i> .....	36
31. <i>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?</i> .....	36
32. <i>Who are the required members of the Evaluation Team?</i> .....	36
33. <i>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?</i> .....	37
35. <i>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?</i> .....	37
36. <i>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?</i> .....	38
37. <i>Is an Evaluation Team meeting necessary to add or remove a related service?</i> .....	38
38. <i>Is an Evaluation Team meeting required to change a disability category determination?</i> .....	38
<b>Evaluation Report.....</b>	<b>38</b>
1. <i>Are Parent/Adult Student comments required on the evaluation report?</i> .....	38
2. <i>What is required if "See Attached" is checked?</i> .....	38
3. <i>Can multiple assessments (observations, CBA, achievement, etc.) be included in a single report (psychological, behavioral, etc.)?</i> .....	38
4. <i>Are observations and classroom-based assessments required for both initial and reevaluation determinations of eligibility?</i> .....	39
5. <i>What are "observations by teachers and related service providers"?</i> .....	39

6. Who can conduct the "Observation" of the student? .....	39
7. For a child who is less than school age or out of school, who determines the appropriate environment for the observation to occur? .....	39
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?.....	39
9. May the district deny or delay an evaluation/services because the district believes the student should be on medication or has recently been placed on medication?.....	39
10. May the district send a student home due to not taking medication? .....	39
11. What is needed for a student to qualify for special education and related services?.....	39
12. What is "specialized instruction"? .....	40
13. May a student meet disability criterion, but still not need special education services?.....	40
14. May a student be identified in more than one disability category? .....	40
15. When a student is initially identified as a student with a disability, when should the IEP be developed? .....	40
16. When is "Speech/Language" a special education service and when is it a related service? .....	40
17. What is the difference between the special education services of "Communication" and "Speech-language pathology"? .....	41
18. 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? .....	41
19. May the IEP Team add additional services without conducting a reevaluation?.....	41
20. What is a related service? .....	42
21. What is the related service, "Parent Counseling and Training"?.....	42
22. Can a student qualify for services under IDEA if they only need a related service? .....	42
23. What does a "lack of instruction in reading or math" mean?.....	42
24. Does signing the Evaluation Report reflect that each signer agrees with the conclusion of the team? .....	42
25. 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?.....	42
26. May a student be identified for both Gifted and Talented and special education and related services? .....	43
27. What is a gifted and talented student? .....	43
28. How can a gifted student who has average academic achievement be determined eligible for special education and related services? .....	43
29. How can the need for special education be established for a gifted student who has average academic achievement? .....	43
31. How does the IEP address the needs of a twice exceptional student if the district does not have a Gifted and Talented program? .....	44
32. What does the term "masking" refer to in relation to twice exceptional students?.....	44
33. Are there strategies that can help address the needs of twice exceptional students? .....	44
34. Is dyslexia considered a specific learning disability under IDEA? .....	44
35. Does a diagnosis of dyslexia automatically qualify a student for special education and related services?.....	45

36. <i>Can the term dyslexia be used or referenced in an Evaluation Report and/or an IEP?</i> .....	45
37. <i>Can a student with dyslexia, who does not qualify for special education, be placed on a 504 plan?</i> .....	45
38. <i>Does using the label of a specific learning disability, in addition to or instead of dyslexia, result in inadequate interventions for students with dyslexia?</i> .....	45
39. <i>Does the OPI have further information concerning dyslexia?.....</i>	45
<b>Independent Education Evaluation .....</b>	<b>46</b>
2. <i>How many Independent Education Evaluations (IEE) is a parent entitled to?.....</i>	46
3. <i>May a parent request an IEE in an area that was not previously assessed by the District?.....</i>	46
4. <i>Are there certain criteria that must be met for an IEE obtained at public expense?.....</i>	47
5. <i>Must a district consider the results of an IEE? .....</i>	47
<b>Common Questions Regarding Eligibility Criteria.....</b>	<b>47</b>
1. <i>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? .....</i>	47
2. <i>If a student has received a medical diagnosis does that student automatically qualify for special education services? .....</i>	47
3. <i>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?.....</i>	48
4. <i>Must the medical diagnosis be "updated" for each reevaluation for that student?.....</i>	48
5. <i>If a district determines a medical evaluation is necessary, who is responsible for obtaining that evaluation? .....</i>	48
6. <i>If a district requests a medical evaluation to determine if a student is eligible for special education, who pays for the medical evaluation?.....</i>	48
7. <i>Is a referral required to evaluate an eligible student for an additional category of disability?.....</i>	48
8. <i>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?.....</i>	48
9. <i>Must an IDEA-qualified student be identified as having a speech-language impairment for the IEP to provide speech and language pathology services?.....</i>	48
10. <i>Can a student identified as having a disability in speech-language receive special education services in reading or math or another service area?.....</i>	48
11. <i>Must the student be reevaluated once every three years? .....</i>	49
12. <i>How does the district document the agreement between it and the parent that a reevaluation is unnecessary? .....</i>	49
13. <i>Is a classroom-based assessment required for all preschool-aged students?.....</i>	49
14. <i>May a child younger than eight be identified in a disability category other than developmental delay? .....</i>	49
15. <i>What must the IEP team do when a child with a Developmental Disabilities (DD) label turns eight?.....</i>	49
16. <i>When a child turns eight and the team removes the DD eligibility and conducts a new ER, is it an initial ER or a re-evaluation? .....</i>	49
17. <i>May the RTI process be used for identification of learning disability in a pre-school child not yet in kindergarten? ...</i>	49
18. <i>Is the Eligibility Determination process for pre-school children different than for school-age students?.....</i>	49

19. <i>Can a school district choose to use either the severe discrepancy or Response to Intervention (RtI) methods to identify a child with LD?.....</i>	50
20. <i>Does Montana allow other methods of identifying a specific learning disability besides the discrepancy or response to intervention models?.....</i>	50
<b>Preschool Outcome Reporting .....</b>	<b>50</b>
1. <i>How are the preschool outcomes measured? .....</i>	50
2. <i>Who conducts the assessment(s)?.....</i>	50
3. <i>When are the assessments to be conducted? .....</i>	50
4. <i>How does a district obtain assessment and outcome measurement information for children who previously participated in an IDEA Part C program?.....</i>	50
5. <i>Must the child be reassessed each year?.....</i>	51
6. <i>Is parental consent required prior to conducting the assessments to complete Preschool Outcome Reporting? .....</i>	51
7. <i>Do these requirements apply to children whose IEP only provides speech and language therapy? .....</i>	51
8. <i>Must the IEP contain Measurable Annual Goals for each performance area reported on the outcome measures? ...</i>	51
<b>Response to Intervention (RtI) .....</b>	<b>51</b>
1. <i>What is Response to Intervention?.....</i>	51
2. <i>What types of interventions are required?.....</i>	52
3. <i>What factors must the Evaluation Team consider when using the RtI method to identify a student as having a specific learning disability?.....</i>	52
4. <i>In what setting do the interventions occur?.....</i>	53
<b>Individualized Education Plans .....</b>	<b>53</b>
1. <i>Can the “Duration of the IEP” be for less than 12 months? .....</i>	53
2. <i>When must an IEP be in effect?.....</i>	53
3. <i>How do we include information from parents if they do not attend the IEP? .....</i>	53
4. <i>When should “Yes” be checked for “Does the student have communication needs”? .....</i>	53
5. <i>Does checking “Yes” for, “Does the student have communication needs”, require a communication goal in the IEP? .....</i>	54
6. <i>At what age must the IEP address postsecondary transition? .....</i>	54
7. <i>May postsecondary transition be included in the IEP for students younger than 16? .....</i>	54
8. <i>When could a student participate in their IEP meeting?.....</i>	54
9. <i>At what age must a student be invited to the IEP meeting? .....</i>	54
10. <i>What additional information must the IEP meeting notice contain for a transition IEP? .....</i>	54
11. <i>Must the IEP include transition services, even if someone other than the school district will provide those services? .....</i>	54
12. <i>What is the school district's responsibility if another agency fails to provide agreed-upon transition services?.....</i>	55
13. <i>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? .....</i>	55

14. <i>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?</i> .....	55
15. <i>What are “Measurable Postsecondary Goals” for students aged 16 and older?</i> .....	55
16. <i>What is the difference between a measurable postsecondary goal (MPSG) and a measurable annual goal (MAG)?</i> .....	55
17. <i>Are IEP progress reports required for measurable postsecondary goals?</i> .....	56
18. <i>Must a parent receive notice prior to the student’s graduating with a regular diploma or exceeding the district’s age of attendance?</i> .....	56
19. <i>When is the Summary of Performance required?</i> .....	56
20. <i>What must the Summary of Performance contain?</i> .....	56
21. <i>What must a Present Level of Academic Achievement and Functional Performance (PLAAFP) statement include?</i> .....	56
22. <i>What must a Measurable Annual Goal (MAG) include?</i> .....	56
23. <i>Must a Measurable Annual Goal be written so that a student makes progress toward meeting a State-approved grade-level standard?</i> .....	57
24. <i>May short-term objectives be written to help a student make progress toward meeting a State-approved grade-level standard?</i> .....	57
25. <i>Is a MAG considered complete if the short-term objectives contain the required components?</i> .....	57
26. <i>Are benchmarks and short-term objectives required for all students?</i> .....	57
27. <i>If a student is taking the alternate assessment, do short-term objectives need to be written for all service areas?</i> .....	57
28. <i>Are all students included in statewide and districtwide assessments?</i> .....	57
30. <i>How is progress toward the IEP goals reported?</i> .....	58
31. <i>Must the progress report contain data?</i> .....	58
32. <i>When a student is not making expected progress toward his or her measurable annual goals, what must the student’s IEP Team do?</i> .....	58
33. <i>How can data be included in a progress report, how can it be reported in AIM, and what should the data contain?</i> .....	58
35. <i>Do the requirements for progress reports also apply to measurable annual goals for related services such as speech and language services or occupational therapy?</i> .....	59
36. <i>Who can provide “Special Education Services in the General Education Setting”?</i> .....	59
37. <i>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?</i> .....	59
38. <i>When must transportation be included in a student’s IEP?</i> .....	59
39. <i>What is an Individual Transportation Contract?</i> .....	60
40. <i>If the District enters into a transportation arrangement with a parent to provide transportation as an IEP related service, is there a set rate for reimbursement for the service?</i> .....	60
41. <i>Is consultation a special education or related service?</i> .....	61
43. <i>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?</i> .....	61
44. <i>Must a student’s IEP contain short-term objectives and benchmarks in years when they are not participating in the alternate statewide assessment?</i> .....	61

45. <i>May a student's IEP contain short-term objectives and benchmarks if the student is not taking the alternate statewide assessment that year?</i> .....	61
46. <i>How may general education teachers, paraeducators and others who work with a student be informed of their specific responsibilities under the IEP?</i> .....	62
47. <i>Who are the required members of the IEP Team?</i> .....	62
48. <i>Must an IEP team have a general education teacher as a member?</i> .....	62
49. <i>Who can serve as the "Designee" for an Administrator in the IEP meeting?</i> .....	63
50. <i>May the parent or district invite others to participate in the IEP meeting?</i> .....	63
51. <i>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?</i> .....	63
52. <i>Who can participate as the "parent" in developing an IEP?</i> .....	64
53. <i>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?</i> .....	64
54. <i>What must the district do if the parent approves the IEP with exceptions?</i> .....	65
55. <i>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?</i> .....	65
56. <i>May districts use electronic mail for administrative purposes under IDEA?</i> .....	65
57. <i>May districts accept electronic or digital signatures from parents indicating consent on required documents under IDEA?</i> .....	65
58. <i>When is a Student required to have a behavior intervention plan (BIP) and does the BIP have to be included in the Student's IEP?</i> .....	66
59. <i>If a student's behavior impedes their learning or the learning of others, what must be included in the IEP?</i> .....	67
<b>Supplementary Aids and Services .....</b>	<b>67</b>
1. <i>What are supplementary aids and services designed to do?</i> .....	67
2. <i>What is a school district's responsibility regarding nonacademic services and extracurricular activities under the IDEA?</i> .....	67
3. <i>Do students with disabilities have the opportunity to participate in field trips and extracurricular activities?</i> .....	67
4. <i>Are there instances when a student with a disability can be denied the opportunity to participate?</i> .....	68
5. <i>Is a lack of district funds an allowable reason to deny a student the opportunity to participate?</i> .....	68
6. <i>Is the district obligated to provide accommodations, related services or services needed for a student to participate?</i> .....	68
7. <i>Can a district require a parent or family member accompany a student during an activity?</i> .....	68
8. <i>Must notice of field trips and extracurricular activities be given equally to all students?</i> .....	68
<b>Emergency Operations.....</b>	<b>68</b>
1. <i>What is an Emergency Operation Plan/School Safety Plan?</i> .....	68
2. <i>How could the IEP address the Emergency Operation Plan/School Safety Plan for students with special needs?..</i>	68
<b>Student Attendance.....</b>	<b>69</b>

1. If a student does not attend school for 10 consecutive days, is the school district required to un-enroll the student?.....	69
2. Can a student on an IEP be found truant?.....	69
<b>Parental Revocation of Consent for Continued Special Education and Related Services .....</b>	<b>70</b>
2. What must the school district do when it receives a revocation notice from a parent/adult student?.....	70
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?.....	70
5. Is the school district required to conduct reevaluations for a child/student whose special education and related services have been revoked?.....	70
6. Should the school district amend the student's records to remove references to the receipt of special education and related services? .....	70
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?.....	70
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?.....	70
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? .....	71
10. Does a subsequent request for evaluation require a referral? .....	71
11. Is a subsequent evaluation to determine eligibility for special education and related services considered a reevaluation or an initial evaluation?.....	71
12. May a school district consider a student for a Section 504 plan after a parent has revoked consent for special education under IDEA? .....	71
<b>IEP Meeting Excusal .....</b>	<b>72</b>
1. May a required member be excused from attending an IEP team meeting? .....	72
2. Are there members of the IEP team who cannot be excused from an IEP Team meeting?.....	72
3. If a parent cannot attend an IEP team meeting, does the parent need to complete an excusal form? .....	72
4. What "written input" must the excused IEP Team member provide?.....	73
5. How is the excusal from the IEP meeting documented?.....	73
6. When should the request for excusal be presented to the parent?.....	73
7. What if the written input is not provided for prior review and consideration by the parent?.....	73
8. What if the parent does not return the request for the excusal of specific required IEP Team members? .....	73
9. What if the parent does not agree to the excusal of specific required IEP Team members? .....	73
10. 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?.....	73
11. If the child has more than one regular education teacher responsible for carrying out a portion of the IEP, must all the teachers attend the IEP meeting?.....	73
12. What is the designated regular teacher?.....	73
<b>IEP Meeting Notes .....</b>	<b>74</b>

1. <i>What should meeting notes include?</i> .....	74
<b>IEP Process .....</b>	<b>74</b>
1. <i>Can an Individualized Education Plan be changed without an IEP meeting?</i> .....	74
2. <i>When may an amended IEP be implemented?</i> .....	75
3. <i>How much of an IEP can an amendment change?</i> .....	75
4. <i>If a student needs specially designed physical education must this be included in the student's IEP?</i> .....	75
5. <i>Can physical/occupational therapy replace a student's health enhancement or physical education program (regular or adapted)?.....</i>	75
6. <i>What is adapted physical education?</i> .....	75
7. <i>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?</i> .....	75
8. <i>May IEP meetings be electronically recorded?</i> .....	75
9. <i>Is it permissible for a school district to develop a draft IEP before the IEP meeting?</i> .....	76
10. <i>May a district provide a copy of a draft IEP to the parents prior to the meeting?</i> .....	76
11. <i>What is a student record?</i> .....	76
12. <i>What steps are necessary to protect confidentiality of student records?</i> .....	76
13. <i>Is the school district required to give parents or eligible students copies of educational records?</i> .....	77
14. <i>How long should a district maintain copies of special education records?</i> .....	77
15. <i>Can a district charge a fee for copying a record?</i> .....	77
16. <i>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?.....</i>	77
17. <i>What is a mini-IEP or mini-ER in the AIM system?</i> .....	78
18. <i>When must a mini-IEP be created in the AIM system?</i> .....	78
<b>Transfer Students .....</b>	<b>79</b>
1. <i>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?</i> .....	79
2. <i>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?</i> .....	79
3. <i>What if the transfer student has an IEP which is more than 12 months old?</i> .....	79
4. <i>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?</i> .....	80
5. <i>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)? .....</i>	80
<b>Highly Mobile Students.....</b>	<b>80</b>
1. <i>Should highly mobile students have timely and expedited evaluations and eligibility determinations?</i> .....	80
2. <i>Is the new school district responsible for comparable services, including extended school year, when initially providing FAPE to the transferring student?.....</i>	81

3. <i>If a student transfers to a new school during the summer, is the new district responsible for extended school year services in the IEP?</i> .....	81
<b>Pre-Employment Transition Services (Pre-ETS) – Montana Vocational Rehabilitation and Blind Services .....</b>	<b>81</b>
1. <i>If a school receives Pre-ETS funding, does it raise the district's maintenance of fiscal effort (MOE) level?</i> .....	81
2. <i>What can Pre-ETS funds be used for?</i> .....	81
3. <i>What can Pre-ETS funds not be used for?</i> .....	81
<b>Students Who are Homeless .....</b>	<b>82</b>
1. <i>Do students who receive special education services and who are homeless have the right to remain in their school of origin?</i> .....	82
2. <i>Must schools provide special education services immediately to students experiencing homelessness who have IEPs from another school district or state?</i> .....	82
3. <i>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?</i> .....	82
4. <i>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?</i> .....	83
<b>Transition Assessments .....</b>	<b>83</b>
1. <i>What are age-appropriate transition assessments?</i> .....	83
2. <i>What are examples of age-appropriate transition assessments?</i> .....	83
<b>Resources for Transition Assessments.....</b>	<b>84</b>
<i>Education.....</i>	84
<i>Training.....</i>	84
<i>Assessments which incorporate education, employment, training and independent living skills .....</i>	85
<b>How to Write Measurable Annual Goals .....</b>	<b>85</b>
<i>Components of a Goal:</i> .....	86
<b>Extended School Year Services.....</b>	<b>86</b>
1. <i>What is an extended school year (ESY)?</i> .....	86
2. <i>May a student with a disability participate in summer school?</i> .....	87
3. <i>May ESY services be provided in conjunction with a district's summer school?</i> .....	87
4. <i>Must ESY services be provided in conjunction with a district's summer school?</i> .....	87
5. <i>How does the IEP team determine if extended school year services are necessary?</i> .....	87
6. <i>Must the IEP team for a newly eligible preschool student consider the student's need for ESY?</i> .....	87
7. <i>What criteria are used to determine whether ESY services are necessary for a student with a disability?</i> .....	87
8. <i>What information may be used in making the determination of need for extended school year services?</i> .....	88
9. <i>What documentation is necessary for the IEP team on the IEP when ESY has been determined necessary?</i> .....	88
10. <i>Must all the special education and related services in the student's IEP be provided during an ESY?</i> .....	88
11. <i>Is it possible for a student to receive only a related service as part of an ESY program?</i> .....	88

12. <i>Must a full continuum of placements be maintained during an ESY program?</i> .....	88
13. <i>What information should an IEP team request from an early intervention provider in considering a preschool child's need for ESY?</i> .....	89
14. <i>If an IEP team checks the box that ESY will be considered at a later date, must an IEP meeting be scheduled to finalize the determination?</i> .....	89
15. <i>Who is responsible for providing ESY to a student who changes his or her residence during the summer?</i> .....	89
16. <i>Who is responsible for providing ESY to a student who is transferring to another school district due to the structure of the school districts, not because the student moved residences?</i> .....	90
<b>Aversive Treatment Procedures</b> .....	<b>90</b>
1. <i>What are "positive behavioral interventions"?</i> .....	90
2. <i>What is a "functional behavior assessment"? Are there requirements for the content and complexity of the functional behavioral assessment?</i> .....	90
3. <i>Who determines when the use of aversive treatment procedures may be appropriate?</i> .....	91
4. <i>What is "physical restraint"?</i> .....	91
5. <i>What are the relevant provisions of MCA 20-4-302?</i> .....	91
6. <i>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?</i> .....	91
7. <i>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?</i> .....	91
8. <i>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?</i> .....	92
9. <i>If school district personnel are in an isolation room with a student and the door is closed, is this isolation time-out?</i> .....	92
10. <i>Does the Office of Public Instruction have standards regarding the design of an isolation time-out room?</i> .....	92
11. <i>Can the use of a peephole, one-way glass or a video camera system meet the requirement for direct constant visual observation?</i> .....	92
12. <i>Who is the "designated staff person"?</i> .....	92
13. <i>Can a parent provide permission for the use of a procedure that is prohibited by this rule?</i> .....	92
14. <i>What is a "locked room"?</i> .....	93
15. <i>What are "aversive mists"? Would having a student take a shower be considered an aversive mist?</i> .....	93
16. <i>What is "mechanical restraint"?</i> .....	93
17. <i>What is the definition of residential treatment facilities and psychiatric hospitals in MCA 20- 7-436?</i> .....	93
18. <i>How is the determination made that a mechanical or restrictive device is intended for</i> .....	94
19. <i>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?</i> .....	94
20. <i>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?</i> .....	94

21. <i>Must the aversive treatment procedures be written on the IEP forms or can these be included as an attachment to the IEP?.....</i>	94
22. <i>Must the two written positive behavioral intervention strategies be implemented before or after the functional behavior assessment is developed?.....</i>	94
24. <i>Is there a minimum period of time for which the positive behavioral intervention strategies must be implemented?.....</i>	94
25. <i>What documentation is required of the written positive behavioral intervention strategies previously implemented?.....</i>	95
26. <i>Can the aversive treatment procedures only address the behaviors that were targeted to be changed by the two written positive behavioral intervention strategies?.....</i>	95
27. <i>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 non-aversive alternatives for de-escalation of behaviors?.....</i>	95
28. <i>Must the target behaviors be discrete individual behaviors (hit, kick, bite) or can they be “classes” of behavior (self-abuse, physical aggression)? .....</i>	95
29. <i>Must the short-term objectives in the aversive treatment plan be included in the student’s IEP?.....</i>	95
30. <i>How detailed must the written description of the aversive treatment procedure(s) be? .....</i>	95
31. <i>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? .....</i>	95
32. <i>What data should be collected for each application of the aversive treatment procedures? .....</i>	96
33. <i>Who should be the individual responsible for ongoing review and analysis of data on the target behavior? .....</i>	96
34. <i>How specific must the IEP team be in stating whether any standard school disciplinary measures are waived? ..96</i>	96
35. <i>Can an IEP team waive standard school disciplinary procedures if the school district does not agree?.....</i>	96
36. <i>How does a school district inform the parents that their consent to the IEP includes consent for the aversive treatment plan?.....</i>	96
37. <i>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? .....</i>	97
38. <i>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?.....</i>	97
39. <i>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?.....</i>	97
40. <i>What is a public agency's responsibility if the parents refuse to consent to the use of aversive treatment procedures? .....</i>	97
41. <i>If a student’s IEP includes behavioral strategies to address a particular behavior, can a student ever be suspended for engaging in that behavior? .....</i>	98
42. <i>Must the parents be notified each time aversive treatment procedures have been used?.....</i>	98
43. <i>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?.....</i>	98
<b>Aversive Treatment Plan.....</b>	<b>98</b>

1. <i>What changes in the aversive treatment plan require an IEP team meeting?</i> .....	98
2. <i>How should changes to the aversive treatment plan be documented?</i> .....	99
3. <i>Is it necessary to complete the Aversive Treatment Procedures Checklist if an Aversive Treatment Plan has been completed?</i> .....	99
<b>Graduation, Diplomas, Transcripts, Grades, Class Ranking and Honor Roll.....</b>	<b>99</b>
<i>**This section has been updated as of 9.05.2025 and is posted on the OPI website as Chapter 1. Graduation, Diplomas, Transcripts, Grades, Class Ranking, and Honor Role. ....</i> 99	
<b>Surrogate Parents.....</b>	<b>100</b>
1. <i>Who is considered a "parent" according to IDEA?.....</i>	100
2. <i>When must a public agency determine whether a student with a disability needs a surrogate parent?.....</i>	101
3. <i>What is a surrogate parent? .....</i>	101
4. <i>What are the responsibilities of a surrogate parent?.....</i>	101
5. <i>Who may the public agency nominate to be a surrogate parent?.....</i>	102
6. <i>What is guardian ad litem?.....</i>	102
7. <i>Could a guardian ad litem be considered a parent under IDEA?.....</i>	102
8. <i>Is a surrogate parent required when a student is placed into a permanent or temporary foster home?.....</i>	103
9. <i>When is a student considered to be a ward of the State?.....</i>	103
10. <i>What is the public agency's responsibility for students who are wards of the state?.....</i>	103
11. <i>Can someone from an agency responsible for the student (i.e., Department of Public Health and Human Services, group home, etc.) act as the parent or be the surrogate parent? .....</i>	104
12. <i>In the case of an unaccompanied homeless youth, may a temporary surrogate parent be appointed?.....</i>	104
13. <i>What must a public agency do to have a surrogate parent appointed? .....</i>	104
16. <i>What happens if the youth court does not act within 20 calendar days? .....</i>	104
17. <i>What occurs if the youth court denies the appointment? .....</i>	104
18. <i>What is the OPI's role in the assignment of a surrogate parent?.....</i>	105
19. <i>Must a surrogate parent be a resident of the student's school district? .....</i>	105
20. <i>Are surrogate parents immune from liability? .....</i>	105
21. <i>Does receipt of payment to act as a surrogate parent make the surrogate parent an employee of the public agency?.....</i>	105
22. <i>Are surrogate parents reimbursed for costs by the public agency? .....</i>	105
<i>When should the services of a surrogate parent be terminated?.....</i>	105
23. <i>May a school district use IDEA Part B federal funds for recruitment and/or training of surrogate parents? .....</i>	105
<b>Disciplinary Removals in Special Education Change of Current IEP Placement for Disciplinary Purposes.....</b>	<b>106</b>
1. <i>What is meant by a "change of current placement" in reference to disciplinary removals?.....</i>	106
2. <i>What constitutes a day of removal?.....</i>	106
3. <i>Do in-school suspension days count towards the 10-day total?.....</i>	106

4. <i>May authorized school district personnel suspend a student with an IDEA protected disability?</i> .....	106
5. <i>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?</i> .....	106
6. <i>What is the basis of "suspected"?</i> .....	107
7. <i>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?</i> .....	107
8. <i>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?</i> .....	107
<b>Manifestation Determination .....</b>	<b>107</b>
1. <i>What is an IDEA manifestation determination and when is one required?</i> .....	107
2. <i>What is a change in placement because of disciplinary removals?</i> .....	108
3. <i>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?</i> .....	108
4. <i>Who conducts the manifestation determination and what are the requirements of a manifestation determination?</i> .....	108
5. <i>What questions must be answered when making a manifestation determination?</i> .....	108
6. <i>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?</i> .....	109
7. <i>What is the definition of a "serious bodily injury" for these purposes?</i> .....	109
8. <i>What is the definition of a "weapon"?</i> .....	109
9. <i>What is the definition of controlled substance and illegal drug?</i> .....	109
10. <i>What is a Functional Behavioral Assessment (FBA)?</i> .....	109
11. <i>When is an FBA required during disciplinary actions?</i> .....	110
12. <i>What happens when the school district, parent, and other relevant members of the IEP Team determine that the behavior was a manifestation of the student's disability(ies)?</i> .....	110
13. <i>What happens when the school district, parent and other relevant members of the IEP Team determine that the behavior was NOT a manifestation of the student's disability(ies)?</i> .....	110

## **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.

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

### **1. How is a Free Appropriate public education (FAPE) defined in the IDEA?**

FAPE means special education and related services that:

- Are provided at public expense, under public supervision and direction, and without charge
- Meet the standards of the OPI including the requirements of Part B of the IDEA
- Include an appropriate preschool, elementary school, or secondary school education
- Are provided in conformity with an individualized education program (IEP)

Each student with a disability is entitled to receive FAPE in the least restrictive environment (LRE).

The local education agency or district where the student with disabilities resides is responsible for ensuring FAPE.

34 CFR 300.114 LRE requirements

34 CFR 300.17 FAPE

ARM 10.16.3122 Local Education Agency Responsibility for Students with Disabilities 34 CFR

300.101 FAPE

300.102 Limitation-exception to FAPE for certain ages

### **2. What is the standard for determining if a local education agency or district has met its FAPE obligation to offer an IEP that is sufficient to confer educational benefit on a student with a disability?**

The U.S. Supreme Court in Endrew F. held that in order for a local education agency or district to meet its substantive obligation of FAPE, it must offer an IEP reasonably calculated to enable the student to make progress appropriately in light of the student's circumstances. In determining the scope of FAPE the Supreme Court reinforced that "every student should have the chance to meet challenging objectives."

OSERS has provided additional guidance on the Endrew F. case and FAPE in its Questions and Answers on U.S. Supreme Court Case Decision Endrew F. v. Douglas County School District RE-1 (December 7, 2017).

Endrew F. v. Douglas County School District Re-1, 137 S.Ct. 988 at 1000 (2017).

OSERS Questions and Answers on U.S. Supreme Court Case Decision Endrew F. v. Douglas County School District RE-1 (December 7, 2017).

**3. 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.

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

## **Least Restrictive Environment**

**1. What is Least Restrictive Environment (LRE)?**

According to the Individuals with Disabilities Education Act (IDEA), all students with disabilities are educated in their least restrictive environment with students who are nondisabled to the maximum extent appropriate. This includes students with disabilities, in public or private institutions, or other care facilities.

300.114 LRE requirements

**2. Does Least Restrictive Environment (LRE) always mean the general education classroom?**

No, the least restrictive environment can include special classes, separate schooling, or other removal of students with disabilities from the general educational environment if the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily.

300.114 LRE requirements

**3. How is the Least Restrictive Environment (LRE) determined?**

The educational placement of a student with a disability, including a preschool student with a disability, is determined by a group of persons (IEP team), including the parents, and other persons knowledgeable about the student, the meaning of the evaluation data, and the placement options. The determination is made at least annually and is based on the student's IEP. The LRE should be as close as possible to the student's home and unless the IEP requires some other arrangement, the student is educated in the same school as he or she would attend if nondisabled. In selecting the LRE, consideration is given to any potential harmful effect on the student or on the quality of services that he or she needs. A student with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum. This includes ensuring that each student with a disability participates with nondisabled students in extracurricular services and activities to the maximum extent appropriate to the needs of that student. The IEP team must determine what appropriate and necessary supplementary aids and services the student needs to participate in nonacademic settings.

34 CFR 300.116 Placements

34 CFR 300.117 Nonacademic settings.

ARM 10.16.3340 Individualized Education Program and Placement Decisions

## **Child Find**

Child find is the affirmative, ongoing obligation of states to identify, locate, and evaluate all children with disabilities residing within the jurisdiction who are in need of special education and related services.

34 CFR 300.111(a)(1)(i).

### **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
- Individual student referral for an initial evaluation.

Each local education agency must establish procedures to ensure that all students with disabilities living within the boundaries of the local education agency regardless of the severity of their disability are identified, located and evaluated. The procedures must include the following:

- a practical method to determine which students are currently receiving needed special education and related services;
- a method to screen and develop criteria for further assessment for children between the ages of birth to 21 including all children in public and private agencies, and children who are highly mobile, migrant, homeless, or wards of the state;
- name the title of the person responsible for the coordination, implementation, and documentation of the child find procedures;
- describe student identification activities including audiological, health, speech/language, and visual screening, and review of data or records for students who have been or are being considered for retention, delayed admittance, long-term suspension or expulsion, waiver of learner outcomes (accreditation standards), regular education intervention and progress monitoring procedures and procedures for identification of children who are suspected of being a child with a disability even though they are advancing from grade to grade; describe the role and responsibilities, if any, of other public or private agencies;
- identify the procedures of the local education agency for the identification of a student as having a specific learning disability. If a local educational agency adopts procedures to use a response to scientific, research-based intervention in learning disability identification, it must identify the subject areas (language arts, math, reading), grades, and schools for which such procedures apply; and ensure the collection and use of data are in accordance with the confidentiality requirements of Part B of IDEA.

The local educational agency must provide parents with public notice of its child find procedures and the procedures it implements to ensure the protection of the confidentiality of any personally identifiable information collected, used, or maintained under Part B of IDEA.

Child find activities for children ages birth through two must be coordinated with early intervention provider agencies.

If the student is parentally enrolled in a private elementary or secondary school outside the boundaries of the local educational agency in which the student is living, the local educational agency where the private school is located is responsible for child find activities, evaluations, and provision of equitable services.

ARM 10.16.3125 Local Educational Agency Child Find Responsibilities

### **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 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 wanting 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 throughout 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**

### **1. 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

## **2. What is the responsibility of school district staff during the 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**

#### **1. 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, childcare, 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.\* (see paragraph below)

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

## **2. 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 to 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.

**3. 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

**4. 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**

**1. 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.

## **2. 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 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.

## **3. 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 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.

**4. 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

**5. 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 not to proceed with a Part B initial evaluation and eligibility determination process.

34 CFR § 300.300 Parental Consent

34 CFR § 300.9 Consent

**6. 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 reinitiate 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

**7. 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

**8. 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

**9. 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

**10. 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 34 CFR

§300.116 Placements

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

Per 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.

**12. 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

**13. When must an IEP be in effect for a child who transitions from Part C to Part B Preschool services?**

If the evaluation team for a child who is transitioning from Part C services determines that the child is eligible under Part B, the district must develop and implement an IEP by the child's third birthday.

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

**14. Does the 30-day timeline from the initial determination of eligibility to the development of an IEP apply to children who are transitioning from Part C to Part B Preschool Services?**

For a child who is transitioning from Part C to Part B, the district must implement the child's IEP by their third birthday. If the child is determined to be eligible under Part B more than 30-days prior to their third birthday the 30-day timeline would apply in regard to the development of the IEP. If there are less than 30 days between the date the child is determined eligible under Part B and the child's third birthday, the district cannot delay the development and implementation of the IEP beyond the child's third birthday.

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

34 CFR 300.323 When IEPs must be in effect

**15. What steps can the district take if it will be unable to develop and implement an IEP by the child's third birthday?**

For children who are transitioning from Part C to Part B the IEP team must consider the child's IFSP in developing the plan. If an IEP cannot be implemented by the child's third birthday, the district and the parent may agree to use the IFSP as the IEP if the IFSP was developed in accordance with the IEP procedures under IDEA. In order for the IFSP to be used as the IEP the district must:

1. Provide the child's parents with a detailed explanation of the differences between an IEP and an IFSP; and
2. Obtain written informed consent from the parents for the use of the IFSP as the IEP.

If the district implements the IFSP as the IEP, the child's record must contain documentation of the detailed explanation provided to the parents and the parent's consent to the implementation of the IFSP. The IFSP may be implemented as the IEP for a reasonable amount of time to allow the district to develop an IEP for the child.

34 CFR 300.323(b) When IEPs must be in effect

**16. What happens if the parents do not agree to have the IFSP act as the IEP and the district does not develop and implement an IEP by the child's third birthday?**

In this circumstance, the district would be out of compliance with the requirements of the IDEA and would be denying the child FAPE.

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

34 CFR 300.323 When IEPs must be in effect

## **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 several names (schoolwide assistance team, teacher assistance team, Response to Intervention (RTI), Multitiered Systems of Support (MTSS) 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 may form the basis of additional actions including an evaluation for special education and related services.

RTI is not a prerequisite for making an initial evaluation.

### **2. Does prereferral delay the special education process?**

No. Prereferral is a general education process. Prereferral activities cannot be used to delay or deny an evaluation for a student suspected of having a disability and needing special education.

OSEP Memo 11-07 Response to Intervention (RTI) (January 21, 2011)

## **Child Find and Private Schools**

### **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 students with disabilities in private, including religious, schools. This applies to students living within the boundaries of the LEA or attending a private school within the boundaries of the district. In Montana, home school students are considered to be private school students.

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 student with a disability at a private school located in another school district, which school district is responsible for locating and evaluating that student?**

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 parents of a private school student request an evaluation by the school district in which they live if the student 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, students be comparable to child find for public school students?**

Yes. Child find activities for private school students must be comparable to activities undertaken for students 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 students 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 students suspected of having specific disabilities?**

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

34 CFR 300.111 Child Find  
ARM 10.16.3125 LEA Child Find Responsibilities

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

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

34 CFR 300.305 Additional requirements for evaluations and reevaluation

**10. Does the parent of a student enrolled in a 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. Students 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 student, 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

**12. Are parentally placed private school students with disabilities entitled to receive special education and related services?**

No. Parentally placed private school students with disabilities have no individual right to receive some or all of the special education and related services that they would receive if enrolled full-time in a public school. Parentally placed private school students are not entitled to FAPE. For parentally placed private school students who receive services, the LEA must develop a services plan, not an IEP, for the student.

34 CFR 300.137(a) Equitable Services Determined

34 CFR 300.138(b) Equitable Services Provided

**13. What is included in the Services Plan for parentally placed students with disabilities in a private/home school?**

The plan includes:

- demographic information
- the educational concerns of the parents, the private school representative, and the public-school representative based on the most recent evaluation team meeting
- The service delivery plan schedule which includes:
  - The date of initiation of services and the anticipated duration of services
  - A description of the service(s) to be provided by the public school
  - The hours per week
  - The location where services will be provided
- The measurable annual goal(s) for services
- Documentation of participation in the meeting
- Notice to the parent regarding availability of a free appropriate public education (FAPE), and Documentation of parent/adult consent for services

**14. What is the “availability of a free appropriate public education (FAPE)”?**

“No parentally placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school.”

34 CFR 300.137 Equitable Services Determine

**15. What is the process for the LEA developing a services plan?**

The LEA must initiate and conduct a meeting to develop and revise a service plan for the student which describes the specific special education and related services the LEA will provide. The LEA must ensure a representative of the private school attends each meeting and if they are unable to attend, the LEA shall use other methods to ensure participation such as conference telephone calls. To the extent appropriate, LEAs must develop, annually review and revise service plans in accordance with the requirements for IEPs in 34 CFR 300.321 through 34 CFR 300.324.

34 CFR 300.138(b) Equitable Services Provided

34 CFR 300.132(b) Provision of services for parentally placed private school children with disabilities – basic requirement

*Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schs., 111 LRP 32532 (OSERS 4/01/11) Questions E 1-4.*

**16. Do the parents of a parentally placed private school student participate in the development of the service plan?**

Yes. A service plan must, to the extent appropriate, be developed in the same way an IEP is developed. The IDEA requires the IEP team, and the service plan team, include parents as a team member.

34 CFR 300.138(b)

34 CFR 300.321(a)(1)

*Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schs.*, 111 LRP 32532 (OSERS 4/01/11) Question E 2.

**17. How is the location of the services provided to parentally placed private school student determined?**

The location of services is required to be discussed during the consultation process between the LEA, private school representative and representatives of parents of parentally placed private school students. The final decision on location is up to the LEA. The location may be the premises of the private school.

34 CFR 300.134(d)

34 CFR 300.137(b)

34 CFR 300.139

*Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schs.*, 111 LRP 32532 (OSERS 4/01/11) Questions F 1-3.

**18. Is the district required to provide transportation to private school students who have a service plan?**

If the student needs transportation to benefit from or participate in the services provided, the LEA must provide transportation, at no expense to the parents, from the student's school or home to a site other than the private school and from the service site to the private school or home depending on the timing of the services.

**19. What is the private school consultation process?**

A required annual process involving discussions between the LEA, private school representatives, and representatives of parents of parentally placed private school students on issues relating to equitable services provided to eligible parentally placed private school students. The key issues that must be discussed are:

- The child find process for parentally placed private school students suspected of having a disability.
- The determination of the proportionate share of funds available to serve parentally placed private school students.
- How the consultation process among representatives of the LEA, private schools and parents will take place, including how it will operate throughout the school year to ensure identified parentally placed private school students can meaningfully participate in special education and related services.

- How, where, and by whom special education and related services will be provided--including a discussion of the types of services, including direct services and alternative service delivery mechanisms--and how special education and related services will be apportioned if funds are insufficient to serve all parentally placed private school students, and how those decisions will be made; and
- How, if the LEA disagrees with the views of the private school officials on the provision of services or the types of services, the LEA will provide explanation of the reasons why the LEA chose not to provide the services recommended by the private school officials.

There are different ways to conduct the consultation process, how the LEA carries out the consultation process is up to the LEA.

34 CFR 300.134

*Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schools.*, 111 LRP 32532 (OSERS 4/01/11) Questions A 1-4.

**20. Are homeschooled students considered parentally placed private school students?**

Yes, in Montana, homeschooled students that are registered with the county superintendent of schools are considered parentally placed private school students. These students must be treated the same as other parentally placed private school students under the IDEA. The LEAs must include parents homeschooling eligible students with disabilities in the consultation process described above.

MCA 20-5-109

*Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schools.*, 111 LRP 32532 (OSERS 4/01/11) Questions K 1-3.

**21. Are preschool age children considered parentally placed private school children?**

No. Children ages 3, 4, or 5 are entitled to FAPE through an IEP regardless of their attendance in preschool or kindergarten in a private school. Once turning six (6), the district will provide an offer of a FAPE. If the parents enroll the child in public school, he/she continues with an IEP. Otherwise, a service plan could be developed if appropriate.

## **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 the determination of special education eligibility are the responsibility of the district. 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 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.

## **Prior Written Notice**

### **1. What is Prior Written Notice (PWN)?**

- The school district must give the parent a written notice whenever the school district: (1) Proposes to begin or change the identification, evaluation, or educational placement of their student or the provision of free appropriate public education (FAPE) to their student; or (2) Refuses to begin or change the identification, evaluation, or educational placement of the student or the provision of FAPE to their student.

34 CFR 300.503(b)

- The school district must provide the notice in understandable language.

34 CFR 300.503(c) – School districts must provide the notice in language understandable to parents.

- The purpose of PWN is to notify and ensure parents understanding of the school district's proposal or refusal to take action. Prior Written Notice gives the parent a reasonable time to consider the change(s).
- The parent then may decide to ask questions or offer suggestions regarding the information that is given in the PWN. If the parent disagrees with the proposal or refusal to take action, the PWN notifies the parents of the protections afforded to them in the procedural safeguards, including available dispute resolution procedures.

**2. How does the district document the PWN when it proposes to take an action, or agrees with an action requested by the parent?**

The IEP and/or ER documents may serve as PWN when all seven components of PWN are included. To ensure that all seven components are included, the team must appropriately complete all editors for each document.

**3. What are the seven components of Prior Written Notice?**

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

**4. How does the district document describe each component?**

Keep in mind PWN is informing the parents so they may participate in the decision-making process; therefore, it is important to use a lot of detail. What the PWN looks like will be dependent on each student's unique circumstances and what action is being proposed or refused.

- (1) A description of the action proposed or refused by the agency:

- Describe specifically what actions are being proposed or refused.
- This can include multiple actions.

- (2) An explanation of why the agency proposes or refuses to take the action:

- Be specific, stay away from general statements. Do not say for example, this is part of the student's annual review.
- Explain "why" the district is proposing or refusing. This should state the district's rationale for its actions.

- From this section the parent should be able to determine how the district made the decision to propose or refuse a particular action.

(3) A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action:

- Identify ALL evaluation procedures, assessments, records or reports used as a basis for the proposed or refused action.

(4) A statement that the parents of a student with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, how a copy of a description of the procedural safeguards can be obtained:

- Inform the parents of where they may obtain the procedural safeguards.
- If this is an initial referral for evaluation the district must provide the parent a copy of the procedural safeguards.

(5) Sources for parents to contact to obtain assistance in understanding the provisions of this part:

- Include sources where parents may obtain assistance to understand provisions of PWN requirements.
- This could include the Office of Public Instruction, Montana Empowerment Center or Disability Rights Montana. The contact information for these agencies is found after the Table of Contents in the Procedural Safeguards.

(6) A description of other options that the IEP Team considered and the reasons why those options were rejected and:

- Describe the other options that were considered, these must again be described in detail.
- If the action that was proposed or refused is not one where other options could be considered, do not only state no other options were considered. Explain why in this unique circumstance no other options were considered.

(7) A description of other factors that are relevant to the agency's proposal or refusal:

- Describe in detail any additional factors that were relevant to the district's proposal or refusal.
- This may include unique circumstances such as health concerns, safety concerns, communication concerns, parental input, etc.
- If there were no additional factors, do not just state "no additional factors" or "not applicable." Make a statement explaining that this requirement was considered but under this set of circumstances there were no other factors to consider.

Additional reminders: Remember you are directing the notice to the parents, use language understandable to the public. The district must provide the notice in the native language of the parent or other mode of communication used by the parent unless clearly it is not feasible to do so.

34 CFR 300.503(c)

**5. Where could each component of the PWN be in the Evaluation Report (ER) and IEP?**

The areas below are possible places where each component could be found and could be referenced in the appropriate prior written notice section. This list is not all-inclusive. If the IEP does not adequately describe a PWN component, the PWN section for that component will need to have a more complete description in the PWN editor or PWN stand-alone form.

**a. Description of the action proposed or refused by the agency**

- 1) Evaluation Report
  - Disability Categories
  - Recommendations for consideration by the IEP team
  - Documentation – if found not eligible
  
- 2) IEP
  - Educational concerns
  - Consideration of special factors
  - Present Level of Academic Achievement and Function Performance (PLAAFP) section
  - Measurable Annual Goals (MAG) section
  - Special Education and Related Services
  - Least Restrictive Environment (LRE)
  - Supplementary Aids and Services
  - Assessments (statewide and districtwide)
  - Extended School Year (ESY)
  - Need for Reevaluation
  - Students Desired Postsecondary Activities
  - High School Graduation
  - Notes Section

**b. An explanation of why the agency proposed or refuses to take action.**

- 1) Evaluation Report
  - Criteria checklist(s) or description of the disability criteria, met and/or not met
  - Why does the student need special education and related services
  - Implications
  - Discussion section if not eligible
  - Notes section
  
- 2) IEP
  - Consideration of special factors
  - PLAAFP statement
  - Explanation of “No” in the LRE section
  - Explanation of why school day is shortened
  - Explanation of Alternative Assessment
  - Notes section

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

- 1) Evaluation Report
  - Assessment summaries
  - Notes section
- 2) IEP
  - A review of current records, current assessments and the student's performance as documented in the PLAAFP statement.

d. A statement that the parents of a student with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, how a copy of a description of the procedural safeguards can be obtained

- 1) Evaluation Report
  - Statement at the end of the PWN editor
- 2) IEP

- Statement in the IEP approval section
- Statement at the end of the PWN editor

e. Sources for parents to contact to obtain assistance in understanding the provisions of this part

- 1) Evaluation Report
  - Statement at the end of the PWN editor
- 2) IEP
  - Statement at the end of the PWN editor

f. A description of other options that the IEP team considered and the reasons why those options were rejected

- 1) Evaluation Report
  - Criteria checklists indicate the student did not meet the qualifications
  - Notes section
- 2) IEP
  - Notes section

g. A description of other factors that are relevant to the agency's proposal or refusal

- 1) Evaluation Report
  - Parent comments
  - Notes section
- 2) IEP
  - Educational concerns by the parents and/or school staff
  - Notes section

**6. How does the district document the PWN when it refuses to take an action that the parent has requested?**

If this occurs during a meeting it will be documented in the IEP or ER form. If the parent requests the meeting, a meeting may be held or the stand-alone PWN form could be used to provide PWN.

**7. Must an IEP Amendment contain all seven components of the PWN?**

Yes. PWN is required to notify the parents of the changes proposed or refused.

**8. How does the district document PWN for a student initially referred for evaluation regardless of the source?**

If a district is going to proceed with the evaluation the parent will receive a copy of the referral form and evaluation plan. If the district is not going to proceed with the evaluation, the district will send the stand-alone PWN to the parent.

If the district chooses not to provide the referral form document to the parent, they must complete the PWN stand-alone form to ensure the seven components of PWN are included.

**9. If a parent requests a re-evaluation and the district refuses this request, how is PWN documented?**

If the request is made during an IEP meeting, it can be documented using the PWN editor. The district would use the stand-alone PWN form if the request is made independently.

**10. Who is responsible for completing the PWN forms?**

The district.

**11. When should a PWN be provided to the parents?**

"There is no requirement in the Individuals with Disabilities Education Act (IDEA) regarding the point at which the written notice must be provided if it is provided a reasonable time before the district implements the action. This provides parents, in the case of a proposal or refusal to act, a reasonable time to fully consider the change and respond to the action before it is implemented."

OSEP Letter to Chandler 4/26/12

**12. Must PWN be provided when a student transfers into the district?**

If the school district accepts the identification and IEP as written, then no additional information is required.

**13. If the IEP team takes notes during the IEP or ER meeting, may the team bypass the PWN and use the meeting notes?**

No.

**14. If an ER and IEP meeting occur consecutively, are two separate PWNs required to be completed?**

Yes. Each document has its PWN requirements embedded.

**15. If a placement change occurs due to disciplinary action, when is PWN required to be provided**

**to the parent?**

After the decision is made, but before the student's placement is changed.

**16. When must PWN be provided to parents of Private/Home School students?**

Only during Child Find if the district proposes or refuses an evaluation of a student with a disability or the district refuses an Independent Education Evaluation. Changes or refusals related to a Private School Service Plan do not require PWN.

**17. May I put "Not applicable" or leave a section blank if it does not apply?**

No.

**18. In a draft IEP or ER should the PWN section be included?**

No. This could suggest predetermination without the parent's meaningful participation.

**19. Is PWN required when a student progresses from elementary to middle school or middle school to high school?**

If it is a normal progression for the student, then no. If the student will be attending a school, he/she wouldn't normally be attending because of his/her needs, then yes.

## **Meeting Notices**

**1. How far in advance should a meeting notice be sent to parents?**

There is no required number of days or weeks for providing advanced notice of a meeting, but the district should notify parents of the meeting enough in advance to ensure that they will have an opportunity to attend.

34 CFR 300.322(a)(1) Parent participation

**2. How many attempts should the district make to schedule an IEP meeting with parents before conducting the meeting without a parent in attendance?**

The IDEA does not define a set number of attempts. An IEP meeting may be conducted without a parent in attendance if the district is unable to convince parents that they should attend. In this case, the district must keep a record of attempts to arrange a mutually agreed on time and place such as documenting:

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

CFR 300.322 Parent participation

## **Referral for Comprehensive Educational Evaluation**

A referral begins the process through which a local education agency collects information to determine whether a comprehensive educational evaluation is necessary and what evaluations are warranted. 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 a comprehensive educational evaluation is warranted.

### **1. When should a school district refer a student 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 student with a disability that adversely affects the student's educational performance to the degree that the student needs specially designed instruction and related services.

## **Request for Initial Evaluation**

### **1. If a request for an initial evaluation by the local education agency is made, what do Montana's regulations require to be in the request?**

- A statement of the reason(s) for the request;
- Documentation of general education interventions tried for students enrolled in school;
- Documentation of the suspicion that the student may have a disability that adversely affects the student's educational performance to the degree that the student needs special education and related services; and
- The signature or electronic signature of the person making the request.

ARM 10.16.3320 Request for Initial Evaluation

### **2. What do Montana's regulations require a request for initial evaluation by a parent contain?**

- A statement of the reason(s) for the request;
- Documentation of the suspicion that the student may have a disability which adversely affects the student's educational performance to the degree the student needs special education and related services;
- The signature or electronic signature of the person making the request.

ARM 10.16.3320 Request for Initial Evaluation

### **3. Is there a specific form that a request for an initial evaluation must be made on?**

No. There is no specific form that must be used for a request for an initial evaluation. Each local education agency shall establish procedures for requesting an initial evaluation which include methods for collecting the information to determine whether a comprehensive educational evaluation is necessary and what types of evaluations are warranted.

ARM 10.16.3320(2) Request for Initial Evaluation

**4. Can the school district delay a request for an initial evaluation to conduct classroom-based interventions?**

No. The use of prereferral activities, a multi-tiered instructional framework or RTI (Response to Intervention) may not be used to delay or deny timely initial evaluations to children suspected of having a disability.

ARM 10.16.3125 LEA Child Find Responsibilities

ARM 10.16.3320 Request for Initial Evaluation

OSEP Memo 11-07 Response to Intervention (RTI) (January 21, 2011)

**5. Who should fill out the Referral for Comprehensive Educational Evaluation form and is it required for all students when an initial evaluation is requested?**

A representative of the LEA should fill out the form. The purpose of the Referral for Comprehensive Educational Evaluation form is to assist in gathering information on the student to make the determination on whether the local education agency will evaluate the student for special education eligibility. If a parent or other referrer submits a request for an initial evaluation without using the form, the LEA may follow up and request information to complete the form, but the LEA may not require that it is completed prior to considering the student for an initial evaluation.

ARM 10.16.3320 Request for Initial Evaluation

**6. Can a school district refuse a parent's request for an initial evaluation?**

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 challenge the refusal by requesting a due process hearing or filing a state complaint regarding the student's need for an evaluation.

34 CFR 300.503 Prior Notice by the Public Agency; Content of Notice

ARM 10.16.3320(3) Request for Initial Evaluation

OSEP Memo 11-07 Response to Intervention (RTI) (January 21, 2011)

**7. What happens after a local education agency decides to evaluate the student for special education eligibility?**

The local education agency must provide an Evaluation Plan to the parents to notify them of the assessments it intends to conduct and obtain the parent's written informed consent for those assessments.

**8. Is there a required timeline between a request for an initial evaluation and the local education agency's request for parental consent for evaluation on the Evaluation Plan?**

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 from referral to evaluation and parental consent. It is the Department's longstanding policy that evaluations be conducted within a reasonable period.

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 student 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 student'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 Special Education Meeting Notice serves to provide the parent with written notice of the upcoming meeting.
- The Evaluation Plan form serves as the permission to evaluate the student.

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

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

Written notice must be given to the parents of a student with a disability a reasonable time before an Evaluation Report 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 300.322 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, unless the parent has failed to respond to the districts attempts to obtain consent. In this circumstance the district may proceed with the reevaluation.

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 the IDEA, the term “parent” means:

- A biological or adoptive parent of a student.
- A foster parent.
- A guardian, generally authorized to act as the student’s parent or authorized to make educational decisions (but not the state if the student is a ward of the state).
- A person acting in the place of a parent such as a grandparent or a stepparent with whom the student lives (such as a caretaker relative) or a person who is legally responsible for the student’s welfare; 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, when attempting to act as parent under IDEA or when more than one party is qualified is presumed to be the parent, unless such person does not have the legal authority to make educational decisions.

A foster parent may act as a parent under IDEA if the natural parents' authority to make educational decisions on the student's behalf has been extinguished under state law and the foster parent: (a)

is willing to make the educational decisions required of parents under IDEA; and (b) has no interest that would conflict with the interests of the student.

However, if a judicial decree or order identifies a specific person or persons under 1-4 above to act as the parent, then that person shall be determined to be the “parent” for IDEA special education purposes.

34 CFR 300.30 IDEA Definition of Parent

MCA 20-5-501 through 503 Parental Rights Definitions and Caretaker Relative MCA 20-7-461 Surrogate Parents

MCA 20-5-501-503 Caretaker Relative

ARM 10.16.3504(2) Surrogate Parent and Foster Parent

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

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 student and should encourage the parents to work together in the best interests of the student.

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 student 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 student, that the student 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 student from Special Education?**

The district must conduct a comprehensive reevaluation of the student and hold an evaluation team meeting to make the determination that the student 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 does not need to 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 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.

**17. What is "informed consent"?**

Prior to starting an evaluation, the school district must have the parent's informed consent. In accordance with 34 CFR 300.9, consent means that the parent has been fully informed of all information relevant to the activity for which consent is sought. The district must inform the parent of the types of assessments that will be conducted prior to obtaining consent. The parent cannot give his/her consent, through a letter or otherwise, before the school district has identified the specific areas of assessment. This is accomplished through the use of the Evaluation Plan form which is prepared by the district and serves as notice to the parents, as well as documenting the parents' informed consent.

34 CFR 300.301 Initial Evaluations

**18. How does the parent give informed consent for a comprehensive evaluation?**

Parents give informed consent by signing the Evaluation Plan form which is prepared by the district and serves as notice to the parents, as well as documenting the parents' informed consent.

**19. What is the district's responsibility if the parent repeatedly fails or refuses to produce the student 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 student for evaluation.

34 CFR 300.301 Initial Evaluations

**20. Are there any circumstances (other than the parent not producing the student) 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

**21. 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.

**22. Which assessments are required for an initial evaluation?**

The IDEA regulations and Montana Administrative Rules require the Evaluation Team to assess the student 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

**23. When is parental consent needed for a transition assessment?**

Generally, parental consent is not required prior to conducting age-appropriate transition assessments because the purpose is to develop post-secondary goals. Consent is only needed for a transition assessment if that assessment is part of an initial comprehensive evaluation to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs. In addition, if the IEP team determines that a reevaluation is warranted to obtain academic achievement and functional performance, parental consent would be required.

OSERS letter to Olex, February 22, 2019

**24. Are there factors that may prohibit a student's identification as a student with a disability?**

Yes. The [Criteria Checklist\(s\)](#) for each disability category lists the specific exclusionary factors for that disability. They can be found on the OPI website under Forms/Guides.

34 CFR 300.306 Determination of eligibility

ARM 10.16.3019

ARM 10.16.3019A

ARM 10.16.3019B

ARM 10.16.3019C

**25. 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 student continues to be a student with a disability, and because of that disability needs special education and related services; and additions or modifications to enable the student 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 student'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

**26. What is the purpose of a reevaluation?**

The reevaluation determines whether the student continues to have a disability and needs special education; whether any additions or modifications to the special education and related services are needed to enable the student to meet the measurable annual goals and to participate, as appropriate, in the general education curriculum; or the parent has requested a reevaluation.

34 CFR 300.305 Additional Requirements for evaluations and reevaluations

**27. 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, like 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 student not receiving a FAPE.

34 CFR 300.305 Additional Requirements for evaluations and reevaluations

**28. 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.

Based on the review and input from the student'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

**29. 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.

**30. 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

**31. 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 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

**32. Who are the required members of the Evaluation Team?**

- The parent(s) of the student.
- Not less than one regular education teacher of the student (if the student is, or may be, participating in the regular education environment).
- Not less than one special education teacher of the student or, if appropriate, at least one special education provider of the student.

- If the student is being evaluated for a specific learning disability, at least one person qualified to conduct individual diagnostic examinations of the student, 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 student 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 student, 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 students.

**33. 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.

**34. 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 student 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

**35. 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

**36. 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.

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

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

**38. 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 student is no longer a student 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.

**9. May the district deny or delay an evaluation/services because the district believes the student should be on medication or has recently been placed on medication?**

No. The IDEA (34 CFR 300.174) does not allow the district to deny or delay an evaluation/ services because of issues related to medication.

**10. May the district send a student home due to not taking medication?**

The IDEA (34 CFR 300.174) does not allow the district to deny or delay evaluation/services because of issues related to medication. If a district chooses to remove a student under these circumstances the removal would be considered a suspension and count toward the ten-day rule.

**11. What is needed for a student to qualify for special education and related services?**

There are two parts to the eligibility determination. First, the evaluation team must determine and document the student meets the criteria of one or more of the disability categories; and, second, the evaluation team must determine and document that the student needs specialized instruction because of the identified disability(ies).

34 CFR 300.8 Child with a disability

**12. What is “specialized instruction”?**

Specialized instruction is adapting, as appropriate to the needs of the student, the content, methodology, or delivery of instruction to meet the unique needs of the student that result from the student’s disability, and to ensure the student access to the general curriculum. The specialized instruction must be designed to meet the educational standards of the state.

34 CFR 300.39 (c)(3) Specially designed instruction

**13. May a student meet disability criterion, 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

**14. 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

**15. When a student is initially identified as a student with a disability, when should the IEP be developed?**

IDEA requires that a meeting to develop an IEP be conducted within 30 calendar days from the date the student was determined eligible. There is nothing in the IDEA regulations that prohibits the development of the IEP earlier than 30 days, including immediately following the eligibility determination. Services should be implemented as soon as possible following parental consent to the developed IEP.

34 CFR 300.323 When IEPs must be in effect

**16. 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 student with a disability. The term “related service” means developmental, corrective and other supportive services as are required to assist a student with a disability to benefit from special education. If “Speech/Language” is required to assist a student 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, not related services, when they are the only services identified on the IEP.

34 CFR 300.34 Related services

34 CFR 300.39 Special education

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

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

A student demonstrates a communication need when and if the student uses a language or mode of communication (i.e., sign language, augmentative communication device, PEC system) that is different from those of school staff and peers. The purpose of this question on the IEP is to document the IEP team considered how information will be given to and received from a student with an alternate language or mode of communication.

A student who uses an alternate mode of communication, other than verbal English, would be demonstrating a “communication need.”

“Speech-language pathology” services include identification of students 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, students, and teachers regarding speech and language impairments.

Speech-language services must address specific needs within the verbal English language “mode” of communication.

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

**18. 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.

**19. 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)

**20. What is a related service?**

A related service is any service provided to allow a student with a disability to benefit from their special education services. A related service is only available to a student who is receiving special education services.

34 CFR 300.34 Related services

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

Parent counseling and training means assisting parents in understanding the special needs of their student; 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 student's IEP or IFSP.

34 CFR 300.34(c)(8) Related services

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

No.

34 CFR 300.8 Child with a disability

**23. 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

**24. 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

**25. 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

**26. May a student be identified for both Gifted and Talented and special education and related services?**

Yes. A student who has high abilities can also be identified as eligible for special education and related services under one or more category of disability. Students who are gifted and who have a disability are often referred to as "twice exceptional."

**27. What is a gifted and talented student?**

"Gifted and talented student" means student of outstanding abilities who are capable of high performance and require differentiated educational programs beyond those normally offered in public schools in order to fully achieve their potential contribution to self and society. The students so identified include those with demonstrated achievement or potential ability in a variety of worthwhile human endeavors.

MCA 20-7-901

**28. How can a gifted student who has average academic achievement be determined eligible for special education and related services?**

The determination that a student is eligible for special education and related services is a two-part test. The Evaluation Team must establish that a student demonstrates characteristics of one or more of the disability categories, and that, because of that disability, the student needs special education services. The evaluation team must ensure that the evaluation of the student includes all areas of suspected disability. It is important to remember when the team is conducting a discrepancy analysis to determine the presence of a Specific Learning Disability, the comparison is between the student's measured intellectual ability and academic achievement, not to the average scores. It is possible for students who demonstrate very high intellectual abilities to score in the average range on measures of academic achievement and to demonstrate the significant discrepancy necessary to qualify as a student with a SLD.

**29. How can the need for special education be established for a gifted student who has average academic achievement?**

During any evaluation, the team must consider the unique circumstances of the student in determining the need for special education services. For students with high abilities, the team may determine that the identified disabling condition is impacting the student's ability to learn because, despite the implementation of targeted interventions, the student's academic performance in one or more areas continues to be below what would be expected given the student's unique circumstances.

**30. Does a student have to be identified as Gifted and Talented for these considerations to apply?**

No. The consideration of a student's high abilities does not require that the student previously be identified as gifted. The Evaluation and IEP teams must consider the unique circumstances of each student and make determinations of qualification and needs that are appropriate to the student and not dependent on the student's identification for any program of services.

**31. How does the IEP address the needs of a twice exceptional student if the district does not have a Gifted and Talented program?**

As with any student with a disability, the IEP of a twice exceptional student must address the educational needs that have been identified. If the student's IEP team has determined that the student needs services such as acceleration, content extension, social-emotional supports, etc., the IEP developed for the student must address those needs. These types of services would be considered a part of the full continuum of services the district must make available under the IDEA.

**32. What does the term "masking" refer to in relation to twice exceptional students?**

When a high-ability student also has an educational disability, the conditions can sometimes result in the student performing at an average level and neither the disability nor the high ability are readily apparent. This phenomenon is known as "masking." Masking can result in the under identification of students with disabilities who also have high intellectual abilities. Evaluation teams need to be aware of this phenomenon and take steps to investigate this possibility when evaluating a student who appears to have high abilities but demonstrates overall average performance academically.

**33. Are there strategies that can help address the needs of twice exceptional students?**

Here are few strategies to use:

- Avoid addressing only the student's weaknesses. A focus on only the weaknesses can result in students becoming frustrated and disruptive.
- Give attention to developing their gifts.
- Provide a supportive environment that values individual abilities.
- Teach strategies to compensate for their learning problems alongside direct instruction

**34. Is dyslexia considered a specific learning disability under IDEA?**

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

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

34 CFR 300.8 Child with a disability

**35. Does a diagnosis of dyslexia automatically qualify a student for special education and related services?**

No. The determination of a student's eligibility for special education and related services is made by an evaluation team which includes school district staff and the parents. This team must conduct a comprehensive evaluation and determine if the student meets the eligibility criteria for a disability, and because of that condition, the student needs specially designed instruction in order to benefit from the education services provided. It is possible, and is often the case, that a student who has dyslexia does not demonstrate a need for specialized instruction and, therefore, does not qualify for special education.

**36. 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

**37. 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.

Public Law 93-112

**38. Does using the label of a specific learning disability, in addition to or instead of dyslexia, result in inadequate interventions for students 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 student. The IDEA 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 students 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

**39. 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: [opt.mt.gov](http://opt.mt.gov)

## **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 regarding the provision of FAPE and may be presented as evidence at a hearing in a due process complaint.

34 CFR 300.502(c) Independent Educational Evaluation

### **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 student and determine whether the student is a student with a disability and the nature and extent of the special education and related services that student needs. The school district must ensure an evaluation is sufficiently comprehensive to assess the student in all areas of suspected disability and must identify all of the student’s special needs whether they are commonly linked to the disability category to which the student 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.

34 CFR 300.502(e) Independent Educational Evaluation

U.S. Dept. of Educ. Discussion of the Federal Regulations, 71 Fed. Reg. 46689-46690 (August 14, 2006)  
Letter to *Anonymous*, 56 IDELR 175 (OSEP 2010); and *Letter to Anonymous*, 20 IDELR 1219 (OSEP 1993)

**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. If a district determines a medical evaluation is necessary, who is responsible for obtaining that evaluation?**

The district.

N.B. v. Hellgate Elementary School District (9<sup>th</sup> Circuit 2008)

**6. If a district requests a medical evaluation to determine if a student is eligible for special education, who pays for the medical evaluation?**

The district.

34 CFR 300.304(c)(4)

**7. 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.

**8. 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.

**9. 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.

**10. 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.

**11. 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.

**12. 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.

**13. 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 childcare 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.

**14. May a child younger than eight be identified in a disability category other than developmental delay?**

Yes. A 3–8-year-old child could be identified under any disability category(ies).

34 CFR 300.8 Child with a disability

**15. What must the IEP team do when a child with a Developmental Disabilities (DD) label turns eight?**

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 eight having a developmental delay

**16. When a child turns eight 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).

**17. 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.

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

No.

**19. 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 RtI methods and/or a severe discrepancy to identify a child as having a specific learning disability.

**20. 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 6<sup>th</sup> 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 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;
- Tier 3 where they receive instruction designed to meet their specific individual needs.
- If a student is suspected of having a disability the RtI process cannot delay the referral.
- RTI is not a prerequisite for making an initial evaluation.

## **2. What types of interventions are required?**

The IDEA gives the school district the authority to “use a process that determines if the student responds to scientific, research-based intervention as a part of the evaluation procedures” for determining whether a student 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.

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 those 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;
- 10.16.3019(a) Response To Scientific, Research-Based Intervention In LD Identification
- 10.16.3019(b) Severe Discrepancy In Learning Disability Identification
- 10.16.3019(c)(2) Documentation Requirements In Learning Disability Identification

#### **4. In what setting do the interventions occur?**

Most of the activities involved in a response to an 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.

#### **2. When must an IEP be in effect?**

For initial IEPs, the IEP team is required to meet within 30 days of the Evaluation Report meeting where a determination has been made that a student needs special education and related services. The IEP must be implemented upon the parent providing written consent of the approval of the IEP.

At the beginning of each school year, the local education agency must have an IEP in effect, for each student identified under IDEA within its jurisdiction. IEP teams are required to meet at least annually to review the student’s IEP. An IEP may have a duration of not more than 12 months.

If the IEP team does not meet to review and revise the annual IEP, the district will not have a current IEP for that student. The student will continue to receive special education and related services. The student’s last agreed-upon IEP will continue to be implemented until the IEP team meeting takes place and written parental consent is obtained.

34 CFR 300.323 When IEPs must be in effect

10.16.3505 Parental Consent

34 CFR 300.324 Development, review, and revision of IEP

#### **3. 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.

#### **4. 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. Minor articulation errors in which the student is still understandable is not considered a communication need.

34 CFR 300.324 Development, review, and revision of IEP

**5. Does checking “Yes” for, “Does the student have communication needs”, require a communication goal in the IEP?**

No. Checking yes on the IEP does not automatically require the IEP to contain a communication goal. The identified need could be addressed through various supports and services which may or may not include speech language services.

**6. 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

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

Yes. If the team determines it is appropriate.

**8. 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

**9. 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

**10. 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

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

The IEP for each student 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

**12. 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

**13. 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 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

**14. 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

**15. 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

**16. 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 student's other educational needs that result from the student's disability to be prepared to attain their postsecondary goals.

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

**17. Are IEP progress reports required for measurable postsecondary goals?**

No.

34 CFR 300.320 Definition of individualized education program

**18. 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.

**19. When is the Summary of Performance required?**

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

34 CFR 300.305 Additional Requirements for Evaluations and Reevaluations

**20. What must the Summary of Performance contain?**

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

34 CFR 300.305 Additional Requirements for Evaluations and Reevaluations

**21. 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.

**22. 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 student to be involved in and make progress in the general curriculum, or for preschool children, to participate in appropriate activities.

**23. Must a Measurable Annual Goal be written so that a student makes progress toward meeting a State-approved grade-level standard?**

Yes. States set academic content and achievement standards, and IEPs must be aligned with the State's academic content standards.

34 CFR 300.309(a)(1) Determining the existence of a specific learning disability OSERS January 12, 2015, letter to Schroder

**24. May short-term objectives be written to help a student make progress toward meeting a State-approved grade-level standard?**

Yes. Short-term objectives and benchmarks must be included for any students taking the alternate statewide assessment but 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

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

Yes.

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

No. Benchmark or short-term objectives are required only for students 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

**27. If a student is taking the alternate assessment, do short-term objectives need to be written for all service areas?**

Yes.

34 CFR 300.320(a)(2)(ii)

**28. Are all students included in statewide and districtwide assessments?**

Yes. A State must ensure that all students with disabilities are included in all general State and district-wide assessment programs with appropriate accommodations and alternate assessments, if necessary, as indicated in their respective IEPs.

34 CFR 300.160(a)

**29. 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 student'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 comply 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 student's progress toward their IEP goals are made.

34 CFR 300.320(a)(3)

**30. 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

**31. Must the progress report contain data?**

Yes, the Progress Report Form is how school districts report the progress towards meeting measurable annual goals. Just checking one of the boxes (expected to meet goal, met goal, goal not yet started, or not expected to meet goal) is not sufficient to report on student progress. The selected box must be justified by providing supporting data.

34 CFR 300.320(a)(3)(ii) Definition of individualized education program

**32. When a student is not making expected progress toward his or her measurable annual goals, what must the student's IEP Team do?**

If the box on the Progress Report Form "not expected to meet goal" is selected, the IEP team must consider reviewing and revising the IEP as necessary. If a student is not making the progress as expected on his or her measurable annual goals, despite receiving the services and supports identified in the IEP, the IEP team must review and revise the IEP, if necessary, to ensure the student is receiving appropriate interventions, special education, related services and supplementary aids and services to ensure the measurable annual goals are individualized and ambitious.

Questions and Answers on U.S. Supreme Court Case Decision Endrew F. v. Douglas County Sch. Dist., RE-1 Question 15, (US Dept. of Ed. 2017)

34 CFR 300.324(b)(1)(ii)(A) Development, review, and revision of IEP

34 CFR 300.320(a)(3)(ii) Definition of individualized education program

**33. How can data be included in a progress report, how can it be reported in AIM, and what should the data contain?**

Data that support the reported gain or lack of progress must be included in the data/description section of the progress report in the AIM system. The data should contain both qualitative and quantitative information (some form of measurement) to indicate the progress on a specific goal. Data must be reported on all IEP goals.

**34. 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

**35. 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.

34 CFR 300.320 Definition of Individualized Education Program

**36. 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

**37. 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.

**38. 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 student 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 students without disabilities, or from getting to school in the same manner as students without disabilities. If the student is able to use the same transportation or get to school in the same manner as students 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 student receives.

34 CFR 300.34 Related Services

**39. What is an Individual Transportation Contract?**

Pursuant to Montana's transportation laws, when a student has transportation identified as a related service in an IEP, the trustees of a district may set up an Individual Transportation Contract with the parent, under which the district would pay the parent for individually transporting the student to and from school. This is one option for fulfilling the district's obligation to furnish transportation. Individual Transportation Contracts are reimbursed semi-annually by state and county sources of transportation revenue, using the rates outlined in Mont. Code Ann. § 20-10-142. Districts receive state and county reimbursement for Individual Transportation contracts at the end of March for the first semester and the end of June for second semester. Then, the district reimburses the parent directly for transportation services. This process is separate from the requirements that are set out in the IDEA for when transportation is a related service. The amount the district receives under the state transportation reimbursement rates may not be enough to cover the full cost to the parents providing transportation as a related service.

MCA § 20-10-121

MCA § 20-10-101(2)(ii)

MCA § 20-10-124

MCA § 20-10-142(1)

MCA § 20-10-145

ARM 10.7.106(8)

**40. If the District enters into a transportation arrangement with a parent to provide transportation as an IEP related service, is there a set rate for reimbursement for the service?**

No. Neither the IDEA nor Montana state laws set out a specific rate for reimbursement to a parent providing transportation as an IEP related service. When an IEP team determines transportation is required as a related service, the service must be reflected in the student's IEP. Transportation as an IEP related service must be provided in accordance with the IEP and at public expense, with no cost to the parent. The district determines what the amount of reimbursement should be, based on the individual circumstances set out in the student's IEP, ensuring there is no cost to the parent to provide transportation as a related service. The United States Court of Appeals for the Ninth Circuit has determined that reimbursement to parents at the IRS mileage rate is appropriate; therefore, the IRS mileage rate will be acceptable in most circumstances.

Montana's transportation laws set out specific reimbursement rates for what a district will receive for reimbursement from state and county sources of transportation revenue when a parent transports a student to school. Pursuant to Montana transportation laws, districts are required to set up an Individual Transportation Contract with a parent that sets out the amount the district will get for reimbursement for that particular student, which the district can then pass along to the parent. This process is separate from the requirements that are set out in the IDEA for when transportation is a related service. The amount the district receives under the state transportation reimbursement rates may not be enough to cover the full cost to the parent providing transportation as an IEP related service. Districts may use other funds, including IDEA funds, to cover the additional cost to parents.

Mont. Code Ann. 20-10-142, 20-10-145, 20-10-146

Admin. Rule Mont. 10.7.106(8), 10.16.3820

34 CFR 300.34(16)  
34 CFR 300.202(a)(2)

U.S. Dept. of Educ. Discussion of the Federal Regulations, 71 Fed. Reg. 46569 (August 14, 2006)  
S.L. v. Upland Unified School Dist., 63 IDELR 32 (9<sup>th</sup> Cir. 2014)

**41. 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

**42. 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.

**43. 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

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

No.

34 CFR 300.320 Definition of individualized education program

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

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

**46. 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, they 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

**47. Who are the required members of the IEP Team?**

- The parent(s) of the student, or the adult student.
- Not less than one regular education teacher of the student (if the student is, or may be, participating in the regular education environment).
- Not less than one special education teacher of the student or, where appropriate, at least one special education provider of the student.

An administrator or designee who –

- Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of students with disabilities.
- Is knowledgeable about the general education 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 student, including related services personnel as appropriate; and
- Whenever appropriate, the student.
- To the extent appropriate, with consent of the parents or a student 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

**48. Must an IEP team have a general education teacher as a member?**

Yes. Any student who participates in general education classes or, if there is a possibility of the student participating in any general education classes, must have the general education teacher(s) on the IEP team. If the general education teacher(s) cannot attend an IEP meeting, the teacher must be excused using the excusal form.

34 CFR 300.321 IEP Team

**49. 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 students 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

**50. 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 student, 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

**51. 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

**52. Who can participate as the “parent” in developing an IEP?**

A “parent” is defined as:

- a biological or adoptive parent of a student.
- a guardian, but not the state if the student is a ward of the state.
- a person acting in the place of a parent (such as a grandparent or stepparent with whom the student lives, or a person who is legally responsible for the student'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

**53. 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 sign the IEP providing consent, the most recent agreed upon IEP should be implemented until the parent consents to another IEP.

When parental consent for annual placement has not been obtained and has not been specifically refused or revoked, the district must informally attempt to obtain consent from the parent. If parental consent cannot be obtained within a reasonable time, the district must 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.

The required written notice that a District must send to a parent may include the following information:

- Student's name.
- Date of the IEP that needs approval.
- Descriptions of each of the District's attempts to obtain consent.
- A statement requesting approval of the IEP (include a copy of the IEP with the notice).
- The address of where the signed IEP should be sent or the location of where it may be dropped off in person.
- Contact information of the person who can discuss any concerns the parent may have.

- A statement informing the parent that if the District does not receive a response from the parent within fifteen days of the date of the notice, the IEP in question will be implemented as written, without parental consent, subject to the parent's right to a due process hearing.
- A statement that the *IDEA Special Education Part B Procedural Safeguards Notice* contains more information on the parent's right to an impartial due process hearing and the additional procedural safeguards available to the parent in accordance with the IDEA and that the parent has the right to request a copy.

ARM 10.16.3505 Parental Consent

**54. 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

**55. 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.

**56. May districts use electronic mail for administrative purposes under IDEA?**

Under the IDEA, parents may elect to receive prior written notice, procedural safeguards and due process complaint notices by electronic mail. 34 CFR 300.505. The IDEA does not address the use of electronic mail for other required documents. OSEP has stated that it is not prohibited to use electronic mail to carry out administrative matters under IDEA, as long as the parent and public agency agree to do so.

*U.S. Dept. of Educ. Discussion of the Federal Regulations, 71 Fed. Reg. 46687 (Aug. 14, 2006) [OSEP Letter to Breton](#) (March 21, 2014).*

**57. May districts accept electronic or digital signatures from parents indicating consent on required documents under IDEA?**

The IDEA does not directly address the use of electronic or digital signatures for obtaining written parental consent. Consent means that the parent has been fully informed of all the information relevant to the activity for which consent is sought, in their native language or other mode of communication, and the parent understands and agrees in writing.

OSEP has indicated that electronic signatures for consent may be used, provided there are necessary steps to ensure appropriate safeguards to protect the integrity of the process, consistent with 34 CFR 300.9(b). The safeguards should include a statement that indicates the parent has been fully informed of the activity and that consent is voluntary on the part of the parent consistent with 34 CFR 300.9.

The FERPA allows parents to use electronic signatures for consent to disclose records as long as the process (1) identifies and authenticates a particular person as the source of the electronic signature and (2) indicates the person's approval of the information contained in the electronic format. Therefore, districts may choose to use electronic signatures if the district is taking steps to ensure the integrity of the process. There are many options for electronic signatures. Districts will need to consult with their information technology staff to ensure proper safeguards are in place for protecting student privacy while transmitting and storing electronic information that contains personally identifiable information. All documents and documentation of electronic signatures should be printed and placed in the hard copy special education folder and uploaded in AIM.

34 CFR 300.9(a) & (b)

34 CFR 99.30(d)

*U.S. Dept. of Educ. Discussion of the Federal Regulations*, 71 Fed. Reg. at 46629 OSEP Letter to Breton (March 21, 2014)

**58. When is a Student required to have a behavior intervention plan (BIP) and does the BIP have to be included in the Student's IEP?**

The only time the IDEA refers to a BIP is when a student has had a change in placement due to disciplinary action and the manifestation determination finds a student's behavior was a manifestation of the student's disability. The IEP team then must either conduct a functional behavior assessment and implement a BIP or if the student already has a BIP, review and revise as necessary to address the negative behavior. In addition, BIPs are referred to one time under Montana special education law on aversive treatment procedures, which directs the BIP with aversive treatment procedures to be developed and incorporated or attached as part of the IEP.

These are the only two times that a BIP is specifically required. However, as part of developing the IEP the IEP team must, in the case of a student whose behavior impedes the student's learning or that of others, consider the use of positive behavior interventions and supports, and other strategies to address the behaviors, one of which may be a BIP.

As to whether or not a BIP must be included in the IEP, there is not a direct yes or no answer found in federal or state special education law. OPI's past guidance was to keep the BIP separate from the IEP so that it could be revised without an IEP amendment. OPI is changing its guidance to recommend that BIPs are incorporated or attached in IEPs, so that all members of the IEP team, which includes parents, discuss the BIP to determine what behavioral supports and strategies are necessary and when amendments need to be made. If the BIP is not incorporated in the IEP it would allow for unilateral changes to the BIP leaving members of the IEP team not knowing what is in the plan, and the procedural safeguards of the IDEA would not apply, going against the intent of the IDEA.

34 CFR 300.530

ARM 10.16.3346

34 CFR 300.324(a)(2)

**59. If a student's behavior impedes their learning or the learning of others, what must be included in the IEP?**

When an IEP team determines that a student's behavior impedes the student's learning or that of others, they must consider the use of positive behavior interventions and supports, and other strategies to address the behavior and incorporate what is determined necessary for FAPE into the IEP. IEP teams should determine whether behavioral supports are necessary in the areas of special education and related services, supplementary aids and services, and program modifications or supports for school personnel. Please see the OSEP Dear Colleague Letter from August 1, 2016, regarding students whose behavior impedes their learning or the learning of others for additional discussion: <https://sites.ed.gov/idea/files/dcl-on-pbis-in- iebs-08-01-2016.pdf>

34 CFR 300.324(a)(2)

## **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 students with disabilities and nondisabled students in extracurricular and other nonacademic activities.

34 CFR 300.320(a)(4)(i) Definition of individualized education program

34 CFR 300.320(a)(4)(ii) Definition of individualized education program

34 CFR 300.320(a)(4)(iii) Definition of individualized education program

34 CFR 300.107 Nonacademic services

**2. What is a school district's responsibility regarding 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

## **Emergency Operations**

**1. What is an Emergency Operation Plan/School Safety Plan?**

A plan adopted by the district's board of trustees to address issues of school safety relating to school buildings and facilities, communication systems, and school grounds with input from the local community and that addresses coordination on issues of school safety, if any, with the county interdisciplinary child information and school safety team provided for in MCA 52-2-211.

**2. How could the IEP address the Emergency Operation Plan/School Safety Plan for students with special needs?**

The IEP team could review the Emergency Operation Plan/School Safety Plan adopted by the district while considering the student's individual needs and addressing those needs in the IEP in the event of a disaster drill or actual emergency.

**3. What should be included in the Emergency Operation Plan/School Safety Plan in the IEP for students with special needs?**

The IEP team should discuss all areas that would address the student's needs in the event of an emergency. Things to consider are mobility, medication, health care needs, safety, communication, behavioral, visual, sensory, and other considerations purposed by the IEP team.

**4. Who would be responsible for implementing the Emergency Operation Plan/School Safety Plan for students with special needs?**

The IEP team would assign responsible district personnel to assist the student in the event of a disaster drill or actual emergency to ensure the student's needs are being addressed.

## **Student Attendance**

**1. If a student does not attend school for 10 consecutive days, is the school district required to un-enroll the student?**

No. A school district is not required to un-enroll a student because they have missed 10 consecutive days of school. The so called 10-day rule is only for when school districts are submitting the enrollment count for the Annual Number Belonging (ANB). School districts must follow their own district policy to end enrollment for students.

ARM 10.20.102 and OPI Memo to School District Officials re: FY 2019 School Count for ANB Reporting to the OPI (August 31, 2018) <http://opi.mt.gov/LinkClick.aspx?fileticket=4MB7jHoWI-E%3d&portalid=182>

**2. Can a student on an IEP be found truant?**

Yes. A student on an IEP could be found truant. Truant means "the persistent nonattendance without excuse, as defined by district policy, for all or any part of a school day equivalent to the length of one class period of a child required to attend school..." If a school district's attendance officer finds a child is truant, they may make a reasonable effort to notify the parent or guardian. If the child is discovered truant after the attendance officer has made a reasonable effort to notify the parent or guardian, then the attendance officer may require the parent or guardian and child to meet with an individual designated by the school district to formulate a truancy plan. If the parent or guardian fails to meet with the designated individual or fails to uphold the responsibilities of the plan, the attendance officer may refer the matter to the prosecuting attorney in a court of competent jurisdiction for a determination regarding whether to prosecute the parent or guardian.

MCA § 20-5-106

MCA §§ 20-5-102 and 103

**3. When does an IEP team need to consider a student's excessive absences or truancy?**

The IEP team should consider a student's excessive absences when the student's absences are adversely affecting the student's learning. If a student's behavior impedes their learning or the learning of others, then the IEP team must consider the use of positive behavior interventions and supports, as well as other strategies to address the behavior. An IEP team may need to consider additional evaluations of the student to determine the cause of the behavior. Such evaluations may include, for example, functional behavioral assessments or psychological evaluations.

## **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) Parental consent

### **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) Parental consent

### **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) Parental consent

### **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(b)(4) 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 student, 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.

Required members of the IEP Team include:

- The parent(s) of the student, or the adult student.
- Not less than one regular education teacher of the student (if the student is, or may be, participating in the regular education environment).
- Not less than one special education teacher of the student or, where appropriate, at least one special education provider of the student.
- An administrator or designee who -
  - (i) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of students 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 student, including related services personnel as appropriate.
- Whenever appropriate, the student.
- To the extent appropriate, with consent of the parents or a student 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

### **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. If a parent cannot attend an IEP team meeting, does the parent need to complete an excusal form?**

No.

**4. 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.

**5. 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.

**6. 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.

**7. 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.

**8. 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.

**9. 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.

**10. 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.

**11. If the child has more than one regular education teacher responsible for carrying out a portion of the IEP, must all the teachers attend the IEP meeting?**

No. If the child has more than one regular education teacher responsible for carrying out a portion of the IEP, the LEA may designate which teacher or teachers will serve as the IEP member(s) considering the best interest of the child. An LEA could also agree that each teacher attend only the part of the meeting that involves modification to, or discussion of, the teacher’s area of the curriculum.

34 CFR 300.321(e), U.S. Dept. of Educ. Discussion of the Federal Regulations, 71 Fed. Reg. 46675 (August 14, 2006)

**12. What is the designated regular teacher?**

When a student has more than one regular education teacher, the school district may choose to designate one regular education teacher of the student to participate in the student’s IEP development. This teacher would be the designated regular education teacher.

U.S. Dept. of Educ. Discussion of the Federal Regulations, 71 Fed. Reg. 46675 (August 14, 2006)

**13. What is the role of the designated regular education teacher in the IEP process?**

The designated regular education teacher is responsible for representing all the student's regular education teachers in the IEP process. The designated regular education teacher must be able to convey to the IEP team information regarding the student's current performance in each of their classes, any concerns noted by any regular education teacher of the child, and information regarding the general education curriculum and the grade-level expectations for each of the student's classes.

**14. Does a related service provider, who has been invited to an IEP meeting and cannot attend, must be excused using the excusal form?**

If a related service provider is on the IEP team, written consent from the parent would be required for the service provider to be excused from attending an IEP team meeting, in whole or in part, when the IEP team meeting involves a modification to, or discussion of, the IEP team member's related service or area of the curriculum.

34 CFR 300.321(e), Comments page 46675

**15. 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:

- necessary information regarding IEP services not recorded elsewhere in the IEP document.
- 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. Can physical/occupational therapy replace a student's health enhancement or physical education program (regular or adapted)?**

No. Physical/Occupational therapy may be needed to support one or more of the goals in the student's physical education program. Physical/Occupational therapy is not a substitute for the health enhancement or physical education program.

**6. What is adapted physical education?**

Adapted physical education is special education. It is a diversified program of developmental or remedial activities designed to enhance the gross motor abilities of students who have substantial medical, orthopedic, and/or neurological conditions that preclude a student from participating in the regular health enhancement/physical education program.

**7. 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.

**8. May IEP meetings be electronically recorded?**

The OPI neither requires nor 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.

**9. 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.

**10. 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.

**11. What is a student record?**

Student record is defined in the Family Educational Rights and Privacy Act as all those records that are directly related to a student; and maintained by the school district. In Montana, the special education record retained by each LEA shall include, access log, request for initial evaluation, permission for evaluation, summaries of assessments, test protocols, and other information that are not subject to sole possession requirements of FERPA, evaluation reports, individualized education programs, and reports of the student's progress toward meeting annual goals of the individualized education program.

ARM 10.16.3560(3) Special Education Records

20 U.S.C. 1232g(a)(4) FERPA

**12. What steps are necessary to protect confidentiality of student records?**

Student special education records must be stored in a secure location, such as a locked file cabinet. Only those individuals who have legitimate educational interests regarding the student may have access to the records. Typically, only parents, adult students, school officials, and federal and state education agency staff would have access to these records. The Administrative Rules of Montana require the school district to keep a log of those individuals who have accessed the record and the reason for the access.

ARM 10.16.3560 Special Education Records

20 U.S.C. 1232g(a)(4) FERPA

34 CFR 300.535 Referral to and action by law enforcement and judicial authorities

34 CFR 300.614 Record of access

**13. Is the school district required to give parents or eligible students copies of educational records?**

Generally, no. Schools are required to allow parents and eligible students to inspect and review education records, but schools are not required to provide copies of education records unless the circumstances effectively prevent the parent or eligible student from being able to review the records without being sent a copy, and the school does not want to arrange another way for the parent or eligible student to view the records. For example, if the parent does not live within commuting distance from the school and could not get to the school site to view the records, the school is required to provide a copy or to make other arrangements for the parent to inspect and review the records.

34 CFR 300.613 Access rights

**14. How long should a district maintain copies of special education records?**

In Montana, records may be destroyed when the board of trustees determine the records have met the retention period, contained in the local government records retention and disposition schedules. The local government retention schedule is set by the Local Government Records Committee. Schedule 7 pertains to school districts and can be found on the Secretary of State's Website. Schedule 7 addresses the requirements for special education records and references the IDEA requirements. If a school district has questions regarding record retention the questions should be directed to the Local Government Records Committee.

34 CFR 300.624 (a), (b)

Destruction of Records 20-1-212, MCA

Secretary of State and Schedule 7

**15. Can a district charge a fee for copying a record?**

A district may charge a fee for copies of records that are made for parents if the fee does not effectively prevent the parent from exercising their right to inspect and review those records. The district may not charge a fee for staff time to search for and/or retrieve information.

34 CFR 300.617 Fees

**16. 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 student needs 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 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.
- 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.

**17. What is a mini-IEP or mini-ER in the AIM system?**

A mini-IEP or mini-ER is an electronic document created to enter data into the AIM system when the typical IEP or ER process is not appropriate. This tool allows the state to have valid and reliable data in a timely manner.

**18. When must a mini-IEP be created in the AIM system?**

A mini-IEP must be created in the AIM system when an out-of-state student transfers to a Montana district and the current IEP is accepted by the receiving district or when an in-state student transfers to another Montana district and there is no record in AIM. The process to complete a mini-IEP in AIM is as follows

- Select create a new IEP
- Meeting date and start date will be the date of the hard copy IEP currently in use
- Put in the date of the last reevaluation
- Select save
- Select Plan Outline editor
- Select “Student Information”
- Click on the “Refresh Student Information” button
- Select save
- Select Notes editor
- Write in the note section “This IEP is for data purposes only, the original IEP exists in the hard copy file”
- Select save
- Select Documents tab
- Locate the IEP
- Click once on the IEP to highlight it
- Select “Lock/Unlock” button to lock the IEP

## **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 student'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 student 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

*OSEP Letter to Anonymous August 2, 2008*

*U.S. Dept. of Educ. Discussion of the Federal Regulations, 71 Fed. Reg. 46682*

**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 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 student while the determination of the students' 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

### **Highly Mobile Students**

Highly mobile students include students experiencing frequent family moves into new school districts, such as military-connected students, migrant students, students in the foster care system, and students who are homeless.

**1. Should highly mobile students have timely and expedited evaluations and eligibility determinations?**

Yes. When a student transfers during an evaluation process, both school districts must coordinate to ensure timely completion of the evaluation. The student must be evaluated in a timely manner and without undue delay so that eligible students can receive FAPE.

This applies to students being initially evaluated even though the 60-day timeline for an initial evaluation is not in effect if the parent and district have agreed to a specific timeline for the evaluation.

34 CFR 300.101 Free appropriate public education (FAPE)

34 CFR 300.111 Child find

34 CFR 300.201 Consistency with State policies

34 CFR 300.301 Initial evaluations

OSERS letter on highly mobile children

**2. Is the new school district responsible for comparable services, including extended school year, when initially providing FAPE to the transferring student?**

Yes. The new district must provide comparable services (in consultation with the parents) pending adoption of the current IEP, amendment of the current IEP, development of a new IEP, or during a reevaluation.

**3. If a student transfers to a new school during the summer, is the new district responsible for extended school year services in the IEP?**

Yes.

**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 eligible 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 who receive special education services and 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 students 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 student who receives special education services 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 student who receives special education services 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 students with current IEPs change school districts during the school year, the new district must provide the students 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 year 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 students 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](http://www.collegeview.com)
- Information from current evaluations such as WIAT II, Woodcock Johnson III, Statewide assessments
- Employment
- Occupational Aptitude Survey and Interest Schedule (OASIS-3) [www.proedinc.com](http://www.proedinc.com)
- Self-Directed Search (Form E): SDS [www.self-directed-search.com](http://www.self-directed-search.com)
- Wide Range Interest and Occupation Test (WRIOT-2) Second edition [www.proedinc.com](http://www.proedinc.com)
- ASVAB
- Brigance Employability Skills Inventory [www.brigance.net](http://www.brigance.net)
- Reading Free Vocational Interest Inventory: 2 [www.proedinc.com](http://www.proedinc.com)
- Work Adjustment Inventory [www.proedinc.com](http://www.proedinc.com)
- Career Game/Red Hot Jobs [www.careergame.com](http://www.careergame.com)
- Career Decision-Making System – Revised [www.agsnet.com](http://www.agsnet.com)

### **Training**

- Skills Assessment Module (SAM) [www.pineymountain.com](http://www.pineymountain.com)
- ASVAB
- Informal Assessments for Transition Planning [www.proedinc.com](http://www.proedinc.com) includes Transition Health Care Assessment and Self-Determination/Self-Advocacy Checklist
- Social Skills Rating System (SSRS) [www.PearsonAssessments.com](http://www.PearsonAssessments.com)
- Independent Living Skills
- Checklist of Adaptive Living Skills (CALS) [www.riverpub.com](http://www.riverpub.com)
- Skillstreaming Checklist (in Skillstreaming the Adolescent and the Prepare Curriculum) - [www.researchpress.com](http://www.researchpress.com)
- Vineland Adaptive Behavior Scales [www.agsnet.com](http://www.agsnet.com)
- Brigance Life Skills Inventory [www.brigance.net](http://www.brigance.net)
- Informal Assessments for Transition Planning [www.proedinc.com](http://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](http://www.riversidepublishing.com)
- The Transition Planning Inventory (TPI) [www.proedinc.com](http://www.proedinc.com)
- The Transition Behavior Scale [www.hes-inc.com](http://www.hes-inc.com)
- Enderle-Severson Transition Rating Scale [www.estr.net](http://www.estr.net)
- Transition Skills Inventory [www.proedinc.com](http://www.proedinc.com)
- Informal Assessments for Transition Planning [www.proedinc.com](http://www.proedinc.com) includes
  - Comprehensive Informal Inventory of Knowledge and Skills for Transition,
- Employability/Life Skills Assessment
- Gates to Adventure (for students who are deaf or partially hearing)  
[www.pepnet.org/train.asp](http://www.pepnet.org/train.asp)

### **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.

### **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.

### 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.

## **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. 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 §30.320 through 300.324 Individualized education programs

ARM 10.16.3324 Extended school year services

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

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.

**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 because 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 childcare 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. What documentation is necessary for the IEP team on the IEP when ESY has been determined necessary?**

The IEP must describe the measurable annual goals (MAGs) to be addressed in the ESY program, the beginning and end dates, the frequency and duration, location, and service provider(s) of the ESY services.

34 CFR § 300.106 Extended school year services.

**10. 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.

**11. 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.

**12. 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.

**13. 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.

**14. If an IEP team checks the box that ESY will be considered at a later date, must an IEP meeting be scheduled to finalize the determination?**

Yes, the date of the meeting must be documented, and the IEP team is required to meet by that date.

34 CFR § 300.106 Extended school year services.

**15. Who is responsible for providing ESY to a student who changes his or her residence during the summer?**

If a student changes his or her residence during the summer, to another district within the state (in-state transfer) ESY services must be provided either for the duration of time determined appropriate by the newly-designated IEP Team or until the new school district adopts the student's IEP from the previous school district or develops and implements a new IEP for the student.

If the student moves, during the summer, to another district outside of the state (out-of-state transfer) ESY services deemed comparable services must be provided either for the duration of time determined appropriate by the newly-designated IEP Team or until the new school district conducts its own evaluation and eligibility determination, if determined to be necessary by the new school district, and develops and implements a new IEP for the student, if appropriate, that is consistent with State and Federal law.

Letter to State Directors of Special Education, Issue 2 (OSEP 2013)

34 CFR 300.323(e)-(f) When IEPs must be in effect.

MCA 20-7-420 Residency requirements – financial responsibility for special education.

MCA 1-1-215 Residence – rules for determining.

**16. Who is responsible for providing ESY to a student who is transferring to another school district due to the structure of the school districts, not because the student moved residences?**

For example, a student is in 8th grade attending a K-8 school district and his or her IEP team determines the student needs ESY services during the summer. The following school year the student will attend a different district for 9th grade (high school). The student has not moved residences, the transfer is based on how the school districts are structured.

A student's IEP team must determine, on an individual basis, that ESY services are necessary for the provision of FAPE. It would be the student's IEP team at the K-8 district determining the need for ESY services. If ESY services are determined necessary for FAPE during the summer of 8th grade, this is an extension of the student's 8th-grade year and the K-8 district would continue to implement the current IEP. The two school districts could also develop a different plan that meets the needs of the individual student.

MCA 20-7-420 Residency requirements – financial responsibility for special education. MCA 1-

1-215 Residence – rules for determining.

34 CFR 300.106 Extended school year services.

## **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 non-aversive 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:

- quell a disturbance.
- provide self-protection.
- protect the pupil or others from physical injury.
- obtain possession of a weapon or other dangerous object on the person of the pupil or within control of the pupil.
- 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
- 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 student 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 student’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:

- 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
- 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.

**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, and 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 non-aversive 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 consequent 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 34 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 student 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 student'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 student's IEP includes behavioral strategies to address a particular behavior, can a student 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 student's IEP will have to be determined on a case-by-case basis considering the particular circumstances of that incident.

**42. Must the parents be notified each time aversive treatment procedures have been used?**

Yes, parents must be informed as soon as possible, but no more than 24 hours after the procedure is used, in writing, or orally if in writing is not possible, in their native language each time an aversive procedure is implemented on their child. ARM 10.16.3346(9)

**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 student needs, informed parental consent must be obtained unless the evaluation is administered to all students. If a request is for individualized behavior assessment for a particular student, 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**

**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 compounded 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.

**Graduation, Diplomas, Transcripts, Grades, Class Ranking and Honor Roll**

**\*\*This section has been updated as of 9.05.2025 and is posted on the OPI website as Chapter 1. Graduation, Diplomas, Transcripts, Grades, Class Ranking, and Honor Role.**

## **Surrogate Parents**

The Individuals with Disabilities Education Act (IDEA) mandates that in certain circumstances a surrogate parent must be appointed to protect the rights of a student. When a school district or institution that provides education to a student with a disability (public agency) determines that a student is in need of a surrogate parent, the IDEA as well as Montana law, requires the public agency, who is providing education to the student, to nominate a person to be the student's surrogate parent. The nominated person then has to be appointed as the surrogate parent by a Montana Youth Court.

### **1. Who is considered a “parent” according to IDEA?**

Under the IDEA, the term “parent” means:

- A biological or adoptive parent of a student.
- A foster parent.
- A guardian, generally authorized to act as the student's parent or authorized to make educational decisions (but not the state if the student is a ward of the state);
- A person acting in the place of a parent such as a grandparent or a stepparent with whom the student lives (such as a caretaker relative) or a person who is legally responsible for the student's welfare; 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, when attempting to act as parent under IDEA or when more than one party is qualified is presumed to be the parent, unless such person does not have the legal authority to make educational decisions.

A foster parent may act as a parent under IDEA if the natural parents' authority to make educational decisions on the student's behalf has been extinguished under state law and the foster parent: (a) is willing to make the educational decisions required of parents under IDEA; and (b) has no interest that would conflict with the interests of the student.

However, if a judicial decree or order identifies a specific person or persons under 1-4 above to act as the parent, then that person shall be determined to be the “parent” for IDEA special education purposes.

34 CFR 300.30 IDEA Definition of Parent

MCA 20-5-501 through 503 Parental Rights Definitions and Caretaker Relative MCA 20-

7-461 Surrogate Parents

MCA 20-5-501-503 Caretaker Relative

ARM 10.16.3504(2) Surrogate Parent and Foster Parent

## **2. When must a public agency determine whether a student with a disability needs a surrogate parent?**

Whenever:

- The student's parents or guardian cannot be identified.
- The public agency, after reasonable efforts, cannot locate a parent.
- The student is a ward of the State under Montana state law.
- the student is an unaccompanied homeless youth under the McKinney-Vento Act.

In order to ensure the rights of students with disabilities are protected in the above situations, it is the duty of the public agency to include a method of determining whether a student needs a surrogate parent and for assigning a surrogate parent to a student.

MCA 20-7-461 Appointment and Termination of Appointment of Surrogate Parent 34 CFR

300.30 IDEA Definition of Parent

34 CFR 300.519 Surrogate Parents ARM

10.16.3504 Surrogate Parents 34 CFR

300.45 Ward of the State

## **3. What is a surrogate parent?**

A surrogate parent is an individual who has been appointed to represent the educational interests of a student with a disability. A surrogate parent ensures the educational rights of a student with a disability are protected. Montana law defines a surrogate parent in the context of special education as "an individual appointed to safeguard a student's rights and protect the student's interests in educational evaluation, placement, and hearing or appeal procedures concerning the student."

MCA 20-7-401(6) Definitions

## **4. What are the responsibilities of a surrogate parent?**

The surrogate parent shall:

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

34 CFR 300.519(g) Surrogate Parent Responsibilities MCA

20-7-401(6) Definition of Surrogate Parent MCA 20-7-

462 Responsibilities of Surrogate Parent

## **5. Who may the public agency nominate to be a surrogate parent?**

The public agency 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 school district, a public agency, or any other agency that is involved in the education or care of the student.
- Has no personal or professional interest that conflicts with the interest of the student he or she represents.
- Has the knowledge and skills that ensure adequate representation of the student.

A person otherwise qualified is not an employee of the agency solely because they are paid to serve as a surrogate parent.

Whenever practicable, the surrogate parent must be familiar with the cultural or language background of the student and must be knowledgeable about the educational system, special education requirements, and the legal rights of the student in relation to the educational system.

34 CFR 300.519(d) Criteria for Selection of Surrogate Parents

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

## **6. What is guardian ad litem?**

A person appointed by a court to represent the best interests of the student.

MCA 41-3-112 Appointment of Court-Appointed Special Advocate - Guardian Ad Litem MCA 41-5-1411 Appointment of Guardian Ad Litem

## **7. Could a guardian ad litem be considered a parent under IDEA?**

Yes, a court could issue an order that specifies guardian ad litem to make educational decisions for the student. If the court appoints a guardian ad litem specific person to act as parent under IDEA, then a surrogate parent would not be necessary. Additionally, for a student who is a ward of the state, the judge overseeing the case could:

- appoint a surrogate parent, who may be the guardian ad litem,
- provided the individual is not an employee of the SEA,
- the LEA or other agency that is involved in the care of the student.
- A person otherwise qualified is not an employee of the agency solely because they are paid to serve as a surrogate parent.

If a public agency is unable to identify a “parent” under IDEA and determines that it is necessary to appoint a surrogate parent, the public agency could potentially nominate the person serving as a guardian ad litem as a surrogate parent, if the individual satisfies the necessary criteria to act as a surrogate parent. The public agency makes the determination as to who they want to nominate based on the circumstances of the individual student.

Letter to Shatley, Surrogate Parents (OSEP 2013)

Letter to Caplan, Surrogate Parents (OSEP 2011) 34

CFR 300.519(c) Wards of the State

MCA 20-7-461 Surrogate Parents

34 CFR 300.30 IDEA Definition of Parent

**8. Is a surrogate parent required when a student is placed into a permanent or temporary foster home?**

It depends. A foster parent may act as a parent under IDEA, if the natural parents' authority to make educational decisions on the student's behalf has been extinguished under state law and the foster parent: (a) is willing to make the educational decisions required of parents under IDEA; and (b) has no interest that would conflict with the interests of the student. If these conditions are not met, and there is not another person identified as "parent" under IDEA, then a surrogate parent may need to be appointed.

ARM 10.16.3504(2) Surrogate Parent and Foster Parent

**9. When is a student considered to be a ward of the State?**

A ward of the state is a student who, as determined by the State where the student resides, is:

- A foster student (except those that have a foster parent who meets the IDEA definition of parent);
- A ward of the state, or;
- In the custody of a public student welfare agency.

In Montana, if a foster student does not have a foster parent who meets the IDEA definition of a parent as explained above, the student is considered a ward of the state. Similarly, if a student is in the custody of the Department of Health and Human Services (DPHHS)/Department of student & Family Services or the State of Montana, the student is considered a ward of the state.

34 CFR 300.45 Ward of the State

**10. What is the public agency's responsibility for students who are wards of the state?**

The IDEA does not require automatic appointment of a surrogate parent for every student who is a ward of the state. The public agency must determine whether a surrogate parent needs to be appointed considering the circumstances relevant to each particular case or if there is already someone that can act as parent under the IDEA.

For example, for a student with a disability who is in the temporary custody of the Department of Public Health and Human Services (DPHHS), the parent's right to make educational decisions may or may not have been terminated or the Judge overseeing the case may have issued a decree that appoints an individual who will have legal authority to make educational decisions.

If the public agency determines that a surrogate parent is necessary, the public agency must submit a nomination for a surrogate parent to the youth court. A surrogate parent may also be appointed by the judge.

34 CFR 300.45 Ward of the State

MCA 20-7-461(1) and (3) Surrogate Parents 34

CFR 300.519(c) Wards of the State

34 CFR 300.519(e) Non-employee requirement; compensation

MCA 20-7-461(3) Appointment and Termination of Appointment of Surrogate Parent Letter to Caplan, Surrogate Parents (OSEP 2011)

**11. Can someone from an agency responsible for the student (i.e., Department of Public Health and Human Services, group home, etc.) act as the parent or be the surrogate parent?**

No. Social workers or employees of the Department of student & Family Services or a group home are involved in the care of the student and therefore prohibited by law from serving as a surrogate parent.

34 CFR 300.519 Surrogate Parents

**12. In the case of an unaccompanied homeless youth, may a temporary surrogate parent be appointed?**

Yes. In the case of a student who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs and street outreach programs may be appointed as a temporary surrogate parent until a surrogate parent can be appointed that meets all the requirements.

A temporary surrogate parent is not bound to the non-employee requirement that the surrogate parent is not an employee of the SEA, school district or other agency that is involved in the education or care of the student.

34 CFR 300.519(f) Unaccompanied Homeless Youth

**13. What must a public agency do to have a surrogate parent appointed?**

The public agency must submit a nomination for appointment of a surrogate parent, along with all supporting documents, to the youth court for official appointment by the court.

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

**14. When does the public agency have to file the nomination for appointment with the court?**

Within 10 calendar days of determining that a student is in need of a surrogate parent, the public agency must nominate a surrogate parent and deliver the appropriate documentation to the youth court. Public agencies should have knowledge of individuals qualified and willing to serve as a surrogate parent prior to needing to obtain one in order to comply with the required timelines.

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

**15. How long does the youth court have to act on the nomination of the surrogate parent?**

Within 20 calendar days of the court's receipt of the necessary documentation, the court should either appoint or deny the appointment of the nominated surrogate parent.

**16. What happens if the youth court does not act within 20 calendar days?**

The individual nominated becomes the surrogate parent for the student.

**17. What occurs if the youth court denies the appointment?**

The public agency shall nominate another person as the surrogate parent.

MCA 20-7-461(3)

**18. What is the OPI's role in the assignment of a surrogate parent?**

As the State Educational Agency (SEA), the OPI must make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after a public agency determines that the student needs a surrogate parent.

34 CFR 300.519(h) SEA Responsibility

**19. Must a surrogate parent be a resident of the student's school district?**

No.

**20. Are surrogate parents immune from liability?**

A person appointed as a surrogate parent is exempt from liability for any act or omission performed by the person in the capacity as a surrogate parent, except an act or omission that is found to have been committed in a grossly negligent or malicious manner.

MCA 20-7-463 Surrogate Parent-Immunity from Liability-Reimbursement

**21. Does receipt of payment to act as a surrogate parent make the surrogate parent an employee of the public agency?**

No. A person otherwise qualified to be a surrogate parent is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.

CFR 300.519 (e) non-employee requirement; compensation

**22. Are surrogate parents reimbursed for costs by the public agency?**

Yes. Surrogate parents may be reimbursed by the public agency for all reasonable and necessary expenses incurred in the pursuit of the surrogate parent duties.

MCA 20-7-463 Surrogate Parent Immunity from Liability Reimbursement

**When should the services of a surrogate parent be terminated?**

The public agency shall petition the court of competent jurisdiction for termination of the surrogate parent appointment when:

- The student's parent is identified.
- The location of the parent is discovered.
- The student is no longer a ward of the state; or
- The surrogate parent wishes to discontinue the appointment.

MCA 20-7-461(3) (4) Appointment and Termination of Appointment of Surrogate Parent ARM  
10.16.3504(3) Surrogate Parents

**23. May a school district use IDEA Part B federal funds for recruitment and/or training of surrogate parents?**

Yes.

34 CFR 300.704(b) Other State-level activities 71 Fed. Reg. 46711 (August 14, 2006)

## **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 student 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 student is suspended and the proximity of the suspensions to one another
  - the student's behavior is substantially similar in the series of suspensions
  - additional factors such as the length of time the student 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 student 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.

71 Fed. Reg. 46,715 (2006)

### **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 student expressed concern, in writing, to the school district that the student may need special education and related services.
- The parent requested an evaluation for special education eligibility.
- 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.

71 Fed. Reg. 46,715 (2006)

## **Manifestation Determination**

**1. What is an IDEA manifestation determination and when is one required?**

Within 10 school days of any decision to change the placement of a student with a disability because of a violation of a code of student conduct (except for a removal that is for 10 school days in a row or less and not a change of placement), the school district, parent, and other relevant members of the IEP Team (as determined by the parent and the school district) must review all relevant information in the student's file, including the student's IEP, any teacher observations, and any relevant information provided by the parent to determine:

1. If the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability or
2. If the conduct in question was the direct result of the school district's failure to implement the student's IEP.

If the school district, parent, and other relevant members of the student's IEP Team determine that either of those conditions was met, the conduct must be determined to be a manifestation of the student's disability.

If the school district, parent, and other relevant members of the student's IEP Team determine that the conduct in question was the direct result of the school district's failure to implement the IEP, the school district must take immediate action to remedy those deficiencies.

34 CFR 300.530(e) Authority of school personnel

**2. What is a change in placement because of disciplinary removals?**

A removal of the student with a disability from his or her current educational placement is a change of placement if:

1. The removal is for more than 10 school days in a row; or
2. The student has been subjected to a series of removals that constitute a pattern because:
  - a. The series of removals total more than 10 school days in a school year.
  - b. The student's behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removals.
  - c. Of such additional factors as the length of each removal, the total amount of time the student has been removed, and the proximity of the removals to one another.

Whether a pattern of removals constitutes a change of placement is determined on a case-by-case basis by the school district and, if challenged, is subject to review through due process and judicial proceedings.

34 CFR 300.536 Change of placement because of disciplinary removals.

**3. 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.

**4. 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

**5. 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

**6. 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.
- 4) 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

**7. 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.

**8. 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 pocketknife with a blade of less than 2 1/2 inches in length.

18 U.S. Code § 930

34 CFR 300.530

**9. 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

**10. 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.

**11. 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.

**12. What happens when the school district, parent, and other relevant members of the IEP Team determine that the behavior was a manifestation of the student's disability(ies)?**

The IEP Team must either conduct a functional behavior assessment, unless the school district has already conducted one before the behavior that resulted in a change of placement occurred and implement a behavior intervention plan OR if a behavior intervention plan has been developed, review and modify it as necessary to address the behavior. Additionally, except as provided for under the "special circumstances" described above, the student shall return to the placement from which he or she was removed, unless the parent and school district agree to a change of placement as part of the modification of the behavior intervention plan.

34 CFR 300.530(f)-(g) Authority of School Personnel

**13. What happens when the school district, parent and other relevant members of the IEP Team determine that the behavior was NOT a manifestation of the student's disability(ies)?**

School personnel may apply the relevant disciplinary procedures to the student with disabilities in the same manner and for the same duration as the procedures would be applied to students without disabilities, except that:

1. The student must continue to receive educational services so as to participate in the general education curriculum, although in another setting (that may be an alternative educational setting) and to progress towards meeting the goals set out in the student's IEP.
2. Receive as appropriate a functional behavior assessment, behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not happen again.

After a student with a disability has been removed from his or her current placement for 10 school days in that same school year, and if the current removal is for 10 school days in a row or less and if the removal is NOT a change of placement (see definition above), then school personnel, in consultation with at least one of the student's teachers, determine the extent to which services are needed to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP. If the removal is a change of placement (see definition above in question #2), the student's IEP Team determines the appropriate services to enable the student to continue to participate in the general education curriculum, although in another setting (that may be an interim alternative educational setting), and to progress toward meeting the goals set out in the student's IEP.

34 CFR 300.530(c)-(d) Authority of School Personnel.

34 CFR 300.531 Determination of setting.