

Instructional Delivery of Programs Standards

Instructional delivery of programs refers to the system a district uses to ensure that a free appropriate public education is available for each child, and that a continuum of alternative placements is available to meet the needs of children or students with disabilities for special education and related services. Each district must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services. This continuum must include, but is not limited to, instruction in regular education classes, special classes, special schools, home instruction, instruction in hospitals and institutions, instruction at a state academy, instruction in a care and treatment facility approved by MDE, and extended school year services. Each district must also make provision for supplementary services, such as a resource room or itinerant instruction, to be provided in conjunction with regular education class placement.

Required Policies

The LEA must have in effect policies that are consistent with State policies established under Code of Federal Regulations, title 34, sections 300.101 through 300.163, and sections 300.165 through 300.174. Among those required policies, the LEA must have policies to ensure a full educational opportunity goal and least restrictive environment for all students with disabilities. These policies should be included in the district's Total Special Education System (TSES) plan.

A district must include in its TSES plan a description of its method for providing special education services for identified students, including a description of the full range of available educational services, sites available where services may occur, and available instruction and related services. (Minn. R. 3525.1100, subp. 2(B).)

Through their Interagency Early Intervention Committees, districts are required to develop and implement policies and procedures related to (1) assuring that services involve cooperating agencies at all steps leading to individualized programs; and (2) identifying the services and funding being provided within the community for children with disabilities under age five, and their families. These policies and procedures must be included in the district's comprehensive, documented TSES plan.

Instructional Delivery of Programs Standards

The purposes of this part are:

- (a) To ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living;
- (b) To ensure that the rights of children with disabilities and their parents are protected;

(c) To assist States, localities, educational service agencies, and Federal agencies to provide for the education of all children with disabilities; and

(d) To assess and ensure the effectiveness of efforts to educate children with disabilities. (34 C.F.R. § 300.1.)

A free appropriate public education must be available to all children residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school, as provided for in Code of Federal Regulations, title 34, section 300.530(d). (34 C.F.R. § 300.101(a).)

Free Appropriate Public Education (FAPE)

Availability of FAPE

(1) Each State must ensure that:

(i) The obligation to make FAPE available to each eligible child residing in the State begins no later than the child's third birthday; and

(ii) An IEP or an IFSP is in effect for the child by that date, in accordance with Code of Federal Regulations, title 34, section 300.323(b).

(2) If a child's third birthday occurs during the summer, the child's IEP team shall determine the date when services under the IEP or IFSP will begin. (34 C.F.R. § 300.101(b).)

(1) Each State must ensure that FAPE is available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade, and is advancing from grade to grade.

(2) The determination that a child described in paragraph (a) of this section is eligible under this part, must be made on an individual basis by the group responsible within the child's LEA for making eligibility determinations. (34 C.F.R. § 300.101(c).)

Each public agency in the State is responsible for ensuring that the rights and protections under Part B of the Act are given to children with disabilities

(1) Referred to or placed in private schools and facilities by that public agency; or

(2) Placed in private schools by their parents under the provisions of section 300.148. (34 C.F.R. § 300.2(c).)

(a) As defined in paragraph (b), every district must provide special instruction and services, either within the district or in another district, for all children with a disability, including providing required services under Code of Federal Regulations, title 34, section 300.121, paragraph (d), to those children suspended or expelled from school for more than ten school days in that school year, who are residents of the district and who are disabled as set forth in section 125A.02. For purposes of state and federal special education laws, the phrase "special instruction and services" in the state Education Code means a free and appropriate public education provided to an eligible child with disabilities and includes special education and

related services defined in the Individuals with Disabilities Education Act, subpart A, section 300.24.

(b) Notwithstanding any age limits in laws to the contrary, special instruction and services must be provided from birth until July 1 after the child with a disability becomes 21 years old but shall not extend beyond secondary school or its equivalent, except as provided in Minnesota Statutes, section 124D.68, subdivision 2. Local health, education, and social service agencies must refer children under age five who are known to need or suspected of needing special instruction and services to the school district. Districts with less than the minimum number of eligible children with a disability as determined by the commissioner must cooperate with other districts to maintain a full range of programs for education and services for children with a disability. This section does not alter the compulsory attendance requirements of section 120A.22. (Minn. Stat. § 125A.03.)

As defined in this section, every district must ensure the following:

(1) all students with disabilities are provided the special instruction and services which are appropriate to their needs. Where the individualized education program team has determine appropriate goals and objectives based on the student's needs, including the extent to which the student can be included in the least restrictive environment, and where there are essentially equivalent and effective instruction, related services, or assistive technology devices available to meet the student's needs, cost to the district may be among the factors considered by the team in choosing how to provide the appropriate services, instruction, or devices that are to be made part of the student's individual education program.. The individualized education program team shall consider and may authorize services covered by medical assistance according to Minnesota Statutes, section 256B.0625, subdivision 26. The student's needs and the special education instruction and services to be provided must be agreed upon through the development of an individual education program. The program must address the student's need to develop skills to live and work as independently as possible within the community. The individualized education program team must consider positive behavioral interventions, strategies, and supports that address behavior for children with attention deficit disorder or attention deficit hyperactivity disorder. During grade 9 the program must address the student's needs for transition from secondary services to postsecondary education and training, employment, community participation, recreation, and leisure and home living. In developing the program, districts must inform parents of the full range of transitional goals and related services that should be considered. The program must include a statement of the needed transition services, including a statement of the interagency responsibilities or linkages or both before secondary services are concluded. (Minn. Stat. § 125A.08(b)(1).)

Pupils with disabilities who are eligible for special education services based on an appropriate individual evaluation shall have access to free appropriate public education, as that term is defined by applicable law. (Minn. R. 3525.0300.)

Limitation on Obligation to Make FAPE Available

A. Student Discipline

A public agency is only required to provide services during periods of removal to a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if it provides services to a child without disabilities who has been similarly removed. (34 C.F.R. § 300.530(d)(3).)

B. Students Incarcerated in Adult Prisons

The obligation to make FAPE available to all children with disabilities does not apply with respect to the following:

(2)(i) Children aged 18 through 21 to the extent that State law does not require that special education and related services under Part B of the Act be provided to students with disabilities who, in the last educational placement prior to their incarceration in an adult correctional facility

(A) Were not actually identified as being a child with a disability under section 300.8; and

(B) Did not have an IEP under Part B of the Act.

(ii) The exception in paragraph (a)(2)(i) of this section does not apply to children with disabilities, aged 18 through 21, who

(A) Had been identified as a child with a disability under section 300.8 and had received services in accordance with an IEP, but who left school prior to their incarceration; or

(B) Did not have an IEP in their last educational setting, but who had actually been identified as a child with a disability under section 300.8. (34 C.F.R. § 300.102(a)(2).)

C. Students with High School Diplomas

The obligation to make FAPE available to all children with disabilities does not apply with respect to the following: (i) Children with disabilities who have graduated from high school with a regular high school diploma.

(ii) The exception in paragraph (a)(3)(i) of this section does not apply to children who have graduated from high school but have not been awarded a regular high school diploma.

(iv) As used in paragraphs (a)(3)(i) through (a)(3)(iii) of this section, the term regular high school diploma does not include an alternative degree that is not fully aligned with the State's academic standards, such as a certificate or a general educational development credential (GED). (34 C.F.R. § 300.102(a)(3)(i)-(ii), (iv).)

SEA Responsibility for All Educational Programs

(a) The SEA is responsible for ensuring —

(1) That the requirements of this part are carried out; and

(2) That each educational program for children with disabilities administered within the State, including each program administered by any other State or local agency (but not including elementary schools and secondary schools for Indian children operated or funded by the Secretary of the Interior) —

(i) Is under the general supervision of the persons responsible for educational programs for children with disabilities in the SEA; and

(ii) Meets the education standards of the SEA (including the requirements of this part).

(3) In carrying out this part with respect to homeless children, the requirements of subtitle B of title VII of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.) are met.

(b) The State must have in effect policies and procedures to ensure that it complies with the monitoring and enforcement requirements in sections 300.600 through 300.602 and sections 300.606 through 300.608.

(c) Part B of the Act does not limit the responsibility of agencies other than educational agencies for providing or paying some or all of the costs of FAPE to children with disabilities in the State.

(d) Notwithstanding paragraph (a) of this section, the Governor (or another individual pursuant to State law) may assign to any public agency in the State the responsibility of ensuring that the requirements of Part B of the Act are met with respect to students with disabilities who are convicted as adults under State law and incarcerated in adult prisons. (34 C.F.R. § 300.149.)

The LEA, in providing for the education of children with disabilities within its jurisdiction, must have in effect policies, procedures, and programs that are consistent with the State policies and procedures established under sections 300.101 through 300.163, and sections 300.165 through 300.174. (34 C.F.R. § 300.201.)

Services at No Cost to Parents

A. Placement in Residential Program

If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the child. (34 C.F.R. § 300.104.)

For fiscal year 2006, when a school district provides instruction and services outside the district of residence, board and lodging, and any tuition to be paid, shall be paid by the district of residence. The tuition rate to be charged for any child with a disability, excluding a pupil for whom tuition is calculated according to Minnesota Statutes, section 127A.47, subdivision 7, paragraph (d), must be the sum of (1) the actual cost of providing special instruction and services to the child including a proportionate amount for special transportation and unreimbursed building lease and debt service costs for facilities used primarily for special education, plus (2) the amount of general education revenue and referendum aid attributable to the pupil, minus (3) the amount of special education aid for children with a disability received on behalf of that child, minus (4) if the pupil receives special instruction and services outside the regular classroom for more than 60 percent of the school day, the amount of general education

revenue and referendum aid, excluding portions attributable to district and school administration, district support services, operations and maintenance, capital expenditures, and pupil transportation, attributable to that pupil for the portion of time the pupil receives special instruction and services outside of the regular classroom. If the boards involved do not agree upon the tuition rate, either board may apply to the commissioner to fix the rate. Notwithstanding chapter 14, the commissioner must then set a date for a hearing or request a written statement from each board, giving each board at least ten days' notice, and after the hearing or review of the written statements the commissioner must make an order fixing the tuition rate, which is binding on both school districts. General education revenue and referendum equalization aid attributable to a pupil must be calculated using the resident district's average general education revenue and referendum equalization aid per adjusted pupil unit.

(b) For fiscal year 2007 and later, when a school district provides special instruction and services for a pupil with a disability as defined in Minnesota Statutes, section 125A.02 outside the district of residence, excluding a pupil for whom an adjustment to special education aid is calculated according to Minnesota Statutes, section 127A.47, subdivision 7, paragraph (e), special education aid paid to the resident district must be reduced by an amount equal to (1) the actual cost of providing special instruction and services to the pupil, including a proportionate amount for special transportation and unreimbursed building lease and debt service costs for facilities used primarily for special education, plus (2) the amount of general education revenue and referendum equalization aid attributable to that pupil, calculated using the resident district's average general education revenue and referendum equalization aid per adjusted pupil unit excluding basic skills revenue, elementary sparsity revenue and secondary sparsity revenue, minus (3) the amount of special education aid for children with a disability received on behalf of that child, minus (4) if the pupil receives special instruction and services outside the regular classroom for more than 60 percent of the school day, the amount of general education revenue and referendum equalization aid, excluding portions attributable to district and school administration, district support services, operations and maintenance, capital expenditures, and pupil transportation, attributable to that pupil for the portion of time the pupil receives special instruction and services outside of the regular classroom, calculated using the resident district's average general education revenue and referendum equalization aid per adjusted pupil unit excluding basic skills revenue, elementary sparsity revenue and secondary sparsity revenue and the serving district's basic skills revenue, elementary sparsity revenue and secondary sparsity revenue per adjusted pupil unit. Notwithstanding clauses (1) and (4), for pupils served by a cooperative unit without a fiscal agent school district, the general education revenue and referendum equalization aid attributable to a pupil must be calculated using the resident district's average general education revenue and referendum equalization aid excluding compensatory revenue, elementary sparsity revenue, and secondary sparsity revenue. Special education aid paid to the district or cooperative providing special instruction and services for the pupil must be increased by the amount of the reduction in the aid paid to the resident district. Amounts paid to cooperatives under this subdivision and section 127A.47, subdivision 7, shall be recognized and reported as revenues and expenditures on the resident school district's books of account under Minnesota Statutes, sections 123B.75 and 123B.76. If the resident district's special education aid is insufficient to make the full adjustment, the remaining adjustment shall be made to other state aid due to the district.

(c) Notwithstanding paragraphs (a) and (b) and section 127A.47, subdivision 7, paragraphs (d) and (e), a charter school where more than 30 percent of enrolled students receive special education and related services, a site approved under section 125A.515, an intermediate district, a special education cooperative, or a school district that served as the applicant agency for a group of school districts for federal special education aids for fiscal year 2006 may apply to the commissioner for authority to charge the resident district an additional amount to recover any remaining unreimbursed costs of serving pupils with a disability. The application must include a description of the costs and the calculations used to determine the unreimbursed portion to be charged to the resident district. Amounts approved by the commissioner under this paragraph must be included in the tuition billings or aid adjustments under paragraph (a) or (b), or section 127A.47, subdivision 7, paragraph (d) or (e), as applicable.

(d) For purposes of this subdivision and section 127A.47, subdivision 7, paragraphs (d) and (e), "general education revenue and referendum equalization aid" means the sum of the general education revenue according to Minnesota Statutes, section 126C.10, subdivision 1, excluding alternative teacher compensation revenue, plus the referendum equalization aid according to Minnesota Statutes, section 126C.17, subdivision 7, as adjusted according to Minnesota Statutes, section 127A.47, subdivision 7, paragraphs (a) to (c). (Minn. Stat. § 125A.11, Subd. 1.)

B. Placement in Private School Facility

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

(a) Is provided special education and related services

(2) At no cost to the parents. (34 C.F.R. § 300.146(a)(2).)

As provided in Minnesota Statutes, section 125A.05, a pupil's district of residence is responsible for assuring that an appropriate program is provided for all eligible pupils placed by the district's team within the district or in an out-of-district placement regardless of the method or location of instruction used. (Minn. R. 3525.0800, subp. 1.)

Availability of Educational Programs and Services

The State must ensure that each public agency takes steps to ensure that its children with disabilities have available to them the variety of educational programs and services available to nondisabled children in the area served by the agency, including art, music, industrial arts, consumer and homemaking education, and vocational education. (34 C.F.R. § 300.110.)

Participation in Nonacademic and Extracurricular Services and Activities

The State must ensure the following:

(a) Each public agency must take steps, including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP Team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities.

(b) Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the public agency and assistance in making outside employment available. (34 C.F.R. § 300.107.)

Availability of Physical Education Services

The State must ensure that public agencies in the State comply with the following:

(a) Physical education services, specially designed if necessary, must be made available to every child with a disability receiving FAPE, unless the public agency enrolls children without disabilities and does not provide physical education to children without disabilities in the same grades.

(b) Each child with a disability must be afforded the opportunity to participate in the regular physical education program available to nondisabled children unless —

(1) The child is enrolled full time in a separate facility; or

(2) The child needs specially designed physical education, as prescribed in the child's IEP.

(c) If specially designed physical education is prescribed in a child's IEP, the public agency responsible for the education of that child must provide the services directly or make arrangements for those services to be provided through other public or private programs.

(d) The public agency responsible for the education of a child with a disability who is enrolled in a separate facility must ensure that the child receives appropriate physical education services in compliance with this section. (34 C.F.R. § 300.108.)

Full Educational Opportunity Goal

The State must have in effect policies and procedures to demonstrate that the State has established a goal of providing full educational opportunity to all children with disabilities, aged birth through 21, and a detailed timetable for accomplishing that goal. (34 C.F.R. § 300.109.)

The LEA, in providing for the education of children with disabilities within its jurisdiction, must have in effect policies, procedures, and programs that are consistent with the State policies and procedures established under sections 300.101 through 300.163, and sections 300.165 through 300.174. (34 C.F.R. § 300.201.)

Methods and Continuum of Instructional Services

(1) Except as provided in section 300.324(d)(2) (regarding children with disabilities in adult prisons), the state must have in effect policies and procedures to ensure that public agencies in the State meet the LRE requirements of this section and sections 300.115 through 300.120.

(2) Each public agency must ensure that

(i) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and

(ii) Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with use of supplementary aids and services cannot be achieved satisfactorily. (34 C.F.R. § 300.114(a).)

(a) Each public agency must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services.

(b) The continuum required in paragraph (a) of this section must

(1) Include the alternative placements listed in the definition of special education under section 300.38 (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions); and

(2) Make provision for supplementary services (such as a resource room or itinerant instruction) to be provided in conjunction with regular class placement. (34 C.F.R. § 300.115.)

Each district must ensure that a continuum of alternative placements is available to meet the needs of pupils for special education and related services. The continuum must:

A. include instruction in regular classes, special classes, special schools, home instruction, and instruction in schools and hospitals; and

B. make provision for supplementary services, including resource room or itinerant instruction, to be provided in conjunction with regular class placement. (Minn. R. 3525.3010, subp. 1.)

Ensuring Implementation of LRE

(a) The SEA must carry out activities to ensure that § 300.114 is implemented by each public agency.

(b) If there is evidence that a public agency makes placements that are inconsistent with § 300.114, the SEA must

(1) Review the public agency's justification for its actions; and

(2) Assist in planning and implementing any necessary corrective action. (34 C.F.R. § 300.120).

Each SEA must carry out activities to ensure that teachers and administrators in all public agencies

(a) Are fully informed about their responsibilities for implementing § 300.114; and

(b) Are provided with technical assistance and training necessary to assist them in this effort. (34 C.F.R. § 300.119.)

Except as provided in section 300.149(d) (regarding agency responsibility for general supervision of some individuals in adult prisons), an SEA must ensure that § 300.114 is

effectively implemented, including, if necessary, making arrangements with public and private institutions (such as a memorandum of agreement or special implementation procedures). (34 C.F.R. § 300.118.)

The LEA, in providing for the education of children with disabilities within its jurisdiction, must have in effect policies, procedures, and programs that are consistent with the State policies and procedures established under sections 300.101 through 300.163, and sections 300.165 through 300.174. (34 C.F.R. § 300.201.)

Indirect and Direct Services

A. Indirect Services for a Pupil with a Disability in the General Education Classrooms or Settings

“Indirect services” means special education services which include ongoing progress reviews; cooperative planning; consultation; demonstration teaching; modification and adaptation of the environment, curriculum, materials, or equipment; and direct contact with the pupil to monitor and observe. Indirect services may be provided by a teacher or related services professional to another regular education [teacher], special education teacher, related services professional, paraprofessional, support staff, parents, and public and nonpublic agencies to the extent that the services are written in the pupil's IEP or IFSP. (Minn. R. 3525.0210, subp. 27.)

B. Direct Services for a Pupil with a Disability in the Special or General Education Classrooms or Settings

“Direct services” means special education services provided by a teacher or a related service professional when the services are related to instruction, including cooperative teaching. (Minn. R. 3525.0210, subp. 14.)

Extended School Year (ESY)

Each public agency must ensure that extended school year services are available as necessary to provide FAPE, consistent with paragraph (a)(2) of this section. (34 C.F.R. § 300.106(a)(1).)

As used in this section, the term extended school year services means special education and related services that

- (1) Are provided to a child with a disability
 - (i) Beyond the normal school year of the public agency;
 - (ii) In accordance with the child's IEP; and
 - (iii) At no cost to the parents of the child; and
- (2) Meet the standards of the SEA. (34 C.F.R. § 300.106(b).)

A. Provision of ESY Services

Extended school year services must be provided only if a child's IEP Team determines, on an individual basis, in accordance with sections 300.320 through 300.324, that the services are necessary for the provision of FAPE to the child. (34 C.F.R. § 300.106(a)(2).)

School districts are required to provide extended school year (ESY) services to a pupil if the IEP team determines the services are necessary during a break in instruction in order to provide a free appropriate public education. (Minn. R. 3525.0755, subp. 1.)

B. Limitation of ESY Services

In implementing the requirements of this section, a public agency may not

- (i) Limit extended school year services to particular categories of disability; or
- (ii) Unilaterally limit the type, amount, or duration of those services. (34 C.F.R. § 300.106(a)(3).)

C. Summer Programs

A district may provide extended school year services for children with a disability living within the district and nonresident children temporarily placed in the district pursuant to Minnesota Statutes, sections 125A.15 or 125A.16. Prior to March 31 or 30 days after the child with a disability is placed in the district, whichever is later, the providing district shall give notice to the district of residence of any nonresident children temporarily placed in the district pursuant to Minnesota Statutes, sections 125A.15 or 125A.16, of its intention to provide these programs. Notwithstanding any contrary provisions in Minnesota Statutes, sections, 125A.15 and 125A.16, the district providing the special instruction and services must apply for special education aid for the extended school year services. The unreimbursed actual cost of providing the program for nonresident children with a disability, including the cost of board and lodging, may be billed to the district of the child's residence and must be paid by the resident district. Transportation costs must be paid by the district responsible for providing transportation pursuant to Minnesota Statutes, sections 125A.15 or 125A.16 and transportation aid must be paid to that district. (Minn. Stat. § 125A.14.)

Multidisability Team Teaching Models

Subpart 1. A district may assign more than one teacher licensed in different areas or one or more teachers and related services staff as a team to provide instruction and related services to pupils in a school-age educational service alternative.

Subp. 2. There must be a teacher on the team who is licensed in the disability area of each pupil served by the team.

Subp. 3. The team member licensed in a pupil's disability shall be responsible for conducting the pupil's evaluation and participating at team meetings when an IEP is developed, reviewed, or revised. Consultation and indirect services as defined in part. 3525.0210 must be provided to the general or special education teacher providing instruction if not licensed in the disability. The frequency and amount of time for specific consultation and indirect services shall be determined by the IEP team.

Subp. 4. Pupils may receive instruction and related services from any or all of the team members with appropriate skills. The special education provided by each team member shall be included in the IEP. (Minn. R. 3525.2350)

Early Intervention Services

“Early Intervention Services” means services provided in conformity with an individualized family service plan that are designed to meet the special developmental needs of a child eligible under Code of Federal Regulations, title 34, part 303, and the needs of the child’s family related to enhancing the child’s development and that are selected in collaboration with the parent.

These services include core early intervention services and additional early intervention services listed in Minnesota Statutes, section 125A.29 and services defined in Code of Federal Regulations, title 34, section 303, et seq. (Minn. Stat. 125A.27, Subd. 6.)

A. District Obligation for Special Instruction and Services for Families

As defined in this section, every district must ensure the following:

(2) children with disabilities under age five and their families are provided special instruction and services appropriate to the child’s level of functioning and needs. (Minn. Stat. § 125A.08(b)(2).)

B. Types of Early Intervention Services

Types of early intervention services. Subject to paragraph (d) of this section, early intervention services include the following services defined in this paragraph:

(1) Assistive technology device and service are defined as follows:

(i) Assistive technology device means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of an infant or toddler with a disability. The term does not include a medical device that is surgically implanted, including a cochlear implant, or the optimization (e.g., mapping), maintenance, or replacement of that device.

(ii) Assistive technology service means any service that directly assists an infant or toddler with a disability in the selection, acquisition, or use of an assistive technology device. The term includes—

(A) The evaluation of the needs of an infant or toddler with a disability, including a functional evaluation of the infant or toddler with a disability in the child's customary environment;

(B) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by infants or toddlers with disabilities;

(C) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

(D) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(E) Training or technical assistance for an infant or toddler with a disability or, if appropriate, that child's family; and

(F) Training or technical assistance for professionals (including individuals providing education or rehabilitation services) or other individuals who provide services to, or are otherwise substantially involved in the major life functions of, infants and toddlers with disabilities.

(2) Audiology services include

(i) Identification of children with auditory impairments, using at-risk criteria and appropriate audiologic screening techniques;

(ii) Determination of the range, nature, and degree of hearing loss and communication functions, by use of audiological evaluation procedures;

(iii) Referral for medical and other services necessary for the habilitation or rehabilitation of an infant or toddler with a disability who has an auditory impairment;

(iv) Provision of auditory training, aural rehabilitation, speech reading and listening devices, orientation and training, and other services;

(v) Provision of services for prevention of hearing loss; and

(vi) Determination of the child's individual amplification, including selecting, fitting, and dispensing appropriate listening and vibrotactile devices, and evaluating the effectiveness of those devices.

(3) Family training, counseling, and home visits means services provided, as appropriate, by social workers, psychologists, and other qualified personnel to assist the family of an infant or toddler with a disability in understanding the special needs of the child and enhancing the child's development.

(4) Health services has the meaning given the term in section 303.16.

(5) Medical services means services provided by a licensed physician for diagnostic or evaluation purposes to determine a child's developmental status and need for early intervention services.

(6) Nursing services include

(i) The assessment of health status for the purpose of providing nursing care, including the identification of patterns of human response to actual or potential health problems;

(ii) The provision of nursing care to prevent health problems, restore or improve functioning, and promote optimal health and development; and

(iii) The administration of medications, treatments, and regimens prescribed by a licensed physician.

(7) Nutrition services include

- (i) Conducting individual assessments in
 - (A) Nutritional history and dietary intake;
 - (B) Anthropometric, biochemical, and clinical variables;
 - (C) Feeding skills and feeding problems; and
 - (D) Food habits and food preferences;
 - (ii) Developing and monitoring appropriate plans to address the nutritional needs of children eligible under this part, based on the findings in paragraph (b)(7)(i) of this section; and
 - (iii) Making referrals to appropriate community resources to carry out nutrition goals.
- (8) Occupational therapy includes services to address the functional needs of an infant or toddler with a disability related to adaptive development, adaptive behavior, and play, and sensory, motor, and postural development. These services are designed to improve the child's functional ability to perform tasks in home, school, and community settings, and include—
- (i) Identification, assessment, and intervention;
 - (ii) Adaptation of the environment, and selection, design, and fabrication of assistive and orthotic devices to facilitate development and promote the acquisition of functional skills; and
 - (iii) Prevention or minimization of the impact of initial or future impairment, delay in development, or loss of functional ability.
- (9) Physical therapy includes services to address the promotion of sensorimotor function through enhancement of musculoskeletal status, neurobehavioral organization, perceptual and motor development, cardiopulmonary status, and effective environmental adaptation. These services include
- (i) Screening, evaluation, and assessment of children to identify movement dysfunction;
 - (ii) Obtaining, interpreting, and integrating information appropriate to program planning to prevent, alleviate, or compensate for movement dysfunction and related functional problems; and
 - (iii) Providing individual and group services or treatment to prevent, alleviate, or compensate for, movement dysfunction and related functional problems.
- (10) Psychological services include
- (i) Administering psychological and developmental tests and other assessment procedures;
 - (ii) Interpreting assessment results;
 - (iii) Obtaining, integrating, and interpreting information about child behavior and child and family conditions related to learning, mental health, and development; and

(iv) Planning and managing a program of psychological services, including psychological counseling for children and parents, family counseling, consultation on child development, parent training, and education programs.

(11) Service coordination services has the meaning given the term in section 303.34.

(12) Sign language and cued language services include teaching sign language, cued language, and auditory/oral language, providing oral transliteration services (such as amplification), and providing sign and cued language interpretation.

(13) Social work services include

(i) Making home visits to evaluate a child's living conditions and patterns of parent-child interaction;

(ii) Preparing a social or emotional developmental assessment of the infant or toddler within the family context;

(iii) Providing individual and family-group counseling with parents and other family members, and appropriate social skill-building activities with the infant or toddler and parents;

(iv) Working with those problems in the living situation (home, community, and any center where early intervention services are provided) of an infant or toddler with a disability and the family of that child that affect the child's maximum utilization of early intervention services; and

(v) Identifying, mobilizing, and coordinating community resources and services to enable the infant or toddler with a disability and the family to receive maximum benefit from early intervention services.

(14) Special instruction includes—

(i) The design of learning environments and activities that promote the infant's or toddler's acquisition of skills in a variety of developmental areas, including cognitive processes and social interaction;

(ii) Curriculum planning, including the planned interaction of personnel, materials, and time and space, that leads to achieving the outcomes in the IFSP for the infant or toddler with a disability;

(iii) Providing families with information, skills, and support related to enhancing the skill development of the child; and

(iv) Working with the infant or toddler with a disability to enhance the child's development.

(15) Speech-language pathology services include

(i) Identification of children with communication or language disorders and delays in development of communication skills, including the diagnosis and appraisal of specific disorders and delays in those skills;

(ii) Referral for medical or other professional services necessary for the habilitation or rehabilitation of children with communication or language disorders and delays in development of communication skills; and

(iii) Provision of services for the habilitation, rehabilitation, or prevention of communication or language disorders and delays in development of communication skills.

(16) Transportation and related costs include the cost of travel and other costs that are necessary to enable an infant or toddler with a disability and the child's family to receive early intervention services.

(17) Vision services mean

(i) Evaluation and assessment of visual functioning, including the diagnosis and appraisal of specific visual disorders, delays, and abilities that affect early childhood development;

(ii) Referral for medical or other professional services necessary for the habilitation or rehabilitation of visual functioning disorders, or both; and

(iii) Communication skills training, orientation and mobility training for all environments, visual training, and additional training necessary to activate visual motor abilities. (34 C.F.R. § 303.13 (b).)

C. Interagency Policies and Procedures

The [Interagency Early Intervention Committee] must develop and implement interagency policies and procedures concerning the following ongoing duties:(5)implement a process for assuring that services involve cooperating agencies at all steps leading to individualized programs;

(7) identify the current services and funding being provided within the community for children with disabilities under age five and their families. (Minn. Stat. § 125A.30(b)(6) & (8).)

D. Appropriate Program Alternatives

Appropriate program alternatives to meet the special education needs, goals, and objectives of a pupil must be determined on an individual basis. Choice of specific program alternatives must be based on the pupil's current levels of performance, pupil special education needs, goals, and objectives, and must be written in the IEP. Program alternatives are comprised of the type of services provided, the setting in which services occur, and the amount of time and frequency in which special education services occur. A pupil may receive special education services in more than one alternative based on the IEP or IFSP. (Minn. R. 3525.2335, subp. 2.)

1. Types of Special Education Services

There are two types of special education services: direct and indirect. (Minn. R. 3525.2335, subp. 2(A).)

A school district may provide direct or indirect special education services by district special education staff to a pupil attending a community-based program. A school district may contract

for special education services with a community-based program if the program meets Department of Education rules. (Minn. R. 3525.1550, subp. 2.)

2. Types of Special Education Settings

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

(1) Home includes the home of the pupil and parent or relative, or a licensed family child care setting in which the pupil is placed by the parent.

(2) District ECSE classroom includes classrooms that are located in district schools or community center buildings housing elementary students or preschool-aged children who do not have disabilities.

(3) Community-based programs include licensed public or private nonsectarian child care programs other than a family child care setting, licensed public or private nonsectarian early education programs, community cultural centers, Head Start programs, and hospitals. A school district must provide direct or indirect special education services by district special education staff to a pupil attending a community-based program. (Minn. R. 3525.2335, subp. 2(B).)

E. Early Intervention Respite

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

(1) severity of the child's disability and needs;

(2) potential risk of out-of-home placement for the child if respite services are not provided;

(3) parental lack of access to informal support systems, including, but not limited to, extended family, supportive friends, and community supports;

(4) presence of factors known to increase family stress, including, but not limited to, family size and presence of another child or family member with a disability;

(5) the availability of other public services provided to the family that assist the parent or primary caretaker in obtaining relief from caretaking responsibilities; and

(6) the perceived and expressed level of need for respite services by the parent.

Counties are encouraged to make a variety of respite service models available, which may include in or out-of-home respite, family reimbursement programs, and parent-to-parent respite projects. (Minn. Stat. § 125A.34.)

Related Services

Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special

education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training. (34 C.F.R. § 300.34(a).)

Transition Services

Transition services for children with disabilities may be special education, if provided as specially designed instruction, or a related service, if required to assist a child with a disability to benefit from special education. (34 C.F.R. § 300.43(b).)

Assistive Technology Devices and Services

Assistive technology device means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted, or the replacement of such device. (34 C.F.R. § 300.5.)

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

- (a) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;
- (b) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;
- (c) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;
- (d) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
- (e) Training or technical assistance for a child with a disability or, if appropriate, that child's family; and
- (f) Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of that child. (34 C.F.R. § 300.6.)

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

(i) Special education under section 300.36;

(ii) Related services under section 300.34; or

(iii) Supplementary aids and services under sections 300.38 and 300.114(a)(2)(ii). (34 C.F.R. § 300.105(a).)

On a case-by-case basis, the use of school-purchased assistive technology devices in a child's home or in other settings is required if the child's IEP Team determines that the child needs access to those devices in order to receive FAPE. (34 C.F.R. § 300.105(b).)

Each public agency must ensure that hearing aids worn in school by children with hearing impairments, including deafness, are functioning properly. (34 C.F.R. § 300.113(a).)

(1) Subject to paragraph (b)(2) of this section, each public agency must ensure that the external components of surgically implanted medical devices are functioning properly.

(2) For a child with a surgically implanted medical device who is receiving special education and related services under this part, a public agency is not responsible for the post-surgical maintenance, programming, or replacement of the medical device that has been surgically implanted (or of an external component of the surgically implanted medical device). (34 C.F.R. § 300.113(b).)

Staff to Pupil Ratios

Early Childhood Case loads

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

A. birth through two years: 12 pupils per teacher;

B. three through six years: 16 pupils per teacher; and

C. birth through six years: 14 pupils per teacher.

District early childhood special education (ECSE) classes must have at least one paraprofessional employed while pupils are in attendance. The maximum number of pupils in an ECSE classroom at any one time with a teacher and a program support assistant is eight. The maximum number of pupils in an ECSE classroom at any one time with an early childhood team is 16. (Minn. R. 3525.2340, subp. 5.)

Case Loads for School-Age Educational Service Alternatives

A. The maximum number of school-age pupils that may be assigned to a teacher:

(1) for pupils who receive direct special instruction from a teacher 50 percent or more of the instructional day, but less than a full school day:

(a) deaf-blind, autism spectrum disorders, developmental cognitive disability: severe-profound range, or severely multiply impaired, three pupils;

(b) deaf-blind, autism spectrum disorders, developmental cognitive disability: severe-profound range, or severely multiply impaired with one program support assistant, six pupils;

(c) developmental cognitive disability: mild-moderate range or specific learning disabled, 12 pupils;

(d) developmental cognitive disability: mild-moderate range or specific learning disabled with one program support assistant, 15 pupils;

(e) all other disabilities with one program support assistant, ten pupils; and

(f) all other disabilities with two program support assistants, 12 pupils. (Minn. R. 3525.2340, subp. 4(A)(1).)

A. The maximum number of school-age pupils that may be assigned to a teacher:

(2) for pupils who receive direct special education for a full day:

(a) deaf-blind, autism spectrum disorders, developmental cognitive disability: severe-profound range, or severely multiply impaired with one program support assistant, four pupils;

(b) deaf-blind, autism spectrum disorders, developmental cognitive disability: severe-profound range, or severely multiply impaired with two program support assistants, six pupils; and

(c) all other disabilities with one program support assistant, eight pupils. (Minn. R. 3525.2340, subp. 4(A)(2).)

For pupils who receive direct special education less than 50 percent of the instructional day, caseloads are to be determined by the local district's policy based on the amount of time and services required by the pupils' IEP plans. (Minn. R. 3525.2340, subp. 4(B).)

Variance from Staff to Pupil Ratios

The district may apply to the commissioner of education, or the commissioner's designee for a variance from the case loads in Minn. R. 3525.2340. The commissioner or the commissioner's designee shall grant a variance for less than 90 school days when it is demonstrated that unanticipated special education enrollment increases have occurred for students with severe disabilities. (Minn. R. 3525.2380, subp. 1.)

Attendance Outside Resident Public School

Educational Options

A. School of Parent's Choice

Nothing in this chapter must be construed as preventing parents of a child with a disability from sending the child to a school of their choice, if they so elect, subject to admission standards and policies adopted according to Minnesota Statutes, sections 125A.62 to 125A.64 and 125A.66 to 125A.73, and all other provisions of chapters 120A to 129C. (Minn. Stat. § 125A.13.)

B. Pupils Placed Through Education Choice Options

When a pupil is placed outside of the district of residence by the parent or pupil for the purpose of education and in accordance with a statutory education choice enrollment act, the resident district shall be responsible for assuming the cost of the education program when notified in accordance with Minnesota Statutes, section 127A.47, subdivision 5. The providing district shall be responsible for assuring that an appropriate program is available for the pupil including the notice and hearing provisions. Responsibility for transportation costs between the pupil's home and the providing school district shall be determined in accordance with Minnesota Statutes. (Minn. R. 3525.0800, subp. 8.)

C. Child with a Disability Placed in a Private School by the District

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

(a) Is provided special education and related services

(1) In conformance with an IEP that meets the requirements of sections 300.320 through 300.325; and

(2) At no cost to parents;

(b) Is provided an education that meets the standards that apply to education provided by the SEA and LEAs including the requirements of this part except for section 300.18 and section 300.156(c); and

(c) Has all of the rights of a child with a disability who is served by a public agency. (34 C.F.R. § 300.146.)

State and local funds may supplement and in no case supplant the proportionate amount of Federal funds required to be expended for parentally-placed private school children with disabilities under this part. (34 C.F.R. § 300.133(d).)

D. Attendance in Another District

No resident of a district who is eligible for special instruction and services pursuant to this section, may be denied provision of this instruction and service because of attending a public school in another district pursuant to Minnesota Statutes, section 123B.88, subdivision 5, if the attendance is not subject to sections 124D.06, 124D.07 or 124D.08. If the pupil attends a public school located in a contiguous district and the district of attendance does not provide special instruction and services, the district of residence must provide necessary transportation for the pupil between the boundary of the district of residence and the educational facility where special instruction and services are provided within the district of residence. The district of residence

may provide necessary transportation for the pupil between its boundary and the school attended in the contiguous district, but must not pay the cost of transportation provided outside the boundary of the district of residence. (Minn. Stat. § 125A.12.)

E. Placement in a Minnesota Academy

See Section Entitled, Placement in MN Academies

F. Nonpublic School

Parentally-placed private school children with disabilities means children with disabilities enrolled by their parents in private, including religious, schools or facilities that meet the definition of elementary school in section 300.13 or secondary school in section 300.36, other than children with disabilities covered under sections 300.145 through 300.147. (34 C.F.R. § 300.130.)

“Nonpublic School” means any school, church or religious organization, or home school wherein a resident of Minnesota may legally fulfill the compulsory instruction requirements of Minnesota Statutes, section 120A.22, which is located within the state, and which meets the requirements of Title VI of the Civil Rights Act of 1964 (Public Law 88-352). It does not mean a public school. (Minn. Stat. § 123B.41, Subd. 9.)

G. Charter School

Children with disabilities who attend public charter schools and their parents retain all rights under this part. (34 C.F.R. § 300.209(a).)

Parental Placement in Private School

Disagreements Between Parent and District About the Provision of FAPE

This part does not require an LEA to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made FAPE available to the child and the parents elected to place the child in a private school or facility. However, the public agency must include that child in the population whose needs are addressed consistent with sections 300.131 through 300.144. (34 C.F.R. § 300.148(a).)

Disagreements between the parents and a public agency regarding the availability of a program appropriate for the child, and the question of financial reimbursement, are subject to the due process procedures in sections 300.504 through 300.520. (34 C.F.R. § 300.148(b).)

Reimbursement for Parents' Expenditure When FAPE is Not Provided

If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private preschool, elementary school, or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made FAPE available to the child in a timely manner prior to that enrollment and that the private placement is

appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to education provided by the SEA and LEAs. (34 C.F.R. § 300.148(c).)

A. Limitation on Reimbursement

The cost of reimbursement described in paragraph (c) of this section may be reduced or denied (1) If

(i) At the most recent IEP Team meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or

(ii) At least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in paragraph (d)(1)(i) of this section;

(2) If, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in section 300.503(a)(1), of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for such evaluation; or

(3) Upon a judicial finding of unreasonableness with respect to actions taken by the parents. (34 C.F.R. § 300.148(d).)

B. Exception to Limitation on Reimbursement

Notwithstanding the notice requirement in paragraph (d)(1) of this section, the cost of reimbursement

(1) Must not be reduced or denied for failure to provide the notice if —

(i) The school prevented the parents from providing the notice;

(ii) The parents had not received notice, pursuant to § 300.504, of the notice requirement in paragraph (d)(1) of this section; or

(iii) Compliance with paragraph (d)(1) of this section would likely result in physical harm to the child; and

(2) May, in the discretion of the court or a hearing officer, not be reduced or denied for failure to provide this notice if

(i) The parents are not literate or cannot write in English; or

(ii) Compliance with paragraph (d)(1) of this section would likely result in serious emotional harm to the child. (34 C.F.R. § 300.148(e).)

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

A. Determining Services

Parentally-placed private school children with disabilities means children with disabilities enrolled by their parents in private, including religious, schools or facilities that meet the definition of elementary school in section 300.13 or secondary school in section 300.36, other than children with disabilities covered under sections 300.145 through 300.147. (34 C.F.R. § 300.130.)

(1) Decisions about the services that will be provided to parentally-placed private school children with disabilities under sections 300.130 through 300.144 must be made in accordance with paragraph (c) of this section and section 300.134(c).

(2) The LEA must make the final decisions with respect to the services to be provided to eligible parentally-placed private school children with disabilities. (34 C.F.R. § 300.137(b).)

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

(1) Initiate and conduct meetings to develop, review, and revise a services plan for the child, in accordance with 300.138(b); and

(2) Ensure that a representative of the religious or other private school attends each meeting. If the representative cannot attend, the LEA shall use other methods to ensure participation by the religious or other private school, including individual or conference telephone calls. (34 C.F.R. § 300.137(c).)

B. Consultation with Private School and Parent Representatives

To ensure timely and meaningful consultation, an LEA, or, if appropriate, an SEA, must consult with private school representatives and representatives of parents of parentally-placed private school children with disabilities during the design and development of special education and related services for the children regarding the following:

(c) The consultation process among the LEA, private school officials, and representatives of parents of parentally-placed private school children with disabilities, including how the process will operate throughout the school year to ensure that parentally-placed children with disabilities identified through the child find process can meaningfully participate in special education and related services.

(d) How, where, and by whom special education and related services will be provided for parentally-placed private school children with disabilities, including a discussion of

(1) The types of services, including direct services and alternate service delivery mechanisms; and

(2) How special education and related services will be apportioned if funds are insufficient to serve all parentally-placed private school children; and

(3) How and when those decisions will be made;

(e) How, if the LEA disagrees with the views of the private school officials on the provision of services or the types of services (whether provided directly or through a contract), the LEA will provide to the private school officials a written explanation of the reasons why the LEA chose not to provide services directly or through a contract. (34 C.F.R. § 300.134(c)-(e).)

C. Location of Services

Services to parentally-placed private school children with disabilities may be provided on the premises of private, including religious, schools, to the extent consistent with law. (34 C.F.R. § 300.139(a).)

For those children with a disability under sections 125A.03 to 125A.24 who attend nonpublic school at their parent's choice, a school district may provide special instruction and services at the nonpublic school building, a public school, or at a neutral site other than a nonpublic school as defined in Minnesota Statutes, section 123B.41, subdivision 13. The school district shall determine the location at which to provide services on a student-by-student basis, consistent with federal law. (Minn. Stat. § 126C.19, Subd. 4(b).)

D. Personnel to Deliver Services

The services provided to parentally-placed private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools, except that private elementary school and secondary school teachers who are providing equitable services to parentally-placed private school children with disabilities do not have to meet the highly qualified special education teacher requirements of section 300.18. (34 C.F.R. § 300.138(a)(1).)

An LEA may use funds available under sections 611 and 619 of the Act to make public school personnel available in other than public facilities

(1) To the extent necessary to provide services under sections 300.130 through 300.144 for parentally-placed private school children with disabilities; and

(2) If those services are not normally provided by the private school. (34 C.F.R. § 300.142(a).)

An LEA may use funds available under sections 611 and 619 of the Act to pay for the services of an employee of a private school to provide services under sections 300.130 through 300.144 if

(1) The employee performs the services outside of his or her regular hours of duty; and

(2) The employee performs the services under public supervision and control. (34 C.F.R. § 300.142(b).)

E. Level of Service

Parentally-placed private school children with disabilities may receive a different amount of services than children with disabilities in public schools. (34 C.F.R. § 300.138(a)(2).)

F. Separate Classes Prohibited

An LEA may not use funds available under section 611 or 619 of the Act for classes that are organized separately on the basis of school enrollment or religion of the students if

- (a) The classes are at the same site; and
- (b) The classes include students enrolled in public schools and children enrolled in private schools. (34 C.F.R. § 300.143.)

G. Expenditure

- (a) An LEA may not use funds provided under section 611 or 619 of the Act to finance the existing level of instruction in a private school or to otherwise benefit the private school.
- (b) The LEA must use funds provided under Part B of the Act to meet the special education and related services needs of parentally-placed private school children with disabilities, but not for meeting
 - (1) The needs of a private school or
 - (2) The general needs of the students enrolled in the private school. (34 C.F.R. § 300.141.)

H. Equipment and Supplies

- (a) A public agency must control and administer the funds used to provide special education and related services under sections 300.137 through 300.139, and hold title to and administer materials, equipment, and property purchased with those funds for the uses and purposes provided in the Act.
- (b) The public agency may place equipment and supplies in a private school for the period of time needed for the Part B program.
- (c) The public agency must ensure that the equipment and supplies placed in a private school
 - (1) Are used only for Part B purposes; and
 - (2) Can be removed from the private school without remodeling the private school facility.
- (d) The public agency must remove equipment and supplies from a private school if
 - (1) The equipment and supplies are no longer needed for Part B purposes; or
 - (2) Removal is necessary to avoid unauthorized use of the equipment and supplies for other than Part B purposes.
- (e) No funds under Part B of the Act may be used for repairs, minor remodeling, or construction of private school facilities. (34 C.F.R. § 300.144)

Transportation Services [See also Chapter 11]

(i) If necessary for the child to benefit from or participate in the services provided under this part, a parentally-placed private school child with a disability must be provided transportation

(A) From the child's school or the child's home to a site other than the private school; and

(B) From the service site to the private school, or to the child's home, depending on the timing of the services.

(ii) LEAs are not required to provide transportation from the child's home to the private school. (34 C.F.R. § 300.139(b)(1).)

The cost of the transportation described in paragraph (b)(1)(i) of this section may be included in calculating whether the LEA has met the requirement of section 300.133. (34 C.F.R. § 300.139(b)(2).)

No resident of a district who is eligible for special instruction and services under this section may be denied instruction and service on a shared time basis consistent with Minnesota Statutes, section 126C.19, subdivision 4, because of attending a nonpublic school defined in Minnesota Statutes, section 123B.41, subdivision 9. If a resident pupil with a disability attends a nonpublic school located within the district of residence, the district must provide necessary transportation for that pupil within the district between the nonpublic school and the educational facility where special instruction and services are provided on a shared time basis. If a resident pupil with a disability attends a nonpublic school located in another district and if no agreement exists under Minnesota Statutes, section 126C.19, subdivision 1 or 2, for providing special instruction and services on a shared time basis to that pupil by the district of attendance and where the special instruction and services are provided within the district of residence, the district of residence must provide necessary transportation for that pupil between the boundary of the district of residence and the educational facility. The district of residence may provide necessary transportation for that pupil between its boundary and the nonpublic school attended, but the nonpublic school must pay the cost of transportation provided outside the district boundary.

Parties serving students on a shared time basis have access to the due process hearing system described under United States Code, title 20, and the complaint system under Code of Federal Regulations, title 34, section 300.660-662. In the event it is determined under these systems that the nonpublic school or staff impeded the public school district's provision of a free

appropriate education, the commissioner may withhold public funds available to the nonpublic school proportionally applicable to that student under Minnesota Statutes, section 123B.42. (Minn. Stat. § 125A.18)

District Initiated Placement in a Private School or Facility

Prior to Placement in a Private School or Facility

(1) Before a public agency places a child with a disability in, or refers a child to, a private school or facility, the agency must initiate and conduct a meeting to develop an IEP for the child in accordance with sections 300.320 and 300.324.

(2) The agency must ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the agency must use other methods to ensure participation by the private school or facility, including individual or conference telephone calls. (34 C.F.R. § 300.325(a).)

Once Placed in a Private School or Facility

A. Provision of Services

Code of Federal Regulations, title 34, sections 300.146 through 300.147 apply only to children with disabilities who are or have been placed in or referred to a private school or facility by a public agency as a means of providing special education and related services. (34 C.F.R. § 300.145.)

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

(a) Is provided special education and related services

(1) In conformance with an IEP that meets the requirements of sections 300.320 through 300.325; and

(2) At no cost to the parents;

(b) Is provided an education that meets the standards that apply to education provided by the SEA and LEAs including the requirements of this part, except for section 300.18 and section 300.156(c); and

(c) Has all of the rights of a child with a disability who is served by a public agency. (34 C.F.R. § 300.146.)

In implementing section 300.146, the SEA must

(a) Monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires;

(b) Disseminate copies of applicable standards to each private school and facility to which a public agency has referred or placed a child with a disability; and

(c) Provide an opportunity for those private schools and facilities to participate in the development and revision of State standards that apply to them. (34 C.F.R. § 300.147.)

B. Meetings to Review and Revise IEPs

(1) After a child with a disability enters a private school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the public agency.

(2) If the private school or facility initiates and conducts these meetings, the public agency must ensure that the parents and an agency representative

(i) Are involved in any decision about the child's IEP; and

(ii) Agree to any proposed changes in the IEP before those changes are implemented.

(c) Even if a private school or facility implements a child's IEP, responsibility for compliance with this part remains with the public agency and the SEA. (34 C.F.R. § 300.325(b)-(c).)

Providing Special Education to Shared-Time Pupils

Public school programs that provide instruction in core curriculum may be provided to shared time pupils only at a public school building. Public school programs, excluding programs that provide instruction in core curriculum, may be provided to shared time pupils at a public school building, a neutral site, the nonpublic school, or any other suitable location. Guidance and counseling and diagnostic and health services required under Minnesota Statutes, sections 125A.03 to 125A.24 and 125A.65 may be provided at a nonpublic school building. As used in this subdivision, "diagnostic services" means speech, hearing, vision, psychological, medical and dental diagnostic services and "health services" means physician, nursing or optometric services provided to pupils in the field of physical and mental health. (Minn. Stat. § 126C.19, Subd. 4(a).)

For those children with a disability under Minnesota Statutes, sections 125A.03 to 125A.24 who attend nonpublic school at their parent's choice, a school district may provide special instruction and services at the nonpublic school building, a public school, or at a neutral site other than a nonpublic school as defined in Minnesota Statutes, section 123B.41, subdivision 13. The school district shall determine the location at which to provide services on a student-by-student basis, consistent with federal law. (Minn. Stat. § 126C.19, Subd. 4(b).)

Student Enrolled Outside of the Resident District

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

If the team determines that it may be appropriate to consider placement options outside of the resident district, representatives from the outside district, agency, or academy must be invited to attend a team meeting as a participant to complete an appropriate IEP for the pupil including the needs, goals, objectives, services, and placement of the pupil. (Minn. R. 3525.0800, subp. 3.)

Purchased Services

The district shall not purchase special educational services for a pupil from a public or private agency when the service is available or can be made available and can be more appropriately provided as the least restrictive alternative within the district. Whenever it is appropriate for a district to purchase special education service for pupils with disabilities and who reside in the district, it continues to be the responsibility of the school district, consistent with Minnesota Statutes and Minnesota Rules, parts 3525.0210 to 3525.4770, to assure and ascertain that such pupils and youth receive the education and related services and rights to which they are entitled. (Minn. R. 3525.0800, subp. 2.)

Educational and Financial Responsibilities of the Resident District

A. Development of an Appropriate Program

As provided in Minnesota Statutes, section 125A.05 a pupil's district of residence is responsible for assuring that an appropriate program is provided for all eligible pupils placed by the district's team within the district or in an out-of-district placement regardless of the method or location of instruction used. (Minn. R. 3525.0800, subp. 1.)

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

If the team determines that it may be appropriate to consider placement options outside of the resident district, representatives from the outside district, agency, or academy must be invited to attend a team meeting as a participant to complete an appropriate IEP for the pupil including the needs, goals, objectives, services, and placement of the pupil. (Minn. R. 3525.0800, subp. 3.)

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

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

The annual IEP must be developed jointly by the providing district, agency, or academy and resident district. The resident district may appoint a member of the providing district as its representative. (Minn. R. 3525.0800, subp. 4.)

The resident district is responsible for resolving disagreements between the pupil's parents and district, including conciliation and due process hearings when the placement has been made by the resident district. If the providing district, agency, or academy receives a request for a conciliation conference, mediation, or due process hearing from the parent, the providing district, agency, or academy must notify the resident district of the parent's request within one school day. (Minn. R. 3525.0800, subp. 5.)

B. Other Responsibilities

If the districts do not agree on the tuition rate, either district may appeal to the commissioner as provided in Minnesota Statutes, section 125A.11. (Minn. R. 3525.0800, subp. 6.)

Educational and Financial Responsibilities of the Providing District

A. Provision of Services

A school district may provide direct or indirect special education services by district special education staff to a pupil attending a community-based program. A school district may contract for special education services with a community-based program if the program meets Department of Education rules. (Minn. R. 3525.1550, subp. 2.)

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

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

The annual IEP must be developed jointly by the providing district, agency, or academy and resident district. The resident district may appoint a member of the providing district as its representative. (Minn. R. 3525.0800, subp. 4.)

B. Other Responsibilities

The resident district is responsible for resolving disagreements between the pupil's parents and district, including conciliation and due process hearings when the placement has been made by the resident district. If the providing district, agency, or academy receives a request for a conciliation conference, mediation, or due process hearing from the parent, the providing district, agency, or academy must notify the resident district of the parent's request within one school day. (Minn. R. 3525.0800, subp. 5.)

If the districts do not agree on the tuition rate, either district may appeal to the commissioner as provided in Minnesota Statutes, section 125A.11. (Minn. R. 3525.0800, subp. 6.)

Joint Participation

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

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

The annual IEP must be developed jointly by the providing district, agency, or academy and resident district. The resident district may appoint a member of the providing district as its representative. (Minn. R. 3525.0800, subp. 4.)

Placement in Minnesota State Academies

Admission Standards

Admission to the Minnesota State Academies is described in this section. (a) A pupil who is deaf, hard of hearing, or blind-deaf, may be admitted to the Academy for the Deaf. A pupil who is blind or visually impaired, deaf/blind, or multiply disabled may be admitted to the Academy for the Blind. For a pupil to be admitted, two decisions must be made under Minnesota Statutes, sections 125A.03 to 125A.24 and 125A.65.

(1) It must be decided by the individualized education program team that education in regular or special education classes in the pupil's district of residence cannot be achieved satisfactorily because of the nature and severity of the deafness or blindness or visual impairment respectively.

(2) It must be decided by the individualized education program team that the academy provides the most appropriate placement within the least restrictive alternative for the pupil.

(b) A deaf or hard of hearing child or a visually impaired pupil may be admitted to get socialization skills or on a short-term basis for skills development. (Minn. Stat. § 125A.69, Subd. 1.)

Obligations of the Academies

Subdivision 1. The academies must provide their pupils with the levels of service defined in rules of the state board.

Subd. 2. The academies must deal with the developmental needs of their pupils.

Subd. 3. The academies must provide opportunities for their pupils to be educated with pupils without a disability. A pupil's opportunities must be consistent with the pupil's individualized education program or individual family service plan and assessment. (Minn. Stat. § 125A.66.)

Charter Schools

Charter Schools That Are an LEA or are Part of the LEA

If the public charter school is an LEA, consistent with Code of Federal Regulations, title 34, section 300.28, that receives funding under section 300.705, that charter school is responsible for ensuring that the requirements of this part are met, unless State law assigns that responsibility to some other entity. (34 C.F.R. § 300.209(c).)

If the public charter school is a school of an LEA that receives funding under section 300.705 and includes other public schools

(i) The LEA is responsible for ensuring that the requirements of this part are met, unless State law assigns that responsibility to some other entity; and

(ii) The LEA must meet the requirements of paragraph (b)(1) of this section. (34 C.F.R. § 300.209(B)(2).)

Charter Schools that are Not Part of the LEA

(1) If the public charter school is not an LEA receiving funding under Code of Federal Regulations, title 34, section 300.705, or a school that is part of an LEA receiving funding under section 300.705, the SEA is responsible for ensuring that the requirements of section 300.312 are met.

(2) Paragraph (d)(1) of this section does not preclude a State from assigning initial responsibility for ensuring the requirements of this part are met to another entity. However, the SEA must maintain the ultimate responsibility for ensuring compliance with this part, consistent with § 300.149. (34 C.F.R. § 300.209(d).)

A charter school must comply with Minnesota Statutes, sections 125A.02, 125A.03 to 125A.24, and 125A.65 and rules relating to the education of pupils with a disability as though it were a district. (Minn. Stat. § 124D.10, Subd. 12.)

Care and Treatment

Education programs approval and responsibility

The commissioner shall approve education programs for placement of children and youth in residential facilities including detention centers, before being licensed by the Department of Human Services or the Department of Corrections. Education programs in these facilities shall conform to state and federal education laws including the Individuals with Disabilities Education Act (IDEA). This section applies only to placements in facilities licensed by the Department of Human Services or the Department of Corrections. (Minn. Stat. § 125A.515, Subd. 1.)

Definition of Care and Treatment Placement

For those education programs run by the Department of Corrections, the district shall be the Department of Corrections for the purpose of this part. The district is responsible for ensuring that a cooperative agreement is reached with the care and treatment center facility which addresses all the requirements of Department of Human Services Rules, 9545.0900 to 9545.1090 and 9545.1400 to 9545.1480 which pertain to the provision of education services for students placed in centers for care and treatment. Provision of special education services requires implementation of all due process safeguards defined in state and federal law. Some procedures are modified to assure the pupil's access to education.

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

1. chemical dependency and other substance abuse treatment centers;

2. shelter care facilities;
3. home, due to accident or illness;
4. hospitals;
5. day treatment centers;
6. correctional facilities;
7. residential treatment centers; and
8. mental health programs. (Minn. R. 3525.2325, subp. 1(D).)

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

Students who are absent from, or predicted to be absent from, school for 15 consecutive or intermittent days, and placed at home or in facilities not licensed by the Departments of Corrections or Human Services are entitled to regular and special education services consistent with this section or Minnesota Rules, part 3525.2325. These students include students with and without disabilities who are home due to accident or illness, in a hospital or other medical facility, or in a day treatment center. (Minn. Stat. § 125A.515, Subd. 10.)

When Education is Required

(a) Education services must be provided to a student beginning within three business days after the student enters the care and treatment facility. The first four days of the student's placement may be used to screen the student for educational and safety issues.

(b) If the student does not meet the eligibility criteria for special education, regular education services must be provided to that student. (Minn. Stat. § 125A.515, Subd. 4.)

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

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

B predicted to be absent from the normal school site for 15 consecutive school days according to the placing authority, such as a medical doctor, psychologist, psychiatrist, judge, or other court-appointed authority; or

C. health-impaired and in need of special education and predicted by the team to be absent from the normal school site for 15 intermittent days.

A pupil or regular education student shall begin receiving instruction as soon as practicable under treatment conditions.

Special education services must be provided as required by a pupil's IEP, and to the extent that treatment considerations allow the pupil to participate. Number of school days for determining due process procedures shall begin upon enrollment in an education program. Placement for care and treatment does not of itself require special education placement. (Minn. R. 3525.2325, subp. 1(C).)

Provisions of Education for Short-Term Placement

When a student is placed in a facility approved under this section that has an on-site education program, the providing district, upon notice from the care and treatment facility, must contact the resident district within one business day to determine if a student has been identified as having a disability, and to request at least the student's transcript, and for students with disabilities, the most recent individualized education program (IEP) and evaluation report, and to determine if the student has been identified as a student with a disability. The resident district must send a facsimile copy to the providing district within two business days of receiving the request. (Minn. Stat. § 125A.515, Subd. 5(a).)

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

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

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

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

(1) Regular education instruction must begin immediately upon enrollment in the education program.

(2) A screening must be conducted by education staff to determine the student's academic, social, and behavioral needs.

(3) Based on the documented results of the screening, a decision must be made about the need for prereferral interventions or an appropriate special education evaluation according to Minnesota Rules, parts 3525.2550 and 3525.2710. It is not required that an appropriate evaluation be started unless it appears that it can be completed.

(4) During the student's placement, regular education instruction must be provided. (Minn. R. 3525.2325, subp. 2.)

A. When the Pupil Has an Identified Disability and an IEP

If a student placed under this section has been identified as having a disability and has an individualized education program in the resident district:

(1) the providing agency must conduct an individualized education program meeting to reach an agreement about continuing or modifying special education services in accordance with the current individualized education plan goals and objectives and to determine if additional evaluations are necessary; and

(2) at the least the following people shall receive written notice or documented phone call to be followed with written notice to attend the individualized education program meeting:

(i) the person or agency placing the student;

(ii) the resident district;

(iii) the appropriate teachers and related services staff from the providing district;

(iv) appropriate staff from the residential facility;

(v) the parents or legal guardians of the student; and

(vi) when appropriate, the student. (Minn. Stat. § 125A.515, subp. 5(b).)

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

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

including the modified IEP, must be provided to the parents with a copy of [parental] rights, including a response form. (Minn. R. 3525.2325, subp. 2(A).)

B. When a Disability Has Not Been Identified

For a student who has not been identified as a student with a disability a screening must be conducted by the providing districts as soon as possible to determine the student's educational and behavioral needs and must include a review of the student's educational records. (Minn. Stat. § 125A.515, Subd. 5(c).)

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

(1) Regular education instruction must begin immediately upon enrollment in the education program.

(2) A screening must be conducted by education staff to determine the student's academic, social, and behavioral needs.

(3) Based on the documented results of the screening, a decision must be made about the need for prereferral interventions or an appropriate special education evaluation according to Minnesota Rules, parts 3525.2550, and 3525.2710. It is not required that an appropriate evaluation be started unless it appears that it can be completed.

(4) During the student's placement, regular education instruction must be provided. (Minn. R. 3525.2325, subp. 2(B).)

Provisions of Education

When a student is placed in a facility approved under this section that has an on-site education program, the providing district, upon notice from the care and treatment facility, must contact the resident district within one business day to determine if a student has been identified as having a disability, and to request at least the student's transcript, and for students with disabilities, the most recent individualized education program (IEP) and evaluation report, and to determine if the student has been identified as a student with a disability. The resident district must send a facsimile copy to the providing district within two business days of receiving the request. (Minn. Stat. § 125A.515, Subd. 5 (a).)

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

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

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

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

(1) contact the parents to secure an agreement to provide special education on an interim basis while an evaluation is completed; or

(2) call a team meeting to revise the current IEP or develop an interim IEP while the pupil is undergoing additional evaluation to determine an appropriate program.

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

If the student meets entrance criteria for special education, an IEP must be developed. Special education services must be provided by appropriately licensed staff in accordance with the IEP. If the student was not evaluated or was evaluated and does not meet entrance criteria for special education, regular education services must be provided in accordance with the student's education plan. (Minn. R. 3525.2325, subp. 3.)

A. When the Pupil Has an Identified Disability and an IEP

If the student placed under this section has been identified as having a disability and has an individualized education program in the resident district:

(1) the providing district must conduct an individualized education program meeting to reach an agreement about continuing or modifying special education services in accordance with the current individualized education program goals and objectives and to determine if additional evaluations are necessary; and

(2) at the least the following people shall receive written notice or documented phone call to be followed with written notice to attend the individualized education program meeting:

(i) the person or agency placing the student;

(ii) the resident district;

(iii) the appropriate teachers and related services staff from the providing district;

(iv) appropriate staff from the residential facility;

(v) the parents or legal guardians of the student; and

(vi) when appropriate, the student. (Minn. Stat. § 125A.515, subp. 5(b).)

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

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

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

(1) contact the parents to secure an agreement to provide special education on an interim basis while an evaluation is being completed; or

(2) call a team meeting to revise the current IEP or develop an interim IEP while the pupil is undergoing additional evaluation to determine an appropriate program. (Minn. R. 3525.2325, subp. 3(A).)

B. When a Disability Has Not Been Identified

For a student who has not been identified as a student with a disability a screening must be conducted by the providing districts as soon as possible to determine the student's educational and behavioral needs and must include a review of the student's educational records. (Minn. Stat. § 125A.515, subp. 5(c).)

If the student has not been identified as disabled or if the providing district cannot determine if the student has been identified as disabled, the student entering a residential facility for a long-term placement must be screened to determine if there is a need for an appropriate educational evaluation. An evaluation must begin with a review of screening and other information such as the parent or student interview, available educational and social history, and the purpose of the treatment placement. The evaluation must be conducted according to Minnesota Rules, parts 3525.2750 and 3525.2710.

If the student meets entrance criteria for special education, an IEP must be developed. Special education services must be provided by appropriately licensed staff in accordance with the IEP. If the student was not evaluated or was evaluated and does not meet entrance criteria for special education, regular education services must be provided in accordance with the student's education plan. (Minn. R. 3525.2325, subp. 3(B).)

Financial Responsibilities for Care and Treatment

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

(a) The district of residence of a child shall be the district in which the child's parent resides, if living, or the child's guardian, or the district designated by the commissioner if neither parent nor guardian is living within the state. (Minn. Stat. § 125A.15(a).)

(a) Education services provided to students who have been placed under this section are reimbursable in accordance with special education and general education statutes.

(b) Indirect or consultative services provided in conjunction with regular education prereferral interventions and assessment provided to regular education students suspected of being disabled and who have demonstrated learning or behavioral problems in a screening are reimbursable with special education categorical aids.

(c) Regular education, including screening, provided to students with or without disabilities is not reimbursable with special education categorical aids. (Minn. Stat. § 125A.515, Subd. 9.)

If the resident district places a pupil for care and treatment, the resident district shall be responsible for providing and paying for an appropriate education program according to this part, either directly or through tuition agreement, and shall also be responsible for the costs associated with care and treatment. (Minn. R. 3525.0800, subp. 7(A).)

When a child is temporarily placed for care and treatment in a day program located in another district and the child continues to live within the district of residence during the care and treatment, the district of residence is responsible for providing transportation to and from the care and treatment program and an appropriate educational program for the child. The resident district may establish reasonable restrictions on transportation, except if a Minnesota court or agency orders the child placed at a day care and treatment program and the resident district receives a copy of the order, then the resident district must provide transportation to and from the program unless the court or agency orders otherwise. Transportation shall only be provided by the resident district during regular operating hours of the resident district. The resident district may provide the educational program at a school within the district of residence, at the child's residence, or in the district in which the day treatment center is located by paying tuition to that district. (Minn. Stat. § 125A.15(c).)

When a child is temporarily placed in a residential program for care and treatment, the nonresident district in which the child is placed is responsible for providing an appropriate educational program for the child and necessary transportation while the child is attending the educational program; and must bill the district of the child's residence for the actual cost of providing the program, as outlined in Minnesota Statutes, section 125A.11, except as provided in paragraph (e). However, the board, lodging, and treatment costs incurred in behalf of a child with a disability placed outside of the school district of residence by the commissioner of human services or the commissioner of corrections or their agents, for reasons other than providing for the child's special educational needs must not become the responsibility of either the district providing the instruction or the district of the child's residence. For the purposes of this section, the state correctional facilities operated on a fee-for-service basis are considered to be residential programs for care and treatment. (Minn. Stat. § 125A.15(d).)

When the pupil is placed in a residential facility or foster care by someone other than the resident district, the district in which the facility is located is responsible for providing an appropriate education program set forth in Minnesota Statutes and Minnesota Rules, parts 3525.0210 to 3525.4770 including the notice and hearing provisions. The resident district is responsible for assuming the cost of the educational program when notified according to Minnesota Statutes, sections 125A.15 and 127A.47. The district is not responsible for the cost of care and treatment. (Minn. R. 3525.0800, subp. 7(B)(1).)

When the pupil is placed in a day treatment program by an agency other than the resident district, the resident district is responsible for determining the location of the special education services in accordance with the options outlined in Minnesota Statutes, section 125A.15. The resident district shall be responsible for ensuring that an appropriate program is provided in accordance with subparts 4 to 6, including all costs for the education program and any due process proceedings regardless of the method or locations of services selected. (Minn. R. 3525.0800, subp. 7(B)(2).)

Pupils Leaving the Care and Treatment Facility

If a student has been placed in a facility under this section for 15 or more business days, the providing district must prepare an exit report summarizing the regular education, special education, evaluation, educational progress, and service information and must send the report to the resident district and the next providing district if different, the parent or legal guardian, and any appropriate social service agency. For students with disabilities, this report must include the student's IEP. (Minn. Stat. § 125A.515, Subd. 6.)

If a student or pupil has received an evaluation or special education services for 15 or more school days, the providing district must prepare an exit report summarizing the regular education or special education evaluation or service information and must send the report to the home school, the receiving facility, the parent, and any appropriate social service agency. For a pupil, this report must include a summary of current levels of performance, progress, and any modifications made in the pupil's IEP or services. Record transfers between anyone other than educational agencies and the parent require prior approval of the parents in accordance with data privacy laws. (Minn. R. 3525.2325, subp. 4.)

Minimum Service Requirements When Placed for Care and Treatment

When a student is placed in a facility approved under this section, at a minimum, the providing district is responsible for:

- (1) the education necessary, including summer school services, for a student who is not performing at grade level as indicated in the education record or IEP; and
- (2) a school day, of the same length as the school day of the providing district, unless the unique needs of the student, as documented through the IEP or education record in consultation with treatment providers, requires an alteration in the length of the school day. (Minn. Stat. § 125A.515, Subd. 7)

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

- A. the instruction necessary for the student or pupil to make progress in the appropriate grade level for the successful completion of the courses, programs, or classes the student or pupil would have been enrolled in if the student or pupil were not placed for care and treatment;

B. preferably a normal school day in accordance with the pupil's IEP, as defined in Minnesota Rules, part 3525.2810, subpart 1, item A;

C. an average of at least two hours a day of one-to-one instruction; or

D. a minimum of individualized instruction for one-half of the normal school day if it is justified in the pupil's IEP or student's education plan that none of these options are appropriate.

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

Provision of special educational services for pupils outside of the providing school district's regular calendar is optional unless the pupil has an extended year IEP. (Minn. R. 3525.2325, subp. 5.)

Due Process Requirements in Care and Treatment Placement

When a student's treatment and educational needs allow, education shall be provided in a regular educational setting. The determination of the amount and site of integrated services must be a joint decision between the student's parents or legal guardians and the treatment and education staff. When applicable, educational placement decisions must be made by the IEP team of the providing district. Educational services shall be provided in conformance with the least restrictive environment principle of the Individuals with Disabilities Education Act. The providing district and care and treatment facility shall cooperatively develop discipline and behavior management procedures to be used in emergency situations that comply with the Minnesota Pupil Fair Dismissal Act and other relevant state and federal laws and regulations. (Minn. Stat. § 125A.515, Subd. 8.)

A. IEP Development

The IEP developed by the team must include the provisions of parts 3525.2900 and 3525.2810, the location of the special education services, the projected duration of the special education services, and provisions for coordinating the care and treatment and the special education services. Minn. R. 3525.2325, subp. 6(A).

B. Integration of Pupils at Required On-Site Program

The nature of and the restrictiveness of some long-term facilities require the pupils to remain on site. When a pupil's treatment and educational needs allow integration shall be provided in a regular educational setting. The determination of the amount and site of integrated services must be a joint decision between parents, the treatment and education staff, and when possible final educational placement decisions must be made by the IEP team of the providing educational agency. If the IEP team concludes a pupil can benefit from an average of more than three hours of educational services, it must, in conjunction with care and treatment center staff, consider the feasibility and appropriateness of an education placement at a regular school site. (Minn. R. 3525.2325, subp. 6(B).)

C. Residential Facility as Providing District

If a pupil is placed in a residential facility outside the resident district, the providing district must provide appropriate special education services. The placement of the pupil in a residential center for care and treatment outside the resident district is not an initial placement in the receiving district. The providing district shall make every effort to implement the resident district's IEP, making the modifications necessary due to the restrictive care and treatment setting and based on agreements reached with the parent. The providing district shall comply with the due process procedures of parts 3525.2550 to 3525.4770. Districts shall develop alternative procedures for implementing the legal requirements for observing the student in a regular classroom and document previous interventions that have been tried before the student placed for care and treatment is identified as having a specific learning disability or an emotional or behavioral disorder. These alternative procedures must be included in the district's entrance criteria. The district and facility shall cooperatively develop procedures to be used in emergency situations that comply with the Pupil Fair Dismissal Act according to Minnesota Statutes, section 121A.40 to 121A.56, and the district's discipline policy. (Minn. R. 3525.2325, subp. 6(C).)

Placement in State Institution

(a) Responsibility for special instruction and services for a child with a disability placed in a state institution on a temporary basis must be determined in the following manner:

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

(b) When it is determined that the child can benefit from public school enrollment, provision for the instruction shall be made in the following manner:

- (1) determination of eligibility for special instruction and services must be made by the commissioner and the commissioner of the department responsible for the institution;
- (2) the district where the institution is located is responsible for providing transportation and an appropriate educational program for the child and must make a tuition charge to the child's district of residence for the actual cost of providing the program; and
- (3) the district of the child's residence shall pay the tuition and other program costs excluding transportation costs and may claim general education aid for the child. Transportation costs must be paid by the district where the institution is located and the state must pay transportation aid to that district. (Minn. Stat. § 125A.16.)

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

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

- (1) parental rights have been terminated by court order;
- (2) the parent or guardian is not living within the state;
- (3) no other district residence can be established; or
- (4) the parent or guardian having legal custody of the child is an inmate of a Minnesota correctional facility or is a resident of a halfway house under the supervision of the commissioner of corrections.

The school board of the district of residence must provide the same educational program for the child as it provides for all resident children with a disability in the district. (Minn. Stat. § 125A.17.)

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

A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for in this part if the public agency had knowledge (as determined in accordance with paragraph (b) of this section) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred. (34 C.F.R. § 300.534(a).)

Basis of Knowledge

A public agency must be deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred

- (1) The parent of the child expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;
- (2) The parent of the child requested an evaluation of the child pursuant to Code of Federal Regulations, title 34, sections 300.300 through 300.311; or
- (3) The teacher of the child, or other personnel of the LEA, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the agency or to other supervisory personnel of the agency. (34 C.F.R. § 300.534(b).)

Exception

A public agency would not be deemed to have knowledge under paragraph (b) of this section if

- (1) The parent of the child
 - (i) Has not allowed an evaluation of the child pursuant to Code of Federal Regulations, title 34, section 300.300 through 300.311; or
 - (ii) Has refused services under this part; or

(2) The child has been evaluated in accordance with Code of Federal Regulations, title 34, section 300.300 through 300.311 and determined to not be a child with a disability under this part. (34 C.F.R. § 300.534(c).)

Conditions That Apply If No Basis of Knowledge

If a public agency does not have knowledge that a child is a child with a disability (in accordance with paragraphs (b) and (c) of this section) prior to taking disciplinary measures against the child, the child may be subjected to the disciplinary measures applied to children without disabilities who engage in comparable behaviors consistent with paragraph (d)(2) of this section. (34 C.F.R. § 300.534(d)(1).)

Limitations

(i) If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under Code of Federal Regulations, title 34, section 300.530, the evaluation must be conducted in an expedited manner.

(ii) Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

(iii) If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency must provide special education and related services in accordance with this part, including the requirements of sections 300.530 through 300.536 and section 612(a)(1)(A) of the Act. (34 C.F.R. § 300.534(d)(2).)