

## Q & A: Special Instruction and Services for Children with Disabilities Continues until Age 22

The Minnesota Department of Education (MDE), General Counsel – Dispute Resolution, has developed this document to provide technical assistance to parents, school districts, and charter schools regarding the changes to age eligibility for children with disabilities. Now, in Minnesota, the provision of special instruction and services (a free appropriate public education) to children with disabilities continues until they reach age 22, as opposed to the previous version of the law, which continued special instruction and services until July 1 after the child with a disability reached 21 years old.

The intention of this document is to provide helpful, general information to the public. It does not constitute legal advice nor is it a substitute for consulting with a licensed attorney. The information below should not be relied upon as a comprehensive or definitive rendition of applicable state and federal law.

### Question 1: When does a child’s eligibility for a free appropriate public education (FAPE) terminate under Part B of the Individuals with Disabilities Education Act (IDEA)?

**Answer:** Once a child with a disability has been deemed eligible for services under Part B of the IDEA, the child’s eligibility terminates when one of the following events occur:

- After the completion of an evaluation, it is determined that the child is no longer a child with a disability, as defined under IDEA;<sup>1</sup>
- The child graduates from high school with a regular high school diploma;<sup>2</sup> or

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<sup>1</sup> 34 C.F.R. §§ 300.305(e)(1) and 300.306(a)(1). *See also*, 34 C.F.R. § 300.8 and Minn. Stat. 125A.02 (defining a child with a disability).

<sup>2</sup> 34 C.F.R. § 300.102(a)(3)(i). *See also*, 34 C.F.R. § 300.102(a)(3)(iv) (defining a regular high school diploma as the standard high school diploma awarded to the preponderance of students in the State that is fully aligned with State standards, or a higher diploma, except that a regular high school diploma shall not be aligned to the alternate academic achievement standards of the [Every Student Succeeds Act] and does not include a recognized equivalent of a diploma, such as a general equivalency diploma, certificate of completion, certificate of attendance, or similar lesser credential) and Minn. Stat. 125A.04 (providing “upon completion of secondary school or the equivalent, a pupil with a disability who satisfactorily attains the objectives in the pupil’s IEP must be granted a high school diploma that is identical to the diploma granted to a pupil without a disability.”).

- The child exceeds the maximum age for receiving a free appropriate public education under State law.<sup>3</sup>

## **Question 2: When does a child with a disability exceed the maximum age for receiving a FAPE under Minnesota law?**

**Answer:** The maximum age for a child with disability to receive a FAPE in Minnesota is now age 22. The 2023 Minnesota Legislature amended Minnesota Statutes, section 125A.03(b) to continue the provision of special instruction and services (a FAPE) until a child with a disability becomes 22 years old.<sup>4</sup> This legislation went into effect July 1, 2023.<sup>5</sup>

## **Question 3: What if a child with a disability reaches age 22 during the school year or during an extended school year program?**

**Answer:** When a child with a disability reaches age 22 in Minnesota, the child’s eligibility terminates.<sup>6</sup> There are no provisions in State law to extend a child’s Part B eligibility past the age of 22. As such, the day before a child turns 22 is the last day the child is eligible for special education and related services under Minnesota law. For example, there is no Minnesota law granting a child continued eligibility until the end of the school year in which the child turns age 22, to the end of an extended school year program in which the child turns age 22, or otherwise. Instead, when a child with a disability reaches the age of 22, the child is no longer eligible for special instruction and services (FAPE) under Minnesota law.

## **Question 4: Does a child whose eligibility for a FAPE terminated effective July 1, 2023, under Minnesota’s previous law (Minn. Stat. 125A.03(b)), continue to be eligible for special instruction and services?**

**Answer:** In an order dated August 25, 2023, United States District Court Judge Patrick J. Schiltz declared, “Minn. Stat. § 125A.03(b) that was in effect until July 1, 2023, violated the Individuals with Disabilities Education Act (specifically, 20 U.S.C. § 1412) insofar as that version of Minn. Stat. § 125A.03(b) denied special education to students with disabilities who had not received high-school diplomas and who had not yet reached the age of 22.”<sup>7</sup> Thus, if a child has not graduated from high school with a regular high school diploma, is still determined to be a child with a disability as defined under IDEA, and has not yet reached age 22, that child continues to be

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<sup>3</sup> 34 C.F.R. § 300.101(a) and Minn. Stat. 125A.03.

<sup>4</sup> See also, [Chapter 55 - Minnesota Laws](#) (amending Minn. Stat. 120A.20, subd. 1(c) “A pupil who becomes age 21 after enrollment is eligible for continued free public school enrollment until at least one of the following occurs: (1) the first September 1 after the pupil’s 21st birthday; (2) the pupil’s completion of the graduation requirements; (3) the pupil’s withdrawal with no subsequent enrollment within 21 calendar days; ~~or~~ (4) the end of the school year; or (5) in the case of a student with a disability as defined under section 125A.02, the pupil’s 22nd birthday.”).

<sup>5</sup> See [Chapter 55 - Minnesota Laws](#) (amending Minn. Stat. 125A.03(b) “special instruction and services must be provided from birth ~~until July 1 after the child with a disability becomes 21 years old~~ until the child with a disability becomes 22 years old.”).

<sup>6</sup> Minn. Stat. 125A.03.

<sup>7</sup> *K.O v. Willie L. Jett, II*, 0:21-cv-01837-PJS-DJF, Doc. 69, (D. Ct. Minn. Aug. 25, 2023).

eligible for special instruction and services and may seek reenrollment into their school district to receive those services until he/she reaches age 22.