

SPECIAL EDUCATION PROCEDURAL MANUAL

BILLINGS PUBLIC SCHOOL DISTRICT MISSION STATEMENT

Billings Public Schools Community strives to INSPIRE, EDUCATE, and EMPOWER students to be responsible and innovative global citizens who achieve their full potential.

BELIEFS

ABOUT STUDENTS...

All students are valued and respected.

Students learn in diverse ways and at different rates.

Personal responsibility is the basis for successful learning and positive behavior.

Student success is achieved through shared responsibility.

Positive relationships lead to higher achievement, mutual trust, and a safe school environment.

ABOUT HOME & COMMUNITY...

Parents and families have the greatest influence on, and responsibility for, their student's learning and behavior.

Positive role models are essential for learning.

Community engagement strengthens learning and promotes a sense of pride in ownership.

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Chapter 1.0 INTRODUCTION

This chapter serves as the introduction to the Billings School District Special Education Procedural Manual. The introduction consists of the following parts:

- 1.1 Purpose of this Manual
- 1.2 Applicable Laws and Regulations
- 1.3 Free Appropriate Public Education (FAPE)
- 1.4 Overview of the Manual

1.1 PURPOSE OF THIS MANUAL

This manual is designed for use by teachers, administrators, parents, service providers, professionals, and others involved in the identification, evaluation, and education of students with disabilities in the Billings School District (referred to as “District”). The manual is intended to guide the user in complying with federal and state legal requirements as they apply to the District’s interaction with students with disabilities and their parents. The District’s Superintendent may modify or update this manual as provided for in the District’s policies.

This manual frequently refers to District personnel who are responsible for carrying out certain activities, as well as the appropriate contacts if issues arise. If District personnel have any questions regarding the use or interpretation of this manual or any legal or other issues affecting students with disabilities, they should contact the Executive Director of Student Services.

1.2 APPLICABLE LAWS AND REGULATIONS

1.2.1. Individuals with Disabilities Education Act (IDEA)

- a. This federal law for children with disabilities was first enacted by Congress in 1975 and has been subject to various amendments during periodic funding reauthorizations. The 1990 amendments included its currently prevailing name, the Individuals with Disabilities Education Act, commonly referred to as “IDEA.” IDEA provides federal funds to state and local agencies for the education of eligible students with disabilities. In order to be eligible to receive services under IDEA, a student must be determined to meet the specific criteria of one or more of the classifications, and as a result thereof, need special education.
- b. The District receives IDEA funds for the education of students with disabilities only if it complies with the specific requirements of IDEA. They include, among other things, the requirement to evaluate students who may have disabilities, to determine the eligibility of such students, to develop individualized education programs (IEPs), to place students in appropriate settings, to follow certain procedural safeguards, and to protect the confidentiality of student records. These requirements are discussed in more detail throughout this manual.
- c. Congress last amended IDEA in 2004, and the U.S. Department of Education revised the regulations on August 14, 2006 and December 1, 2008. Section 504 of the

Rehabilitation Act of 1973 and the Americans with Disabilities Amendment Act of 1990, both amended in 2008, provide additional requirements and protections to students eligible under the IDEA. Those requirements are incorporated in this manual.

1.2.2. State of Montana Requirements

a. The State of Montana has adopted its own legislation and regulations covering the education of students with disabilities. These laws largely parallel the requirements of the federal laws and regulations discussed above but in some instances, expand on them. The Montana requirements are incorporated throughout this manual.

1.2.3. Settlement Agreements and Similar Requirements

a. From time to time, the District may enter into settlement agreements or compliance plans in connection with administrative or court actions against the District or State involving the education of students with disabilities. The District must comply with the terms of such agreements in addition to the federal and state requirements discussed above.

1.3 FREE APPROPRIATE PUBLIC EDUCATION (FAPE)

The central requirement of IDEA requires for students who meet the eligibility criteria is the provision of a , often referred to as “FAPE.” Because the meaning of FAPE is important to all the topics covered in this manual, this section discusses its meaning with further detail.

1.3.1. Definition

The federal regulations implementing IDEA define FAPE to mean special education and related services that:

- a. are provided at public expense, under public supervision and direction, and without charge;
- b. meets the standards of the Montana Office of Public Instruction, including the requirements of IDEA and its federal regulations;
- c. include an appropriate preschool, elementary school, or secondary school education for students 3-20 in the State of Montana; and
- d. are provided in conformity with an IEP that meets the requirements described in Chapter 7.0 – IEPs of this manual. The meaning of special education and related services is discussed in Chapter 7.0 — IEPs. Other components of FAPE are discussed in greater detail below.

FREE

For purposes of FAPE, the term “free” means that required services are provided without cost to the student’s parents. There may be other governmental agencies, insurers, or other third parties (e.g., Medicaid) that have an obligation to provide or pay for services required under IDEA, Section 504 of the Rehabilitation Act of 1973 (Section 504); or the American with Disabilities Act (ADA). However, IDEA regulations specify that the District may access a parent’s private insurance proceeds only if the parent provides informed consent as described in Chapter 2.0 — Procedural Safeguards. The District must obtain informed parental consent each time the parent’s private insurance is accessed, and the parent must be informed that his or her refusal to consent does not relieve the District of its responsibility to ensure that all

required IDEA services are provided at no cost to the parents. The IDEA regulations also provide that the District may not:

- require parents of a student with a disability to sign up for or enroll in public insurance programs in order for their child to receive FAPE under IDEA;
- require parents to incur an out-of-pocket expense such as payment of a deductible or co-pay amount incurred in filing a claim for services provided under IDEA;
- use a student's benefits under a public insurance program if that use would decrease available lifetime coverage or any other insured benefit;
- result in the family paying for service that would otherwise be covered by the public insurance program and that are required for the student outside of the time the student is in school;
- increase premiums or lead to the discontinuation of insurance; or
- risk loss of eligibility for home and community based waivers, based on aggregate health-related expenditures.

For assistance in locating potential sources of services or funding for services to meet the FAPE requirements for IDEA eligible students, District personnel should contact the Executive Director of Student Services. The requirement that services be provided without cost to the student's parents applies only to the costs of special education and related services. The District may charge the parents of students with disabilities any incidental fees that are normally charged to students without disabilities or their parents as part of the general education program. For example, fees may be charged for classroom supplies and art supplies if parents of students without disabilities are charged for the same supplies and the supplies are not part of the student's special education and related services.

APPROPRIATE

The meaning of the term "appropriate" will depend on the unique needs of the individual student. Under IDEA, an appropriate education to a student with a disability is provided when:

- District personnel comply with Montana Administrative Rules (A.R.M. 10.16.3007), applicable federal law, and the procedural requirements described in this manual; and
- The IEP developed for the student (as described in Chapter 7.0 — IEPs) is reasonably calculated to enable the student to make progress in light of the child's individual circumstances. The federal regulations implementing IDEA define an appropriate education as the provision of general or special education and related aids and services that:
 - are designed to meet individual educational needs of persons with disabilities as adequately as the needs of persons without disabilities are met; and
 - are based on adherence to procedures that satisfy the requirements for evaluation (described in Chapter 5.0 — Evaluation), placement and educational setting (described in Chapter 8.0 — Placement), and procedural safeguards (described in Chapter 2.0 — Procedural Safeguards).

The District is not required to provide the best possible education for a student with a disability. However, the District must provide a program that is reasonably designed to provide individually appropriate progress. It does not guarantee any particular outcome, with the legal focus being on a reasonable rather than ideal IEP.

PUBLIC

The term “public” education means one that meets the standards established by the Montana Office of Public Instruction, including standards that relate to compliance with IDEA. This requirement does not mean that a student cannot be placed in a private school or facility if the IEP Team determines that such a placement is needed to provide FAPE. Moreover, if a district fails to provide FAPE and the parent unilaterally places the child in a private school or facility, the state standards do not bar reimbursement if that placement is reasonably calculated for individually appropriate progress.

1.3.2. Students Who are Entitled to a Free and Appropriate Public Education

- a. Generally the District is required to ensure that FAPE is available to all students with disabilities, aged 3 through 20, residing within the District, including students with disabilities who have been suspended or expelled from school. FAPE includes the requirement that the District engage in appropriate “child find” activities for certain children who are not enrolled in the District, such as students in private schools and homeless students. These requirements are discussed in Chapter 4.0 — *Child Find*.
- b. The FAPE requirements specifically apply to students who have been suspended or expelled. For a discussion of the requirements for disciplinary action against a student with a disability, please refer to Chapter 9.0 — *Discipline*.
- c. The District’s obligation to provide FAPE to a student ends when:
 - the student is found not eligible through a reevaluation;
 - the student graduates with a diploma;
 - the student ages out at 20 years old;
 - the parent provides the District with a written revocation of consent and the District issues a Prior Written Notice of revocation of services; or
 - a hearing officer orders the termination.
- d. The obligations of the District for students in private schools, whether placed by the IEP team or the parents and whether within or outside the boundaries of the District, are included in Chapter 8.0 — *Placement*.
- e. Under IDEA regulations and Montana requirements, a student aged 18 through 21 may not be eligible to receive FAPE if:
 - he or she is incarcerated in an adult correctional facility;
 - was not identified as a student with a disability before the incarceration; and
 - did not have an IEP.

These provisions are discussed in Chapter 6.0 — *Eligibility*.

1.3.3. Other Terms Defined in This Manual

Many other important terms are used routinely in connection with students with disabilities. These terms are defined and discussed in context, specifically in the chapters covering the related areas.

1.4 OVERVIEW OF THE MANUAL

1.4.1. Introduction

This manual is organized in ten chapters, each covering a particular stage in the process of ensuring that students with disabilities receive a FAPE.

1.4.2. Procedural Safeguards

Chapter 2.0 addresses the procedural safeguards afforded to parents and students under federal and state law. These safeguards include provisions regarding notice, consent, and participation in certain decisions, as well as requirements for mediation, due process hearings, state complaints, and civil actions.

1.4.3. Notices

Chapter 3.0 addresses the written notices (forms) provided by the OPI that are required to be given to parents under federal and state law. Section 3.1 provides a brief explanation for each notice. The notices include:

- Notice of Evaluation Plan
- Notice of Team Meeting
- IEP Excusal Form
- Manifestation Determination
- Prior Written Notice (Combined) Evaluation Report and IEP
- Prior Written Notice- Evaluation
- Prior Written Notice- IEP
- Private School Offer of FAPE
- Revocation of Consent
- Aversive Treatment Plan

1.4.4. Child Find

Chapter 4.0 addresses the ongoing obligation to initiate an evaluation within a reasonable time after reasonably suspecting that a student may meet the eligibility criteria under IDEA. The coverage of this chapter extends to appropriate pre-referral intervention strategies as well as persons with disabilities. These requirements include child find obligations and the process for referring a student for an evaluation.

1.4.5. Evaluation

Chapter 5.0 addresses the process for evaluating a student to determine whether he or she may have or continues to have a disability. The chapter also discusses the requirements for persons who are involved in an evaluation as well as certain procedural requirements designed to keep parents informed of and involved in their child's evaluation.

1.4.6. Eligibility

Chapter 6.0 addresses the requirements for determining whether a student qualifies to receive services under IDEA. These requirements include provisions governing the requisite criteria and process.

1.4.7. Individualized Education Programs (IEPs)

Chapter 7.0 addresses the development and revision of a student's IEP. The chapter discusses the procedural and substantive requirements for an IEP, including the District's obligation to appropriately implement the IEP.

1.4.8. Placement

Chapter 8.0 addresses the process for ensuring that a student is placed in an appropriate setting in accordance with state and federal special education law. The chapter discusses the options available for placement in the least restrictive environment (LRE) and specific requirements for certain types of placements.

1.4.9. Discipline

Chapter 9.0 addresses the special provisions applicable to governing disciplinary actions involving students with disabilities. It discusses the procedural safeguards that are provided during the student disciplinary process, as well as parents' rights to challenge disciplinary actions.

1.4.10. Student Records and Confidentiality

Chapter 10.0 addresses the requirements for the District's handling of the records of students with disabilities.

Chapter 2.0 PROCEDURAL SAFEGUARDS

INTRODUCTION

The District is required to establish, maintain, and implement procedural safeguards as described in this chapter. This chapter describes:

- 2.1 Parents and Communications with Parents
- 2.2 Notices and Opportunities to Participate
- 2.3 Consent
- 2.4 Student Records
- 2.5 Independent Educational Evaluations
- 2.6 Disciplinary Placements
- 2.7 Private School Placements at Public Expense
- 2.8 Mediation
- 2.9 Due Process
- 2.10 Civil Actions
- 2.11 State Complaints

2.1 PARENTS AND COMMUNICATIONS WITH PARENTS

2.1.1. Definition of Parent

The use of the term "parent" means one of the following:

- a. child's biological or adoptive parent;
- b. foster parent:
 - if the biological parent's authority to make educational decisions on the student's behalf has been terminated under State law,
 - has an ongoing, long-term parental relationship with the student, and
 - is willing to make the educational decisions required of the parent under IDEA, and
 - has no interest that would conflict with the interests of the student.

- c. guardian authorized to act as a child’s parent or authorized to make educational decisions by a court of law;
- d. individual acting in the place of a biological or adoptive parent (grandparent, stepparent or other relative) with whom the child lives, or who is legally responsible;
- e. A surrogate parent who has been appointed in accordance with IDEA or its regulations. A surrogate must be appointed whenever:
 - no parent (as defined in §300.30) can be identified;
 - parents cannot be located after reasonable efforts;
 - the child is a ward of the State;
 - the child is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. § 11434a(6)); or
 - represents the child in all matters concerning the identification, evaluation, and educational placement of the child, and the provision of FAPE.
- f. When more than one party is qualified to act as a parent, it must be presumed the biological or adoptive parent is the parent unless they do not have legal authority to make educational decisions for the student.
- g. In the cases described above the District Administrator (or designee) should request the Executive Director of Student Services appoint a surrogate parent. For additional information regarding surrogate parents, contact the Executive Director of Student Services. If it is unclear who has legal responsibility for a student, District personnel may seek assistance from the Student Services department, which will coordinate with the appropriate agencies.
- h. State and federal law outline the rights of parents to equal and full participation in their child’s education, including the right to a non-attorney professional advocate to represent their interests and participate in meetings regarding their children. The IDEA provides for full and meaningful participation for parents in the evaluation, eligibility determination, and programming for students with disabilities. The District acknowledges the benefits of parental involvement and advocacy. As such, the District has an affirmative duty to work with parents and cannot abdicate that obligation to other individuals.
 - Contact Student Services for the “Attorney and Non-Attorney Representation Agreement” to document the District’s requirement for paid advocate parent representation per Section 7.3.4 below.

2.1.2. Transfer of Parental Rights to the Student

In certain circumstances, the parent’s rights will transfer to the student, and after rights have transferred, references to “parent” in this manual should be read to mean the student.

2.1.3. The parent’s rights under IDEA generally transfer to the student:

- a. when the student reaches age 18; or
- b. if the student is incarcerated in an adult or juvenile, state or local correctional institution.

2.1.4. The parent’s rights under IDEA do not transfer to the student if:

- a. the student is adjudged incompetent and a court appoints a guardian for the student;
- or

b. the student's parent submits legal documentation through a signed court order of guardianship to continue to represent their child's special education interests whose child participates in the state's alternate assessment.

2.1.5. The student and their parents are to be notified of the transfer of IDEA rights to the student through the IEP process, beginning not later than one year before the child reaches the age of majority under State law. Even after the parent's rights transfer to the student, any notices that ordinarily are required to go to the parent must be provided to both the parent and the student. All other rights accorded to parents under IDEA will transfer to the student. However, at the discretion of the student or of the District, the parent may be invited to attend IEP meetings as "individuals who have knowledge or special expertise" regarding the student.

2.1.6. Native Language or Mode of Communication

The native language of a parent with limited English proficiency generally means the language normally used by the parent of the student. However, for purposes of all direct contact with the student (including evaluation of the student), the student's native language is the language normally used by the student in the home or learning environment. If a person has deafness or blindness or does not have a written language, the mode of communication would be that, which is normally used by that person (e.g., sign language, Braille, or oral communication).

2.1.7. If a parent has limited English proficiency, District staff should contact Student Services for any assistance needed in locating an interpreter. Similarly, for a parent with hearing impairment, the Student Services should be contacted.

2.2 NOTICES AND OPPORTUNITIES TO PARTICIPATE

2.2.1. Notices of Meetings and Other Actions

Prior Written Notice (PWN) that meets the requirements described in this section must be given to the parent of a student in a reasonable time. The District must make reasonable attempts to schedule meetings at a mutually agreeable time. Multiple attempts are generally considered to be at least three (3) attempts to arrange a meeting. The meeting PWN should be provided at least 48 hours in advance whenever possible.

The PWN embedded in the IEP/ER document must also be completed before the District proposes or refuses to initiate or change the student's:

- a. identification as a child with a disability;
- b. evaluation;
- c. educational placement; or
- d. provision of a FAPE.

2.2.2. The required notice must include:

- a. a description of the action proposed or refused by the District;
- b. an explanation of why the District proposes or refuses to take the action;
- c. a description of any other options that the District considered and the reasons why those options were rejected;

- d. a description of each evaluation procedure, assessment, record, or report the District relied upon when the action was proposed or refused;
- e. a description of any other factors that are relevant to the District's proposal or refusal;
- f. a statement that the parents of a student with a disability have protection under the procedural safeguards described in this chapter; and
- g. sources for the parent to contact to obtain assistance in understanding the provisions of the IDEA.

2.2.3. Notice to the parent must be written in a language understandable to the general public, and provided in the native language of the parent, or other mode of communication used by the parent. If the native language or other mode of communication of the parent is not a written language, staff should contact the English Language Learner Department for assistance in taking steps to ensure that:

- a. the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;
- b. that the parent understands the content of the notice; and
- c. that there is written evidence in the student's confidential folder that these requirements have been met.

2.2.4. Copies of the notice forms sent to the parent must be filed in the student's confidential folder, or if the student does not have a confidential folder, the student's cumulative folder.

2.2.5. Procedural Safeguards Notice

The procedural safeguards notice must include a full explanation of all of the procedural safeguards available relating to:

- (1) Independent educational evaluations;
- (2) Prior written notice;
- (3) Parental consent;
- (4) Access to education records;
- (5) Opportunity to present and resolve complaints through the due process complaint and State complaint procedures, including
 - The time period in which to file a complaint;
 - The opportunity for the agency to resolve the complaint; and
 - The difference between the due process complaint and the State complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures;
- (6) The availability of mediation;
- (7) The child's placement during the pendency of any due process complaint;
- (8) Procedures for students who are subject to placement in an Interim Alternative Educational Setting (IAES);
- (9) Requirements for unilateral placement by parents of children in private schools at public expense;
- (10) Hearings on due process complaints, including requirements for disclosure of evaluation results and recommendations;
- (11) State-level appeals;
- (12) Civil actions, including the time period in which to file those actions; and

(13) Attorneys' fees.

District personnel must provide parents with a copy of the procedural safeguards notice, at a minimum:

- a. upon initial referral or parent request for evaluation;
- b. at least once per year;
- c. when parent requests a copy;
- d. upon first request for due process hearing;
- e. first filing of a state complaint during the school year; or
- f. when the District proposes a suspension or expulsion that will result in a disciplinary change of placement.

A copy of the Procedural Safeguards Notice is located at

<https://opi.mt.gov/Portals/182/Page%20Files/Special%20Education/Guides/ProceduralSafeguards.pdf?ver=2020-12-22-085315-637>

2.2.6. Opportunity to Participate in Meetings and Decisions

Parent must be given an opportunity to participate in meetings with respect to:

- a. identification;
- b. evaluation; and
- c. educational placement of the student; and
- d. the provision of FAPE to the student.

2.2.7. "Meeting"

The term meeting in this context of the parent's opportunity for participation does not include informal or unscheduled conversations involving District personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the student's IEP. The term also does not include preparatory activities that District personnel engage in to develop a proposal or to prepare a response to a parent proposal that will be discussed at a later meeting. For example, if a member of an IEP team contacted a Special Education Coordinator for ideas about possible positive behavioral intervention strategies to discuss at an IEP meeting, the conversation between the IEP team member and the specialist would not be a "meeting" requiring an opportunity for parent participation.

2.2.8. The District Administrator (or designee) must take steps to ensure that the meeting is scheduled at a mutually convenient time and place, including district staff availability. If neither parent can physically attend the meeting, the District Administrator (or designee) must use other methods to ensure parent participation, including individual or conference telephone calls or video conferencing. A decision may be made by the IEP team without the parent's participation if District personnel are unable to obtain this participation after making and documenting in the student's confidential folder the extensive efforts for it, including at a minimum:

- a. detailed records of telephone calls made or attempted and the results of those calls (per District best practice that at least one telephone call be made and that a follow-up call be made if District staff are unable to speak with the parent directly over the phone);
- b. copies of correspondence sent to the parent and any responses received (per District best practice that at least two notices be sent by regular mail); and/or

c. detailed records of visits made to the parent's home or place of employment and the results of those visits.

2.2.9. District personnel must make reasonable efforts to ensure that the parent understands so as to be able to participate in any group discussions relating to the educational decision for the student. The efforts should include arranging for an interpreter for parents who are deaf or hard of hearing or whose native language is other than English. For additional information regarding Parent Participation in Meetings, see Chapter 3- *Prior Written Notice*.

2.3 CONSENT

2.3.1. Definition

Certain actions with respect to a student with a disability require parental consent, as described below in this Section. Consent means that:

- a. the parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language or other mode of communication;
- b. the parent understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and
- c. the parent understands that the granting of consent is voluntary and may be revoked at any time.

2.3.2. If a parent revokes consent for evaluation, the revocation is not retroactive. In other words, the revocation does not invalidate actions that were taken between the time consent was granted and the time it was revoked. For example, if a parent consents to an evaluation of a student but later revokes that consent, the revocation does not invalidate the steps that District personnel took to conduct the evaluation components between the time consent was given and the time it was revoked.

2.3.3. When Consent is Required

Parental consent must be obtained before:

- a. Conducting an initial evaluation;
 - If the parent refuses to consent or does not respond to the District's request for consent for an initial evaluation, the District may, but is not required to, request mediation or request a due process hearing to override the parent's refusal.
- b. Initial provision of special education and related services to a student with a disability;
 - If the parent refuses to consent or does not respond to the District's request for consent to provide special education and related services to the student for the first time, the District cannot use mediation or due process to override the parent's lack of consent. If the parent does not provide consent for the initial provision of special education and related services, the District will not be required to develop an IEP and will not be in violation of the obligation to make a FAPE available to the student.
 - Parental consent to an initial evaluation does not constitute consent to the initial placement.
- c. Implementing an annual IEP;

- Montana regulations require parental consent to implement each annual IEP.
 - Parents must provide approval of services to implement the annual IEP, or
 - Provide approval with specific exceptions to certain services in the annual IEP.
- If the District is unable to obtain approval for the annual IEP, the District must continue to provide the last agreed upon services until approval is obtained.
- If the District is unable to obtain approval for the annual IEP and FAPE cannot be provided without additional services, the District must file for a Due Process Hearing.
 - See section section 2.9 Due Process.

Conducting a reevaluation.

- If the parent refuses to consent or does not respond to the District's request for consent for a re-evaluation, the District may, but is not required to, request mediation or request a due process hearing to override the parent's refusal.
- In circumstances involving re-evaluation because the student no longer meets the criteria for a disability, or is no longer in need of specially designed instruction, the District may notify the parent with PWN that the District will be conducting classroom-based assessments and observations for the purposes of exiting the student from IDEA service. If the parent refuses to consent, the District may move forward by providing a fifteen (15) day notice to implement.

2.3.4. Parental consent is not required before:

- a. Reviewing existing data as part of an evaluation or a reevaluation; or
 - for a reevaluation of a student if District personnel can demonstrate that they have taken reasonable measures to obtain parental consent, and the student's parent has failed to respond.
- b. Administering a test or other evaluation that is administered to all students unless, before administration of that test or evaluation, consent is required of parents of all children.

2.3.5. To demonstrate that they have taken reasonable measures to obtain consent, District personnel must have a record in the student's confidential folder of all attempts to obtain consent, including:

- a. detailed records of telephone calls made or attempted and the results of those calls (per District best practice that at least one telephone call be made and that follow-up calls be made if District staff are unable to speak with the parent directly over the phone);
- b. copies of correspondence sent to the parent and any responses received (per District best practice that at least two notices be sent by regular mail); and/or
- c. detailed records of visits made to the parent's home or place of employment and the results of those visits.

2.3.6. Revocation of Consent

The parent has the right to revoke consent for the continued provision of special education and related services by submitting a written request for the revocation to the Superintendent of the District. The following requirements apply following revocation:

The public agency

1. May not continue to provide special education and related services to the child, but must provide prior written notice in accordance with §300.503 before ceasing the provision of special education and related services;
2. May not use the procedures in subpart E of this part (including the mediation procedures under §300.506 or the due process procedures under §§300.507 through 300.516) in order to obtain agreement or a ruling that the services may be provided to the child;
3. Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with further special education and related services; and
4. Is not required to convene an IEP Team meeting or develop an IEP under §§300.320 and 300.324 for the child for further provision of special education and related services.

Additionally:

- The District may not initiate a due process hearing or mediation procedures to continue special education and related services for a student when their parent has revoked consent.
- If at a later date the parent requests that special education services be reinstated, the request would be treated as an initial referral and offered an evaluation in the same manner as any other student suspected of having a disability.
- If the parent requests that the special education records be expunged, the District must follow the Family Educational Rights and Privacy Act (FERPA) procedures for amending records, but the District is not required to amend the child's education records to remove any references to the child's previous receipt of special education and related services.
- If the student engages in behavior that may result in a disciplinary change of placement, the student is not entitled to the protections under IDEA. Instead, the District is deemed not to have knowledge of a suspicion of a disability, and the student will be disciplined as a general education student.
- A parent may not revoke a particular service without agreement from the public agency that the child will be provided with a FAPE if the child does not receive that service. A revocation of service is for all services under special education and Section 504.
 - 1) The parent consent is for the initial provision of ALL special education and related services, not for a particular service.
 - 2) For example: a parent cannot revoke resource services but keep the speech language services.
 - 3) If a parent disagrees with the provision of any particular service, they can pursue the matter by requesting a hearing.

2.4 STUDENT RECORDS

- 2.4.1.** Under the Family Education Rights and Privacy Act (FERPA), a parent has the right to:
- a. inspect and review all student's educational records; and
 - District personnel will explain and interpret the records.
 - The District may charge a fee for copies of records that are made.

b. give written permission before the District can release any personal identifying information to any person not otherwise entitled by law to see this information.

- The District must keep a record of parties obtaining access to educational records collected or maintained including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records. For a more detailed description of matters relating to student records, see Chapter 10- *Student Records and Confidentiality*.

2.5 INDEPENDENT EDUCATIONAL EVALUATIONS (IEE)

2.5.1. Generally

The parent has the right to obtain an IEE of the student. An IEE refers to an evaluation conducted by a qualified examiner who is not employed by the District.

- The examiner must have the same or similar qualifications as the District staff who conducted the initial evaluation or the re-evaluation.

2.5.2. Right to Evaluation

If a parent disagrees with an evaluation obtained by the District, the parent may have the right to an IEE at the District's expense, meaning that the District either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent. More specifically, if the parent requests an IEE at the District's expense, District personnel must respond to the request in a timely manner. District personnel must, without unnecessary delay, by either:

- a. ensuring that an IEE is provided at the District's expense; or
- b. refusing to do so and initiating an impartial due process hearing, as described below, to demonstrate that the District's evaluation is appropriate.

2.5.3. District personnel may request, but not require, the parent to provide reason(s) for the disagreement with the District's evaluation; however, there may not be unreasonable delay to either provide the IEE at the District's expense or initiate a due process hearing to defend the District evaluation.

2.5.4. If a hearing officer requests an IEE as part of a hearing, the cost of the evaluation must be at public expense. If a due process hearing results in a final decision that the District's evaluation is appropriate, the student's parent still has the right to an IEE, but not at the District's expense.

2.5.5. District personnel must consider an IEE that meets District criteria, whether paid for by the District or not, in any decision regarding the provision of a FAPE to the student. The results of an IEE may be presented as evidence in a due process hearing regarding the student, as described in Section 2.9.

2.5.6. Notice of the Right to an IEE

Upon request, District personnel must provide the parent an IEE, information about how and where an IEE may be obtained, and District criteria for an IEE. This information should be made available in a manner that is readily understandable to the general public, including

parents whose native language is not English. The information should be made available so that if a parent disagrees with an evaluation, he or she will have access to the District criteria for an independent educational evaluation, as described below.

2.5.7. Criteria for an IEE

If the parent obtains an IEE at the District's expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria the District uses in initiating evaluations unless the parent provides unique circumstances that would warrant an exception. For further information about the District's criteria for an independent educational evaluation, please contact the Executive Director of Student Services.

2.5.8 Consideration of IEE

District personnel must consider an IEE, whether or not conducted at the District's expense, in any decision regarding the provision of a FAPE to the student, so long as the IEE meets the District criteria. The results of an IEE may be presented as evidence in a due process hearing.

2.6 DISCIPLINARY PROCEDURES

Certain procedures apply for temporarily moving a student into an IAES in connection with disciplinary action against the student. These procedures are described in Chapter 9 – *Discipline*.

2.6.1. The parent has the right to have a MDR, to determine relatedness of the student's behavior to the disability, when the student's school recommends removal of the student from the current educational placement to an IAES for more than 10 consecutive school days or its cumulative equivalent within a school year for violating school disciplinary rules.

a. Under the IDEA, the District may move the student to in an appropriate IAES for up to 45 school days if the student engages in any of the following **conduct at school, on school property or at a school function** under the jurisdiction of the school, District or State:

- carries or possesses a weapon;
- knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance; or
- inflicts serious bodily injury on another person.

b. Additionally, an IDEA hearing officer has the authority to order a 45-day interim alternate education setting if the District files for an expedited hearing and demonstrates that the student's current placement is likely to result in injury to the student or to others.

2.6.2. The parent has the right to request an impartial due process hearing (see Section 2.9), and have the hearing expedited (see Section 9.5), if the parent disagrees with:

- a. the school's removal of the student to an IAES;
- b. the manifestation determination review (MDR); or
- c. any other District action specific to a disciplinary change in placement.

2.7 PRIVATE SCHOOL PLACEMENTS AT PUBLIC EXPENSE

2.7.1. If a student's parent unilaterally places the student in a private school or facility, the District may not be required to pay for the costs of that placement if the District made FAPE available to the student in a timely manner before the parent makes the private placement. However, the makes the unilateral placement and proves at a due process hearing that the district did not provide FAPE and the private placement did provide FAPE, the parent may receive reimbursement for the tuition and related expenses if the hearing officer does not reduce or deny reimbursement based on the equities, including whether the parent provided timely notice of the unilateral placement and otherwise engaged in reasonable relevant conduct.

2.7.2. Disagreements between the District and a parent regarding the availability of a program appropriate to the student, and the question of financial responsibility, are subject to the due process procedures described in Section 2.9.

2.8 EARLY ASSISTANCE PROGRAM (EAP)

2.8.1. The State and District are required to ensure that formal mediation procedures are established and implemented to allow resolution of disputes resulting from the District's proposal, or refusal, to identify, evaluate, place, or provide the student with a .

Montana's Office of Public Instruction (OPI) provides an ongoing systematic informal dispute resolution process referred to as the Early Assistance Program (EAP). A parent, guardian, adult student, school district or other public agency as defined above or their representative may access EAP for any issue related to a student's FAPE or any violation of Part B of the IDEA, or Montana special education laws by contacting OPI. EAP services include the following:

a. IEP Facilitation

- If parents or Districts have concerns regarding the child's IEP, the parties may request assistance from an OPI IEP facilitator.
- Both parties must provide written consent to the use of a facilitator. An IEP Facilitator Request form may be obtained by contacting the OPI Dispute Resolution Office at (406) 444-2046.
- The cost of the facilitator is covered by OPI.

The IEP facilitation is an optional dispute resolution process where an impartial facilitator assists the IEP team with communication and problem solving. Using facilitation as an early dispute resolution option keeps control of the decisions in the hands of the parties who know the student the best.

- Facilitators help with the IEP process by keeping the meeting focused, helping ensure everyone's voice is heard and keeping the meeting moving forward.
- The facilitator is not part of the IEP team and will not give advice or make decisions.
- Facilitators are not investigating the District and are not there to enforce special education law.

- The District is still responsible for determining that the IEP meeting is conducted in accordance with federal and state law and that all appropriate forms are completed.
- b. Complaint assistance
- The EAP shall have up to 15 business days from the filing of the complaint to assist the parties in attempting to resolve the dispute. If successful, the complaint will be dismissed.
 - If the EAP director determines any attempt to mutually resolve the complaint would be futile or if the EAP process is not successful, the dispute resolution office shall immediately notify the responding party to prepare and submit its written response of the complaint to the dispute resolution office and send a copy to the complainant within ten calendar days
 - An extension may be granted based on reasonable necessity.

2.8.2. Differences between state complaints and due process complaints and hearings

The regulations for IDEA set forth separate procedures for state complaints and for due process complaints and hearings.

- Any individual or organization may file a state complaint alleging a violation of any Part B requirement by a District, the OPI, or any other public agency.
- Only parents or a District may file a due process complaint on any matter relating to a proposal or a refusal to initiate or change the identification, evaluation, or educational placement of a child with a disability, or the provision of a FAPE to the child.

While staff of the OPI generally must resolve a state complaint within a 60-calendar-day timeline, unless the timeline is properly extended, an impartial hearing officer must hear a due process complaint (if not resolved through a resolution meeting or through mediation) and issue a written decision within 45 calendar days after the end of the resolution period, unless the hearing officer grants a specific extension of the timeline at parent or school district's request.

- The OPI must develop model forms to parties in filing a due process complaint and assist parents or other parties in filing a state complaint.
- An organization or individual may file a written signed complaint alleging the District or public agency violated the Individuals with Disabilities Education Act (20 U.S.C., sections 1401 through 1485) or its implementing regulations (34 CFR, part 300), the Montana statutes pertaining to special education (Title 20, chapter 7, part 4, MCA), or the administrative rules promulgated by the Superintendent of Public Instruction governing special education (ARM Title 10, chapter 16).

2.8.3 State Complaint Procedures

- a. The state complaint must state the following:
1. Allege a violation that occurred not more than one year prior to the date the complaint is filed;
 2. State the name and address of the affected child, if applicable, and the name of the school or public agency where the violation allegedly occurred;
 3. Contain a statement that the agency has violated a requirement of federal or state special education laws or regulations;
 4. State the nature of the problem and the facts on which each allegation is based; and

5. State a proposed resolution of the problem to the extent known and available to the complainant.
- b. Filing the complaint:
 1. The signed complaint must be filed with the OPI Dispute Resolution Office, Office of Public Instruction, P.O. Box 202501, Helena, Montana 59620-2501.
 2. The complainant also must provide a copy of the complaint to the District, or public agency serving the child.
 3. An insufficient complaint not meeting the requirements set out above, may be returned to the complainant for more information which would delay the filing date until a sufficient complaint is received.
- c. Notice of filing complaint
 1. Within ten calendar days of filing, the dispute resolution office shall send written notice to the complainant and the District or public agency that a complaint has been filed.
 2. The written notice shall include a copy of the complaint.
 3. If the complaint addresses matters listed in 34 CFR 300.503(a)(1) and (2) relating to the identification, evaluation, or educational placement of a student with a disability, or the provision of a to the student, the written notice shall inform the complainant of the right to request a due process hearing under 34 CFR 300.507 and ARM 10.16.3508 through 10.16.3531.
 4. The written notice shall inform the parties of the EAP as set forth in state regulations
- d. Investigation
 - Upon receipt of the response, the dispute resolution office shall begin an appropriate investigation.
 - Additional information from complainant:
 - The complainant will have ten calendar days to submit additional relevant information to the dispute resolution office, either orally or in writing.
- e. Final Report
 1. Following an appropriate investigation, the dispute resolution office shall review all relevant information and make an independent determination as to whether a violation of a federal or state statute, regulation, or rule concerning IDEA special education has occurred.
 - A final report shall be issued within 60 days of filing of the complaint unless an extension of the 60-day period is required by exceptional circumstances which exist with respect to the particular complaint or the timeline was modified during the EAP process.
 2. The final report shall address each allegation in the complaint and list findings of fact and conclusions of law, including the reasons for the decision.
 - If the final report concludes that an allegation is true and corrective action is required to comply with federal or state law, corrective action shall be ordered including timelines for implementation of such action.
 3. The Superintendent of Public Instruction will provide technical assistance at the request of the local educational or public agency.
 - The OPI shall retain the investigative files as a confidential agency record pursuant to the appropriate retention schedule.
- f. Resolution of complaint prior to final report

At any time during this process, if the dispute resolution office determines the complaint has been resolved and compliance is achieved, the parties shall be informed and the complaint dismissed.

- **There is no right to appeal a state complaint.**

2.9 DUE PROCESS

2.9.1. Filing a Due Process Complaint

The parent or the District may initiate an impartial due process hearing if they disagree with identification, evaluation, educational placement or the provision of FAPE to the student.

- a. For example, a parent may request a due process hearing if the District refuses to identify, evaluate, or appropriately serve the student, fails to consider the results of an IEE, the parent disagrees with a proposed IEP, or objects to termination of the student's special education program.
- b. The District may request a due process hearing if the parent refuses to provide consent for a comprehensive evaluation for a student believed to be a child with a disability under the IDEA and special education and related services are necessary for the child to receive a FAPE.
 - The District may also request a due process hearing if the parent refuses to provide approval for an annual IEP that is designed to provide the student with a FAPE.
 - If District personnel believe that it may be appropriate for the District to initiate a due process proceeding, they should contact Student Services, which will assist in determining whether due process may be appropriate and in seeking to resolve the problem.
- c. The request for due process must be in writing to the Superintendent of the District and must include:
 1. The name of the child;
 2. The address of the child's residence;
 3. The name of the child's school;
 4. If the child is a homeless child or youth, the child's contact information and the name of the child's school;
 5. A description of the nature of the problem of the child relating to the proposed or refused action, including facts relating to the problem; and
 6. A proposed resolution of the problem to the extent known and available to the complaining party (you or the District) at the time.
 - Whoever files the complaint must also provide the OPI with a copy of the complaint. The request shall be made in writing to the Superintendent of Public Instruction, P.O. Box 202501, Helena, MT 59620-2501.
 - If the request does not include the information above, the District or parent may ask the hearing officer within 15 days of the request to find the due process insufficient.
- d. A parent's due process complaint must be requested within two years from the date that the parent knew or should have known about the act or omission that gave rise to the hearing request unless the parent was prevented from requesting a hearing because the District:

- specifically misrepresented to the parent that it had resolved the problem; or
 - withheld required information.
- e. When a request for a due process hearing has been received, the Superintendent (or designee) must inform the parent of the availability of EAP, including mediation, as described above in Section 2.8, as well as any free or low-cost legal and other relevant services available in the area.

A model form for a request for a due process hearing is available on the OPI website.

2.9.2 Mediation

The District must develop procedures that make mediation available to allow parents and the District to resolve disagreements involving any matter under Part B of IDEA, including matters arising prior to the filing of a due process complaint.

- a. Requirements:
1. Mediation is voluntary on the part of parents and the District;
 2. Mediation is not used to deny or delay the right to a due process hearing, or to deny any other rights provided under Part B of IDEA; and
 3. Mediation is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.
- b. Requesting mediation through OPI:
1. Upon request for mediation signed by all parties, the Superintendent of Public Instruction shall appoint an impartial mediator.
 - Mediators are qualified and impartial individuals who may not be an employee of the District, another District, the Montana OPI or other state agency which receives IDEA funding or which provides direct services to a student who is the subject of the mediation process.
 2. The parties may agree to any qualified mediator who is included on the list of mediators maintained by the Superintendent of Public Instruction.
 3. If a mutually agreeable mediator could not be chosen, the Superintendent of Public Instruction shall appoint a mediator.
 4. The mediator shall schedule a mediation session no later than 30 days from the date of the request.
 5. The state is responsible for the costs associated with the mediation process.
- c. Mediation is an alternative but not a prerequisite to the due process hearing.
- d. Discussions that occurred during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding.
- e. The agreement is signed by both the parent and a representative of the agency who has the authority to bind such agency.

2.9.3. Resolution Process

Prior to the opportunity for an impartial due process hearing, the District shall convene a meeting with the parents and the relevant member or members of the IEP team who have specific knowledge of the facts identified in the due process hearing request unless the parents and the District agree in writing to waive such meeting, or agree to use the mediation process described in the section 2.9.2.

- a. After receiving a request for a due process hearing, the District must:

- Convene a resolution session within 15 business days of the hearing request unless the parent and District agree in writing to waive the meeting or agree to mediation. The meeting must include:
 1. A representative of the District who has decision-making authority; and
 2. May not include an attorney of the District unless the parent is accompanied by an attorney.
 - The team must try to resolve the issues stated in the due process request during the resolution time period.
- b. If an agreement is not reached within 30 days of receiving the hearing request, the timeline for due process begins.
- c. If after making and documenting reasonable efforts, the District is unable to obtain parent participation in a resolution meeting, the District may request that the hearing officer dismiss the due process complaint if filed by the parent.
- Documentation includes:
 1. Detailed record of phone calls made or attempted;
 2. Copies of correspondence sent or received;
 3. Detailed records of visits made to home or place of work.
- d. If the District fails to hold the resolution meeting within 15 calendar days of receiving notice of a due process complaint or fails to participate in a meeting, the hearing officer may begin the 45 calendar day timeline.
- e. If a resolution to the dispute is reached at the resolution meeting, the parent(s) and the District must enter into a legally binding agreement that is:
 1. Signed by the parent(s) and a representative of the District who has the authority to bind the District; and
 2. Enforceable in any state court of competent jurisdiction (a state court that has authority to hear this type of case) or in a district court of the United States.
- f. The resolution agreement can be canceled in writing within 3 business days if either party changes their mind.

2.9.4. Conducting a Due Process Hearing

a. Impartial Hearing Officer

- At a minimum, a hearing officer:
 1. Must not be an employee of the OPI or the District that is involved in the education or care of the child. However, a person is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer;
 2. Must not have a personal or professional interest that conflicts with the hearing officer's objectivity in the hearing;
 3. Must be knowledgeable and understand the provisions of IDEA, federal and state regulations pertaining to IDEA, and legal interpretations of IDEA by federal and state courts; and
 4. Must have the knowledge and ability to conduct hearings, and to make and write decisions, consistent with appropriate, standard legal practice.

b. Stay-Put Requirements

Once a due process hearing has been initiated:

- The District cannot change the student’s educational placement until the legal proceedings are completed (referred to as “stay-put”) unless:
 - the District changes the placement of the student for conduct that is not a manifestation of the disability, or
 - the District moves the students to a 45-day IAES for weapons, drugs, controlled substance or causing serious bodily injury, or
 - the hearing officer removes the student to a 45-day IAES based on substantial likelihood that the student may injure him/herself or others, or
 - the parties mutually agree on a revised IEP that changes the child’s educational placement.
- c. Disclosure Prior to the Hearing
 - At least 5 business days prior to the hearing, each party must ensure that all evaluations and any evidence that the party wishes to use at the hearing has been disclosed to the other party and the hearing officer.
 - If required disclosure is not made, the hearing officer may exclude the admission of undisclosed evaluations and evidence from being introduced at the hearing.
- d. Due Process Hearing
 - Due Process hearings must be conducted at a time and place that is reasonably convenient to the parent and the student involved.
 - The District is responsible for:
 - notifying the parent (by certified mail) and the hearing officer of the time and place set for the hearing; and
 - notifying the parent of their rights in a due process hearing and of any free or inexpensive legal services and other relevant services available in the area.
 - Any party to a due process hearing has the right to:
 - be represented by legal counsel;
 - be accompanied by and advised by persons who have special knowledge of or training regarding students with disabilities;
 - present evidence;
 - confront, cross-examine, and compel the attendance of witnesses;
 - obtain a written, or, at the option of the parent, electronic, verbatim record of the hearing; and
 - obtain, at no cost a written, or, at the option of the parent, electronic copy of the hearing officer’s decision, which includes findings of fact.
 - In addition, the parent has the right to:
 - have the student who is the subject of the hearing present; and
 - the hearing be open to the general public.
 - The District must take whatever action is necessary to ensure that the parent understands the written notice and the proceedings at the hearing, including arranging for an interpreter for a parent who is deaf or hard of hearing or whose native language is not English.
 - If District personnel are aware of any need that the parent may have for an interpreter, that information should be provided to the OPI at the time the due process hearing is initiated, or as soon as possible.
- e. Timeline for the Hearing Officer Decision

- The hearing officer is required:
 - to reach a decision in the due process proceeding no later than 45 days after the resolution period ends or, for an expedited hearing within 10 school days after the conducting the hearing, except that the hearing officer for non-expedited hearings may grant specific extensions of time at the request of either party; and
 - to mail a copy of the decision to each of the parties within the 45-day period.
- The decision of the hearing officer on matters alleging a procedural violation can only be found as a denial of FAPE if the proposed violations:
 - interfered with the student’s right to a FAPE;
 - significantly interfered with the parent’s opportunity to participate in the decision-making process regarding the provision of FAPE; or
 - caused the student to be deprived of meaningful educational benefit.
- OPI must, after deleting all personally identifiable information from a copy of the findings and decision, transmit the redacted version and make the redacted version available to the public. The hearing officer’s decision in a due process hearing is considered final, but may be appealed by either the parent or the District as described below.

2.9.5. Appeals

Any party aggrieved by the findings and decision in the hearing has the right to appeal the decision of the impartial due process hearing officer by bringing a civil action.

2.10 CIVIL ACTIONS

2.10.1. A civil action may be brought by any party disagreeing with the findings and decision of a hearing officer in an appeal.

a. A civil action may be brought in a state court with jurisdiction or in federal district court.

b. The request for an appeal must be made within 90 calendar days after receiving the decision of the review officer.

2.10.2 In any civil action the court:

1. Receives the records of the administrative proceedings;

2. Hears additional evidence at your request or at the District’s request; and

3. Bases its decision on the preponderance of the evidence and grants the relief that the court determines to be appropriate.

Before a civil action may be filed the party must “exhaust” (i.e., initiate and complete) the due process hearing process described above in Section 2.9.

2.10.3 Attorney’s Fees

- In any action or proceeding brought under Part B of IDEA, the court, in its discretion, may award reasonable attorneys’ fees as part of the costs to the parent, if the parent prevails (wins).

- In any action or proceeding brought under Part B of IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to a prevailing State Educational Agency or District, to be paid by parent's attorney, if the attorney:
 - (a) filed a complaint or court case that the court finds is frivolous, unreasonable, or without foundation; or
 - (b) continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or
- In any action or proceeding brought under Part B of IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to a prevailing State Educational Agency or District, to be paid by the parent or parent's attorney, if the parent's request for a due process hearing or later court case was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to unnecessarily increase the cost of the action or proceeding (hearing).
- See the Procedural Safeguards Notice for additional information related to the award of fees.

2.11 STATE COMPLAINTS

2.11.1. Any organization or individual may file a complaint with the OPI.

- a. The complaint must be in writing, signed and include:
 - a statement that the District has violated state or federal special education law;
 - the facts related to the issue(s);
 - signature and contact information of the complainant;
 - a description of the nature of the problem; and
 - a proposed resolution of the problem to the extent known and available at the time.
- b. If a specific school or student is referenced in the complaint, the complaint must also include:
 - the name and residence of the student; and
 - the name of the school the student is attending.
- c. The parent must submit a copy of the complaint to the District and the OPI.
- d. The complaint must allege a violation that occurred within one year of filing.
- e. The District has the right to respond and try to resolve the complaint or mediate if both parties agree.
- f. The OPI must complete its review and give its decision within 60 calendar days.
- g. If the complaint includes issues which are also the subject of a due process hearing, the OPI is required to set aside those issues until the due process hearing is completed.
- h. Any issues which are not the subject of a due process hearing must proceed and be resolved within the 60 calendar-day time frame.
- i. If any issues raised in a complaint have previously been decided in a due process hearing involving the same parties, the due process hearing decision is binding, and the OPI must inform the complaining party to that effect.
- j. If a complaint alleges that the District has failed to implement a due process decision, the OPI is responsible to resolve that complaint.

2.11.2. After reviewing all relevant information, the OPI will make an independent determination as to whether the District violated a requirement of IDEA. The OPI will issue a written decision to the complainant that:

- a. addresses each allegation in the complaint;
- b. contains findings of fact and conclusions; and
- c. states the reasons for the OPI's final decision.

2.11.3. If the OPI finds that the District has failed to provide appropriate services to a student, it must address:

- a. how to remediate the denial of those services, including, as appropriate, the awarding of monetary reimbursement, compensatory services, or other corrective action appropriate to the needs of the student; and
- b. appropriate future provision of services for all students with disabilities.

Chapter 3.0 PRIOR WRITTEN NOTICE (PWN)

INTRODUCTION

The parent has the right to receive PWN in a reasonable time in their native language or other mode of communication, when the District proposes, or refuses to initiate or change the student's identification, evaluation/re-evaluation, eligibility, provision of a FAPE through an IEP and change of placement. This chapter describes the PWN requirements for:

- 3.1 Required OPI forms for PWN
- 3.2 Identification, Evaluation/Re-evaluation
- 3.3 Eligibility
- 3.4 Provision of FAPE, through an IEP and Change of Placement
- 3.5 Parent Revocation of Consent for Special Education Services

3.1 REQUIRED OPI FORMS FOR PWN

3.1.1 Notice of Evaluation Plan

PWN to provide the reason(s) for a comprehensive evaluation. Describes the tests and other evaluation procedures to be used to assess the student.

3.1.2 Notice of Team Meeting

PWN to identify the type of meeting to be conducted and the mutually agreed upon time and place for the meeting. Provides additional information related to what topics may be discussed at the meeting.

The term "meeting" does not include informal or unscheduled conversations involving District personnel. The term also does not include preparatory activities that District personnel engage in to develop a proposal or to prepare a response to a parent proposal that will be discussed at a later meeting.

3.1.3 IEP Excusal Form

PWN to request prior parent approval for a member of the IEP team to be excused from attending an IEP meeting when a modification to or discussion about the member's area of curriculum or related services will occur. The team member must provide information regarding the student's strengths, educational concerns the team member has, the present levels of achievement and performance, and accommodations/modifications appropriate for the student.

3.1.4 Manifestation Determination

PWN that describes specific information regarding proposed disciplinary action for a student under IDEA protections. See Section 9.4 for specific details related to making manifestation determinations.

3.1.5 Prior Written Notice

PWN that provides the required components for action(s) proposed or refused by the District to include the initiation or change in the evaluation, identification, educational placement, or provision of FAPE for a student. The types of PWNs are:

- (Combined) Evaluation Report and IEP
- Prior Written Notice- Evaluation
- Prior Written Notice- IEP

3.1.6 Private School Offer of FAPE

PWN that offers a FAPE to a parentally placed child with disabilities in a private school. The notification explains the right to a FAPE upon public school enrollment, the right to reevaluation, and participation in private school IDEA-funded special education and related services.

3.1.7 Revocation of Consent

PWN that details parents' right to withdraw consent, in writing, for the provision of special education and related services. Upon receipt of the revocation, the district must honor the revocation and will identify the date the district will stop providing services.

3.1.8 Aversive Treatment Plan

PWN that complies with state law regarding physical restraint and/or isolation time-out. The document describes:

- the written positive behavioral intervention strategies implemented subsequent to a functional behavioral assessment;
- the results of the interventions;
- the targeted behavior(s);
- short-term objective(s) and annual goal(s);
- aversive treatment procedure(s);
- time limit for the use of the aversive treatment procedure(s);
- data collection procedure(s);
- timeline for review;
- responsible party(ies);
- how progress will be reported; and
- any standard school disciplinary measures to be waived.

3.2 IDENTIFICATION, EVALUATIONS/RE-EVALUATIONS

3.2.1. PWN of District Proposal

District special education staff must provide the parent PWN of the initiation of an evaluation within a reasonable time before the evaluation begins.

- a. The Notice of Intent to conduct an Evaluation or Reevaluation and Permission for Evaluation or Reevaluation (Notice of Evaluation Plan, section 3.1.1) must be completed in full by district staff.
 - The reason(s) for the referral for comprehensive evaluation must be included.
 - Each area of required assessment must be determined by the referral team.
- b. Parent approval for the evaluation or reevaluation must be obtained prior to beginning any part of the evaluation or reevaluation.

3.2.2. If District personnel are unable to convince the parent to participate, all efforts to obtain the parent's input should be documented and placed in the student's confidential folder.

3.2.3. PWN of District Refusal

If the student's parent requests an evaluation, and the team (in section 6.2.1) determines that an evaluation is not required or otherwise warranted, the District must provide the parent PWN of the District's determination to refuse the evaluation. District personnel should contact Student Services to discuss a potential refusal. Any PWN for a refusal **MUST** be provided by Student Services.

The PWN (section 3.1.5) of the refusal must state:

- a. Action(s) proposed or refused:
 - Initiation or change in the educational placement of the student
 - Initiation or change in the provision of FAPE to the student.
- b. A description of the action refused by the District;
- c. An explanation of why the District refuses to take the action;
- d. A description of any other options that the District considered and the reasons why those options were rejected;
- e. A description of each evaluation procedure, assessment, record, or report the District relied upon when the action was refused;
- f. A description of any other factors that are relevant to the District's refusal;
- g. A statement that the parents of a student with a disability have protection under the procedural safeguards described in Chapter 2.0; and
- h. sources for parents to contact to obtain assistance in understanding the provisions of IDEA.

3.3 ELIGIBILITY

3.3.1. PWN of Evaluation Report and Meeting

District special education staff must provide the parent PWN of the eligibility determination meeting, scheduled at a mutually agreeable time and place (Notice of Team Meeting, section 3.1.2).

- a. The Evaluation Report (ER) must be completed in full including all areas of assessment, implications for educational planning and criteria checklists for areas of potential disability.
- b. The purpose of this meeting is for the team to review assessment results and determine eligibility in all areas of suspected disability, make recommendations to the IEP team (if eligible) or make recommendations for additional services if determined ineligible under the IDEA.
- c. The PWN for the Evaluation must be completed at the time or shortly after the meeting. The PWN must identify if the proposed actions are an:
 - Initiation or change in the education placement of the student, and/or
 - Initiation or change in the provision of FAPE to the student.The PWN must also provide specific details related to the required elements listed above in section 3.1.3 to meet the provisions of IDEA.

3.3.2. PWN – Proposed Initial IEP Meeting

At the same time the District special education staff notifies the parent of the determination of eligibility, they must also provide the parent PWN of the Initial IEP meeting if the student is determined to be eligible. The District must work with the parent(s) to schedule the IEP meeting at an agreeable time and place. The Notice of Team Meeting (section 3.1.2) must be provided to the parent(s) at least 48 hours prior to the meeting.

The Notice of Team Meeting may be provided to the parent for both the ER and Initial IEP meeting if the parent and District agree that the Initial IEP meeting may be held immediately following the eligibility determination meeting. The parent(s) understand that the Initial IEP meeting is being scheduled, with their approval, for convenience of scheduling and does not constitute a pre-determination of eligibility. In the event a student is determined to not meet eligibility criteria under the IDEA, the Initial IEP meeting would not be held.

3.4 PROVISION OF A FAPE THROUGH AN IEP

3.4.1. PWN of Annual IEP Meeting

District special education staff is responsible for initiating and conducting meetings for the purpose of developing, reviewing, and revising the annual IEP of a student with a disability. Within a reasonable time before the annual date of the IEP, the District special education staff must meet with the parent(s) at a mutually agreeable time and place to review the district's proposal.

- The Notice of Meeting (section 3.1.2) must indicate:
 - a. the purpose, time, and location of the meeting (IEP and/or ER)
 - b. who will be in attendance at the meeting (Include as many members as reasonably included. Do not include the names of individuals, but their titles/positions);
 - c. the student if the student is 16 years old or older;
 - d. the parent may bring to the meeting other people who have knowledge or special expertise regarding the student;
 - e. if the parent gives consent to the District, invite person(s) from outside agencies who can provide information on their agencies.

- Phone calls and email correspondence can be used to determine an agreeable time and place for all parties. However, a written notice must be provided to parents prior to the meeting.
 - Phone calls should be documented in the AIM system in the Log.

3.4.2. PWN – Proposed IEP

The District’s proposal for the annual IEP must include input from the parent(s) and student (when applicable).

- The District must provide a DRAFT copy of the proposed IEP, if developed, at least 48 hours prior to the scheduled meeting date/time to allow the parent(s) to review the proposal.
- The District must allow the parent(s) to ask questions, provide additional input, and make recommendations into the proposed IEP.
- The parent(s) must provide written approval of the annual IEP prior to implementation.

The PWN for the IEP is required for ALL IEPs (section 3.1.5).

a. This includes instances where:

- the parent disagrees with all or part of the IEP (disagree checked on IEP); or
- the parent does not agree or disagree (no box checked on IEP); or
- the parent is not in attendance (either by telephone or in person); or
- the parent agrees with the IEP as written (agree is checked on IEP).

The PWN for the IEP must be provided to the parent as soon as possible after the IEP meeting, along with a copy of the IEP and the Procedural Safeguards.

b. The PWN must provide specific details related to the required elements listed above in section 3.1.3 to meet the provisions of IDEA.

3.4.3. PWN of District Refusal

If the student’s parent requests to revise the IEP and District special education staff determines that an amendment IEP is not required or otherwise warranted, the District staff must provide the parent PWN of the District’s determination to refuse the IEP revision. The PWN must provide specific details related to the required elements listed above in section 3.1.3 to meet the provisions of IDEA.

3.5 REVOCATION OF CONSENT FOR SPECIAL EDUCATION SERVICES

3.5.1. PWN of District Proposal

The parent has the right to revoke consent for the continued provision of special education and related services by submitting a written request for the revocation to the Superintendent of the District.

- Student Services staff will respond by issuing the Revocation of Consent (section 3.1.7) to change the student’s designation as a student with a disability effective on the date of discontinuation. The revocation notice will remain in the student’s confidential folder indicating that services are discontinued.

Chapter 4.0 CHILD FIND

INTRODUCTION

Under the IDEA and Montana regulations the District has a “child find” obligation to ensure that all children with disabilities residing in the State, including children with disabilities who are homeless, wards of the State, or attending private schools, regardless of the severity of their disability, and who are in need of special education and related services are identified, located, and evaluated.

Child Find responsibilities also include highly mobile and migrant children. In addition, early intervention strategies may be appropriate for some students who are experiencing academic and/or behavior problems. This Chapter describes both the identification and the intervention processes. These processes are not mutually exclusive. Rather, either or both may be appropriate for a particular student. The process for making a referral is described in the Chapter 5.0- *Evaluation*.

This chapter describes:

- 4.1 School Pre-Referral Teams (PRT)
- 4.2 Child Find

4.1 PRE-REFERRAL TEAMS (PRT)

4.1.1. When Intervention is Appropriate

The PRT (PRT) can provide viable educational interventions for students prior to, or in lieu of, referral for special education, or when referral to existing formal programs within regular or special education is inappropriate. The main purpose of the PRT is not referral for special education. Instead, focus is placed on early detection and successful remediation of academic and behavioral difficulties across all at-risk students. By creating building-level teacher assistance teams, the PRT provides direct assistance to general education classroom teachers. If a student is experiencing academic and/or behavioral difficulties, the school staff should initially seek the assistance of the District PRT.

The PRT is a collaborative problem-solving approach that addresses the needs of a student demonstrating difficulty in the general education program. Members of PRT identify and clarify issues, select and implement appropriate interventions and supports, and monitor student progress in the general education curriculum. In many cases, interventions will adequately address the student’s needs so that the student is able to succeed academically and/or behaviorally without formal evaluation. School staff should consider requesting the assistance of the PRT whenever a student exhibits any of the following:

- a. the student demonstrates behaviors that are resistant to conventional classroom management techniques;
- b. the student presents a substantial risk of failing one or more subjects during any grading period;
- c. the student is at risk of retention at the end of the year;
- d. the student is absent without medical excuse for more than 10 school days in any school semester;

- e. the student is 16 to 20 years old and is planning to leave school without a high school diploma;
- f. the student is involved in high risk behavior, e.g., substance abuse, suicide attempts, etc.;
- g. the student's parent requests assistance.

Students who exhibit suicidal behavior should receive immediate attention from District personnel. The District's Crisis Response Team is called when necessary.

PRT consultation may also be appropriate for students who do not meet the above criteria, but who may benefit from intervention. PRT may not be used to defer or delay processing of a referral for an evaluation when the team suspects a disability under IDEA (i.e., suspicion of a disability and need for special education services). If a teacher, parent, or other person knowledgeable about the student suspects that the student might have a disability under IDEA, the District Administrator and members of the PRT should be consulted.

4.1.2. PRT Process

a. Request for Assistance

The District or the parent may request PRT assistance by:

- contacting a member of the schools' PRT; and/or
- District administrator or counselor.

b. Gather Information

The person requesting assistance should consult with a member of the PRT to clarify the problem, describe interventions and supports previously attempted with the student, and collect additional relevant data. The PRT process should be explained to the student's parent(s).

If a student is having difficulty learning and there is a question about English proficiency, it is suggested that the District Administrator or designee compile the following information to share with the PRT:

- classroom observation data by teacher, school specialist (if appropriate) or other school personnel;
- classroom performance data; and
- student performance data in relation to any currently implemented scientific, research-based interventions.

The English Language Learner (ELL) Program establishes procedures to determine the levels of language proficiency in English, and guidelines for ELL students who may need to access the PRT process.

4.1.3. PRT Problem-Solving Approach

District personnel should apply a systematic problem-solving and data collection approach to child identification and interventions. At a minimum, this process should include:

- a. notification to the student's parent(s) of any proposed intervention and the parents' right to initiate a formal evaluation of the student;

- b. description of the problem in objective, measurable terms that address individual and environmental characteristics that may be altered, as well as discrepancies between educational expectations and the student's performance;
- c. collection of data, analysis of the problem, and sharing information with the parent;
- d. design and implementation of interventions based on the data collected, analysis of the problem, parent input, and professional judgment, including identification of goals, responsible parties, methods for measuring progress, and time frames;
- e. monitoring progress and modification of interventions as needed;
- f. evaluation of the effects of intervention; and
- g. referral for an IDEA evaluation at any time during the process when referral is appropriate.

4.2 CHILD FIND

4.2.1. Child Find Requirements

IDEA and MCA regulations require the District to have policies and procedures in place to ensure that children aged 3 through 20 residing within the District who are reasonably suspected of having disabilities and needing special education and/or related services are identified, located, and evaluated. District staff engage in child find activities. Students who may be identified include:

- a. children who are suspected of being a child with a disability and in need of special education, even though they are advancing from grade to grade;
- b. highly mobile students including migrant students;
- c. homeless children;
- d. wards of the state; and
- e. children who are enrolled in private schools or are home-schooled.

4.2.2. Child Find Activities

a. Communication

Child Find activities seek to create public awareness of special education programs, to advise the public of the rights of eligible children and parents, and to alert community residents of the need to identify, locate, and assess qualified children who are suspected of having a disability or developmental delay, and needing special education and/or related services. Child Find activities provide information in understandable terms in English and other languages commonly used by parents and children residing within the District's jurisdiction. Child Find activities access qualified interpreters, when appropriate, to facilitate communication with the parent. In carrying out child identification, Child Find activities:

- utilize various local media resources by issuing public service announcements on television and radio, press releases in major newspapers and minority publications, and/or videotaped informational programs;
- reach out to members of the community who may not understand English by making presentations at community meetings or to business groups, and/or attending meetings of public employees and officials;

- reach out to highly mobile members of the community and agencies that provide services to highly mobile populations, to help identify migrant and homeless students who may have disabilities and be in need of special education;
- communicate with various agencies that provide services to children with disabilities in the community by disseminating materials to hospitals, clinics, pediatricians, pediatric nurses, and/or social service professionals involved in family or child services;
- develop and implement procedures to ensure that children are located, identified, and evaluated; and
- develop and disseminate the following information annually to the public in connection with the Early Childhood Special Education Programs:
 - federal regulations and District procedures;
 - notification of the availability of special education services, a student's right to a FAPE , and persons to contact to initiate a referral for an evaluation;
 - notice of the District's intent and willingness to identify, locate, and assess all children, from birth through age 20, who are suspected of having a disability;
 - specific notice regarding the confidentiality of personally identifiable information; and
 - information provided by community agencies which may assist in the activities or the provision of educational services to students with disabilities;
 - documents its implementation of the above activities.

b. Referrals

Children may be referred for Child Find activities by parent(s), state or community agencies, private agencies, medical providers or facilities, private or parochial schools, preschool or daycare centers or others concerned with the child's needs.

- Intake for preschool aged children
 - The child's parent (legal guardian) must make the initial contact with Child Find personnel and must give permission for the evaluation to take place. When a parent contacts Child Find personnel, information regarding the nature of the concern, referral source, and personal data is requested.
 - The child is then scheduled for an evaluation, at a Child Find location or designated District school, based on the concerns expressed by the parent.
- Special Circumstances- While Child Find activities primarily process referrals for preschool children, school-age children may be referred under special circumstances (i.e., private school, home schooled, homebound and/or medically fragile).
- Private School- Child Find personnel serve as the initial point of contact for children attending private schools within the District's boundaries. A referral packet is sent to the private school to be completed by the child's current teacher with identifying information gathered from the parent. Information requested from the private school will include any available observation data, classroom-based assessments, and student performance relative to previous interventions.

- For children who reside within District boundaries but are in private schools outside of the District, the District will evaluate or cooperate with the local education agency (LEA) where the private school is located to evaluate the student to determine eligibility. The district will propose an IEP at such time as the parent provides reasonable notice of possible enrollment in the District.

After the referral is initiated and the decision to evaluate is made, procedures for initial evaluation are followed.

4.2.3. Child Find Responsibilities

It is the responsibility of the District to oversee child find activities. All children identified through child find identification activities are referred for appropriate evaluation and services as required under federal law and Montana statutes and regulations.

Chapter 5.0 EVALUATION

INTRODUCTION

Before special education or related services can be provided to a student with a disability, the District must conduct a comprehensive evaluation based on the determined scope of the assessment to address all areas of suspected disability. The purpose of this evaluation is to determine whether the student is eligible for special education services and, if so, to determine the student's special educational programming and service needs. Evaluation of a student is also required in other circumstances, such as when it is suspected that the student no longer has an IDEA eligibility, or may have a disability not addressed by the student's current finding of eligibility. This Chapter describes:

- 5.1 Suspicion of Disability
- 5.2 Initial Evaluations
- 5.3 Reevaluation
- 5.4 Evaluation for Transfer Students
- 5.5 General Requirements for Evaluation
- 5.6 Early Childhood Evaluation
- 5.7 Bilingual Evaluation
- 5.8 Evaluation for Special Education Students who are Subject to Disciplinary Change in Placement
- 5.9 Homebound Evaluation
- 5.10 Evaluation Reports
- 5.11 Independent Educational Evaluation (IEE)

5.1 SUSPICION OF A DISABILITY

If District personnel have reason to suspect that a student may be eligible for special education, the District administrator and staff should be contacted so that they may meet to review the information available and determine whether the suspicion is at a reasonable level to initiate a referral for evaluation. When a student is experiencing academic or behavioral problems but there is no suspicion of an IDEA eligibility, personnel should consider accessing

the school PRT regarding any necessary interventions, accommodations and supports for the student. Parent input is also an important consideration in relationship to providing students with intervention services.

5.2 INITIAL EVALUATIONS

5.2.1. Definition

The term “Initial Evaluation” refers to a formal evaluation that considers initial eligibility for special education under the IDEA and Montana’s corollary law. Initial evaluation applies to:

- a. general education students with no history of special education;
- b. general education students who previously received and were exited from special education including general education students whose parents revoked consent for the continued receipt of special education services; or
- c. all transfer students from other states who have a current out-of- state eligibility, but no current special education eligibility in Montana.

5.2.2. Pre-Referral Team

Each school must have a structured support and assistance process PRT in place and must use the process prior to referral for evaluation. (see Chapter 2.0 above). Some specific disability categories require evidence of intervention in order to establish that the student has a disability. Early intervention services provided through the Part C (for children ages 3-5) program may be considered pre-referral interventions when appropriate. The PRT is charged to:

- a. ensure reasonable accommodations and modifications have been attempted with the student; and
- b. screen students before more formal identification procedures are implemented.

The typical team includes:

- one or more general education teachers, who are most familiar with the general education classroom and curriculum,
- a counselor;
- a school psychologist;
- one or more special education teachers; and
- related service personnel, as appropriate.

Each school selects team members depending on who has the most knowledge and expertise related to the student and their school performance.

5.2.3. Scope/Review of evaluation data and determination of need for additional data

In the case of students transitioning from Early Intervention Services at age three (under IDEA, Part C), or for students from out-of-state that have evaluation records available, as part of an initial evaluation, the combined members of the student’s IEP team and the ER team shall review existing evaluation data. Based on that review and input from the student’s parent(s), the team must identify what additional data if any are needed. The group may conduct its review without a meeting.

5.2.4. Request for an Initial Evaluation Referral

- a. Sources may include parents and/or District staff.
 - If District personnel request an initial evaluation, initial evaluation steps need to be followed as described in section 5.2.5.
 - If the parent requests an initial evaluation, either verbally or in writing, District personnel must respond formally (in writing).
- b. The school PRT is notified immediately.
 - The PRT must decide:
 - an evaluation is NOT warranted or determined that interventions will be tried first, THEN a refusal must be completed by Student Services staff and sent to parents: or
 - an evaluation is warranted, then proceed with procedures for initial evaluation including scheduling a referral meeting, if appropriate.

5.2.5. Initial Evaluation Steps

1. Initiate a referral for a comprehensive education evaluation.
2. Notify ER team members and related service providers, as deemed appropriate.
3. Provide the parent(s) with the procedural safeguards notice and document all contacts and attempted contacts with the parent(s). If District personnel are unable to convince the parent to participate, all efforts to obtain parent input should be documented on contact log.
4. Check ONLY the areas that are required to sufficiently and comprehensively evaluate the student for areas of suspected disability. Only the areas checked can be evaluated.
5. Obtain parent consent for evaluation, see Notice of Evaluation Plan, section 3.1.1. The Notice of Evaluation Plan must be completed in full by district staff.
 - The reason(s) for the referral for comprehensive evaluation must be included.
 - Each area of required assessment must be determined by the referral team.
 - Parent approval for the evaluation or reevaluation must be obtained prior to beginning any part of the evaluation or reevaluation.
6. Conduct needed assessments as warranted. *This must be completed within 60 calendar days from received written parent consent on initial evaluations.*
7. Hold the ER meeting (use appropriate PWN procedures for scheduling as described in Chapter 3.0).
8. Draft copies of evaluation reports may be given to the parent and each page must be clearly labeled as a draft.
9. Provide a copy of completed evaluations reports and completed criteria checklist(s) to the parent on the day of the meeting.
10. For eligible students, complete IEP development within 30 calendar days of eligibility determination.

5.3 REEVALUATIONS

5.3.1. Definition

The term “Reevaluation” refers to the formal evaluation of a student who is already identified as eligible for special education under the IDEA and Montana’s Special Education laws.

- a. The need for a reevaluation is determined yearly by the IEP team.
- b. Students who are evaluated for continuing eligibility for special education in Montana under a different or additional eligibility classification includes students who currently hold Developmental Delay or Speech/Language Impairment eligibilities;
- c. Other students whose primary eligibility classifications might change (e.g., adding additional eligibility categories under the IDEA).
 - A reevaluation is required if there is sufficient information to suspect that a significant change in a student’s physical, psychological, academic, or social functioning is occurring that may have an impact on the student’s eligibility for special education and/or related services, including situations where the student may no longer need special education services to receive an appropriate education.

5.3.2. Scope/Review of Evaluation Data

As part of any reevaluation, the members of the student’s IEP Team shall review existing evaluation data and on the basis of that review and input from the student’s parent, identify what additional data, if any, are necessary. The reevaluation may:

- a. conduct a review of data from existing evaluations, including, without limitation;
 - evaluations and information provided by the parents of the student,
 - current local or state assessments, classroom-based assessments and observations,
 - observations by teachers and related service providers, and
- b. based upon the review and input from the student’s parent, identify the additional data, if any that are required to determine;
 - whether the student continues to have a disability and the educational needs of the student,
 - the present levels of academic achievement and related developmental needs (functional levels) of the student,
 - whether the student continues to need special education and related services, and
 - whether any additions or modifications to the special education and related services are needed to enable the student to meet the measurable annual goals set out in the IEP of the student and to participate, as appropriate, in the general education curriculum.

5.3.3. Reevaluation Steps

- a. Identify students needing reevaluation.
- b. Complete the Notice of Evaluation Plan to obtain parental approval for the reevaluation.
 - The reevaluation must occur during the current IEP year without delay (typically following the 60-day timeline outlined in initial evaluations).
- c. Conduct ER meeting and amend IEP, if necessary.

5.4 EVALUATION FOR TRANSFER STUDENTS

The circumstances under which a student transfers to the District from another District will govern which specific special education procedures are applicable. Informed written consent for initial provision of services must be obtained from the parent prior to implementation of special education services.

The transfer student should be registered and enrolled as expeditiously as possible in the home school. All placements in specialized programs must be formally assigned via the Student Services Department.

5.4.1. Transfers Within State

A current Montana eligibility from any Montana District can be accepted outright by the District using the Transfer Students Documentation form completed within the standard timeline of 10 school days for timely completion.

5.4.2. Transfers From Another State with a Current IEP

The District must decide if it is necessary to conduct a reevaluation to determine if the child is eligible as a student with a disability under the eligibility criteria established by Montana regulations. This can be documented on the Transfer Student Documentation form. If the District determines that an evaluation is necessary, the evaluation is considered an initial evaluation which requires informed parental consent.

The District must continue to provide a FAPE, including providing services comparable to those services in the student's existing IEP. The District, in conjunction with the parents, then must either:

- a. accept the IEP as written, or
- b. determine an reevaluation is necessary, or
- c. amend the IEP to reflect current data collection within 30 days.

5.4.2. Transfers student has an IEP which is more than 12 months old

The District must continue to provide a FAPE, including providing services that are comparable to those services in the student's last agreed upon IEP. The district must develop an annual IEP within 30 school days.

The existing IEP cannot be amended in this instance since the district must complete an annual review of the IEP.

5.5 GENERAL REQUIREMENTS FOR EVALUATIONS

Initial evaluations and reevaluations must be comprehensive enough to identify all of the student's special education and related service needs, whether or not commonly linked to the disability category in which the student has been, or may be, classified.

5.5.1. Assessment Areas

Montana regulations impose specific requirements for evaluation of particular areas of a student's abilities/skills, behavior, and performance, as follows:

- a. "Educational performance in the current setting":
This term means the behavioral and academic functioning of a student in the environment in which the majority of the student's education occurs.

Generally, a student's past and present educational performance is reviewed to obtain information about:

- achievement test scores;
- grades;
- appropriateness of instruction and progress relative to instruction;
- any prior, scientific, research-based interventions which may involve modification of the classroom environment, curriculum or delivery of instruction;
- any positive behavioral intervention/strategies/supports;
- disciplinary record; and
- attendance.

The person conducting this portion of the evaluation should also review any information collected through the PRT.

The assessment *must* include:

- observation of the student in that setting;
- classroom-based assessments to include a review of any report from a parent or teacher of the student, samples of the work of the student; and curriculum-based assessment.

Any interpretation of an assessment of performance in the current educational setting must be made by one or more members of the eligibility team having personal knowledge of the performance of the student.

b. Interventions:

This means a strategy, developed on the basis of individual need, designed to have a remediate effect upon any academic or behavioral difficulties of a student. The term does not include disciplinary procedures applied to a group of students unless, giving consideration to the individual needs of a student, such procedures are demonstrably more appropriate than other strategies.

- "Scientific, research-based intervention" means the modification of the classroom environment, curriculum or delivery of instruction in general education settings, which is based upon an examination of characteristics of the student as a learner, the instruction being provided and the curricular tasks to be accomplished, and targeted toward improving the student's level of performance and rate of learning. The modification of the classroom environment, curriculum or delivery of instruction is demonstrated through scientifically-based research and practice to have a positive impact on a student's academic achievement or behavior.

Examples of intervention practices may include, but are not limited to:

- adapting curriculum materials to the needs of the student;
- variations in the techniques employed in teaching the student;
- tutoring or supplemental instruction;
- using behavior management programs;
- counseling or direct social skills instruction for the student; and

- modifications to the educational environment.

c. Cognitive Abilities:

This term means those abilities involving the processes of thinking, reasoning and problem solving.

- An individually administered, standardized test of cognitive ability must be used as part of the evaluation process, when appropriate, in assessing the cognitive abilities of a student with a disability. If a score other than the total score of the student on such a test is used to assess the student's cognitive abilities, the procedure must be justified, on the basis of professionally recognized criteria, in the records of the student maintained by the District.

Any interpretation of an assessment of cognitive abilities must be made by a licensed school psychologist or licensed or certified psychologist. In the case of a student under the age of 6 years, any such interpretation may be made by a licensed school psychologist or a licensed or certified psychologist with documented training in the assessment of preschool students with disabilities.

d. Social and Emotional:

This term means the present thoughts, feelings and interactive behavior of a person. If the social and emotional condition of a student is assessed, the assessment may include:

- observation of the student;
- interview of the student or of any person having personal knowledge of the student; and
- use of a behavior rating scale, an adaptive behavior rating scale; and a self-report inventory.

A student may not be identified as a student with an emotional disturbance without prior interventions and unless a variety of these techniques is used to assess the social and emotional condition of the student. Any interpretation of an assessment of social and emotional condition must be made by a school psychologist or another certified psychologist or licensed mental health professional.

e. Adaptive Skills:

This term includes communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure and work.

If the adaptive skills of a student with a disability are assessed, the person conducting the evaluation must use a validated adaptive behavior scale. The assessment must include an assessment of any six or more of the following:

- communication;
- self-care;
- home living;
- social skills;
- community use;
- self-direction;

- health and safety;
- functional academics; and
- leisure and work.

Any interpretation of an assessment of adaptive skills must be made by a person qualified to assess adaptive skills through the use of adaptive behavior rating scales.

f. Physical

This refers to the general physical condition of a person. If the health of a student is assessed, the assessments include:

- review of health and developmental history;
- hearing and vision screening; or
- physical examination.

When the health of a student with a disability is assessed, the following assessments may also be included:

- audiological assessment;
- physical therapy assessment; or
- occupational therapy assessment of the student.

Any interpretation of an assessment of “physical” must be made by a person qualified to assess the condition in issue. An evaluation of a student’s health and developmental history is used to determine if the student has one or more health concerns that substantially affect his or her educational performance.

- It is essential that the student’s medical history and current health be reviewed early in the evaluation process so that any health problems can be identified and, if possible, be remediated prior to conducting other evaluation procedures. Vision and hearing screening should be conducted prior to the evaluation. However, no student shall be required to undergo any physical examination or medical treatment if the parent objects.
- If a student fails any general health screening, the student should be referred for an examination by a licensed practitioner for diagnosis and remediation.
- Failure of any general health screening does not constitute an eligibility determination for the purposes of the IDEA.
- If a medical consultation, including any psychiatric or neurological consultation, is appropriate, District personnel conducting the evaluation should contact the Student Services.
- Montana regulations require a diagnosis made by a medical doctor for consideration under Other Health Impairment (OHI).

A health evaluation of a student with significant health concerns who is transferring from outside the District should be completed as part of the review process if the student:

- requires a medical procedure such as G-tube feeding, suctioning, catheterization, oxygen, etc.;
- recently experienced a traumatic brain injury;
- has a seizure disorder not under control;

- has uncontrolled respiratory problems requiring procedures during the school day;
- has other serious health concerns which might warrant medical intervention or monitoring; or
- requires significant assistance with personal care (e.g., toileting, feeding, etc.).

g. Speech, Language (or Other Communication Skills)

This means skills relating to articulation, phonology, receptive language, expressive language, syntax, semantics, morphology, fluency and the use of the voice.

If the speech and language or other communication skills of a student are assessed, the assessment may include:

- observation of the student;
- interview of the student or of any person having personal knowledge of the student;
- use of information from a parent or teacher of the student;
- use of a standardized test of speech, language or other communication skills; and
- health assessment.

Any interpretation of an assessment of speech, language or other communication skills must be made by a speech and language specialist.

h. Academic Achievement

This term means the possession of basic reading skills and skills relating to oral expression, listening comprehension, written expression, reading fluency, reading comprehension, mathematics calculation and mathematics reasoning. In the case of a student under the age of 6, the term means academic readiness and the mastery of language concepts.

If the academic achievement of a student with a disability is assessed, the person conducting the assessment may use:

- a standardized test of academic achievement;
- curriculum-based assessment; and
- a report by the teacher of the student.

If the assessment of academic achievement is required to determine the eligibility of the student for special services and programs of instruction, then the assessment must be based upon the use of a standardized test. Any interpretation of an assessment of academic achievement must be made by a person qualified to administer individually standardized tests of academic achievement to the student.

i. Functional Behavior

As used in this section, if the functional behavior of a student is assessed as part of the evaluation process, which must include:

- systematic observation of the occurrence of the targeted behavior for an accurate definition and description of the frequency, duration and intensity of the behavior;
- systematic observation of the events that immediately precede each display of the targeted behavior and are associated with the display of the behavior;
- systematic observation and analysis of the consequences following the display of the targeted behavior, to identify the specific environmental or physiological outcomes produced by the behavior, in order to determine the function that the behavior serves for the student;
- the communicative intent of the targeted behavior must be identified in terms of what the student is either requesting or protesting through the display of the behavior;
- analysis of the settings in which the targeted behavior occurs most frequently, including these considerations as appropriate:
 - the physical setting
 - the social setting
 - the activities
 - the nature of instruction
 - scheduling
 - the quality of communication between the student and staff or other students
 - the degree of participation of the student in the setting
 - the amount and quality of social interaction
 - the degree of choice and the variety of activities
- review of records for health and medical factors which may influence the targeted behavior, including, without limitation, levels of medication, sleep cycles, health and diet; and
- review of the history of the targeted behavior to include the effectiveness of any intervention previously used. This term means the particular adaptive or inappropriate behavior of the student that the person conducting the assessment monitors in order to promote adaptive behavior and reduce the occurrence of inappropriate behavior.

5.5.2. Evaluation Procedures

In selecting tests and other evaluation materials used to assess a student, District personnel must ensure that in conducting the evaluation, the District ER must, at a minimum:

- a. Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent, that may assist in determining:
 - whether the student is a student with an IDEA eligibility; and
 - the content of the student's IEP, including information related to enabling the student to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities).
- b. Not use any single measure or assessment as the sole criterion for determining whether a student is a student with an IDEA disability and for determining an IEP for the student.

- c. Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.
- d. Ensure that assessments and other evaluation materials used to assess the student are:
- selected and administered so as not to be discriminatory on a racial or cultural basis; and
 - provided and administered in the student's native language or other mode of communication and in the form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to provide or administer;
 - used for the purposes for which the assessments or measures are valid and reliable;
 - administered by trained and knowledgeable personnel; and
 - administered in accordance with any instructions provided by the producer of the assessments.
- e. Use assessments and other evaluation materials including those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.
- f. Select and administer assessments so as best to ensure that if an assessment is administered to a student with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the student's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).
- g. Select assessment tools and strategies that provide relevant information that directly assists team members in determining the educational needs of the student.
- h. Assess the student in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.
- i. Coordinate with students' prior schools if they have transferred from one district to another district in the same school year as necessary and as expeditiously as possible to ensure prompt completion of full evaluations.
- j. Be sufficiently comprehensive to identify all of the student's special education and related service needs, whether or not commonly linked to the disability category in which the student has been classified.

5.5.3. Eligibility Category

Montana's special education regulations specify the following disability classifications:

- ❖ Developmental Delay (*for ages 3-8*)
- ❖ Autism
- ❖ Cognitive Delay
- ❖ Deaf-Blindness
- ❖ Deafness
- ❖ Emotional Disturbance
- ❖ Hearing Impairment

- ❖ Orthopedic Impairment
- ❖ Other Health Impairment
- ❖ Specific Learning Disability
- ❖ Speech-Language Impairment
- ❖ Traumatic Brain Injury
- ❖ Visual Impairment

5.4.4. Timelines for Evaluations

a. Every effort must be made to complete the evaluation within a reasonable time after the District has reason to suspect that a student may have a disability and need special education and related services.

- Initial evaluations must be completed within 60 days from the date of securing informed parental consent.
- The need for a reevaluation is determined yearly by the IEP team,
 - but may not occur more than once a year, unless the parent and District otherwise agree.
 - If deemed necessary, the reevaluation must be completed in a reasonable amount of time, typically within 60 days.
- A reevaluation must be conducted when conditions warrant it (i.e., new referral questions/assessment needs).
- The District is *not required* to conduct reevaluations for students to meet the entrance or eligibility requirements of an outside institution or agency (e.g., vocational rehabilitation programs, colleges/universities, other postsecondary settings).

b. Timelines in exceptional circumstances:

- Upon request of the District, the Superintendent of Public Instruction may extend the deadline for conducting the initial evaluations for not more than 15 school days.
- The deadline does not apply if the parent of the student repeatedly fails or refuses to deliver the student for the evaluation.
- If for any reason (such as extended illness of the student), it becomes impossible to complete the evaluation within 60 days, District personnel should document the justification for the delay in writing. Delay should only occur in exceptional cases and the documentation for the justification should conform to the codes used in the District's student information system.

5.6 EARLY CHILDHOOD EVALUATION

5.6.1. Early Childhood Considerations.

The completion of formal eligibility reevaluations for students with disabilities who are 3, 4 or 5 years of age occur when warranted, including when other eligibility classifications are suspected. In the case of a 8-year-old who has a Developmental Delay eligibility, formal reevaluation procedures are required and this reevaluation must occur no later than the student's ninth birthday.

5.7 BILINGUAL EVALUATIONS

5.7.1. Language and Cultural Information

If there is reason to believe that the student may have limited English proficiency (LEP) and is being considered for referral for evaluation or has been referred for evaluation (as well as when an evaluation has been ordered by a hearing officer), the District Administrator (or designee) should ensure that the following have occurred:

- a. District personnel must have assessed and documented the student's proficiency in English and the student's native language. This language assessment must include:
 - an interview with the student's parent;
 - a determination of the language spoken in the student's home;
 - the language the student uses most comfortably and frequently;
 - the language the student uses to conceptualize and communicate; and
 - the student's levels of language proficiency in English and the native language if feasible to do so.
- b. Information must be gathered about the student's cultural background, including:
 - the language spoken at home;
 - ethnicity;
 - socioeconomic status;
 - the extent to which school expectations may conflict with cultural expectations;
 - family mobility; and
 - other information which may be relevant to how the student functions at school.
- c. Information must be gathered about the student's mode of communication through observation of the extent to which the student uses expressive and written language and other modes of communication as a substitute for expressive language (e.g., gestures, signing, or unstructured sounds).

5.7.2. Evaluations

If there are indications that a student may use a language other than English, the ER team must determine whether a bilingual evaluation is necessary, on a case-by-case basis. For the purpose of making such a determination, the evaluation must include qualified personnel with knowledge of second language acquisition theory or document consultation with such a professional.

When a bilingual evaluation is required, the evaluation team must consult with a Speech Language Pathologist or a bilingual School Psychologist, as needed, in determining which evaluation components must be conducted by qualified bilingual personnel, and which components may be conducted by District staff. During the evaluation process, the student's proficiency in their native language must be determined, if feasible, and must be documented in the evaluation report.

5.8 EVALUATIONS FOR SPECIAL EDUCATION STUDENTS WHO ARE INVOLVED IN THE DISCIPLINE PROCESS

5.8.1 In some circumstances a student who has not yet been determined to be eligible may be entitled to procedural protections under the IDEA and Montana regulations in relation to a disciplinary change in placement.

The specific circumstances are as follows that apply if occurring before the behavior that precipitated the disciplinary action:

- a. the parent of the student had expressed concern in writing, to District supervisory or administrative personnel, that the student is in need of special education and related services;
 - b. the parent of the student had requested an IDEA eligibility evaluation of the student;
- or
- c. the teacher of the student, or other personnel of the District, had expressed specific concerns about a pattern of behavior demonstrated by the student, directly to a District director of special education or to other District supervisory personnel.

5.8.2. However, these circumstances do not apply if:

- a. the parent of the student has not allowed an evaluation;
- b. if the parent of the student has refused services;
- c. the student has been evaluated and it has been determined that the student is not a student with a disability; or
- d. the parent has revoked consent for special education and related services.

5.8.3. If a request is made for an evaluation after the disciplinary infraction occurred but before the long-term disciplinary action has been taken, the District must conduct an eligibility evaluation in an expedited manner. Pending the results of the evaluation, the student shall remain in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

5.9 HOMEBOUND EVALUATION

Evaluations for special education eligibility completed for students who are hospitalized or are receiving homebound services must follow standard procedures for evaluation to the best of the assessor's ability based on the unique circumstances of each student.

- For example, classroom-based assessments and observations cannot be conducted using traditional methods due to the students inability to access the school environment.
- Parent or medical personnel interviews may be necessary to meet some of the assessment criteria rather than standardized assessments or observations.

The home school personnel are responsible for conducting and completing the evaluation.

5.10 EVALUATION REPORTS

5.10.1. At the conclusion of the evaluation process, a written report must be developed that summarizes the procedures employed, the results, and any educational implications (Evaluation Report form required by the OPI). The ER may include assessment data from general and special education teachers and related services providers including a school psychologist, speech language pathologist, school nurse, occupational therapist, physical therapist, and other appropriate personnel.

5.10.2. The ER must include a detailed, educationally relevant description of the student's needs. The report must be written in succinct, readily understandable language, using as little educational jargon as possible. Each report should include, as appropriate:

- a. student demographic information;
- b. reasons for referral;
- c. review of prior/previous interventions and student progress, and the student's educational history and classroom performance data;
- d. evaluation methods used;
- e. any variation from standard conditions in the administration of assessments, including variations in the qualifications of the person administering a test or the method of test administration;
- f. results of all relevant assessments and interpretations of results, including the student's strengths and weaknesses;
- g. a description of the student's relevant behavior during the evaluation, and the relationship of that behavior to the student's evaluation results and educational performance;
- h. if a bilingual evaluation was conducted or considered, the language(s) used to test the student and the methods used;
- i. environmental, cultural, or economic factors; and
- j. professional recommendation regarding the student's eligibility for special education and related services.

5.10.3. Distribution of a draft ER to the parent at, or immediately prior to, scheduled eligibility meetings is an acceptable practice that can facilitate team collaboration and informed decision making. Draft psychological reports may be provided at parent request but will clearly indicate "draft" and will not be signed by the author of the report.

5.10.4. The ER must be signed by the person(s) conducting the evaluation, provide the dates the assessments were administered, and the date of the eligibility meeting. The parent must receive a copy of the signed ER and psychology report upon their completion at the formal eligibility meeting. The ER must be maintained in the student's confidential folder.

5.10.5. Screenings

The screening of a student by a teacher or specialist to determine appropriate instruction strategies for curriculum implementation shall not be considered to be an evaluation for determining eligibility for special education and related services.

5.11 INDEPENDENT EDUCATIONAL EVALUATIONS (IEE)

For detailed information regarding parents' rights to request an IEE, refer to section 2.5 in Chapter 2.0- *Procedural Safeguards*.

Chapter 6.0 ELIGIBILITY

This chapter describes:

6.1 The Eligibility Determination

- 6.2 The Evaluation Report Team
- 6.3 Eligibility
- 6.4 Report of the Eligibility Determination

6.1 THE ELIGIBILITY DETERMINATION

Once a student has been formally evaluated, the District must convene a meeting of the ER Team to determine whether the student has a disability and whether the student is eligible for special education and related services. This chapter explains the general requirements for eligibility determination, eligibility criteria, the composition of the ER team, and the requirements for the evaluation report.

In order to ensure that required time frames are met for conducting an Individualized Education Program (IEP) meeting and that students begin receiving needed services in a timely manner, it is important to promptly schedule the ER's eligibility determination. In many instances, the eligibility determination and the IEP meeting may be held on the same date, provided that all necessary participants for each meeting are available and appropriate notices were sent.

6.1.1. General Requirements of Eligibility Determination

- a. Upon completion of a formal evaluation, an ER of qualified professionals and the student's parent must determine whether the student is a child with a disability within the meaning of IDEA. IDEA defines an eligible student as a child who has been formally evaluated and determined to:
 - meet the criteria for one or more identified classifications; and
 - have a resulting need for special education, including any necessary related services.
- b. A student must have at least one of the disability classifications located in section 5.5.3.
- c. A student is not considered eligible for special education services if the ER team determines, through an appropriate evaluation, that a student has one of the above disabilities but does not have a resulting need for special education services. Related services are a support service and are only provided to students eligible for special education services only when necessary to benefit from special education.
- d. The exception is for the classification of Speech and Language Impairment, which alone establishes eligibility because, under Montana regulations, Speech/Language services may serve as either special education or related services.
- e. Depending on the individual circumstances, a student who has passing grades and is advancing from grade to grade may nevertheless qualify for IDEA eligibility under certain classifications.

6.1.2. Lack of Instruction in Reading or Math and Limited English Proficiency

- a. A student may not be determined to be a child with a disability if the determinant factor for eligibility is:
 - lack of appropriate instruction in reading including the essential components of reading instruction;
 - the essential components of reading instruction means explicit and systematic instruction in:

- phonemic awareness;
- phonics;
- vocabulary development;
- reading fluency, including oral reading skills; and
- reading comprehension strategies;
- lack of appropriate instruction in math; or
- limited English proficiency; and
- the student does not otherwise meet the eligibility criteria described in this chapter.

6.1.3. Restrictions

a. Drug or Alcohol Addiction

A student’s drug or alcohol addiction may not alone serve as the sole basis for eligibility under the IDEA. However, a student with a drug or alcohol addiction is eligible under IDEA if the ER team determines that the student meets the criteria for one of the identified disabilities and needs special education for reasons unrelated to drug or alcohol addiction.

b. Students Incarcerated as Adults

The District is not responsible for initial child find activities for students who are convicted as adults and incarcerated in adult prisons.

6.1.4. Age Ranges for Eligibility

The entitlement under the IDEA applies to a child who meets the criteria for eligibility between the child’s third birthday and either graduation with a high school diploma or upon the 20th birthday before September 10, whichever is earlier.

6.1.5. Termination of Eligibility

a. Termination of eligibility is considered a change in placement. Termination of eligibility occurs when the student:

- graduates with a high school diploma;
- turns 20 years of age prior to September 10, or
- is formally evaluated and found not eligible by the ER Team.

6.2 THE EVALUATION REPORT (ER) TEAM

6.2.1. General Requirements for Membership

Membership requirements differ based on specific eligibility classifications, as defined by Montana’s relevant regulation (10.16.3007). Moreover, the District recommends additional members. These requirements and recommendations are identified in the following chart.

Eligibility Category	Special Ed. Teacher	Gen. Ed. Teacher	Parent	LEA	Psychologist	Speech Pathologist	School Nurse
Developmental Delay	X	X	X	X	X	X	R
Autism	X	X	X	X	X	X	
Cognitive Delay	X	X	X	X	X	X	
Deaf/Blindness	X*	X	X	X	R		R
Deafness	X*	X	X	X	R		
Emotional Disturbance	X	X	X	X	X		
Hearing	X*	X	X	X	R		R

Impairment							
Other Health Impairment	X	X	X	X	X		X
Orthopedic Impairment	X*	X	X	X	R		X
Specific Learning Disability	X	X	X	X	X		
Speech/Lang. Impairment	X	X	X	X	X	X	
Traumatic Brain Injury	X	X	X	X	X	X	X
Visual Impairment	X*	X	X	X	R		R

* = For these classifications, the District recommends a specialist, such as an audiologist or OT/PT participate in the evaluation.

X = Required member under Montana regulations.

R = Recommended member by the District.

6.2.2. Other Considerations

- a. If eligibility is multiple impairment, participants must include required members for both the primary disability classification and the secondary disability classification.
- b. A minimum of three (3) participants must be in attendance for any eligibility.
- c. Health assessments are required for all eligibility determinations; however, a school nurse is not always a required participant in formal eligibility meetings.
- d. The ER team may proceed with completing eligibility determinations without the parent's participation when reasonable efforts to encourage parent participation, through formal notifications and attempted notifications, have been made and documented.
- e. Eligibility decisions are finalized as a function of the majority position among required team members, whereas IEP and placement decisions are typically finalized as a function of attaining consensus among required participants. In the absence of a consensus among ER members for eligibility determination, the team must consider and determine the following factors:
 - Were there sufficient discussions among team members over outstanding disagreements?; and
 - Is there enough information available to render a decision?

6.3 ELIGIBILITY

The IDEA Part B regulations govern special education for children aged 3 through 21 years.

The first of the two basic prongs for eligibility is meeting the criteria for one or more of the classifications identified in the IDEA or Montana's corollary law, which are generally outlined below:

6.3.1. Developmental Delay (3-8)

Developmental Delay functions at a developmental level two or more standard deviations below the norm in any one area of development or 1.5 standard deviations below the norm in two or more of the following areas:

- (i) cognitive development;

- (ii) physical development;
- (iii) communication development;
- (iv) social and emotional development; or
- (v) adaptive functioning skills.

6.3.2 Autism

“Autism” to mean a spectrum disorder which includes:

- a developmental disability significantly affecting verbal and nonverbal communication and social interaction of a person and is often characterized by repetitive activities and stereotyped movements, resistance to changes in environment or daily routine, and responding to sensory experiences in an unusual manner;
- is usually apparent before the age of 3 years; and
- adversely affects the educational performance of a student causing significant delays or irregular patterns in learning, or both.

The term includes, without limitation, a group of developmental disorders such as autistic disorder, Asperger’s disorder, atypical autism, pervasive developmental disorder and other disorders that share the characteristics described above. The term Autism does not apply if a student’s educational performance is adversely affected primarily because the student has an emotional disturbance as defined in section 6.3.6.

6.3.3. Cognitive Delay

“Cognitive Delay” as a condition that:

- is characterized by intellectual functioning at a level that is significantly below average, and which exists concurrently with related limitations in two or more of the following adaptive skill areas:
 - communication skills;
 - self-care;
 - home living;
 - social skills;
 - use of the community;
 - self-direction;
 - health and safety;
 - functional academics;
 - leisure; and
 - work;
- manifests before the age of 18 years; and
- adversely affects the educational performance of a student.

6.3.4. Deaf-Blindness

“Deaf-Blindness” to mean concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that they cannot be accommodated in special education programs solely for students who are deaf or students who are blind.

6.3.5. Deafness

“Deafness” to mean hearing loss so severe that the student is impaired in processing linguistic information, with or without amplification, to the extent that prevents the auditory channel from being the primary mode of learning speech and language.

6.3.6. Emotional Disturbance

“Emotional Disturbance” to mean a severe emotional disorder that:

- is exhibited by a person over a long period of time;
- marked degree that adversely affects academic performance; and
- includes one or more of the following:
 - an inability to learn which is not caused by an intellectual, sensory or health factor;
 - an inability to engage in or to maintain interpersonal relationships with peers and teachers;
 - inappropriate behavior or feelings;
 - a general and pervasive mood of unhappiness or depression;
 - tendency to develop physical symptoms or fears associated with a personal or academic problem; or
 - the term includes schizophrenia.
- The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance.

6.3.7. Hearing Impairment

MCA defines “Hearing Impairment” to mean an impairment in hearing, whether permanent or fluctuating, that adversely affects a child’s educational performance but that is not included under the definition of deafness in this section.

6.3.8. Orthopedic Impairment

“Orthopedic Impairment” to mean a severe orthopedic impairment that adversely affects the student’s educational performance and which results from:

- congenital anomaly including without limitation, clubfoot and absence of a member, etc.
- a disease, including without limitation, (bone tuberculosis and poliomyelitis, etc.); or
- any disease including without limitation, cerebral palsy, amputations and a fracture or burn that caused a contracture.

6.3.9. Other Health Impairment

“Other Health Impairment” to mean an impairment that limits the strength, vitality or alertness of the student, including, without limitation, a heightened alertness to environmental stimuli which results in limited alertness with respect to the educational environment and which:

- is caused by chronic or acute health problems such as:
 - asthma
 - attention deficit disorder
 - attention deficit hyperactivity disorder
 - childhood disintegrative disorder
 - diabetes
 - epilepsy
 - a heart condition

- hemophilia
- lead poisoning
- leukemia
- nephritis
- rheumatic fever
- Rett's disorder
- sickle-cell anemia
- Tourette syndrome (this list of specific health conditions is meant to be illustrative, not exhaustive); and adversely affects the educational performance of the student.

6.3.10. Specific Learning Disability

“Specific Learning Disability” is defined as a student that does not make sufficient progress to meet age or grade level based on state approved K-12 content standards in one or more of the following areas:

oral expression, listening comprehension, written expression, basic reading skill, reading fluency skills, reading comprehension, mathematics calculation, mathematics problem solving.

The student may not be identified as having a specific learning disability if the student's significantly low rate of progress in meeting age or grade level based on state approved K-12 content standards is primarily the result of a visual, hearing, or motor impairment; cognitive delay; emotional disturbance; environmental or economic disadvantage; cultural factors; or a lack of appropriate instruction.

6.3.11. Speech and Language Impairment

“Speech and Language Impairment” to mean a disorder relating to language, articulation, fluency, or the use of the voice which:

- is outside the range of acceptable variation in a given environment;
- is inconsistent with the chronological or mental age of the student; or
- affects the emotional, social, or educational adjustment of the student.

6.3.12. Traumatic Brain Injury

“Traumatic Brain Injury” to mean an injury to the brain caused by an external force that results in the total or partial functional disability or psychosocial impairment of a person, or both.

Except as otherwise provided in this section, the term applies to any injury to the brain which adversely affects educational performance including, without limitation, injuries affecting a student's:

- cognitive abilities;
- speech;
- language;
- information processing;
- memory;
- attention;
- reasoning;
- abstract thinking;
- judgment;

- problem solving abilities;
- sensory, perceptual and motor skill abilities;
- psychosocial behavior; and
- physical functions.

The term does not include injuries to the brain that are congenital or degenerative or which are induced by trauma during birth.

6.3.13. Visual Impairment

“Visual Impairment” including blindness, to mean an impairment which, despite correction, adversely affects or will adversely affect the ability of a student to benefit from or participate in an educational program. The term includes both partial sight and blindness.

6.4 REPORT OF THE ELIGIBILITY DETERMINATION

6.4.1. Preparation of the Reports

The ER must document its determination of a student’s eligibility or ineligibility for special education services. All team members must indicate that the ER is an accurate summary of their analysis and conclusions by signing as a participant in the ER meeting.

All ERs must be filed in the student’s confidential folder, which should be developed and maintained at the school site for all who have been formally evaluated, whether or not the student was found eligible). The ER must complete a criteria checklist for each disability formally considered by the team. The parent must be provided a copy of finalized ER on which the determination of the student’s eligibility or ineligibility is based.

Any team member who disagrees with the determination may submit a dissenting opinion within the ER.

6.4.2. Content of the ER

The ER should discuss its findings and conclusions regarding whether the student meets the classification and the need prongs of eligibility.

- The discussion should include the definitions, criteria, and required evaluation components for each particular classification considered, including those rejected by the team.
- The report should describe the student’s areas of deficit and strengths and the resulting effects on student’s learning, functional performance, and academic achievement.
- An ER must include the reason for referral, required assessments by disability classification, and determination of special education needs.
- The report should specifically recommend any additional evaluations when needed; if no such recommendation is made, the presumption will be that the ER team has concluded that no additional evaluation is required.
- If the child is determined to meet both prongs for eligibility, make sure the report fulfills the other regulatory purpose of evaluation, “to determine the educational needs of the child” as the basis for the IEP.

- The report should be written in clear and concise language understandable to the parent and others who may refer to it.

Chapter 7.0 INDIVIDUALIZED EDUCATION PROGRAMS -IEP

INTRODUCTION

Once a determination has been made that a student has a disability and needs special education and related services, an Individualized Education Program (IEP) must be developed for the student in accordance with the procedures and standards described in this Chapter. An IEP is a written program designed to provide special education and related services in accordance with the student's disability related needs.

This chapter describes:

7.1 Prior Written Notice

7.2 Parental Participation

7.3 IEP Meeting Participants

7.4 Consent for Initial Provision of Special Education and Related Services

7.5 Types of IEPs

7.6 IEP Components

7.7 Aversive Treatment Plans

7.8 Conducting an IEP meeting

7.9 IEPs for Students in Correctional Facilities

7.1 PRIOR WRITTEN NOTICES (PWNs)

7.1.1. Proposed Meeting Arrangements

- a. A reasonable time before a proposed IEP meeting, District staff must notify the parent of their intent to conduct an initial or annual IEP meeting. The notice must also provide proposed meeting arrangements to the student's parent.
- b. The meeting arrangements include time, date, location and participants of the IEP meeting.
- c. Beginning at age 16, the student must be invited to attend the meeting and be provided a copy of the meeting arrangements.
- d. The proposed meeting arrangements and the PWN of District proposals must use understandable language and be provided in the native language or other mode of communication of the parent.
- e. A copy of the proposed meeting arrangements and the PWN of District proposals must be filed in the student's confidential folder and documented in the status record that a copy was given to the parent and the student (16 years or older). See Chapter 3.0 on PWNs for additional information and procedures.

7.2 PARENTAL PARTICIPATION

7.2.1. The District Administrator or designee must take steps to ensure that one or both of the student's parents are present at each IEP meeting or are otherwise afforded the opportunity to participate in the development of the student's IEP.

7.2.2. IEP meetings should be scheduled at a mutually agreed upon time and place, and the parent should be notified well enough in advance of the meeting to ensure that they will have an opportunity to attend. Parents cannot require meetings be held after school hours or outside of the contracted school calendar. The District will comply with the collective bargaining agreements for District staff.

If neither parent can attend an IEP meeting, the District Administrator or designee must make available to the parents other methods to ensure parent participation, such as a telephone conference call, video conference, or other means with the required team members present.

7.2.3. The District may proceed with an IEP meeting without a parent in attendance, if and only if, the District has documented in reasonable detail all required attempts to ensure parent participation as described in 7.2.4. below.

7.2.4. All efforts to arrange a mutually agreed upon time and place for the meeting must be documented in the student's confidential folder, including:

- a. detailed records of telephone calls made or attempted and the results of those calls;
 - It is District practice that at least one telephone call is made, and follow-up calls are made if staff is unable to speak with the parent directly over the phone. If parents don't have a phone, document other methods to contact parents.
- b. copies of correspondence sent to the parent and any responses received; and
 - It is District practice that at least two written notices must be provided to the parent
- c. detailed records of any visits made to the parent's home or place of employment and the results of those visits.

7.2.5. The District should take whatever action is necessary to ensure that the parent understands the proceedings of the IEP meeting, including arranging for an interpreter for a parent who is hearing impaired or whose native language is other than English.

7.2.6. If a parent leaves an IEP meeting before its conclusion, staff should note the parent's departure in the status record located in the student's confidential folder and either continue the meeting and complete the IEP or reschedule the meeting to complete the IEP. This choice would depend on the circumstances surrounding the departure of the parent.

7.3 IEP MEETING PARTICIPATION

7.3.1. Required participants

The District Administrator or designee is responsible for ensuring that the IEP Team includes the following required participants:

- a. one or both of the student's parents;
 - If the student has more than one teacher, the District Administrator or designee may designate which teacher(s) will participate.
 - If the student does not currently access general education classes, a general education teacher knowledgeable of the grade level curriculum must attend.

- b. a District representative who acts as the Local Education Agency (LEA) representative and is:
- qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of students with disabilities;
 - knowledgeable about the general curriculum;
 - knowledgeable about the availability of District resources; and
 - a District Administrator or designee who has the authority to commit District resources and ensure that IEP services will be provided.
- c. at least one general education teacher who teaches the student;
- d. at least one special education teacher or provider who is or will be responsible for implementing the IEP; and
- For example, a student who receives only speech/language services, the speech/language pathologist would serve as the special education teacher.
- e. an individual who can interpret the instructional implications of evaluation results, who may be a member of the team described above (other than the parent).

7.3.2. Additional participants who must be invited

- a. In the case of an IEP that includes transition services or considers the student's transition service needs:
- the student must be invited;
 - upon parental consent, a representative of a participating agency that is likely to provide or pay for transition services must be invited if the IEP is to include transition services or to consider the student's transition service needs. A parent can refuse to provide consent for the District to invite other agencies that are likely to be responsible for providing or paying for transition services.
- b. In the case of an IEP for a student that has reached the age of majority (age 18), the parent may be invited by the student.
- c. In the case of an IEP that includes a related service, the provider must be invited (attendance is not required) if the student's evaluation has identified a need for a particular related service or if a related service is to be discussed as part of the IEP meeting.
- d. In the case of an IEP that includes the related service of transportation, a representative from the transportation department must be invited (although attendance is not required) if the following is being discussed:
- consideration of a bus aide;
 - consideration of an adjusted schedule;
 - consideration of implementing a behavior plan; and
 - medical or safety concerns.
- e. In the case of an initial IEP meeting for a preschool child who previously received early intervention services, the District must notify the parent that upon the parent's request, the District will invite the service coordinator or representative of the child's early intervention system to participate in the meeting.
- f. In the case of an IEP for a student whose parent is deaf or whose native language is other than English, the District must take whatever action is necessary to ensure the parent understands the proceedings of the IEP team meeting, including arranging for an interpreter.

g. In the case of an IEP for a student enrolled in a private school and receiving special education services from the District, the District must invite a teacher or other representative of the private school to the meeting. If the representative is unable to attend the meeting, the District will use other methods to ensure participation (e.g., telephone conference) and consult with the private school representative regarding present levels of performance and progress.

7.3.3. Other participants that may be invited

a. The District has the right to invite additional participants who have knowledge or special expertise concerning the student to the IEP meeting.

- The parent must be provided this information in writing on the Notice of Team Meeting form.
- If Transitions services are to be discussed with outside agencies, the Consent to Invite Outside Agency for Postsecondary Transition Services form must be sent home.

b. If behavioral concerns are going to be discussed, a person who is knowledgeable about positive behavioral supports may be invited.

- This person may be a special education teacher, school counselor, school psychologist, behavior mentor teacher or special education instructional facilitator.

c. The parent has the right to bring additional participants to an IEP meeting who have knowledge or special expertise regarding the student. The parent determines the knowledge or special expertise of the additional participants. This may include:

- friends
- family members
- neighbors
- attorneys
- advocates

7.3.4. Special Education Attorneys and Non-Attorney Advocate Representation

The District respects all parents' rights to have their attorneys at law and/or non-attorney advocates at IEP meetings as they deem in the best interest of their family and their child. The District also recognizes that, from time to time, a parent may choose to invite an attorney or an advocate associated with an attorney to attend an IEP meeting.

a. The parent may indicate who they are bringing when responding to the proposed meeting arrangements, but they are not required to do so.

b. In the event a parent has an attorney present at a meeting, District staff will notify Student Services, which will contact the District's legal counsel to determine whether they need to be in attendance.

- If parents do not notify the District in advance, and the determination is that the District's legal counsel will attend, the team members will need to arrange for an alternate agreeable time and place for the meeting.

c. In the event a parent chooses to have a non-attorney advocate present at a meeting, District staff will notify Student Services.

- State and federal law outline the rights of parents to equal and full participation in their child’s education, including the right to a non-attorney professional advocate to represent their interests and participate in meetings regarding their children.
 - The Advocate Scope of Representation Agreement, Guidelines and Procedures for Parents and Staff (BPS Procedure 2161-P1), outlines the specific services non-attorney advocates may engage in on behalf of the parents.
- d. Only parents or District staff may request a meeting or make other such requests.
- Non-attorney advocates or other parent representatives are members of the team but do not have the authority to make demands or requests.
 - Any demands or requests made by non-attorney advocates or other parent representatives must be made via the parent.
- e. If the parent has a non-attorney advocate, all correspondence will continue to be provided directly to the parent.
- An Advocate Scope of Representation Agreement must be completed and provided to the District’s Superintendent prior to including non-attorney advocates in any correspondence related to the student.
 - A Mutual Exchange of Information must also be provided to the District prior to a non-attorney advocate being included in correspondence that includes District staff.
 - Any questions or requests made by a non-attorney advocate to District staff must come from the parent.
 - The District is obligated to provide DRAFT copies of District proposals and documents to the parents. No information or documentation will be provided to a non-attorney advocate that is not provided to every member of the team.

7.3.5. Non-Attendance

The District’s policy is that all required members must be in attendance and remain for the duration of every IEP meeting (see Section 1 and 2 7.3.1. for required members), although IDEA permits nonattendance of additional IEP team members.

7.3.6. Excusal

The District’s policy is that all required members must be in attendance and remain for the duration of every IEP meeting unless otherwise agreed by the parent via the IEP Team Member Excusal_form.

7.4 CONSENT FOR INITIAL PROVISION OF SPECIAL EDUCATION AND RELATED SERVICES

7.4.1. Consent for the Initial Provision of Services

Parent approval is required for the initial provision of services.

- a. Before consent is obtained, the parent must fully understand the types and setting of services to be provided.
- b. The parents must be fully informed of the special education and related services being proposed. This includes the minutes of services in the special education or regular education setting and which staff, special education, regular education, or related service providers will be providing the services.

c. The District may not initiate a due process hearing to provide special education and related services to a student when a parent refuses to consent to initial services. A student whose parent has refused consent for initial services will not be provided special education and related services, instead continuing to receive general education services.

7.4.2. Revocation of Consent for Special Education and Related Services

Refer to sections **1.3.2 (c)** and **2.3.6** regarding revocation procedures.

7.5 TYPES OF IEPS

Requirements for PWN, Parental Participation, and IEP Meeting Participants must be met for meeting for all types of IEPs. The following are the various types of IEPs.

7.5.1. Initial IEP

a. Purpose

- An initial IEP is the first IEP developed following the initial eligibility.
- In the case of a student that was previously determined eligible and then exited from special education services in Montana, any new eligibility determination in Montana would be followed by an initial IEP.

b. Timelines

- An initial IEP meeting must be convened within 30 calendar days after the date of the eligibility determination. It may be held immediately following the eligibility determination, but no later than 30 calendar days.
- An initial IEP must be in effect before special education and related services are provided to the student.
- An initial IEP must be in effect by the third birthday if a student is receiving services through an Individualized Family Service Plan (IFSP) and continues to be eligible for services. The Initial IEP team must consider the student's IFSP.

c. IEP Development

- An initial IEP is developed based on current information which may include: educational records, formal and informal assessments, teacher reports and observation data, medical records, interviews with student, parent, and school personnel and any outside information provided by the parent.
- A student whose parent has refused consent for initial services is not provided special education and related services and therefore an IEP does not need to be developed. See Procedural Safeguards Chapter 2.0 for additional information and procedures.

7.5.2. Annual IEP

a. Purpose

- An annual IEP is the yearly review and revision of the current IEP. Parental approval must be obtained prior to the implementation of the annual IEP.

b. Timelines

- After the initial IEP is developed, the District must ensure that the IEP team reviews/revises the student's IEP periodically, but no less than annually, to determine whether the annual goals are being achieved.

- While the student remains eligible under IDEA, the annual IEP must be held on or before the one year anniversary of the date of the previous annual IEP.
 - The District must ensure that each student with a disability within the District has a current IEP in effect at the beginning of each school year.
 - An IEP must be implemented as soon as possible following its development. There can be no undue delay in providing special education and related services to the student.
- c. IEP Development
- Prior to the development of the annual IEP, each goal in the current IEP must be reviewed for progress and a Progress Report provided to the parent.
 - An annual IEP must be developed based on current information which may include:
 - educational records
 - formal and informal assessments
 - teacher and related service provider reports
 - observation data
 - medical records
 - interviews with student, school personnel, and/or parent
 - any outside information provided by the parent.
 - In the event that the parent cannot, or does not participate in the annual review, the IEP team must proceed with the development of the Annual IEP, provided that the Prior Written Notice requirements have been met.

7.5.3. IEP Amendment

a. Purpose

- The IEP Plan Amendments is to ensure services continue to be appropriate based on new information and/or District or parental concerns.

b. Timelines

- Any time before the annual review, the parent or the District may request to reconvene the IEP team to review and possibly amend the IEP.
- If a parent requests a meeting and the team agrees with the need for a revision, a PWN of proposal and meeting arrangement must be provided to the parent.
- If the team disagrees with the need for a revision meeting, a prior written notice of refusal must be provided to the parent. See Prior Written Notice Chapter 3.0 for additional information and procedures.

c. IEP Development

- An IEP review and/or amendment may be required, as appropriate, to address the following:
 - the results of any evaluation;
 - disciplinary actions that result in a disciplinary change of placement, IAES
 - lack of expected progress towards the annual goals;
 - lack of expected progress in the general education curriculum;
 - any proposed placement change;
 - information about the student provided to or by the parent; or
 - the student's anticipated needs (supplementary aids/services).

- During the IEP revision, the entire annual IEP does not need to be reviewed. Items discussed are related to the purpose of the meeting as identified in the PWN and other areas agreed upon by the team.
- d. Amendment without a Meeting
- Although IDEA allows the parent and the LEA to agree to make changes to an annual IEP without a meeting, the District should not regularly implement this provision of the statute.
 - Guaranteed full and meaningful participation by the parent is a central tenet of the IDEA.
 - The District must ensure that the parent is allowed to fully participate in the development and review of the IEP.
 - IEP meetings are the mechanism by which their participation is protected.

7.5.4. Homebound IEP services

a. Purpose

Homebound is a temporary service for all students with health issues due to injury or illness, regardless of whether eligible under IDEA. If a student is eligible to receive special education and related services under an existing IEP, homebound services becomes an educational placement. Therefore, the IEP must be amended or written to address a change of placement and continue to meet the individualized requirements for a FAPE.

b. Timelines

- Parents must obtain a physician's letter stating the student is unable to attend public school due to a medical concern. Extended absences or anticipation of extended absences must be substantiated by a qualified physician who is acting within their authorized scope of practice. For additional information, see Placement Chapter 8.0.
- It is the responsibility of the home school to ensure a timely submission of the form(s) required to receive homebound services in order for the student to have continuity of educational service. A Homebound/Interim Alternative Education Placement form is required to be submitted to Student Services.
- After the receipt of a completed Homebound referral, the home school staff initiates a Revision IEP meeting.

c. IEP Development/Meeting

- The home school is responsible for conducting all events (e.g., homebound revision IEP, annual IEP, three-year reevaluation and the anticipated date of return to school). The home school needs to contact the Student Services regarding any approaching due dates to coordinate meetings and gather information.
- The home school is responsible for inviting all pertinent/required members of the IEP team and distributing all necessary notifications.
- The homebound staff member must be included in the IEP meeting. DO NOT hold an IEP amendment without participation from Student Services.
- The school nurse or school psychologist provides current health/psychological information for the IEP if applicable.

- Instruction is intended to reflect the student’s educational program as outlined in the student’s IEP. The amount of instruction is dependent on several factors:
 - the student’s IEP
 - the age of the student
 - the grade of the student
 - the nature of the defined health issues
 - the identified schedule of the secondary student, and
 - other disability-related needs.
 - The actual determination of the amount of weekly instructional hours is determined by the IEP team after due consideration of the above factors.
 - The homebound teacher must be provided a copy of the student’s annual IEP indicating the need for homebound instruction. The assigned homebound teacher must follow the IEP as written.
 - If related services are part of the IEP, the homebound staff must confirm with the parent that related services are being provided in the home. The homebound teacher must contact the Student Services if related services have not been initiated.
 - The home school is responsible for submitting progress reports and grades the student has earned to the attending school. Recording and disseminating the report card to the family is the responsibility of the home school.
 - The homebound staff must report a student’s attendance each month. The zoned school must maintain student attendance. Students who return to their school of attendance prior to the end of the semester may require a reduced schedule until the new semester begins. This must be determined by the team and addressed on the accommodations page of the IEP.
 - During any period of homebound services, the home school is responsible for:
 - providing all applicable books, materials, and assignments from the student’s classroom teacher and/or service providers;
 - reviewing completed assignments from the student for grading and/or credit.
 - During any provision of homebound services, an adult (other than the homebound instructor) aged 21 or older must be present.
 - If the student will continue to be on homebound placement at the beginning of a new school year and the doctor’s orders have expired, a new application must be completed to update the student’s condition and the IEP team must determine if the need for homebound placement continues.
 - Homebound is a placement decision, therefore the IEP team must convene an IEP for placement to homebound and placement back to the home school.
- d. Private Mental Health Treatment Facilities
- If a parent enrolls a child in a private mental health treatment facility, the IEP will NOT be changed to reflect homebound placement as the District is not providing services.
 - If this student becomes eligible for homebound services outside the mental health treatment facility, regular homebound procedures will be followed beginning with the application.

7.5.5. Frameworks

Frameworks provides academic services for district students at a centralized location who have been disciplinarily removed from their home school by an independent hearing officer through due process.

- a. For a student with an IEP, a MDR must be conducted prior to being referred to the hearing officer for school removal.
- b. In the event the MDR team determines the conduct for which the student is being removed is not a manifestation of their disability, the student may be scheduled for a hearing.
- c. The hearing officer may only determine the length of removal.
- d. The student's IEP team may determine placement at Frameworks is appropriate. In the event a student with an IEP is placed at Frameworks during their removal, the IEP services must be implemented as written.
 - The IEP must be amended to reflect the placement at Frameworks.
 - The IEP services cannot be changed due to placement at Frameworks.
 - Frameworks is not an IEP placement determination. Due process must be followed.

7.5.6. Graduation

a. Purpose

- Whether a student is graduating based on the meeting district requirements for graduation or substantially meeting the goals in the IEP, the IEP team must determine if the student will graduate upon the completion of the fourth year of high school.
- All students who either meet District graduation requirements or substantially meet the goals in the IEP will receive a regular diploma.
- An annual IEP for the following year will be developed for any students who have not met either criteria for graduation, will not meet age out criteria and are in need of additional services to meet the postsecondary goals.
- Students who have not met either criteria and will meet age out criteria will not receive a regular diploma and an IEP will not be developed for the following year.
- A Summary of Performance form must:
 - be completed by the IEP team;
 - include academic and functional performance (which include recommendations on how to assist the student in meeting their postsecondary goals; and
 - include a team of persons with knowledge or special expertise regarding the student should give input to the creation of the document.
- Placement is changed to indicate the student is no longer eligible to receive special education services.

7.6 IEP COMPONENTS

An IEP is designed to provide special education and related services for a student with an identified eligibility. The IEP forms must be completed by the IEP team using the required state system, AIM, and reflect the student's current level of performance and special education service needs.

7.6.1. IEP Information

The IEP information page:

- a. identifies demographic information;
 - student;
 - parent/guardian demographic information
- b. documents student's primary language, English language learner code, and primary language spoken at home;
- c. documents the need for an interpreter or other accommodations (if parent is not in attendance, interpreter does not sign as a participant);
- d. identifies eligibility;
- e. identifies meeting date and information;
- f. identifies IEP team participants (participants must initial or sign that they attended the meeting);
- g. documents receipt and explanation of Procedural Safeguards:
 - A copy of the Procedural Safeguards notice must be given to the parents only one time a school year, unless requested by the parent.
 - If an IEP amendment meeting is held during that school year, document the annual date that the Procedural Safeguards notice was given to the parents.
- h. documents that at least one year prior to reaching age 18 the student was informed of their rights under IDEA and advised that these rights will transfer to them at age 18;
 - If the student is 16 at the time an IEP is being developed, and there is no expectation that another IEP will be held prior to the student turning 17, the rights transfer must be discussed when the student is 16, otherwise it will not be discussed at least one year prior to reaching age 18.
 - Parents may obtain a court order retaining guardianship of a student 18 years of age or older to retain parental rights under the IDEA.
 - The District must be provided with a copy of the court order or will be required to treat the child as their own guardian.
 - Parents are allowed to participate in the IEP/Evaluation meetings of their 18 year old or older child; however, they may not:
 - request meetings;
 - receive progress reports; or
 - approve services.
 - Upon reaching the age of majority, all parental rights transfer to the 18 year old student.
- i. uses the comments section to note any additional important information, (e.g., that a meeting was conducted via telephone, that a meeting was being held in response to a parental request, or that the parent was not in attendance.)

7.6.2. Present Levels of Academic Achievement and Functional Performance

Present levels provide a snapshot of the student's present levels of performance including the activities the student can and cannot do. This information serves as a foundation for the development of the goals and benchmarks in the IEP and:

- a. must include the results of the most recent ER evaluation or reevaluation;

- include the information most relevant to the student's present levels of performance.
- b. lists the assessments conducted and any other sources of information used to describe the student's present levels. This may include:
- formal or informal methods;
 - norm- or criterion-referenced tests;
 - classroom observation;
 - student work samples;
 - teacher-made tests or other achievement tests;
 - recent evaluations;
 - behavior rating scales;
 - performance data from regular education teachers; and
 - parent input.
- c. must include English language proficiency assessment scores for ELL students, if applicable.
- d. describes the results corresponding to the assessments conducted by building a profile of the student's current abilities in column two (grades, attendance and test scores may be included, however, this information must be combined with other assessments conducted to build a student profile); and
- e. must include a statement of the student's academic achievement (core curriculum) and functional performance (self-help, social-emotional, organizational skills, and/or daily living).
- Functional performance must be stated even if the student is functioning with age appropriate skill.
- f. if a student has related services, related service staff will collaborate with the teacher of record to develop present levels related to the area of concern.
- g. beginning not later than the first IEP to be in effect when the student is 16, must include results of age appropriate transition assessments related to training/education, employment, and (where appropriate) independent living skills. Transitional assessments may be formal and/or informal and may include:
- observations
 - anecdotal information
 - on-the-job tryouts
 - classroom performance examples
 - tests
 - work samples
 - apprenticeships
 - paid work experiences
 - student work programs.
- h. describe the requirements and expectations in the general education curriculum:
- what is taught;
 - how is it taught;
 - what instructional activities are students engaged in;
 - how are knowledge and skills demonstrated and evaluated?
 - Describe the ways in which the student's disabilities will affect the student's involvement and progress in the general education curriculum.

- Include statements that address each major area of the curriculum that are impacted by the student's disability.

7.6.3. Student Strengths/Parent Concerns/Student's Preferences and Interests

- a. Describe student strengths using input from teachers, parents and student, (if applicable) and take these into consideration when developing the IEP.
- b. Complete the statement to reflect the parent's concerns as they relate to the student's education. This information must be considered when determining services.
- c. Information concerning the student's interests and preferences are required if transition services will be discussed, beginning at age 14 or younger if appropriate.
 - This information may be collected before the meeting or solicited from the student during the meeting.

7.6.4 Consideration of Special Factors

The team must consider and address each of the special factors. If the team chooses "Yes" for any of the factors, the team may address this factor in a variety of ways, including:

- goals and benchmarks
- a behavior intervention plan as a part of the Supplemental Aids and Services;
- supplementary aids and services, related services, or
- accommodations and modifications.

Each special factor that is marked "Yes", must be reflected in the present levels of performance.

Consideration of Special Factors:

- a. Behavior impedes student's learning or that of others.
 - If the team selects "Yes", the student's behavioral needs must be addressed in accordance with § 20-7-401, MCA et. seq Special Education for Exceptional Children. The IEP team may address the behavior with a positive behavior plan included as a Supplemental Aid and Service, which may include the following:
 - positive methods to modify the environment of pupils with disabilities to promote adaptive behavior and reduce the occurrence of inappropriate behavior;
 - methods to teach skills to pupils with disabilities so that the pupils can replace inappropriate behavior with adaptive behavior;
 - methods to enhance the independence and quality of life of pupils with disabilities;
 - the use of the least restrictive methods to respond to and reinforce the behavior of pupils with disabilities; and
 - a process of designing interventions based on the pupil that are focused on promoting appropriate changes in behavior as well as enhancing the overall quality of life for the pupil without the use of aversive or negative means.
 - The District uses research and evidence-based approaches to ensure positive behavioral supports and trauma informed practices for students with challenging behaviors. These include but are not limited to:
 - Collaborative & Proactive Solutions, Dr. Ross Greene

- Meaningful Solutions for Problem Behavior, Dr. Greg Hanley
 - Classroom 180, A Framework for Creating, Sustaining, and Assessing the Trauma-Informed Classroom, Heather T. Forbes, LCSW
 - Fostering Resilient Learners, Kristin Souers, MA-LMHC
 - Restorative Justice Practices, Dr. Bella Bikowsky, Child & Adolescent Clinical Therapist and an Educational Staff Associate Certified School Counselor with a Ph. D. in Educational Counseling/Psychology.
 - Threat Assessment and Management Protocols (CTAMP), Colorado School Safety Resource Center, Department of Public Safety
 - Collaborative for Academic, Social and Emotional Learning (CASEL), Fundamentals of SEL Framework
 - Behavior Code, Essential Principles of Behavior, Jessica Minahan, Jessica Minahan, M.Ed, BCBA
 - Secondary Trauma Activates Resiliency Training (STAR-T), Andy Laue, LCSW
- b. “English Learner”
- If the team selects “Yes”, accommodations proven to be effective for ELLs must be listed in the supplementary aids and services section. This may include a District developed ELL Plan.
- c. “Blind or visually impaired”
- If the team selects “Yes,” the team must evaluate reading and writing needs and provide for instruction in Braille, Orientation and Mobility unless deemed not appropriate for the student.
- d. “Deaf or hard of hearing”
- If the team selects “Yes,” the team must consider language and communication needs and address the needs in the IEP.
- e. “Assistive Technology Devices and Services”
- If the team selects “Yes,” the team must determine the nature and extent of devices and services and address the needs in the IEP.
- f. “Communication needs”
- If the team selects “Yes,” the team must determine what special education or related services are necessary to address communication.
 - “Communication” is not synonymous with “Speech” in this context.
 - Communication services may include social communication, written expression, expressive and/or receptive language needs.

7.6.5. Transition Services

Transition services are a coordinated set of activities for a student with a disability that is designed within an outcome-oriented process and promotes the student’s movement from school to postsecondary activities.

- a. Transition services must be based on the individual student’s needs, taking into account the student’s preferences and interests.
- b. The transition statements should relate directly to the student’s goals beyond secondary education, and show how planned studies are linked to these goals.

c. When completing the transition section of the IEP the team must consider the following:

- beginning at age 14, the IEP team must consider whether or not the student may need more than four years of high school to complete their transition goals.
 - Transitions services are required for all students at age 16; however if the team feels the student will require additional time to complete their transition service, they should be implemented at age 14.
- If transition services are started at the age of 14, the IEP team will develop a Transition IEP for the student including all aspects of the Transition Plan geared toward meeting the student’s postsecondary goals:
 - Transition assessment
 - Transition services
 - Special education and related services
 - Supplementary aids and services
 - Postsecondary goals
- If the student does not require transition services beginning at age 14, for a student who is 16 years of age or older or will reach 16 years of age when the IEP is in effect, the team will describe desired post-secondary goals and coordinated activities.
 - At a minimum, the transition plan must cover, “Training/ Education” and “Employment”. In contrast, “Independent Living Skills” are addressed only when appropriate.
 - On or before the student’s 16th birthday the IEP team must develop a statement of needed transition services, including strategies or activities to work toward the measurable postsecondary goals already identified. The statement must address each type of coordinated activity:
 - instruction
 - related services
 - community experiences
 - the development of employment and other post-school adult living objectives; and if appropriate,
 - acquisition of daily living skills and a functional vocational evaluation.
- Upon parental consent, a representative of a participating agency must be invited if that agency is likely to be responsible for providing or paying for transition services.

7.6.6. Annual Goals and Benchmarks

The IEP team must develop measurable academic and functional annual goals for the areas of need identified in the present levels. The goals and benchmarks indicated in the IEP must enable the student to be involved and make progress in the general education curriculum, or for preschool children, as appropriate, enable participation in developmentally appropriate activities.

- a. All goals must be derived from the present levels of performance.
- b. Significant deficit areas must be addressed by a goal.

c. Goals must be specific to the student, measurable and attainable in a year's time.

Goals are measurable when they state:

- direction (e.g., increase, maintain, decrease);
- area of need (e.g., reading, social skills, communication, functional);
- level of attainment or success (e.g., grade level, accuracy);
- how progress will be measured; and
- setting and responsible staff will be included.

d. Postsecondary goals are required for students who are 16 or older or will turn 16 when the IEP is in effect and are designed to assist the student in moving toward the desired postsecondary outcomes.

- At least one goal must be related to training/education and employment (one goal can be developed for both).
- The IEP must indicate which goals are written to support postsecondary transition outcomes in training/education, employment or independent living skills.
- Postsecondary goals for independent living skills are optional and written when appropriate for the student.
- Postsecondary goals must be based on age appropriate assessments, as described in present levels of academic achievement and functional performance.
- Postsecondary goals may be considered earlier if deemed appropriate by the IEP team.

e. Benchmarks are developed to describe the amount of progress the student is expected to make toward the annual goals within specified segments of the year, generally coinciding with reporting periods (first grading period, first semester of school year, etc.).

f. If the IEP team determines that a student will receive Extended School Year (ESY) services, the applicable boxes must be checked to indicate the goals that will be addressed during ESY.

7.6.7. Specially Designed Instruction

a. All areas of Specially Designed Instruction (SDI) must be addressed by a goal and reflected in present levels.

- SDI means “adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction—
 - (i) To address the unique needs of the child that result from the child’s disability; and
 - (ii) To ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children,” Section 300.39(B)(3) of the IDEA.

b. SDI must be written to reflect the areas of need (such as reading, math, written expression, behavior or communication).

- SDI does not address course subjects such as history, science, geography, etc.
 - If for example, a student needs services in these areas, SDI needs to be written as reading in the content area of history.
- SDI is NOT a class schedule.

- c. "Direct" services means services provided to the student from a special education teacher/related services provider or an assistant under the direction of a special education teacher or provider.
- d. "Consult" services means services provided to other staff members regarding the student.
- e. State the projected date for the beginning and ending of the services.
- f. State the anticipated frequency and location of services.

7.6.8. Related Services

- a. Related services are supportive services that are required for the student with a disability to benefit from special education. Recommendations made by the related services personnel should be used to guide IEP team discussions.
- b. Referrals for any related services are generated by the IEP team. The IEP team should consult with the related services provider to determine the appropriateness of the referral.
- c. Related Services assessments require PWN and permission to evaluate.
- d. The timeline for the completion of related service assessment and reconvening of the IEP team for the review of the report and consideration of the recommendations regarding services is "reasonable," generally accepted as 60 days.
- e. Related Services may include:
 - Speech/Language Therapy;
 - Physical Therapy;
 - Occupational Therapy;
 - Counseling;
 - Psychological Services;
 - Orientation and Mobility Services;
 - Audiology Services (but not including a medical device that is surgically implanted, the optimization of that device's functioning, maintenance of that device or replacement of that device);
 - School Health Services and School Nurse Services;
 - Medical Services for diagnostic or evaluation purposes;
 - Recreation, including Therapeutic Recreation Services;
 - Parent Counseling and Training;
 - Interpreting Services;
 - Social work Services; and
 - Transportation (if required for a disability-related need). The District does not provide transportation for any out-of-area or out-of-district agreement.
- f. "Direct," See above section 7.6.7 (c).
- g. "Consult" services means services provided to other staff members regarding the student. Consult services for related service personnel may include observing the progress of the student in various educational environments.
- h. "Assess" means that the team has agreed that an assessment is required. Permission to evaluate must be completed.
- i. State the projected date for the beginning and ending of the services.
- j. State the anticipated frequency and location of services.

7.6.9 Method for Reporting Progress

- a. The IEP team determines how the student's parent will be regularly informed of the student's progress toward the annual goals.
 - District practice requires progress reporting triannually, which is consistent with reporting for regular education students.
- b. The IEP must state how the child's progress toward meeting the annual goals will be measured, such as data collection, teacher/staff observations, or assignment completion.
- c. Progress reports must be completed and provided to the parent as determined by the IEP. A copy must be filed in the confidential folder for each reporting period.
- d. Preschool Outcome Reporting applies to children who are ages 3, 4, and 5.
 - Preschool outcomes are measured through various assessments and/or a review of data in the child's file.
 - Following this, the Outcome Measures Form is completed. It is important to note that this is not a part of the IEP or the evaluation process, but a separate form that must be completed.
 - The assessments can be conducted by the child's case manager, or anyone else with knowledge of the child's performance, including the child's parent. If done by someone other than the case manager, the information must be given to the case manager for reporting of outcomes and be placed in the child's special education file.
 - Assessments and the Outcome Measures Form must be completed:
 - within 30 days of the determination of eligibility for children newly identified;
 - for children ages 3, 4, or 5 years of age who are exiting special education and related services completely;
 - within 90 days of a child's 6th birthday who is continuing to receive special education and related services.

7.6.10. Accommodations and Modifications/Supplementary Aids and Services

- a. Identify supports provided to enable the student to advance appropriately toward attaining the annual goals, be involved in and make progress in the general education curriculum, and to participate in extracurricular and other nonacademic activities.
- b. Identify adaptive equipment needs without specifying the equipment.
- c. Reference current behavior plans and health plans.
- d. Include ELL strategies that will meet the language needs of the student if the student demonstrates limited English proficiency as indicated by Special Factors.
- e. State the projected beginning and ending dates for services.
- f. State the frequency of services indicating the specific circumstance(s) or condition(s) in which the accommodation and/or modification will be utilized.
- g. State the location where the accommodation and/or modification will be implemented.

7.6.11. Participation in State-wide and District-wide Assessment Accommodations

- a. Indicate how the student will participate in state-wide or district-wide assessments.
- b. If the team discusses an alternate assessment, the following criteria must be indicated:

- The student must meet the criteria for the Alternative Assessments and IEP must contain benchmarks or short-term objectives.
- A statement of why the student cannot participate in a particular general assessment, even with appropriate modifications or accommodations.
- A statement of why the particular alternate assessment selected is appropriate for the student.

7.6.12. Extended School Year (ESY) Determination

- ESY services must be provided only if the student's IEP team determines, on an individual basis, that services are necessary for the provision of a to the student.
 - The need is based upon guidelines established for ESY, in the areas of regression/recoupment, the severity of a student's disability, or emerging skills.
 - The IEP team bases their ESY determination on the data collected over a period of time which shows:
 - there is significant regression of skills and the need for significant instruction or review to recoup the lost skills;
 - such limited progress based on the severity of the disability that would prevent the student from making adequate progress toward mastering their goals without additional services; or
 - newly emerging skills that would result in regression without the continuation of services beyond the school year.
 - The team may not limit extended school year services to a particular category of disability or unilaterally limit the type, amount or duration of those services.
 - ESY services must be addressed at every annual IEP.
 - If the ESY decision is deferred to a later date, the team must hold an IEP meeting or make a determination on or before the deferred date.
 - The District must provide a PWN of the determination related to ESY.

7.6.13. Placement Considerations

An explanation of the extent, if any, to which the student will not participate with nondisabled students in the regular education environment including academic classes, nonacademic settings, and extracurricular activities.

- The term "placement" does not refer to a District or location.
- The placement of a student outside of the regular education setting and into a special education setting(s) is based on the intensity and duration of the proposed special education and related services.
- Placement determinations are required to be considered based on a continuum of services from the least restrictive environment to the most restrictive environment.
- Placement determinations must be reviewed and considered by the IEP team (see section 7.8.1). All placements discussed must either be rejected or accepted (If considering a change of placement see Chapter 8.0).

7.6.14 Least Restrictive Environment (LRE) and the Continuum of Services

- The percentage of time is determined by calculating the amount of time the student is receiving special education services in a setting other than general education and dividing that number by the number of minutes the student attends school. The amount

of time services are provided is identified on the specially designed instruction and related services pages.

b. Continuum of services from least to most restrictive environments are:

- Regular education setting with nondisabled students for academic instruction and nonacademic activities for 100% of the student's school day;
 - Special education and related services are provided in the regular education setting for small group or individualized instruction for limited amounts of time.
 - Services are provided to allow the student independent access to grade level material and instruction.
- Regular education setting with nondisabled peers for some academic instruction and nonacademic activities for at least 80% of the student's school day;
 - Special education and related services are provided in the regular education setting and in the special education setting for not more than 20% of the student's school day.
- Regular education setting with nondisabled peers for academic and nonacademic activities for less than 80% but more than 40% of the school day;
 - Special education and related services are provided in the regular education setting and in the special education setting for not more than 40% of the student's school day.
- Regular education setting with nondisabled peers for nonacademic activities for less than 40% of the school day;
 - Special education and related services are provided in the regular education setting and in the special education setting for more than 40% of the student's school day.
- Regular education setting with nondisabled peers for academic and nonacademic activities for a portion of the school day depending on students' ability to access the regular education environment without impacting the learning of themselves or others.
 - Special education and related services are provided in the regular education and special education setting with specialized support including mental health and social, emotional, behavioral services from a related service provider or staff member.
- Regular education and special education setting with full 1:1 support from specially trained staff.
 - Special education and related services are provided in the regular education and special education settings for small group or individualized instruction with 1:1 support for an extended period of time.
 - Services provide the student with full 1:1 support in academic and nonacademic activities.
 - Services do not allow the student independent access to grade level material and instruction.
- Special schools located within and/or outside of the District that provides therapeutic services and interventions with other students with disabilities;
- Home Instruction (Homebound or Hospitalization) that provides 1:1 special education and related services in an isolated environment or medical facility.

7.6.15. Justification

Justification, based on data-driven decisions, for removal from the regular education environment must be provided when a student is removed from the regular education environment. Special classes, separate schooling, or other removal of students with disabilities from the regular education environment can only occur if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

- a. The IEP team must explain why the student's IEP cannot be implemented in the regular education environment with the use of supplementary aids and services.
- b. A student with a disability may not be removed from education in age-appropriate regular classrooms solely because of modifications in the general curriculum.
- c. Data-based determinations must be individualized and related to each student's particular needs.
- d. In selecting the least restrictive environment, consideration must be given to any potential harmful effects on the student or on the quality of service that the student needs.

7.6.16. IEP Implementation

- a. If the parent agrees with the IEP, parental approval is obtained and a copy of the signed IEP is given to the parent. The implementation date is the day following the approval date.
- b. If the parent does not participate in the IEP, marks disagree, or declines to select an option, a PWN must be completed and sent to the parent along with a copy of the IEP. The implementation date is fifteen (15) calendar days from the date of the notification. See Chapter 3.0.
- c. If the parent participated via telephone, the IEP must be sent to the parent for approval and signature.
- d. In the event the parent does not approve of the IEP or approves with exceptions, steps to remediate the disagreement regarding the services in the IEP must be taken. See section 2.3 Consent.

7.6.17. Consent for Release of Information and Medicaid Reimbursement Form

- a. The District is required to obtain parental consent to share student information with a non-educational public agency such as Montana Medicaid.
- b. The Medicaid form must be completed for all students regardless of whether the student is eligible for Medicaid. Whether or not the parent gives consent does not impact any services provided in the IEP.
- c. Initial consent must be obtained and filed in the confidential folder. Notification is then provided on an annual basis.

7.6.18. Private and HomeSchool Students/Service Plan

- a. Service Plans
 - The District is responsible for child find for students in private and homeschools to determine eligibility under the IDEA.

- Once eligibility has been determined, a service plan may be developed by the private school for eligible students with disabilities who are enrolled by their parents in a private or homeschool. The private school must provide the District with a copy of the service plan on an annual basis for state child count purposes.
 - The District may provide services or resources one year after the student has been included in child count.
 - The District determines what services and resources it provides to private and homeschooled students.
 - In the case of a parent choosing to decline the services offered, the student remains eligible for services.
- b. Offer of FAPE for Private School students
- A Private School Offer of FAPE form must be provided to parents of parentally placed students with disabilities in a private or homeschool if:
 - The parents are residents of the District, and
 - The parent makes reasonably clear they seek a proposed IEP.
 - The offer of FAPE applies to services that would be provided if the student were to be enrolled in public school, but enrollment is not a prerequisite for the offer.

7.6.19. Students with Disabilities in Adult Prisons

Services may be restricted for a child with a disability who is convicted as an adult under State law and incarcerated in an adult prison. When a student is sent to a correctional facility, the District must follow the directives of the Superintendent of Prisons. If the institution allows educational services, the District will offer services according to the institution's guidelines.

7.7 AVERSIVE TREATMENT PLANS

In order to assure that students are safeguarded against the use and misuse of various forms of aversive intervention, the following procedures and definitions are being established. The following definitions and procedures are based on applicable Montana law.

- a. "Aversive intervention" means the systematic use of stimuli or other treatment which a student is known to find painful or unpleasant for the purpose of discouraging undesirable behavior on the part of the student. The term DOES NOT include the use of reasonable force, restraint, or other treatment to control unpredicted spontaneous behavior which poses one of the following dangers:
1. A clear and present danger of serious harm to the student or another person.
 2. A clear and present danger of serious harm to property.
 3. A clear and present danger of seriously disrupting the educational process.
- b. For the use of aversive intervention involving bodily contact, isolation or physical restraint, the IEP must include a written behavioral intervention plan that meets the following requirements:
1. Any student in isolation time-out must be under the direct constant visual observation of a designated staff person throughout the entire period of isolation.
 2. Subsequent to a functional behavioral assessment, a series of no less than two written positive behavioral intervention (PBI) strategies, which were designed to target the behavior to be changed, were previously implemented.
 3. The IEP shall be based upon and consistent with the recommendations of an IEP team which includes a school psychologist and/or other certificated

employee who understands the appropriate use of the PBIP and aversive interventions and who concurs with the recommended use of the aversive intervention, and a person who works directly with the student.

4. The IEP shall specify the aversive intervention that may be used.

5. The IEP shall state the reason the aversive interventions are judged to be appropriate and the behavioral objective sought to be achieved by its use, and shall describe no less than two positive intervention strategies attempted and the reasons they failed, if known.

6. The IEP shall describe the circumstances under which the aversive intervention may be used.

7. The IEP shall describe or specify the maximum duration of any isolation or restraint.

8. The IEP shall specify any special precautions that must be taken in connection with the use of the aversive intervention technique.

9. The IEP shall establish a means of evaluating the effects of the use of the aversive intervention and a schedule for periodically conducting the evaluation.

10. The parent must consent.

11. The Aversive Plan must be attached to the IEP.

c. Certain forms of aversive intervention are manifestly inappropriate by reason of their offensive nature or their potential negative physical consequences, or both when employed for behaviors to include but not limited to: non-compliance, task avoidance, defiance or verbal aggression.

(1) physical restraint, unrelated to holding a student strictly accountable for disorderly conduct in school, on the way to or from school, or during intermission or recess, when the IEP team has determined that the frequency, intensity or duration of the restraint warrants an aversive treatment procedure; and

(2) isolation time-out which results in the removal of a student to an isolation room under the following conditions:

(i) the student is alone in the isolation room during the period of isolation;

(ii) the student is prevented from exiting the isolation room during the period of isolation;

(iii) the door to the isolation room remains closed during the period of isolation; and

(iv) the student is prohibited from participating in activities occurring outside the isolation room and from interacting with other students during the period of isolation.

d. The following procedures are prohibited under any circumstance:

(a) any procedure solely intended to cause physical pain;

(b) isolation in a locked room or mechanical restraint,

(c) the withholding of a meal for a period of greater than one hour from its scheduled starting time; and

(d) aversive mists, noxious odors, and unpleasant tastes applied by spray or other means to cause an aversive physical sensation; and

(e) mechanical restraint that physically restricts a student's movement through the use upon the student of any mechanical or restrictive device which is not intended for medical reasons.

e. Exclusion time-out is not considered an aversive treatment procedure. Exclusion time-out is defined as any removal of a student from a regularly scheduled activity for disciplinary purposes that does not result in placing the student in an isolation room under all of the conditions described in (c) (2) above.

7.8 CONDUCTING AN IEP MEETING

- a. A meeting does not include informal or unscheduled conversations involving District personnel or conversations on issues such as teaching methodology, lesson plans, or coordination of service provision.
- b. A meeting does not include preparatory activities that District personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.
- c. IEP team members, including the parents, are tasked with determining the intensity, duration, and setting of the special education and related services based on state and federal regulations for the least restrictive environment (LRE).
- Setting of services includes:
 - Special education setting
 - Regular education setting
- c. LRE placement discussions focus on the amount and type of services to be provided, not the location.
- The location of special education and related services is determined solely by the District.
 - The child's placement—
 - (1) Is determined at least annually;
 - (2) Is based on the child's IEP; and
 - (3) Is as close as possible to the child's home;
 - Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled.
 - Other arrangements may include the location of specialized or extended resource classrooms;
 - The need for contracted specialized services in a special school, such as Yellowstone Academy or other agency; and/or
 - Home or hospitalization based on significant health, mental health, or behavioral concerns.
 - In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and
 - A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum. (See 7.6.13 above).

7.8.1. Consensus

Decisions in special education that pertain to identification, evaluation, placement, or provision of FAPE, must be made by the team.

- a. The District has the ultimate responsibility to ensure that the IEP includes the services the student needs in order to receive a FAPE with controlling authority as to what services the District will provide in its provision.

- b. For special education decision-making, the following sequential priorities have been established to assist teams in achieving consensus.
- Unanimous Agreement
 - All participating parties, including parents and their representatives agree on major decisions pertaining to identification, evaluation, placement, or provision of FAPE.
 - When unanimous agreement is NOT achieved, then:
 - Consensus among District Members – All participating District personnel excluding the parents and their representatives reach general agreement.
 - The District will provide the parent with a PWN detailing the proposed services, the rationale for the proposed services, and other relevant factors.
 - Lack of Consensus – In the absence of a final decision by District's required members of the IEP team, the team must table the meeting to seek additional information or guidance from District administrative staff in the Student Services department.
 - Considering these factors, the team has two options:
 1. Reschedule the meeting to provide thorough discussions on disagreed upon issues and/or gather more information, or
 2. The LEA makes the final decision when the consensus building and problem solving options appear to be exhausted.
 - Parents may elect to provide approval to the IEP with exceptions in areas of disagreement.
 - The IEP team must reconvene to attempt to address the areas the parents disagree with.

7.8.2. Recording Meetings

A parent request to record an IEP meeting may be permissible under certain circumstances.

- Any parent making a request to record must do so prior to the meeting, and all participants in the IEP meeting must be made aware of the recording.
- In instances where the parent with a disability is requesting the recording to understand the proceeding, the request must be honored by the school staff. The District must make arrangements to record the meeting and the District's recording becomes the official copy.
- It is the District's responsibility to record the meeting and provide a copy to the parent.

7.8.3. Methodology

General instructional strategies and methodology are not required to be included in the student's IEP in order to receive FAPE. However, in rare circumstances, a student's individual needs may require a certain methodology if the IEP team determines that it would be necessary for the student to receive FAPE.

7.8.4. Advocates or attorneys present at meetings

- a. At the discretion of the parent or District, both parties have the right to bring to the IEP meeting individuals who have knowledge or special expertise regarding the student.

An advocate or attorney is not a required member of the IEP team. The primary role of the advocate or attorney is to advise and assist the parent in taking an active and participatory role in the meetings. See section 7.3.4 for more detailed information.

7.8.5. Copies of IEPs

- a. Access to a copy of the IEP must be provided to each regular education teacher, special education teacher, and related service provider who will be working with the student.
- b. If the District develops a DRAFT IEP prior to the IEP meeting, the District should make it clear to the parents at the outset of the meeting that the services proposed by the District are preliminary recommendations for review and discussion with the parents.
- c. The District should provide the parents with a copy of the DRAFT proposal prior to the meeting (ideally 48 hours in advance), so as to give the parents an opportunity to review the recommendation of the team and be better able to engage in a full discussion of the proposals for the IEP.
- d. It is not permissible for the team to have a final IEP completed before the IEP meeting begins.

7.8.6. Time Frames

- a. An IEP must be implemented as soon as possible following its development. In exceptional circumstances, there may be a short delay, such as when the IEP meeting is held during summer break, a vacation period or when transportation is being arranged. A reasonable time for working out transportation arrangements is three to five days. However, there can be no undue delay in providing special education and related services to the student.
- b. If additional information is needed to finalize the IEP, an IEP may be reconvened after the additional information is obtained as long as the IEP is developed in a timely manner and consistent with the requirements of the IDEA.

7.9 IEPs FOR STUDENTS IN CORRECTIONAL FACILITIES

Title 1, Part D of the ESEA authorizes the State of Montana, Office of Public Instruction to provide funding for educational services to students up to the age of 21 who are incarcerated in adult or juvenile facilities. The OPI provides funding to the Montana Department of Corrections (DOC) for students residing in their facilities.

- Facilities providing special education to students with disabilities are eligible to receive supplemental funding through the IDEA.

7.9.1. Juvenile Facilities

- a. Students placed in the state facility for adjudicated juvenile males, ages 10-17 receive educational services within a fully functioning school setting.
- b. Special education and related services are the responsibility of the facility school.

7.9.2. Adult Facilities

- a. While students adjudicated in adult prisons are considered adults by the prison system, a student reaches the age of majority for educational decisions at the age of 18.

- b. For students in adult prisons, the bona fide security or compelling institutional interest of the prison overrides educational issues.

Chapter 8.0 PLACEMENT

INTRODUCTION

The special education and related services identified in the student's IEP determine the placement of the student. The term "placement" refers to one of two settings, regular education or special education. "Location" refers to the physical setting, such as the specific classroom or facility where a student's IEP will be implemented.

This chapter describes the following topics:

- 8.1 Placement Process
- 8.2 Least Restrictive Environment
- 8.3 Individualized Placement Process
- 8.4 Continuum of Placement Decisions
- 8.5 Special Considerations for Certain Types of Placements

8.1 PLACEMENT PROCESS

8.1.1 Time Frames

- a. The student's placement must be determined at least annually.
- b. If there are placement concerns prior to the annual review date, the parent or the District may request to reconvene the IEP team to review and revise the IEP.
- c. An IEP must be implemented as soon as possible following its development. There can be no unreasonable delay in providing special education and related services to the student.

8.1.2. Determination by IEP Team

- a. The student's educational placement must be determined by a group of persons, including the parent, and other persons who are knowledgeable about:
 - the student;
 - the meaning of the evaluation data; and
 - the placement options.
- b. The IEP team determines the student's placement based on the special education and related services identified in the IEP.
 - When the student requires a level of placement which is not available at the home school, the District, through Student Services, will determine the location of placement once the IEP team has determined the appropriate placement.

8.1.3. Change of Placement

- a. If at any time the District proposes or refuses to change the student's educational placement, in response to a parent request, the parent must receive PWN, as described in Chapter 3.0 PWN.
- b. An IEP Amend is required when:

- District personnel or a student’s parent believe that the student’s placement may be inappropriate; or
 - A significant change in the student’s placement is being considered by the school. See section 7.5.3 for more information.
- c. Any change in a student’s placement must be based upon the student’s current IEP. When a more restrictive change of placement is considered by the school team, the building District Administrator or designee should contact Student Services.

8.2 LEAST RESTRICTIVE ENVIRONMENT

8.2.1. The LRE standard requires the District to ensure that, to the maximum extent appropriate, students with disabilities, including students in public institutions or other facilities:

- a. are educated with students who are not disabled; and
- b. that special classes, separate schooling, or other removal of students with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a student is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

8.2.2. The LRE standard requires the District to ensure that students with disabilities participate with non-disabled students in non-academic and extracurricular services and activities to the maximum extent appropriate. Such activities may include: meals, recess periods, counseling services, athletics, transportation, health services, recreational activities, special interest groups, clubs sponsored by the District, and employment opportunities.

- LRE requirements apply to both eligible school age students and preschool children.

8.2.3. Special education is not a “place,” but rather a set of services delineated in the student’s IEP. The LRE provision of the IDEA emphasizes services rather than placement. See section 7.6.14 for information regarding the continuum of services available.

8.3 INDIVIDUALIZED PLACEMENT

8.3.1. The content of the student’s IEP determines placement, rather than the placement determining the content of the IEP.

8.3.2. The placement decision must be individualized and based on the student’s needs through the IEP in consultation with Student Services. See section 7.6.15 for specific justification necessary for any placement outside of the regular education setting.

8.3.3. Placement into specific specialized or extended resource classrooms (location) are determined by Student Services based on a number of factors including:

- a) closest as possible to the students home school;
- b) availability of transportation;
- c) class sizes;
- d) staffing.

School assignments, outside of the student's homeschool, are made by the District.

- Parents may not “shop” for placements.
- Parents who wish to visit the proposed school and/or classroom and meet staff will be allowed to do so before or after school hours to protect the confidentiality rights of all students in the class.

8.3.4 Retention

Retention is not an IEP team decision. Retention is governed by District regulation and state law.

8.4 CONTINUUM OF PLACEMENT DECISIONS

8.4.1. The District is required to ensure that a continuum of placement options is available to meet the needs of students with disabilities for special education and related services. See section 7.6.14 for the continuum of services available to students.

8.4.2. The continuum of service options for a child in early childhood special education may include, as appropriate:

- a. an integrated or specialized center-based program (i.e., a program in which a group of children receives services at a central location) in a regular or special school;
- b. a home-based program;
- c. an itinerant consultant working with a community-based facility; or
- d. the instruction of the child in a hospital or institution.

8.5 SPECIAL CONSIDERATIONS FOR CERTAIN TYPES OF PLACEMENTS

8.5.1. Disciplinary Placements

Under certain circumstances involving discipline, the District staff may remove a student with a disability from their current educational placement to an appropriate interim alternative educational setting, another setting, or suspension, including a suspension for more than 10 school days. For a description of these circumstances, see Chapter 9.0.

8.5.2. Private School Placements

a. Private School Placements by the District

- If the IEP team places a student in an out-of-district placement in a private school, it must provide the special education and appropriate related services at no cost to the student's parent and in accordance with the student's IEP.
- Although the student is placed in a private school, the District remains responsible for the implementation of the student's IEP and must ensure the student receives a FAPE in the LRE as it would for students with disabilities in its public schools
- If a student requires private school placement, the IEP Team must consult with Student Services before the IEP meeting for assistance in determining whether a private school placement will provide the student with a FAPE.

Residential Out-of-District Placements

- If the IEP team determines that a student requires a residential placement in order to obtain FAPE because the student requires programs and services not available within the District, the District Administrator (or designee) should contact the Executive Director or Director of Student Services for assistance in locating and implementing an appropriate residential placement.
 - If an out-of-district placement is required, the Executive Director of Student Services must complete an application for funding from the Montana Department of Education.

Homebound and Hospital Placements

- Homebound instruction may be appropriate for a limited number of students, such as students who are medically fragile and are not able to participate in a school setting with other students or for students with significant social, emotional, behavioral concerns who present a safety concern to themselves or others. See section 7.5.4 for more information.

b. Private School Placements by Parents

- See section 2.7.1 regarding requirements for unilateral parental placement.
- If District personnel suspect that the parent may unilaterally place a student in a private school without the District’s consent or referral, they should contact Student Services for assistance.

Chapter 9.0 DISCIPLINE

INTRODUCTION

The District is obligated to provide a FAPE to all eligible students with disabilities, including students who have been suspended or expelled, and is prohibited from applying its disciplinary policies in a manner that discriminates against students with disabilities.

This chapter discusses the requirements for disciplinary actions for a student with a disability:

9.1 Prevention

9.2 Short-Term Disciplinary Action

9.3 Disciplinary Change of Placement

9.4 Manifestation Determination

9.5 Request for Hearing

9.6 Protections for Students Not Yet Eligible for Special Education

9.7 Referral to Law Enforcement Agencies

9.8 Disciplinary Information in a Student’s Record

“School day” is defined as any day, including a partial day that students are in attendance at school for instructional purposes.

9.1 PREVENTION

In July 2022, the federal Office of Special Education and Rehabilitative Service released a Technical Assistance Guide related to “Addressing the Needs of Children with Disabilities and IDEA’s Discipline Provisions. The focus of the guidance is on preventing exclusionary

removals with the use of positive behavioral interventions and supports. The guidance suggests alternative strategies in place of aversive practices or exclusionary discipline.

9.1.1 Positive, Proactive Approaches to Supporting Children with Disabilities

a. Exclusionary discipline refers to the removal, whether on a short-term or long-term basis, of a child with a disability from a class, school, or other educational program or activity for violating a school rule or school's code of student conduct.

- Although there may be instances when a child's behavior, such as causing physical harm to self or others, warrants exclusionary disciplinary action, preventing the need before it occurs can be an effective first step in most situations.

b. Proactive systematic approaches that focus on instruction and supports, and that are implemented with fidelity are likely to:

- address disparities;
- reduce the use of exclusionary discipline; and
- result in positive developmental, academic, and behavioral outcomes for all children, including those with disabilities.

9.1.2 Using an evidence-based approach to support and respond to student needs

a. Determining if a child's behaviors are inconsistent with school expectations as a result of developmentally inappropriate expectations, academic difficulties, or other factors.

b. Targeted strategies and supports for students with additional needs.

- Supports provided in smaller groups to allow for more explicit instruction and additional opportunities to practice positive behaviors and receive constructive feedback include:
 - Social skills instruction;
 - Support in developing social relationships;
 - Self-management strategies;
 - Check and connect; and
 - Restorative practices.

c. Intensive strategies and support to meet the specific needs of individual students.

- ABC, FBAs and PBIPs are rooted in the understanding that behavior is a form of communication and can provide a deeper understanding of what a child is trying to convey through their behavior.
 - A PBIP describes how antecedents that trigger the interfering behavior will be addressed and how new skills and replacement behaviors will be taught and reinforced.

9.1.3 Ongoing professional development

a. Educators should have specific knowledge and skills in effectively supporting and responding to students.

- Educators should have access to ongoing job-embedded professional development, coaching, and consultation with specialized instructional support personnel who have expertise in responding to and supporting the full range of student needs.

- Job-embedded professional development refers to learning that is grounded in day to day teaching practices and is designed to enhance content-specific instructional practices with the intent of improving student learning.
- b. To effectively support students and respond to behavior, school personnel should have knowledge, skills and experience in topics such as...
- Understanding the unique needs of each student and the rights given them under the IDEA;
 - Potential signs of stress;
 - Implementing screening procedures and understanding data to make informed decisions about appropriate instructional and behavioral strategies;
 - Implementing evidence-based prevention and intervention practices (positive behavioral interventions and supports, safe physical escort, conflict prevention, identifying antecedents, de-escalation, and self-regulation);
 - Conducting Functional Behavioral Assessments;
 - Designing, implementing and evaluating IEPs and positive behavior intervention plans
 - Re-integrating students in the school environment as a whole.

9.1.4 Addressing the Needs of Children with Disabilities and IDEA’s Discipline Provisions.

- a. The District is committed to ensuring that all children have access to a high-quality education provided in a safe, supportive, and predictable learning environment free from discrimination; filled with healthy, trusting relationships; and one that ensures each child’s social, emotional, academic, and functional growth and development.
- Predictable, in positive behavioral interventions and supports, generally refers to something that is obvious or has known expectations.
 - Predictable learning environments contribute to a sense of safety for students thereby limiting behavior that is not consistent with a school’s code of student conduct.
- b. Preventing seclusion and restraint
- There is no evidence-based support for the view that the use of restraint or seclusion is an effective strategy in modifying a child’s behaviors that are related to their disability. Restraint or seclusion should not be used except in situations where a child’s behavior poses imminent danger of serious physical harm to themselves or others.

9.2 SHORT-TERM DISCIPLINARY ACTION

Short-term disciplinary removal for students with disabilities refers to a student’s removal from instruction for less than 10 cumulative or consecutive days in a given school year. This includes suspensions.

9.2.1. Educational Services

- a. Educational services are not required if removal is for a total of 10 consecutive or cumulative days school days or less in a given school year if services are not provided to students without disabilities who have been similarly removed.

- b. Any break in IEP mandated services equals removal.
 - In-school suspension or truancy center would not be considered as part of the days of suspension as long as the student:
 - participates in the general education curriculum; and
 - continues to receive the services and make progress toward meeting the goals in the student's IEP.

9.2.2. Bus Suspensions

- a. If bus transportation is part of the student's IEP as a related service, a bus suspension would be treated as a day of suspension.
- b. If bus transportation is not part of the student's IEP as a related service, a bus suspension would not be treated as a day of suspension. The student's parent has the same obligations to get the student to and from school as a nondisabled student who has been suspended from the bus.
- c. The District must consider whether the behavior on the bus is similar to behavior addressed in the IEP and whether the student's behavior on the bus should be addressed in the IEP or a behavior plan.

9.3 DISCIPLINARY CHANGE OF PLACEMENT

Although District personnel must take certain steps in connection with disciplinary action against a student who has or may have a disability, the most significant procedural protections with respect to disciplinary actions against a student with a disability are triggered when the action constitutes a change in the student's educational placement.

9.3.1. A disciplinary change of placement occurs when a student with a disability is removed from their current educational placement for more than 10 consecutive school days in a school year or the equivalent in cumulative days that constitutes a pattern depending on:

1. The length of each removal;
2. The total amount of time the child is removed;
3. The proximity of the removals to one another;
4. The same or similar behaviors;

9.3.2. For any disciplinary actions that total less than 10 school days in a given school year, the District is not required to take any action. If District personnel have questions regarding whether a series of disciplinary actions may constitute a change in placement, they should contact the Director of Student Services.

9.4 MANIFESTATION DETERMINATION

A manifestation determination review (MDR) meeting must be convened immediately if possible, but no later than 10 school days after the date on which a disciplinary change of placement decision is made.

9.4.1. Procedure

- a. The Building District Administrator meets with parent to inform them of the recommendation for a long-term removal and to provide Procedural Safeguards in Special Education Under IDEA pamphlet.

- b. The District administration must notify special education staff so that a manifestation determination/IEP meeting can be scheduled.
- c. Appropriate PWN of an IEP/MDR must be provided to the parent indicating the disciplinary action.
- d. Student Services will conduct a review of the student's available records prior to the meeting.

9.4.2. Required Participants:

- a. District representative;
- b. Parent; and
- c. Relevant members of the IEP team (as determined by the parent and the District).

9.4.3. The District is required to proceed with the MDR in a timely manner. If the parent is unavailable to attend within the 10 day time frame, the manifestation determination meeting can be convened without the parent.

- a. If a MDR has occurred without the parent, a PWN must be provided detailing the District's proposal. See section 3.1.5.
- b. If the parent disagrees with the MDR, contact the Student Services Director.
- c. The MDR review may be conducted by the IEP Team at the same meeting at which it develops or revises a FBA-BIP and appropriate behavioral interventions.

9.4.4. Manifestation Determination Meeting

When conducting a MDR the IEP Team must:

- 1) Review all relevant information in the student's file, including the student's IEP regarding present level of performance, needs, goals, and services, FBA, BIP results, any teacher observations, and any relevant information provided by the parent to determine:
 - a. the student's misconduct was caused by or had a direct and substantial relationship to the student's disability,
 - b. or was a direct result of the District's failure to implement the student's IEP.

Based on this information, the IEP Team must determine whether the student's behavior that is subject to the disciplinary action is a manifestation of their disability. If the LEA, parent and relevant members of the IEP team determine that either of the above causal criteria are met, the conduct shall be determined to be a manifestation of the student's disability.

The team will also take immediate and necessary steps to remedy those deficiencies.

9.4.5. If the IEP Team determines that the behavior IS NOT a manifestation of the student's disability:

- a. the student is subject to the same disciplinary action as nondisabled peers;
- b. the parent may request an expedited due process hearing. The school of record remains responsible for maintaining the student's attendance and grades, as well as, providing assignments/tests until the student is enrolled in the appropriate program/school.

9.4.6. If the IEP team determines that the behavior IS a manifestation of the student's disability, the team must utilize the data from the current functional behavioral assessment to address the behavior in an effort to prevent it from recurring.

9.5.7. Special Circumstances-Interim Alternative Educational Settings (IAES)

The District may remove a student to an IAES for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the student's disability, in cases where a student knowingly:

- a. carried a weapon to school or to a school function under the jurisdiction of the District; or
 - The term weapon means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2½ inches in length.
- b. knowingly possessed or used illegal drugs or sold or solicited the sale of a controlled substance while at school or at a school function under the jurisdiction of the District; or
 - An illegal drug means a controlled substance, but does not include a substance that the student legally possesses or uses under the supervision of a licensed health-care professional, or that is legally possessed or used under federal law.
- c. had inflicted serious bodily injury upon another person while at school or at a school function under the jurisdiction of the District.
 - The District requested and was granted an expedited impartial due process hearing officer's order.
 - If the District requests and is denied IAES by the due process hearing officer, the District requests and is granted a temporary restraining order (TRO) from a court of competent jurisdiction.
 - Serious bodily injury is an injury involving substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of function of a bodily member, organ or mental faculty.
 - An IAES may be permissible if the District has filed for an expedited due process hearing and obtained authorization from the hearing officer due to the substantial likelihood of the child injuring him/herself or others.

For any of the four special circumstances, the IEP team is responsible for determining the IAES. However, actual District determination remains the responsibility of Student Services. For questions regarding special circumstances, contact Student Services for assistance.

9.5 DUE PROCESS/EXPEDITED REQUEST FOR A HEARING

9.5.1. A parent may challenge the MDR, the IAES, or any aspect of a disciplinary change in placement by filing a request for an expedited due process hearing with OPI. Contact the Director of Students Services when a parent makes an OPI request.

9.5.2. The expedited hearing must occur within 20 school days from the date that the request is made, and the hearing officer must render a decision within ten school days after the hearing.

9.5.3. Stay Put Requirements

If the child has been placed in an IAES, the child must remain in that setting until the issuance of the expedited due process hearing decision or until the expiration of the 45-day period, whichever occurs first, unless the District and parents agree otherwise. When a student is placed in an IAES and the District proposes to change the child's placement after the expiration of the IAES and the parent disagrees by filing for a due process hearing, the child must be returned to the last agreed IEP placement (prior to the IAES). An exception is when the school requests and the hearing officer grants an extension. Parents are not entitled to stay put or other IDEA due process rights to challenge removals that do not reach the level of disciplinary change in placement, but have general notice and appeal rights available to all students subject to suspension.

9.6 PROTECTIONS FOR STUDENTS WHO ARE NOT YET ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES

9.6.1. In some circumstances a student who has not yet been determined to be eligible as a student with a disability may be entitled to procedural protections. If there was a suspicion of a disability prior to the behavior infraction and recommendation of an alternative placement, discipline must cease and an expedited evaluation must occur unless the infraction was weapons, drugs or serious bodily harm.

The District is deemed to have knowledge that a student is a student with a disability if, before the behavior that precipitated the disciplinary action occurred:

- a. the parent of the student had expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the student, that the student is in need of special education and related services;
- b. the parent of the student has requested an evaluation of the student; or
- c. the teacher of the student, or other personnel of the LEA, has expressed specific concerns about a pattern of behavior demonstrated by the child, directly to the Coordinator of Special Education of such agency or to other supervisory personnel of the agency.

9.6.2. Exception: The District is deemed not to have knowledge that a student is a student with a disability if the parent of the student has not allowed an evaluation, has refused or revoked services, or the student has been evaluated, and it was determined that the student was not a student with a disability.

9.7 REFERRAL TO LAW ENFORCEMENT AUTHORITIES

The protections described in this Chapter do not prevent District personnel from reporting a crime committed by a student with a disability to appropriate authorities. Similarly, these protections do not prevent state law enforcement and judicial authorities from exercising their responsibilities in applying federal or state law to crimes committed by a student with a disability. If District personnel report a crime committed by a student with a disability to appropriate authorities, they must ensure that copies of the student's special education and disciplinary records are transmitted for consideration by those authorities to whom the agency reports the crime. The student's records may be transmitted only to the extent such transmission is permitted by the Family Educational Rights and Privacy Act.

9.8 DISCIPLINARY INFORMATION IN STUDENT RECORDS

9.8.1. If a student has been or is being subjected to any disciplinary action, the District may include information about such previous or current disciplinary actions in the student's records to the same extent such information is included in the records of students without disabilities.

The information may include:

- a. a description of the student's behavior that required disciplinary action;
- b. a description of the disciplinary action taken; and
- c. any other information that is relevant to the safety of the student and other individuals involved with the student.

9.8.2. The District also may transmit the disciplinary information in the records of students with disabilities to the same extent that type of information is transmitted in the records of nondisabled students. If the student transfers to another school, the student's current IEP and any information of disciplinary action as described above must be transmitted with their records.

Chapter 10.0 STUDENT RECORDS AND CONFIDENTIALITY

INTRODUCTION

The District is required to follow certain procedures for collecting, maintaining, disclosing, and destroying educational records relating to a student with a disability. Education records include records covered under Family Educational Rights and Privacy Act (FERPA). A record includes printed or handwritten documents, but also includes information recorded in any other way, including computer media, videotape, audiotape, film, microfilm, and microfiche. In addition, the Protection of Pupil Rights Amendment (PPRA) seeks to ensure that schools make instructional materials available for inspection by parents if those materials will be used in connection with an U.S. Department of Education (ED) funded survey, analysis, or evaluation in which their children participate; and ensure that schools obtain written parental consent before minor students are required to participate in any ED-funded survey, analysis, or evaluation that reveals sensitive information.

This chapter discusses student records and confidentiality requirements:

- 10.1 Education records defined
- 10.2 Maintenance of records
- 10.3 Access to records
- 10.4 Copying records
- 10.5 Requests for records
- 10.6 Destruction of records
- 10.7 Amendment of records at parents' request
- 10.8 Annual notice of parental rights

10.1 EDUCATION RECORDS DEFINED

10.1.1. Education records include records that are:

- a. directly related to a student; and
- b. maintained by the District.

10.1.2. The term does not include:

- a. records that are kept in the sole possession of the maker of the record, and are not accessible or revealed to any other person;
- b. records of District School Police;
- c. personnel records;
- d. records that are created or received after a student that is no longer enrolled in the District; or
- e. documents under development, but are not yet completed (ER reports).

10.1.3. Some of the protections for student records relate to information which is personally identifiable to the student. Information is personally identifiable if it includes:

- a. the name of the student, the student's parent, or other family member;
 - b. the student's address;
 - c. a personal identifier, such as the student's social security number or student number;
- or
- d. a list of the student's personal characteristics or other information that would make it possible to identify the student with reasonable certainty.

10.1.4. Although this Chapter refers to the rights of the parent, these rights will transfer from the parent to the student when the student reaches age 18. If the general rights of the parent under IDEA are transferred to the student at age 18, as described in the Procedural Safeguards Chapter 2.0, the parent's rights regarding education records will transfer automatically to the student. However, the District is required to provide the parent and the student notice required under the procedural safeguards requirements of IDEA, as described in the Procedural Safeguards Chapter 2.0.

10.2 MAINTENANCE OF RECORDS

The District is required to protect the confidentiality of personally identifiable information regarding a student. The Executive Director or Student Services, is the designated District official responsible for ensuring the confidentiality of any personally identifiable information.

10.2.1. The District Administrator shall:

- a. designate a confidentiality official to serve as a records custodian for each school;
- b. ensure that all school staff that collect or use a student's personally identifiable information are trained in confidentiality requirements;
- c. maintain the records in a secure and locked location; and
- d. ensure that a current list of the names and positions of those District employees who have access to the records are maintained; and
 - posted in plain view and in close proximity to the confidential records; and
 - ensures that the person(s) who access each student education record signs the Status Record.

10.3 ACCESS TO RECORDS

10.3.1. General Right of Access

District personnel must permit the parent to inspect and review any education records relating to their child that the District collects, maintains, or uses under IDEA.

- a. As part of the process of allowing access to education records, the District Administrator is responsible for verifying that the person requesting access has authority to do so. For assistance in determining whether a parent has authority to access a student's education records, contact Student Services
- b. For procedures related to copying records refer to section 10.4.
- c. District regulations require that the District Administrator must comply with a request to access or review records:
 - no more than 10 days after receipt of the request to review the records; or
 - before any meeting regarding an IEP, hearing, or resolution session.
- d. District personnel must be present to interpret records being reviewed and must follow the record of access procedures as described in 10.3.2. below.

10.3.2. Record of Access

The District is required to keep a file log of parties obtaining access to confidential education records collected, maintained, or used under IDEA. The record must include the:

- a. first and last name and title of the party accessing the record;
- b. date access was given; and
- c. purpose for which the party is accessing the record.

10.3.3. Parent Right to Access

- a. Parents' right to inspect and review education records includes the right to:
 - a response from the District to reasonable requests for explanations and interpretations of the records;
 - request copies of the records containing the information; and
 - have a representative of the parent inspect and review the records.
- b. In order to provide meaningful explanations of records for a parent who may be unable to read due to blindness, inability to read English, distance, or other reasons, the District Administrator must take steps to provide an interpreter, an oral explanation, Braille versions of documents, or an opportunity to review the documents over the telephone, as appropriate. In addition, copies of certain documents may be provided to a parent, as described in section 10.4.1.
- c. If any education record includes information on more than one student, the parent has the right to inspect and review only the information relating to their own child, or to be informed of that specific information. District personnel should ensure that they block out or omit information about other students on copies of education records or take other measures to avoid disclosure to unauthorized persons.
- d. The District is required to provide the parent, on request, a list of:
 - the types and locations of education records collected, maintained, or used by the District; and
 - District employees with authority to access student's personally identifiable information.
- e. The District shall:

- inform the parent when personally identifiable information is no longer needed to provide educational services to the student;
 - maintain a permanent record of the student's name, address, telephone number, grades, attendance, classes attended, grades completed and the year they were completed; and
 - not disclose personally identifiable information except as authorized by law.
- f. Rights of access extend to student teachers and related service interns who have a legitimate educational interest in accessing educational records.
- g. Specific requirements apply to maintenance and disclosure of disciplinary information included in a student's records. These requirements are discussed in the Discipline Chapter 9.0.

10.4 COPYING RECORDS

- 10.4.1.** If a parent requests a copy of an education record:
- a. District personnel shall comply with the request within a reasonable period, but not more than 45 calendar days after receipt of the request.
 - b. The District is allowed to charge a fee for copying, but may not charge a fee for searching or retrieving information. The District may waive the fee if charging the fee would effectively prevent the parent from exercising their right to inspect and review the documents.

10.5 REQUEST FOR RECORDS

10.5.1. Written parental consent must be obtained before personally identifiable information in the student's records is disclosed to anyone other than officials of the District collecting or using the information under IDEA.

10.5.2. FERPA prevents District personnel from disclosing personally identifiable information in a student's education record, except if the parent or eligible student provides the signed Authorization for Release of Confidential Information consent form.

- 10.5.3.** The written consent must:
- a. specify the records that may be disclosed;
 - b. state the purpose of the disclosure; and
 - c. identify the party to whom the disclosure may be made.

- 10.5.4.** Prior written consent is not required when providing education records to:
- a. school officials with a legitimate educational interest;
 - b. officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll, or where the student is already enrolled so long as the disclosure is for purposes related to the student's enrollment or transfer;
 - c. specified officials for audit or evaluation purposes;
 - d. appropriate parties in connection with financial aid to a student;
 - e. organizations conducting certain studies for or on behalf of the school;
 - f. accrediting organizations;

- g. comply with a judicial order or lawfully issued subpoena; or
- h. state and local authorities, within a juvenile justice system, pursuant to specific State law.

However, the district must make a reasonable attempt to notify the parent, unless the disclosure was initiated by the parent or eligible student, or unless the district's annual FERPA notification includes a provision that education records will be forwarded upon request to other institutions where the student seeks admission or intends to enroll or is already enrolled. The parent is entitled to a copy of the record that was disclosed and has the right to a hearing.

10.5.5. If a parent refuses to provide consent to disclose a student's personally identifiable information, District personnel should contact Student Services.

10.5.6. If a student transfers to another school in the District, the student's records must be forwarded to the new location.

10.6 DESTRUCTION OF RECORDS

10.6.1. If the parent requests that personally identifiable information in the records be destroyed, the parent should contact the District Administrator who may confer with Student Services personnel. Destruction means either physical destruction or removal of personal identifiable information. However, the District may maintain (without a time limitation) a permanent record of the student's name, address, telephone number, grades, attendance record, classes attended, grade level completed, and year completed.

10.6.2. District policy is to destroy a student's records following state record destruction guidance.

10.7 AMENDMENT OF RECORDS AT PARENT'S REQUEST

10.7.1. Request for Amendment

- a. The parent may request the District to amend information in their child's education records if the parent believes that the information:
 - is inaccurate;
 - is misleading; or
 - violates the student's privacy rights or other rights.
- b. The parent must submit the request in writing to the District Administrator to explain which information is being challenged and the reasons for their objection to the information.
- c. Within ten school days after receiving such a request, the District Administrator must inform the parent in writing of the determination, the reasons for the decision, and the right to appeal.

10.7.2. Appeal

The parent has the right to appeal the determination to the Superintendent or designee, within ten school days after receipt of the District Administrator's letter. The Superintendent or

designee, shall hold a hearing with the parent within fifteen working days of receipt of the appeal.

10.7.3. Hearing

Upon a parent's request, the District is required to provide an opportunity for a hearing to challenge information in the student's education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student. The parent's request for a hearing should be forwarded to the Superintendent or designee.

a. Requirements:

- the hearing must be scheduled within fifteen working days after receipt of request;
- reasonable notice must be provided to the parent of the date, time, and place of the hearing;
- the hearing must provide the parent a full and fair opportunity to present relevant evidence, and the parent may be assisted by an attorney or other individual at the parent's expense;
- within five working days after conclusion of the hearing, the Area Superintendent or designee, must inform the parent of their decision in writing; and
- the parent shall be notified of the decision by certified mail.

b. If, as a result of the hearing, it is determined that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, District personnel must amend the information accordingly. District personnel are responsible for informing the parent in writing that the information has been amended.

c. If, as a result of the hearing, it is determined that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, the Superintendent or designee must inform the parent of their right to place in the student's District records a statement commenting on the disputed information or setting forth any reasons for disagreeing with the information. Any such explanation that is placed in the student's records must be maintained by the District as part of the student's records as long as the record or contested portion is maintained by the District. If the student's records or the contested portion are disclosed by the District to any party, the explanation must also be disclosed to the party.

10.8 ANNUAL NOTICE OF PARENTAL RIGHTS

10.8.1. District is required to notify parents annually of their right to:

- a. inspect and review the student's education records;
- b. seek amendment of the student's education records that the parent believes are inaccurate, misleading, or that violate the student's privacy rights;
- c. consent to disclosure of personally identifiable information unless an exception applies; and
- d. file an administrative complaint regarding alleged noncompliance with records requirements.

10.8.2. The District provides annual notice to the parent about these rights. The District is required to provide annual notice in a manner that effectively notifies parents who are disabled, or who have a primary or home language other than English.

Chapter 11.0 BILLINGS PUBLIC SCHOOLS PROGRAM NARRATIVE, SPECIAL EDUCATION

INTRODUCTION

The District is required to submit a copy of their program narrative to the Office of Public Instruction per Administrative Rules of Montana 10.16.3220, which states, (1) Each local educational agency or education cooperative must have on file with the Superintendent of Public Instruction a written program narrative that describes policies and procedures used for the provision of special education and related services within the local educational agency or education cooperative. The policies, procedures, and services in the narrative shall be consistent with state policies and address the requirements of 34 CFR 300.101 through 300.163 and 34 CFR 300.165 through 174.

11.1 PROGRAM NARRATIVE

Billings Public Schools

Program Narrative Special Education

April, 2019

****NEEDS TO BE UPDATED TO REFLECT CHANGES****

I. Full Educational Opportunity Goal

Billings School District 2 Policy 2050:

Entrance, Placement, and Transfer

Entrance, Date, and Age

The District will enroll a child in kindergarten or in first grade whose fifth (5th) or sixth (6th) birthday occurs on or before the tenth (10th) day of September of the school year in which a child registers to enter school. Parents may request a waiver of the age requirement. All waivers are granted in the sole discretion of the District. A child who meets the requirement of being six (6) years old, but who has not completed a kindergarten program, may be tested and placed at the discretion of the administration. The District requires a birth certificate and an immunization record for every child to be admitted to District schools. The District usually will not assign or admit any person who has reached age 19 on or before September 10 of the year to be enrolled; however, a waiver to this usual practice may be granted.

School Entrance

1. The District requires that a student's parents, legal guardian, or legal custodian be present at the time of enrollment and show proof of identity of the child (birth certification or certified transcript) to the school within forty (40) days of enrollment, as well as proof of residence in the District. Students who are not residents of the District may apply for admission pursuant to Policy 3141. Homeless students shall be admitted pursuant to state and federal law, and Policy 3125.

2. To be admitted to District schools, in accordance with the Montana Immunization Law, a child

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must present proof of immunization against diphtheria, pertussis, tetanus, poliomyelitis, rubella, mumps, and measles (except that pertussis vaccination is not required for children seven (7) years or older). Immunizations may not be required if a child qualifies for conditional attendance or an exemption is filed as provided by Montana law.

Placement

The District goal is to place students at levels and in settings that will increase the probability of student success. Developmental testing, together with other relevant criteria including, but not limited to, health, maturity, emotional stability, and developmental disabilities, may be considered in the placement of all students. Final disposition of all placement decisions rests with the principal, subject to review by the Superintendent or the Board.

Elementary Grades (K-8) Transfer: A student transferring into the District will be admitted and placed subject to observation by appropriate teachers and a building principal during a probation period of two (2) weeks. Thereafter, should doubt arise as to initial grade and level placement of a student, school personnel will conduct an educational assessment to determine appropriate grade and level placement.

Secondary Grades (9-12) Credit Transfer: A transfer of credits from any secondary school is subject to a satisfactory examination of the following:

1. appropriate certificates of school accreditation
2. length of course, school day, and school year
3. content of applicable courses
4. school building as it relates to credit earned (i.e., lab areas for appropriate science or vocational instruction)
5. appropriate evaluation of student performance leading toward credit issuance.

The District will follow Montana Accreditation Rules and Standard, along with local alternate procedures for earning credit, in reviewing requests for transfer of credits. High school principals have authority for approving credit transfers, subject to review by the Superintendent or the Board.

Cross References:

2050-P1	School Attendance Areas Procedure
2050-P2	Boundary Change Procedure
2413	Placement of Students from Non-accredited, Nonpublic Schools
2413-P1	Placement of Students from Non-accredited, Nonpublic Schools Procedures

Legal References:

§ 20-5-101, MCA	Admittance of child to school
§ 20-5-403, MCA	Immunization required – release and acceptance of immunization records
§ 20-5-404, MCA	Conditional attendance
§ 20-5-405, MCA	Medical or religious exemption
§ 20-5-406, MCA	Immunization record
10.55.601 et seq., ARM	Accreditation Standards

Policy History:

First Reading: February 23, 2004 – Board of Trustees

Second Reading: June 14, 2004 – School/Community Committee

Third Reading: June 21, 2004 – Board of Trustees

Adopted on: June 21, 2004

Effective on: July 1, 2004

Revised on:

II. Child Find

1. Public notification

The following public notices are placed on Community Channel 7 (public service television), posted in the Billings Gazette, sent to all local radio stations, and flyers posted and sent to providers in the community. The Executive Director of Special Education coordinates child find activities for children birth through 21.

Script for Billings Gazette – 4 times per year

A free of charge screening for children birth to 5 years of age who are not in kindergarten is scheduled for date at the **Rimrock Learning Center, 2802 13th St. W**

BIRTH TO 3 YEAR OLD CHILDREN

Children birth up to age 3 will be screened by the Early Childhood Intervention staff. You will be given information in all areas of your child's development and the staff can address any concerns you have.

3 TO 5 YEAR OLD CHILDREN

School District #2 staff will conduct the screening and provide information about your 3 to 5 year old's speech, hearing, vision, thinking skills and physical development, along with overall growth and development.

SCHOOL AGE CHILDREN

If you reside within the Billings Public Schools attendance area and you meet ALL of the following criteria, please contact Billings Public Schools Student Services department at 601-1800 to arrange for an evaluation or contact your private school and request they make that referral to us:

1. Your child is older than five (5) years of age and
2. Your child is being home schooled, homeless or attends a private school and
3. You suspect your child is having learning difficulties and may be in need of a special education evaluation.

All services are available to residents of School District 2. Appointments are required. Call 601-1800 to make an appointment and/or for more information.

Script for Community TV 7 Community Calendar-4 times per year

Billings Public Schools will conduct a "Preschool Screening" of children, ages birth through five years of age. This service is provided **FREE OF CHARGE** to children **NOT IN KINDERGARTEN** who are residents of Billings School District #2. The next screening is date at the **Rimrock Learning Center, 2802 13th St. W**.

For an appointment or further information, please call 601-1800.

Script for Radio Announcement-4 times a year

Billings Public Schools will again be conducting its "Preschool Screening" of children, ages birth through five years of age. Speech, vision, hearing, thinking skills, and motor development will be checked by appropriate professionals. This service is provided **FREE OF CHARGE** to children **NOT IN KINDERGARTEN** who are residents of Billings School District #2.

The next Preschool Screening will be date and will be held at the **Rimrock Learning Center, 2802 13th St. W** For an appointment or further information, please call 406- 601-1800.

**BILLINGS PUBLIC SCHOOLS
2022-2023**

**SCREENING FOR CHILDREN BIRTH TO 5 YEARS
(In Compliance with I.D.E.A.)**

The **PURPOSE** of Screening is to provide an overall developmental check of your child, to assist you in determining if he/she is developing appropriately for his/her age and to locate children with potential or existing problems which may interfere with learning. Screening is for **all children birth to five years of age who have not begun kindergarten** and live within the Billings School District.

DATES:

AREAS ASSESSED: CONDUCTED BY: METHODS USED:		
LANGUAGE VISION HEARING LEARNING	SPEECH CLINICIAN VISION SPECIALIST AUDIOLOGIST/AUDIO TECH PSYCHOLOGIST OR SPECIAL EDUCATION TEACHER	SCREENING TOOL & LANGUAGE SAMPLE VISUAL ACUITY PURE TONE & IMPEDANCE DEVELOPMENTAL SCREENING
MOTOR HEALTH	OCCUPATIONAL OR PHYSICAL THERAPIST NURSE	TOOL DEVELOPMENTAL SCREENING TOOL
SOCIAL/EMOTIONAL	PSYCHOLOGIST, SCHOOL SOCIAL WORKER, UIDANCE COUNSELOR	DRESSED PHYSICAL CHECK PARENT INTERVIEW

CALL 406-601-1800 FOR AN APPOINTMENT

**Rimrock Learning Center
2802 13th St. W**

Screenings and evaluations are Free of Charge

EVALUATIONS FOR SCHOOL AGED CHILDREN

- If your child is enrolled in a Billings Public School please contact the principal for information on screening and evaluation.
- If you meet **ALL** of the following criteria, please contact Billings Public Schools Student Services department at **406-601-1800** to arrange for an evaluation or contact your private school and request they make that referral to us if:
 1. Your child is older than five (5) years of age **and**
 2. Your child is being **home schooled** or attends a **private school in our attendance area and**
 3. You suspect your child is having learning difficulties and may be in need of a special education evaluation.

2. Data on Child Identification

Results of child find activities are collected, maintained, and reported by each department: preschool, audiology, vision, health, speech & language. Records are compiled and collected in student files and are used for appropriate identification of children with disabilities.

3. Child Find Procedures

- Vision Screening is done under the supervision of RN's at preschool screening (ages 0-5) and annually in grades K, 1, 2, 3, 5, 7, as well as referrals in all grades/ages 0-21. Parents are alerted to possible visual acuity problems and referrals are made to ophthalmologists and optometrists.
- Audiology Screening is done under the supervision of our Audiologist at preschool screening (ages 0-5) and annually in grades preschool, K, 1, and 9, new students in grades 2-8, as well as referrals in all grades/ages 0-21. In addition all students who have not successfully passed

two consecutive screenings continue to be rechecked annually. Comprehensive diagnostic and consultative services are available to students who fail screening evaluations. Physician referrals are made for medically related problems.

- Health Screening is done under the supervision of RN's at preschool screening (ages 0-5), scoliosis screening in grades 6 and 8, as well as health referrals in all grades/ages 0-21.
- Speech & Language Screening is done under the supervision of SLP's at preschool screening (ages 0-5), all kindergarten students, as well as referrals in all grades/ages 0-21. A complete speech and language evaluation is conducted for each student who is referred.

A. Infants and Toddlers (ages 0-2)

A minimum of six preschool screening dates and their location are identified for each upcoming school year and publicized utilizing the newspaper, community television announcements, and flyers sent to pediatricians, hospitals, the public Health Department, Head Start and other child service providers. Children are screened in the areas of hearing, health, speech/language, vision, social, motor and cognitive development. Professionals involved in this screening process include special education teachers, speech/language therapists, psychologists, counselors, nurses, audiologists, Part C family support specialists and paraprofessionals. Other service providers within our area are invited to participate in these activities. Head Start routinely participates in screening by providing personnel and referring their students to be screened. Children who do not pass the screening areas are referred for additional assessment to physicians, special education preschool services, Part C Services, audiologists, vision specialists or therapists.

B. Preschool (ages 3-5)

A minimum of six preschool screening dates and their location are identified for each upcoming school year and publicized utilizing the newspaper, community television announcements, and flyers sent to pediatricians, hospitals, the public Health Department, Head Start and other child service providers. Children are screened in the areas of hearing, health, speech/language, vision, social, motor and cognitive development. Professionals involved in this screening process include special education teachers, speech/language therapists, psychologists, counselors, nurses, audiologists, Part C family support specialists and paraprofessionals. Other service providers within our area are invited to participate in these activities. Head Start routinely participates in screening by providing personnel and referring their students to be screened. Children who do not pass the screening areas are referred for additional assessment to physicians, special education preschool services, Part C Services, audiologists, vision specialists, or therapists.

C. In-School (ages 6-12)

1) Each school identifies through comprehensive assessments, screening and/or classroom performance measures, all students who are not proficient in math, reading, and/or oral language. Individual teachers, grade level teams and/or other building teams, determine interventions required for each identified student. Ongoing evaluation of individual student progress in intervention(s) is monitored, maintained and reported utilizing district assessment data for each identified student by the building administrator. Students not making adequate progress are assigned additional interventions or are referred to the PRT. The PRT and/or referral activities are appropriately developed and followed up by the building administrator(s). Pre-referral documentation is available to determine effectiveness prior to a referral for a comprehensive evaluation.

2) Special educators (case managers) and building administrators ensure all initial evaluations are conducted within the 60-day timeline established in 34 CFR 300.301. Program Specialists monitor their respective areas of responsibility to assure evaluations are timely.

3) Billings Public Schools uses the Discrepancy Model for SLD identification in all schools with the exception of Meadowlark and Alkali Creek Elementary Schools. These two K-6 schools have staff members trained by OPI in Response to Intervention procedures in the areas of Language Arts and Reading.

In-School (ages 13-18)

- 1) Since most students with disabilities are identified prior to entering middle school, there is heavy reliance on referrals from teachers, pre-referral teams, counselors, parents, physicians, other child services agencies and pupils themselves. District-wide assessments are reviewed at the beginning of each school year to determine the appropriate placement for students in academic programs. The assessments that are reviewed include district curriculum assessments, state tests and reading and language tests that are given to the students each year. These assessments, along with teacher input, provide data for child find.
- 2) Special educators (case managers), assigned building staff, and building administrators ensure all initial evaluations are conducted within the 60-day timeline established in 34 CFR 300.301. Program Specialists monitor their respective areas of responsibility to assure evaluations are timely.
- 3) Billings Public Schools uses the Discrepancy Procedure for SLD identification in all schools.

D. Post-School (19-21)

As part of child find, referrals are accepted to help identify individuals, ages 19 through 21, with suspected disabilities who have not graduated from high school with a regular diploma and who were not previously identified. Billings Public Schools cooperates and collaborates with Vocational Rehabilitation, DD Services, and other post-school agencies and providers.

E. Private Schools

Child find procedures addressing the provisions of ARM 10.16.3125 and the follow-up procedures for referral and evaluation are the same as those in the public schools.

ENTRANCE, DATE, AND AGE PROCEDURE

Beginning 2022-23 and Forward

1. Billings Public Schools admits and provides services to **all** students five years of age or older on or before September 10 of the year in which the child is to enroll but is not yet 20 years of age, according to Montana School Law.
2. Billings Public Schools provides early entry into Kindergarten if early entry criteria are met based on Montana School Law allowing for Board of Trustees discretion.
3. Billings Public Schools will continue to provide services to students who are currently enrolled in our district (not yet 20 years of age on or before September 10 of the year in which the child is enrolled) as long as the student can reach graduation requirements if allowed to continue one additional year.
4. Billings Public Schools admits and provides special education services to identified students with disabilities as follows:
 - A. Birth to age three through the district's Early Childhood Intervention Part C Program.

B. Ages three to five through the district's Part B Preschool Program.

C. Ages five years or older on or before September 10 of the year in which the child is to enroll but is not yet 20 years of age, according to Montana School Law. An adult student 20 years of age or older who seeks new enrollment in our district as a regular or special education student will be denied admittance.