



## **Total Special Education System (TSES)**

This document serves as the Total Special Education System Plan for Aspen Academy in accordance with Minnesota Rule 3525.1100. This plan also includes an assurance for compliance with the federal requirements pertaining to districts' special education responsibilities found in United States Code, title 20, chapter 33, sections 1400 et seq., and Code of Federal Regulations, title 34, part 300. This document is a companion to the Application for Special Education Funds

– Statement of Assurances (ED-01350-29).

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### **I. Child Study Procedures**

The district's identification system is developed according to the requirement of nondiscrimination as Aspen Academy does not discriminate in education on the basis of race, color, creed, religion, national origin, sex, age, marital status, status with regard to public assistance, sexual orientation, or disability.

#### **A. Identification**

Aspen Academy is a charter school and as such is responsible for identifying students in grades K-8 needing special education services who attend the charter school. As a charter school, Aspen Academy is not required to identify students beginning at birth, pupils with disabilities attending other public and nonpublic schools, and pupils with disabilities who are of school age and who are not attending any school.

A Child Study Team is in place at Aspen and meets 1 time per week at Aspen Academy.

The team shall determine that a child from the age of three years through the age of six years is eligible for special education when:

- A. the child meets the criteria of one of the categorical disabilities in United States

Code, title 20, chapter 33, sections 1400 et seq., as defined in Minnesota Rules; or

B. the child meets one of the criteria for developmental delay in subitem (1) and the criteria in subitem (2). Aspen Academy has elected the option of implementing these criteria for developmental delay.

(1) The child:

(a) has a diagnosed physical or mental condition or disorder that has a high probability or resulting in developmental delay; or

(b) has a delay in each of two or more of the areas of cognitive development; physical development, including vision and hearing; communication development; social or emotional development; and adaptive development, that is verified by an evaluation using one or more technically adequate, norm-referenced instruments. The instruments must be individually administered by appropriately trained professionals and the scores must be at least 1.5 standard deviations below the mean in each area.

(2) The child's need for special education is supported by:

(a) at least one documented, systematic observation in the child's routine setting by an appropriate professional or, if observation in the daily routine setting is not possible, the alternative setting must be justified;

(b) a developmental history; and

(c) at least one other evaluation procedure in each area of identified delay that is conducted on a different day than the medical or norm-referenced evaluation; which may include criterion referenced instruments, language samples, or curriculum-based measures.

Aspen Academy's plan for identifying a child with a specific learning disability is consistent with Minnesota Rule 3525.1341. Aspen Academy implements its interventions consistent with that plan.

Aspen Academy solely uses the severe discrepancy model to determine eligibility (Aspen Academy does not use the Response to Intervention (R.T.I.) process to identify students with a disability). Aspen Academy's plan for identifying a child with a specific learning disability is attached as *Appendix A*.

## **B. Evaluation**

The team conducts an evaluation for special education purposes within a reasonable time not to exceed 30 school days from the date the district receives parental permission to conduct the

evaluation or the expiration of the 14-calendar day parental response time in cases other than initial evaluation, unless a conciliation conference or hearing is requested.

Aspen Academy conducts full and individual initial evaluation before the initial provision of special education and related services to a pupil. The initial evaluation shall consist of procedures to determine whether a child is a pupil with a disability that adversely affects the child's educational performance as defined in Minnesota Statutes, section 125A.02, who by reason thereof needs special education and related services, and to determine the educational needs of the pupil. The district proposing to conduct an initial evaluation to determine if the child qualifies as a pupil with a disability shall obtain an informed consent from the parent of the child before the evaluation is conducted. Parental consent for evaluation shall not be construed as consent for placement for receipt of special education and related services. The District will not override the written refusal of a parent to consent to an initial evaluation or re-evaluation.

### **C. Evaluation Procedures**

Evaluations and reevaluations are conducted according to the following procedures:

A. Aspen Academy provides notice to the parents of the pupil, according to Code of Federal Regulations, title 34, sections 300.500 to 300.505, that describes any evaluation procedures the district proposes to conduct.

B. In conducting the evaluation, Aspen Academy:

(1) uses a variety of evaluation tools and strategies to gather relevant functional and developmental information, including information provided by the parent, that are designed to assist in determining whether the child is a pupil with a disability and the content of the pupil's individualized education program, including information related to enabling the pupil to be involved in and profess in the general curriculum, or for preschool pupils, to participate in appropriate activities;

(2) does not use any single procedure as the sole criterion for determining whether a child is a pupil with a disability or determining an appropriate education program for the pupil; and

(3) uses technically sound instruments that are designed to assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

C. Aspen Academy ensures that:

(1) tests and other evaluation materials used to evaluate a child under this part are selected and administered so as not be discriminatory on a racial or cultural basis, and

are provided and administered in the pupil's native language or other mode of communication, unless it is clearly not feasible to do so;

(2) materials and procedures used to evaluate a child with limited English proficiency are selected and administered to ensure that they measure the extent to which the child has a disability and needs special education and related services, rather than measure the child's English language skills;

(3) any standardized tests that are given to the child have been validated for the specific purpose for which they are used, are administered by trained and knowledgeable personnel, and are administered in accordance with any instructions provided by the producer of such tests;

- (4) the child is evaluated in all areas of suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;
- (5) evaluation tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the pupil are provided;
- (6) if an evaluation is not conducted under standard conditions, a description of the extent to which it varied from standard conditions must be included in the evaluation report;
- (7) tests and other evaluation materials include those tailored to evaluate specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient;
- (8) tests are selected and administered so as best to ensure that if a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills, unless those skills are the factors that the test purports to measure; and
- (9) in evaluating each pupil with a disability, the evaluation is sufficiently comprehensive to identify all of the pupil's special education and related service needs, whether or not commonly linked to the disability category in which the pupil has been classified.

D. Upon completion of administration of tests and other evaluation materials, the determination of whether the child is a pupil with a disability as defined in Minnesota Statutes, section 125A.02, shall be made by a team of qualified professionals and the parent of the pupil in accordance with item E, and a copy of the evaluation report and the documentation of determination of eligibility will be given to the parent.

E. In making a determination of eligibility under item D, a child shall not be determined to be a pupil with a disability if the determinant factor for such determination is lack of instruction in reading or math or limited English proficiency, and the child does not otherwise meet eligibility criteria under parts 3525.1325 to 3525.1351.

**D. Additional requirements for evaluations and reevaluations**

A. As part of an initial evaluation, if appropriate, and as part of any reevaluation under this part, or a reinstatement under part 3525.3100, the IEP team and other qualified professionals, as appropriate, shall:

(1) review existing evaluation data on the pupil, including evaluations and information provided by the parents of the pupil, current classroom-based assessments and observations, and teacher and related services providers observation; and

(2) on the basis of the review, and input from the pupil's parents, identify what additional data, if any, are needed to determine whether the pupil has a particular category of disability, as described in Minnesota Statutes, section 125A.02, or, in case of a reevaluation of a pupil, whether the pupil continues to have such a disability, the present levels of performance and educational needs of the pupil, whether the pupil needs special education and related services, or in the case of a reevaluation of a pupil, whether the pupil 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 pupil to meet the measurable annual goals set out in the individualized education program of the pupil and to participate, as appropriate, in the general curriculum.

B. The district administers such tests and other evaluation materials as may be needed to produce the data identified by the IEP team under item A, subitem (2).

C. The district obtains informed parental consent, in accordance with subpart 1, prior to conducting any reevaluation of a pupil, except that such informed parental consent need not be obtained if the district can demonstrate that it had taken reasonable measures to obtain such consent and the pupil's parent has failed to respond.

D. If the IEP team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the pupil continues to be a pupil with a disability, the district shall notify the pupil's parents of that determination and the reasons for it, and the right of such parents to request an evaluation to determine whether the pupil continues to be a pupil with a disability, and shall not be required to conduct such an evaluation unless requested to by the pupil's parents.

E. The district evaluates a pupil in accordance with this part before determining that the pupil is no longer a pupil with a disability.

The district intends to use restrictive procedures. The district follows the restrictive procedure statute, Minnesota Statute 125A.094-125A.0942. *See Appendix E.*

### **E. Procedures for determining eligibility and placement**

In interpreting the evaluation data for the purpose of determining if a child is a pupil with a disability under parts 3525.1325 to 3525.1351 and the educational needs of the child, the school district:

- (1) draws upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; and
- (2) ensures that the information obtained from all of the sources is documented and carefully considered.

If a determination is made that a child is a pupil with a disability who needs special education and related services, an IEP must be developed for the pupil according to part 3525.2810.

### **F. Evaluation report**

An evaluation report must be completed and delivered to the pupil's parents within the specified evaluation timeline. At a minimum, the evaluation report must include:

- A. a summary of all evaluation results;
- B. documentation of whether the pupil has a particular category of disability or, in the case of a reevaluation, whether the pupil continues to have such a disability;
- C. the pupil's present levels of performance and educational needs that derive from the disability;
- D. whether the child needs special education and related services or, in the case of a reevaluation, whether the pupil continues to need special education and related services; and
- E. whether any additions or modifications to the special education and related services are needed to enable the pupil to meet the measurable annual goals set out in the pupil's IEP and to participate, as appropriate, in the general curriculum.

## **G. Plan for Receiving Referrals**

Aspen Academy's plan for receiving referrals from parents, physicians, private and public programs, and health and human services agencies is attached as *Appendix B*.

## **II. Method of Providing the Special Education Services for the Identified Pupils**

Aspen Academy provides a full range of educational service alternatives. All students with disabilities are provided the special instruction and services appropriate to their needs. The following is representative of Aspen Academy's method of providing the special education services for the identified pupils, sites available at which service may occur, and instruction and related services are available.

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

### **A. Method of providing the special education services for the identified pupils:**

- (1) One-on-one services
- (2) Small group
- (3) Direct and indirect services
- (4) Related services
- (5) Co-teaching
- (6) Homebound

### **B. Alternative sites available at which services may occur:**

- (1) Aspen Academy  
14825 Zinran Avenue  
Savage, MN 55378
- (2) Homebound or home-based services  
(location of services TBD by school or IEP)



team)

- (3) Local Area School Districts  
(Location of services determined by independent school district representative/  
placement)
- (4) Resident District  
(Location of services determined by district representative/placement)

C. Available instruction and related services:

- (1) School Psychology
- (2) Occupational Therapy
- (3) Speech and Language
- (4) Adapted Physical Education
- (5) Deaf/Hard of Hearing
- (6) Educational Audiological services
- (7) Vision impairment services
- (8) Orientation & mobility services
- (9) Physical therapy
- (10) School social work services
- (11) Social/emotional/behavioral skills
- (12) Academic skills

**III. Administration and Management Plan.**

Aspen Academy utilizes the following administration and management plan to assure effective and efficient results of child study procedures and method of providing special education services for the identified pupils:

A. The following table illustrates the organization of administration and management to assure effective and efficient results of child study procedures and method of providing special education services for the identified pupils:

**Aspen Academy Special Education Administration**

<b>Staff Name and Title</b>	<b>Contact Information</b>	<b>Brief Description of Staff Responsibilities relating to child study procedures and method of providing special education services</b>
Connie Freitag Executive Director	Aspen Academy 14825 Zinran Avenue Savage, MN 55378 952-226-5940 connie.freitag@aspenacademymn.org	The Executive Director provides oversight of all school operations.
Melanie Jiskra Principal	Aspen Academy 14825 Zinran Avenue Savage, MN 55378 952-226-5940 Ext. 143 melanie.jiskra@aspenacademymn.org	The school Principal provides oversight of day to day operations of all school processes.
Jodi Herlick Special Education Coordinator	Aspen Academy 14825 Zinran Avenue Savage, MN 55378 952-226-5941 jodi.herlick@aspenacademymn.org	The special education coordinator is responsible for maintaining special education programming in compliance with state and federal guidelines and provides support in all areas of due process.  The special education coordinator is responsible for oversight of the child study process in coordination with the Director of Special Education.
Kelly Dietrich Director of Special Education	Office location: Indigo Education 1170 Red Fox Road St. Paul, MN 55112 651-447-9038	The Director of Special Education provides supervision and management of the special education program in collaboration with the school Executive Director and Principal.

	Mailing address: Aspen Academy 14825 Zinran Avenue Savage, MN 55378  kdietrich@indigoed.org	
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B. Due Process assurances available to parents: Aspen Academy has appropriate and proper due process procedures in place to assure effective and efficient results of child study procedures and method of providing special education services for the identified pupils, including alternative dispute resolution and due process hearings. A description of these processes are as follows:

(1) Prior written notice to a) inform the parent that except for the initial placement of a child in special education, the school district will proceed with its proposal for the child's placement or for providing special education services unless the child's parent notifies the district of an objection within 14 days of when the district sends the prior written notice to the parent; and b) state that a parent who objects to a proposal or refusal in the prior written notice may request a conciliation conference or another alternative dispute resolution procedure.

(2) Aspen Academy will not proceed with the initial evaluation of a child, the initial placement of a child in a special education program, or the initial provision of special education services for a child without the prior written consent of the child's parent. A district may not override the written refusal of a parent to consent to an initial evaluation or reevaluation.

(3) A parent, after consulting with health care, education, or other professional providers, may agree or disagree to provide the parent's child with sympathomimetic medications unless medical, dental, mental and other health services are necessary, in the professional's judgment, that the risk to the minor's life or health is of such a nature that treatment should be given without delay and the requirement of consent would result in delay or denial of treatment.

(4) Parties are encouraged to resolve disputes over the identification, evaluation, educational placement, manifestation determination, interim alternative educational placement, or the provision of a free appropriate public education to a child with a disability through conciliation, mediation, facilitated team meetings, or other alternative process. All dispute resolution options are voluntary on the part of the parent and must not be used to deny or delay the right to a due process hearing. All dispute resolution processes are provided at no cost to the parent.

(5) Conciliation Conference: a parent has the opportunity to meet with appropriate district staff in at least one conciliation conference if the parent objects to any proposal of which the parent receives prior written notice. Aspen Academy holds a conciliation conference within ten calendar days from the date the district receives a parent's objection to a proposal or refusal in the prior written notice. All discussions held during a conciliation conference are confidential and are not admissible in a due process hearing.

Within five school days after the final conciliation conference, the district must prepare and provide to the parent a conciliation conference memorandum that describes the district's final proposed offer of service. This memorandum is admissible in evidence in any subsequent proceeding.

(6) In addition to offering at least one conciliation conference, Aspen Academy informs parents of other dispute resolution processes, including at least mediation and facilitated team meetings. The fact that an alternative dispute resolution process was used is admissible in evidence at any subsequent proceeding. State-provided mediators and team meeting facilitators shall not be subpoenaed to testify at a due process hearing or civil action under special education law nor are any records of mediators or state-provided team meeting facilitators accessible to the parties.

(7) Descriptions of the mediation process, facilitated team meetings, state complaint, and impartial due process hearings may be found in Aspen Academy's Procedural Safeguard Notice, attached as *Appendix C*.

#### **IV. Interagency Agreements the District has Entered**

District has entered in the following interagency agreements or joint powers board agreements for eligible children, ages 3 to 21, to establish agency responsibility that assures that coordinated interagency services are coordinated, provided, and paid for, and that payment is facilitated from public and private sources:

Name of Agency	Terms of Agreement	Agreement Termination/ Renewal Date	Comments
N/A			

## V. Special Education Advisory Council

In order to increase the involvement of parents of children with disabilities in district policy making and decision making, Aspen Academy has a special education advisory council.

- A. Aspen Academy’s Special Education Advisory Council is individually established.
- B. Aspen Academy’s Special Education Advisory Council is a subgroup of the Aspen Academy School Board and advises on the needs of students with disabilities. The goal of the SEAC is to increase parent/guardian involvement in district policy making involving students with disabilities. Meetings provide a forum for parents to address special education concerns and dialogue about education strategies and student successes. The committee is open to all parents, including those with or without children enrolled with special education services.
- C. Aspen Academy’s Special Education Advisory Council consists of the following individuals:
  - A. Melanie Jiskra, School Principal
  - B. Jodi Herlick, Special Education Coordinator
  - C. Membership of parents of children with special education needs changes yearly
- D. Aspen Academy’s Special Education Advisory Council meets three times per year and will be announced on the school website and with flyers at school events.
- E. The operational procedures of Aspen Academy’s Special Education Advisory Council are attached as *Appendix D*.

## VI. Assurances

Code of Federal Regulations, section 300.201: Consistency with State policies. Aspen Academy, in providing for the education of children with disabilities within its jurisdiction, has in effect policies, procedures, and programs that are consistent with the State policies and procedures established under sections 300.101 through 300.163, and sections 300.165 through

300.174. (Authority: 20 U.S.C. § 1413(a)(1)).

Yes: Assurance is given by Aspen Academy.

## Appendix A

### *Specific Learning Disabilities Criteria*

In accordance with Minnesota Rule 3525.1341 Aspen Academy has elected to use Criteria A, B, and C of the Specific Learning Disabilities criteria and at this time has elected not to use Criteria D.

"Specific learning disability" means a condition within the individual affecting learning relative to potential.

- A. A specific learning disability is manifested by interference with the acquisition, organization, storage, retrieval, manipulation, or expression of information so that the individual does not learn at an adequate rate when provided with the usual developmental opportunities and instruction from a regular school environment.
- B. A specific learning disability is demonstrated by a significant discrepancy between a student's general intellectual ability and academic achievement in one or more of the following areas: oral expression, listening comprehension, mathematical calculation or mathematics reasoning, basic reading skills, reading fluency, reading comprehension, and written expression.
- C. A specific learning disability is demonstrated primarily in academic functioning, but may also affect self-esteem, career development, and life adjustment skills. A specific learning disability may occur with, but cannot be primarily the result of: visual, hearing, or motor impairment; mental impairment; emotional disorders; or environmental, cultural, economic influences, or a history of an inconsistent education program.

***Note: IDEA criteria for determining the existence of a specific learning disability is incorporated into the state criteria.***

The team shall determine that a student has a specific learning disability and is in need of special education and related services when the student meets the criteria described in items A through C. Information about each item must be sought from the parent and included as part of the evaluation data. The evaluation data must confirm that the disabling effects of the student's disability occur in a variety of settings.

1. The student must demonstrate severe underachievement in response to usual classroom instruction. The performance measures used to verify this finding must be

both representative of the student's curriculum and useful for developing instructional goals and objectives. The following evaluation procedures are required at a minimum to verify this finding:

- a. Evidence of low achievement from sources such as cumulative record review, class work samples, anecdotal teacher records, formal and informal tests, curriculum based evaluation results, and results from instructional support programs such as Title I and Assurance of Mastery; and
  - b. at least one team member other than the student's regular teacher shall observe the student's academic performance in the regular classroom setting. In the case of a child served through an Early Childhood Special Education program or who is out of school, a team member shall observe the child in an environment appropriate for a child of that age.
2. The student must demonstrate a severe discrepancy between general intellectual ability and achievement in one or more of the following areas: oral expression, listening comprehension, written expression, basic reading skills, reading fluency skills, reading comprehension , mathematical calculation, or mathematical reasoning. The demonstration of a severe discrepancy shall not be based solely on the use of standardized tests. The team shall consider these standardized test results as only one component of the eligibility criteria.
- a. The instruments used to assess the student's general intellectual ability and achievement must be individually administered and interpreted by an appropriately licensed person using standardized procedures.
  - b. For initial placement, the severe discrepancy must be equal to or greater than 1.75 standard deviations below the mean of the distribution of difference scores for the general population of individuals at the student's chronological age level.
3. The team must agree that it has sufficient evaluation data that verify the following conclusions:
- a. the student has an information processing condition that is manifested by behaviors such as: inadequate or lack of expected acquisition of information, lack of organization skills, memory, expression, and motor control for written tasks such as pencil and paper assignments, drawing, and copying;
  - b. the disabling effects of the student's information processing condition occur in a variety of settings; and
  - c. the student's underachievement is not primarily the result of: visual, hearing, or motor impairment; mental impairment; emotional or behavioral disorders; or environmental, cultural, economic influences, or a history of an inconsistent education program.



## SLD Evaluation Report

1. The team shall prepare a report of the results of the evaluation. The report must include a statement of:
  - a. whether the child has a specific learning disability;
  - b. the basis for making the determination;
  - c. the relevant behavior noted during the observation of the child;
  - d. the relationship of that behavior to the child's academic functioning;
  - e. the educationally relevant medical findings, if any;
  - f. whether there is a severe discrepancy between achievement and ability that is not correctable without special education and related services; and
  - g. the determination of the team concerning the effects of environmental, cultural, or economic disadvantage.
2. Each team member shall certify in writing whether the report reflects his or her conclusion. If it does not reflect his or her conclusion, the team member must submit a separate statement presenting his or her conclusions.
3. **Each** SLD evaluation requires team member signatures (initial, reevaluation, override and exit).

## **Appendix B**

### ***Pre- Referral and Referral Process for Special Education***

#### **Aspen Academy**

Minnesota state law provides school districts with a process to ensure that students are given ample opportunity to succeed within the general education program. When teachers suspect a student may need special education services, [Minnesota Statute 125A.56](#) requires that schools implement and document at least two “instructional strategies, alternatives or interventions” with a student within the general education classroom **prior** to referring a child for special education evaluation. This is called the ‘pre-referral process.’ At Aspen Academy this process is known as *Student Support Team Pre-referral and Referral*.

It is important to note that this process is part of regular education. In many instances, the child’s needs may be met by changing instructional strategies or through other interventions within the general classroom.

Two research-based interventions must take place to assist in the determination of the need for an evaluation for special education services. The duration of the pre-referral interventions are based on the individual child’s needs. The interventions must be of sufficient duration to allow the child to succeed from the new instructional strategies and/or interventions. Best practice identifies pre-referral interventions lasting four to six weeks, with the interventions being consecutive. Concurrent interventions can be implemented if there are multiple concerns such as academic and behavior.

A breakdown of this process is as follows:

#### **Step 1 – REGULAR EDUCATION**

##### **Concern Identified**

##### **1A) Concern identified via universal screener**

- The concern is shared with the parent.
- With parental consent, the child will be placed into an intervention following the standard treatment protocol.

##### **1B) Concern identified by teacher**

- A teacher identifies a student's academic or behavioral concern.
- The teacher contacts the student's parent/guardian to share concern.
- The teacher completes the SST, Student Support Team, referral form including all areas of academic, social, emotional concerns. Specialist teachers also complete checklists.
- The teacher contacts the SST, Student Support Team Lead, to be added to the SST meeting schedule.
- A SST meeting is held. Evidence based intervention, progress monitoring tool is decided and a follow up meeting is scheduled for 6 weeks.
- Teacher contacts parent/guardian to update on SST meeting and intervention to be implemented.

- Aspen Academy's SST team membership consists of the school administrator, school counselor, dean of students, reading interventionist, math interventionist and the teacher stating concern of the student. Other professionals may be part of the team as applicable.

## **STEP 2 – REGULAR EDUCATION**

### **Pre-referral Interventions**

- At the SST meeting, the members and classroom teacher problem solve and discuss *scientific research based interventions* to address the student need. The team chooses an intervention.
- The teacher implements intervention #1 for 6-8 weeks and collects data on student's progress.
  - If intervention #1 is proven to be successful, the intervention is continued.
    - A formal evaluation is **not** needed.
  - If intervention #1 is NOT successful, the SST team and teacher determine another *scientific research based intervention* for implementation.
- The teacher implements intervention #2 for 6-8 weeks and continues to collect data on student's progress.
  - If intervention #2 is proven to be successful, the intervention is continued.
    - A formal evaluation is **not** needed.
  - If intervention #2 is NOT successful, the parent(s) are notified and informed of the possibility of a formal evaluation being conducted with the student.
- The classroom teacher completes the remaining sections of the "SST Referral Form" to share with the Special Education team.
- The SST facilitator schedules a meeting with the special education staff to discuss the possibility of special education evaluation.
- The SST facilitator and classroom teacher are added to the special education child study team agenda to discuss data and student progress.

## **STEP 3 – SPECIAL EDUCATION**

### **Evaluation Determination**

- The parents are invited to a meeting to discuss the possibility of a special education evaluation.
- The meeting to determine evaluation consists of a special education teacher, the classroom teacher, a school administrator and related service providers and special education director if applicable.
- Data regarding the interventions is shared with the team. If appropriate, the team will create an evaluation plan to assess if the student meets criteria for special education services.

- The written evaluation plan and Prior Written Notice is shared with the parents and parental permission to evaluate is requested.
- Parent permission is required to conduct an initial evaluation for special education services. Once written parent permission is received, the district will complete the evaluation within 30 school days.
- The evaluation report will be provided to the parents no later than 30 school days from the date written permission is received. A meeting will be scheduled to share the evaluation results with the parent(s).
  - If the student meets criteria for special education services, an Individual Education Program (IEP) plan will be developed and shared with parents. The IEP and Prior Written Notice will be sent to the parents. Parent permission is required to provide special education services.
    - Once written parent permission is received, the district will implement the IEP and provide unique, individualized special education instruction to the student.

If the student does not meet criteria for special education services, the team determines what, if any, additional supports are needed for the student to be successful in the classroom.

## Appendix C

### **PART B NOTICE OF PROCEDURAL SAFEGUARDS PARENTAL RIGHTS FOR PUBLIC SCHOOL SPECIAL EDUCATION STUDENTS**

The material contained in this document is intended to provide general information and guidance regarding special education rights and procedural safeguards afforded to parents of children age 3 through 21 under state and federal law. This document explains a selection of some of the rights and procedural safeguards provided to parents under the Individuals with Disabilities Education Act (IDEA), the implementing regulations at 34 C.F.R Part 300, and applicable Minnesota laws and regulations; it is not a complete list or explanation of those rights. This notice is not a substitute for consulting with a licensed attorney regarding your specific legal situation. This document does not purport to include a complete rendition of applicable state and federal law, and the law may have changed since this document was issued.

#### **INTRODUCTION**

This document provides an overview of parental special education rights, sometimes called procedural safeguards. These same procedural safeguards are also available for students with disabilities who have reached the age of 18.

This Notice of Procedural Safeguards must be given to you at least one time per year. 34 C.F.R. § 300.504(a). It must also be given to you:

The first time your child is referred for a special education evaluation or if you request an evaluation, 34 C.F.R. § 300.504(a)(1);

The first time you file a complaint with the Minnesota Department of Education (MDE) in a school year, 34 C.F.R. § 300.504(a)(2);

The first time you or the district requests a due process hearing in a school year, 34 C.F.R. § 300.504(a)(2);

On the date the district decides to change the placement of your student by removing the student from school for a violation of the district discipline policy, 34 C.F.R § 300.504(a)(3); or

Upon your request, 34 C.F.R. § 300.504(a)(4).

## **PRIOR WRITTEN NOTICE**

The district must provide you with prior written notice each time it proposes to initiate or change, or refuses to initiate or change:

the identification of your child;

the evaluation and educational placement of your child;

the provision of a free appropriate public education (FAPE) to your child; or

When you revoke consent for services for your child in writing and before the district stops providing special education and related services, 34 C.F.R. §§ 300.503(a)(1)-(2) and 300.300(b)(4)(i).

This written notice must include:

A description of the action proposed or refused by the district, 34 C.F.R. § 300.503(b)(1);

An explanation of why the district proposes or refuses to take the action, 34 C.F.R. § 300.503 (b)(2);

A description of each evaluation procedure, assessment, record, or report the district used as a basis for its proposal or refusal, 34 C.F.R. § 300.503(b)(3);

A statement that you, as parents of a child with a disability, have protection under these procedural safeguards and information about how you can get a copy of the brochure describing the procedural safeguards, 34 C.F.R. § 300.503(b)(4);

Sources for you to contact to obtain assistance in understanding these procedural safeguards, 34 C.F.R. § 300.503(b)(5);

A description of other options the IEP team considered and the reasons why those options were rejected, 34 C.F.R. § 300.503(b)(6); and

A description of other factors relevant to the district's proposal or refusal, 34 C.F.R. § 300.503(b)(7).

In addition to federal requirements, prior written notice must inform you that, *except for the initial placement of your child in special education*, the school district will proceed with its proposal for your child's placement, or for providing special education services, unless you notify the district of an objection within 14 days of when the district sent you the prior written notice. Minn. Stat. § 125A.091,

Subd. 3a(1). The district must also provide you with a copy of the proposed IEP whenever the district proposes to initiate or change the content of the IEP. Minn. R. 3525.3600.

The prior written notice must also state that, if you object to a proposal or refusal in the prior written notice, you must have an opportunity for a conciliation conference, and the school district must inform you of other alternative dispute resolution procedures, including mediation and facilitated IEP team meetings, under Minnesota Statutes, section 125A.091, Subdivisions 7-9. Minn. Stat. § 125A.091, Subd. 3a(2).

## **FOR MORE INFORMATION**

If you need help in understanding any of your procedural rights or anything about your child's education, please contact your district's special education director or the person listed below.

This notice must be provided in your native language or other mode of communication you may be using. If your mode of communication is not a written language, the district must take steps to translate this notice orally or by other means. The district must ensure that you understand the

content of this notice and maintain written evidence that this notice was provided to you in an understandable mode of communication and that you understood the content of this notice. 34 C.F.R. § 300.503(c).

***If you have any questions or would like further information, please contact:***

Name: Kelly Dietrich, Director of Special Education

Phone: 651-447-9038

*For further information, you may contact one of the following organizations:*

ARC Minnesota (advocacy for persons with developmental disabilities)

[www.thearcofminnesota.org](http://www.thearcofminnesota.org)

651-523-0823

1-800-582-5256

Minnesota Association for Children's Mental Health

[www.macmh.org](http://www.macmh.org)

651-644-7333

1-800-528-4511

Minnesota Disability Law Center

[www.mndlc.org](http://www.mndlc.org)

612-334-5970 (Twin Cities Metro)

1-800-292-4150 (Greater Minnesota)

612-332-4668 (TTY)

PACER (Parent Advocacy Coalition for Educational Rights)

[www.pacer.org](http://www.pacer.org)

952-838-9000

1-800-53-PACER,

952-838-0190 (TTY)

Minnesota Department of Education

[www.education.state.mn.us](http://www.education.state.mn.us)

651-582-8689

651-582-8201 (TTY)

**ELECTRONIC MAIL**

If your school district gives parents the choice to receive notices by email, you can choose to receive your prior written notice, procedural safeguards notice, or notices related to a due process complaint via email. 34 C.F.R. § 300.505.

## **PARENTAL CONSENT**

### **Definition of Consent**

Consent means that you have been fully informed of all information relevant to the activity for which your consent is sought, in your native language, or through another mode of communication. 34 C.F.R. § 300.9(a). In order to consent you must understand and agree in writing to the carrying out of the activity for which your consent is sought. This written consent must list any records that will be released and to whom. 34 C.F.R. § 300.9(b).

### **Revocation of Consent**

Consent is voluntary and may be revoked in writing at any time. 34 C.F.R. §§ 300.9(c)(1) and 300.300(b)(4). However, revocation of consent is not retroactive; meaning revocation of consent does not negate an action that has occurred after the consent was given and before the consent was revoked. 34 C.F.R. § 300.9(c)(2).

### **When the District Must Obtain Your Consent**

#### *A. Initial Evaluation*

The district must obtain your written and informed consent before conducting its initial evaluation of your child. 34 C.F.R. § 300.300(a)(1)(i) and Minn. Stat. § 125A.091, Subd. 5(a). You or a district can initiate a request for an initial evaluation. 34 C.F.R. § 300.301(b). If you do not respond to a request for consent or if you refuse to provide consent for an initial evaluation, the district cannot override your refusal to provide consent. 34 C.F.R. § 300.300(a)(3)(i) and Minn. Stat. § 125A.091, Subd. 5(a). An initial evaluation shall be conducted within 30 school days from the date the district receives your permission to conduct the evaluation, unless a conciliation conference or hearing is requested. Minn. R. 3525.2550, Subp. 2.

A district will not be found in violation of meeting its child find obligation or its obligations to conduct evaluations and reevaluations if you refuse to consent to or fail to respond to a request for consent for an initial evaluation. 34 C.F.R. § 300.300(a)(3)(ii).

If you consent to an initial evaluation, this consent cannot be construed as being consent for the initial provision of special education and related services. 34 C.F.R. § 300.300(a)(1)(ii).

#### *B. Initial Placement and Provision of Special Education Services and Related Services*

The district must obtain your written consent before proceeding with the initial placement of your child in a special education program and the initial provision of special education services and related services to your child determined to be a child with a disability. Minn. Stat. § 125A.091, Subd. 3a(1) and 5(a); 34 C.F.R. § 300.300(b)(1).

If you do not respond to a request for consent, or if you refuse to consent to the initial provision of special education and related services to your child, the district may not override your written refusal. Minn. Stat. § 125A.091, Subd. 5(a).

If you refuse to provide consent for the initial provision of special education and related services, or you fail to respond to a request to provide consent for the initial provision of special education and related services, the district will not be considered in violation for failure to provide your child with special education and related services for which the district requested consent. 34 C.F.R. §



300.300(b)(4)(i).

### *C. Reevaluations*

Your consent is required before a district conducts a reevaluation of your child. 34 C.F.R. § 300.300(c). If you refuse consent to a reevaluation, the district may not override your written refusal. 34 C.F.R. § 300.300(c)(1)(ii) and Minn. Stat. § 125A.091, Subd. 5(a). A reevaluation shall be conducted within 30 school days from the date the district receives your permission to conduct the evaluation or within 30 days from the expiration of the 14 calendar day time period during which you can object to the district's proposed action. Minn. R. 3525.2550, Subp. 2.

### *D. Transition Services*

Your consent is required before personally identifiable information is released to officials of participating agencies providing or paying for transition services. 34 C.F.R. §§ 300.622(a)(2) and 300.321(b)(3).

### ***When Your Consent is Not Required***

*Except for an initial evaluation and the initial placement and provision of special education and related services, if you do not notify the district of your objection within 14 days of when the district sends the notice of the district's proposal to you, the district's proposal goes into effect even without your consent. Minn. Stat. § 125A.091, Subd. 3a(1).*

Additionally, your consent is not required for a district to review existing data in your child's educational file as part of an evaluation or a reevaluation. 34 C.F.R. § 300.300(d)(1)(i).

Your consent is also not required for the district to administer a test or other evaluation that is given to all children, unless consent is required from parents of all children. 34 C.F.R. § 300.300(d)(1)(ii).

### **Parent's Right to Object and Right to a Conciliation Conference**

You have a right to object to any action the district proposes within 14 calendar days of when the district sends you the prior written notice of their proposal. Minn. Stat. § 125A.091, Subd. 3a(1). If you object to the district's proposal, you have the right to request a conciliation conference, mediation, facilitated IEP team meeting or a due process hearing. 34 C.F.R. § 300.507; Minn. Stat. §§ 125A.091, Subd. 3a(2) and Subd. 14. The District must hold a conciliation conference within ten calendar days from the date the district receives your request for a conciliation conference. Minn. Stat. § 125A.091, Subd. 7.

Except as provided under Minnesota Statutes, section 125A.091, all discussions held during a conciliation conference are confidential and are not admissible in a due process hearing. Within five days after the final conciliation conference, the district must prepare and provide to you a conciliation conference memorandum that describes the district's final proposed offer of service. This memorandum is admissible evidence in any subsequent proceeding. Minn. Stat. § 125A.091, Subd. 7.

You and the district may also agree to use mediation or a facilitated individualized education program (IEP) team meeting to resolve your disagreement. Minn. Stat. § 125A.091, Subd. 8. You or the district can also request a due process hearing (see section about Impartial Due Process Hearings later in this document). The district must continue to provide an appropriate

education to your child during the proceedings of a due process hearing. 34 C.F.R. § 300.518.

### **Confidentiality and Personally Identifiable Information**

Personally identifiable information is information that includes, but is not limited to, a student's name, the name of the student's parent or other family members, the address of the student or student's family, a personal identifier, such as the student's Social Security number, student number, or biometric record, another indirect identifier, such as the student's date of birth, place of birth, a mother's maiden name, other information that, alone or in combination, is linked to or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty, or information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates. 34 C.F.R. § 99.3.

Districts and MDE must protect the confidentiality of any personally identifiable data, information, and records they collect, maintain, disclose and destroy. 34 C.F.R. §§ 300.610 and 300.623.

Generally, your written consent is required before a district may disclose personally identifiable information from your child's educational record with anyone other than officials of participating agencies collecting or using the information under the Individuals with Disabilities Education Act (IDEA) or for any purpose other than meeting a requirement of that law. 34 C.F.R. §§ 99.3 and 99.31.

When your consent is not required to share personally identifiable information. Your consent, or the consent of an eligible student (age 18 or older), is not required before personally identifiable information contained in education records is released to officials of a school district or the state department of education for meeting IDEA requirements. 34 C.F.R. § 300.622(a).

Your child's educational records, including disciplinary records, can be transferred without your consent to officials of another school, district, or postsecondary institution if your child seeks to enroll in or attend the school or institution or a school in that district. 34 C.F.R. § 99.31(a)(2).

Disclosures made without your consent must be authorized under the Family Educational Rights and Privacy Act (FERPA). Please refer to 34 C.F.R. Part 99 for additional information on consent requirements concerning data privacy under federal law.

### **Directory Information**

Directory information can be shared without your consent. This type of information is data contained in an education record of your child that would not generally be considered harmful or an invasion of privacy if disclosed. 34 C.F.R. § 99.3.

Directory information includes, but is not limited to, a student's address, telephone number, email address, date and place of birth, major field of study, grade level, enrollment status, dates of attendance, participation in official activities and sports, weight and height of athletic team members, degrees, honors, and awards received, the most recent educational agency or institution attended, and a student ID number, user ID, or other unique personal identifier used

for accessing or communicating electronically if certain criteria are met. Directory information does not include a student's Social Security number or a student ID number not used in connection with accessing or communicating electronically as provided under federal law. 34 C.F.R. § 99.3.

Districts must give you the option to refuse to let the district designate any or all data about your child as directory information. This notice can be given to you by any means reasonably likely to inform you or an eligible student of this right. Minn. Stat. § 13.32, Subd. 5. If you do not refuse to release the above information as directory information, that information is considered public data and can be shared without your consent.

Data about you (meaning parents) is private data but can be treated as directory information if the same procedures that are used by a district to designate student data as directory information are followed. Minn. Stat. § 13.32, Subd. 2(c).

### **WRITTEN ANNUAL NOTICE RELATING TO THIRD PARTY BILLING FOR IEP HEALTH-RELATED SERVICES**

Before billing Medical Assistance or MinnesotaCare for health-related services the first time, and each year, the district must inform you in writing that:

The district will share data related to your child and health-related services on your child's IEP with the Minnesota Department of Human Services to determine if your child is covered by Medical Assistance or MinnesotaCare and whether those services may be billed to Medical Assistance or MinnesotaCare.

Before billing Medical Assistance or MinnesotaCare for health-related services the first time, the district must obtain your consent, including specifying the personally identifiable information that may be disclosed (e.g., records or information about the services that may be provided), the purpose of the disclosure, the agency to which the disclosure may be made (i.e. the Department of Human Services) and which specifies that you understand and agree that the school district may access your (or your child's) public benefits or insurance to pay for health-related services.

The district will bill Medical Assistance or MinnesotaCare for the health-related services on your child's IEP. Minn. Stat. § 125A.21, Subd. 2(c)(1).

The district may not require you to sign up for or enroll in Medical Assistance or MinnesotaCare or other insurance programs in order for your child to receive special education services.

The district may not require you to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for health services provided, but may pay the cost that you otherwise would be required to pay.

The district may not use your child's benefits under Medical Assistance or MinnesotaCare if that use would: decrease available lifetime coverage or any other insured benefit; result in your family paying for services that would otherwise be covered by the public benefits

or insurance program and that are required for the child outside of the time your child is in school; increase your premiums or lead to the discontinuation of benefits or insurance; or risk your loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.

You have the right to receive a copy of education records the district shares with any third party when seeking reimbursement for IEP health-related services. Minn. Stat. § 125A.21, Subd. 2(c)(2).

You have the right to stop your consent for disclosure of your child's education records to a third party, including the Department of Human Services, at any time. If you stop consent, the district may no longer share your child's education records to bill a third party for IEP health-related services. You can withdraw your consent at any time, and your child's IEP services will not change or stop. Minn. Stat. § 125A.21, Subd. 2(c)(3).

### **INDEPENDENT EDUCATIONAL EVALUATIONS**

An independent educational evaluation (IEE) is an evaluation by a qualified person(s) who is not an employee of your district. 34 C.F.R. § 300.502(a)(3)(i). You may ask for an IEE at school district expense if you disagree with the district's evaluation. 34 C.F.R. § 300.502(b)(1). A hearing officer may also order an independent educational evaluation of your child at school district expense during a due process hearing. 34 C.F.R. § 300.502(d).

Upon request for an IEE, the district must give you information regarding its criteria for selection of an independent examiner and information about where an independent education evaluation may be obtained. 34 C.F.R. § 300.502(a)(2).

If you request an IEE, the district must, without delay, ensure that it is provided at public expense or request a hearing to determine the appropriateness of its evaluation. 34 C.F.R. § 300.502(b)(2). If the district goes to hearing and the hearing officer determines the district's evaluation is appropriate, you still have the right to an independent evaluation, but not at public expense. 34 C.F.R. § 300.502(b)(3).

If you obtain an IEE, the results of the evaluation must be considered by the IEP/IIP (Individual Interagency Intervention Plan) Team and may be presented as evidence at a due process hearing regarding your child. 34 C.F.R. § 300.502(c).

### **EDUCATION RECORDS**

#### **Definition of an Education Record**

Under federal law an education record means those records that are directly related to a student and that are maintained by the department or the district.

#### **Your Access to Records**

If you want to look at your child's education records, the district must give you access to those records for your review. Education records include most of the information about your child that is held by the school. 34 C.F.R. § 300.613(a). However, information held solely by your child's teacher for his or her own instructional use may not be included in the education records. Minn. Stat. § 13.32, Subd. 1(a).

The district must allow you to review the records without unnecessary delay, and before any meeting regarding an IEP, or any hearing or resolution session about your child. 34 C.F.R. § 300.613(a). In addition, the district must comply with your request to review your child's education records immediately, if possible, or within 10 days of the date of the request (excluding Saturdays, Sundays and legal holidays), if immediate compliance is not possible. Minn. Stat. § 13.04, Subd. 3.

Your right to inspect and review records includes the right to:

An explanation or interpretation from the district of your child's records upon request, 34

C.F.R. § 300.613(b)(1); Minn. Stat. § 13.04, Subd. 3;

Have your representative inspect and review the records on your behalf, 34 C.F.R. § 300.613(b)(3);

Request that the district provide copies of your child's educational records to you, 34

C.F.R. § 300.613(b)(2); Minn. Stat. § 13.04, Subd. 3; and

Review your child's records as often as you wish in accordance with state law, 34 C.F.R. § 300.613(c). State law provides that if you have been shown private data and have been informed of its meaning, that data does not need to be disclosed to you for a period of 6 months unless a dispute or action is pending or new information is created or collected.

Minn. Stat. § 13.04,

Subd. 3.

### **Transfer of Rights**

Your rights regarding accessing your child's education records generally transfer to your child at age 18. 34 C.F.R. §§ 300.625 and 99.5(a). Notice must be provided to you and your child regarding this transfer of rights. 34 C.F.R. § 300.520(a)(3).

### **Records on More Than One Child**

If any education record includes information on more than one child, you have the right to inspect and review only information relating to your child. 34 C.F.R. § 300.615. You can seek consent to review and inspect education records that include information about children in addition to your own, but those parents of those children have a right to refuse your request for consent.

### **List of Types and Locations of Information**

Upon your request, the district and the department must provide you with a list of the types and locations of education records they collect, maintain or use. 34 C.F.R. § 300.616.

### **Record of Access by Others**

The district must keep a record of each request for access to, and each disclosure of, personally identifiable information in your child's education records. This record of access must include the name of the individual who made the request or received personally identifiable information from your child's education records, the date access was given and the purpose of the disclosure or the individual's legitimate interest in the information. 34 C.F.R. §§ 300.614 and 99.32.

### **Consent to Release Records**

Generally, your consent is required before personally identifiable information is released to unauthorized individuals or agencies. 34 C.F.R. §§ 300.622(a) and 99.30(a); Minn. Stat. § 13.05, Subd. 4(d). The consent must be in writing and must specify the individuals or agencies authorized to receive the information: the nature of the information to be disclosed; the purpose for which the information may be used; and a reasonable expiration date for the authorization to release information. 34 C.F.R. § 99.30(b); Minn. Stat. § 13.05, Subd. 4(d). Upon request, the district must provide you with a copy of records it discloses after you have given this consent. 34 C.F.R. § 99.30(c).

The district may not disclose information contained in your child's IEP/IIIP, including diagnosis and treatment information, to a health plan company without your signed and dated consent. Minn. Stat. § 125A.21, Subd. 7.

### **Fees for Searching, Retrieving and Copying Records**

The district may not charge a fee to search or retrieve records. However, if you request copies, the district may charge a reasonable fee for the copies, unless charging that fee would prevent you from exercising your right to inspect and review the education records because you cannot afford to pay it. 34 C.F.R. §§ 300.617 and 99.11; Minn. Stat. § 13.04, Subd. 3.

### **Amendment of Records at Parent's Request**

If you believe that information in your child's records is inaccurate, misleading, incomplete or in violation of your child's privacy or other rights, you may request in writing that the district amend or remove the information. 34 C.F.R. §§ 300.618(a) and 99.20(a); Minn. Stat. § 13.04, Subd. 4.

The district must decide within a reasonable time whether it will amend the records. 34 C.F.R. §§ 300.618(b) and 99.20(b). If the district decides not to amend the records, it must inform you that you have the right to a hearing to challenge the district's decision. 34 C.F.R. §§ 300.618(c), 300.619 and 99.20(c). If, as a result of that hearing, the district decides that the information is not inaccurate, misleading, or otherwise in violation of your child's privacy right, it must inform you that you have the right to include a statement of your comments and disagreements alongside the challenged information in your child's education records. 34 C.F.R. § 300.620(b). A hearing to challenge information in education records must be conducted according to the procedures for such hearings under FERPA. 34 C.F.R. § 300.621.

### **Transfer of Records**

Minnesota Statutes require that a district, a charter school, or a nonpublic school transfer a student's educational records, including disciplinary records, from a school a student is transferring from to a school in which a student is enrolling within 10 business days of a request. Minn. Stat. § 120A.22, Subd. 7.

### **Destruction of Records**

The district must inform you when personally identifiable information is no longer needed in order to provide education services to your child. 34 C.F.R. § 300.624(a). That information must be destroyed at your request. However, the school may retain a permanent record of your child's name, address, phone number, grades, attendance records, classes attended, grade level completed and year completed. 34 C.F.R. § 300.624(b).

Under federal law, destruction means the physical removal of personal identifiers from information so that the information is no longer personally identifiable. Thus, the student's record does not need to be physically destroyed to comply with your request to destroy special education related records. Districts can appropriately comply with this requirement by removing personally identifiable information from the student's records. The choice of destruction method generally lies with the school district. 34 C.F.R. § 300.611; Letter to Purcell, 211 IDELR 462 (OSEP, 1987); and Klein Indep. Sch. Dist., 17 IDELR 359 (SEA TC, 1990).

The district shall not destroy any education records if there is an outstanding request to inspect or review the records. 34 C.F.R. § 99.10(e).

Despite your request to destroy records a district can keep certain records necessary to comply with the General Education Provision Act (GEPA), which requires that recipients of federal funds keep records related to the use of those funds. Letter to New, 211 IDELR 473 (OSEP, 1987); 34 C.F.R. §300.611(a); and 20 U.S.C. Ch. 31, sec. 1232(f)(a). You may want to maintain certain special education records about your child for documentation purposes in the future, such as for applying for SSI benefits.

## **MEDIATION**

Mediation is a free, voluntary process to help resolve disputes. You or your district may request free mediation from the Minnesota Department of Education's Special Education Alternative Dispute Resolution program at 651-582-8222 or 1-866-466-7367. Mediation uses a neutral third party trained in dispute resolution techniques. Mediation may not be used to deny or delay your right to a due process hearing. Both you and district staff must agree to try mediation before a mediator can be assigned. At any time during the mediation, you or the district may end the mediation. 34 C.F.R. §§ 300.506 and 300.152(a)(3)(ii).

If you and the district resolve all or a portion of the dispute or agree to use another procedure to resolve the dispute, the mediator shall ensure that the resolution or agreement is in writing and signed by both you and the district and that both parties receive a copy of the document. The written resolution or agreement shall state that all discussions that occurred during mediation are confidential and may not be used as evidence in any hearing or civil proceeding. The resolution or agreement is legally binding on both you and the district and is enforceable in state or federal district court. You or the district can request another mediation to resolve a dispute over implementing the mediation agreement. Minn. Stat. § 125A.091, Subd. 10.

## **FILING A WRITTEN COMPLAINT**

Any organization or individual may file a complaint with the Minnesota Department of Education (MDE). 34 C.F.R. § 300.153(a). Complaints sent to MDE must:

- Be in writing and be signed by the individual or organization filing the complaint, 34 C.F.R. § 300.153(a);

- Allege violations of state or federal special education law or rule, 34 C.F.R. § 300.153(b)(1);

- State the facts upon which the allegation is based, 34 C.F.R. § 300.153(b)(2);

- Include the name, address and telephone number of the person or organization making the

complaint, 34 C.F.R. § 300.153(b)(3);

Include the name and address of the residence of the child and the name of the school the child is attending, 34 C.F.R. § 300.153(b)(4)(i)(ii);

A description of the nature of the child's problem; including facts relating to the problem, 34 C.F.R. § 300.153(b)(4)(iv);

A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed, 34 C.F.R. § 300.153(b)(4)(v); and

Be forwarded to the public agency providing services to the child at the same time the complaint is sent to MDE, 34 C.F.R. § 300.153(d).

The complaint must be sent to:

Minnesota Department Education

Division of Compliance and Assistance

Due Process Supervisor

1500 West Highway 36

Roseville, MN 55113-4266

651.582.8689 Phone

651.582.8725 Fax

The complaint must be received by MDE no later than one year after the alleged violation occurred. 34 C.F.R. § 300.153(c). MDE will issue a written decision within 60 days, unless exceptional circumstances require a longer time or you or the district agree to extend the time to participate in mediation. 34 C.F.R. § 300.152(a) and (b). The final complaint decision may be appealed to the Minnesota Court of Appeals by you (the parent) or the school district injured-in-fact by the decision within 60 days of receiving notice of the final decision.

### **MODEL FORMS**

MDE has developed model forms that can be used to file special education or due process complaints. These forms are not required, but are available as a resource to use when filing a complaint. 34 C.F.R. § 300.509. These model forms are available MDE's website: MDE > School Support > Compliance and Assistance > Due Process Forms.

### **IMPARTIAL DUE PROCESS HEARING**

Both you and the district have a right to request an impartial due process hearing in writing within two years of the date you or the agency knew or should have known about the alleged action that forms the basis of the due process complaint. Minn. Stat. § 125A.091, Subd. 14(a) and 34 C.F.R. §§ 300.507 and 300.511(e).

A due process hearing can be requested regarding a proposal or refusal to initiate or change a child's evaluation, IEP, educational placement, or to provide FAPE. Minn. Stat. § 125A.091, Subd. 14(a).

A due process hearing may address any matter related to the identification, evaluation, educational placement, manifestation determination or provision of a free and appropriate public education of your child. Minn. Stat. § 125A.091, Subd. 12. Within 15 days of receiving notice of your due process complaint, and prior to the due process hearing, the school district must arrange for a resolution meeting with you and the relevant members of the IEP Team who have



knowledge of the facts alleged in the due process complaint. 34 C.F.R. § 300.510(a).

The purpose of this meeting is for you to discuss the due process complaint, and the facts that form the basis of the due process complaint, so that the school district has the opportunity to resolve the dispute that is the basis for the due process complaint. 34 C.F.R. § 300.510(a)(2).

The resolution meeting need not be held if you and the school district agree in writing to waive the meeting or agree to mediation. 34 C.F.R. § 300.510(a)(3). A resolution meeting is also not required to be held when the district is the party who requests a due process hearing. 34 C.F.R. 300.510(a) cmts. at 71 F.R. 46700 (2006).

If the matter is not resolved within 30 days of receipt of the due process complaint, the hearing timelines begin. 34 C.F.R. § 300.510(b)(1).

If the school district is unable to obtain your participation in the resolution meeting or mediation after reasonable efforts have been made and the school district does not agree to waive the meeting in writing, the school district may, at the conclusion of the 30-day period, request that a hearing officer dismiss your due process complaint. 34 C.F.R. § 300.510(b)(4).

### **Loss of Right to a Due Process Hearing**

NOTE: Due to an interpretation of state law by the 8th Circuit Court of Appeals, if your child changes school districts and you do not request a due process hearing before your child enrolls in a new district, you may lose the right to have a due process hearing about any special education issues that arose in the previous district. See *Thompson v. Bd. of the Special Sch. Dist. No. 1*, 144 F.3d.574 (8th Cir. 1998). You do still have a right to request a due process hearing about special educational issues that may arise in the new district where your child is attending.

### **Procedures for Initiation of a Due Process Hearing**

Upon a written request for a hearing, the district must give you a copy of this procedural safeguard notice and a copy of your rights at hearing. 34 C.F.R. § 300.504(a)(2). If you or the district request a hearing, the other party must be provided with a copy of the request and submit the request to the department. Once it receives the request, the department must give a copy of the procedural safeguards notice to you. Minn. Stat. § 125A.091, Subd. 14(d). All written requests must include:

- The name of your child, 34 C.F.R. § 300.508(b)(1); Minn. Stat. § 125A.091, Subd. 14(b);
- The address of your child, 34 C.F.R. § 300.508(b)(2); Minn. Stat. § 125A.091, Subd. 14(b);
- The name of the school your child is attending, 34 C.F.R. § 300.508(b)(3); Minn. Stat. § 125A.091, Subd. 14(b);
- A description of the problem(s), including your view of the facts, 34 C.F.R. § 300.508(b)(5); Minn. Stat. § 125A.091, Subd. 14(b); and
- A proposed resolution of the problem to the extent known and available to you at the time, 34 C.F.R. § 300.508(b)(6); Minn. Stat. § 125A.091, Subd. 14(b).

MDE maintains a list of qualified hearing officers. Upon receipt of a written request for a hearing, MDE will appoint a hearing officer from that list to conduct the hearing. Minn. Stat. § 125A.091, Subd. 13. Below are a few of your rights at hearing. This is not a complete list of

rights.

Both you and the district have the right to:

Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities, 34 C.F.R. §

300.512(a)(1);

Present evidence and confront, cross-examine and compel the attendance of witnesses, 34 C.F.R. § 300.512(a)(2);

Prohibit the introduction of any evidence at the hearing that has not been disclosed at least five business days before the hearing, including evaluation data and recommendations based on that data, 34 C.F.R. § 300.512(a)(3); and

Receive a free copy of the hearing transcript or electronic recording of findings of fact and decisions, 34 C.F.R. §§ 300.512(a)(4)-(a)(5) and (c)(3).

As a parent, you, specifically, have the right to:

Have your child, who is the subject of the hearing, present, 34 C.F.R. § 300.512(c)(1);

Open the hearing to the public, 34 C.F.R. § 300.512(c)(2); and

Have the record or transcript of the hearing and the hearing officer's findings of fact, conclusions of law and decisions made provided to you at no cost. 34 C.F.R. § 300.512(c)(3); Minn. Stat. § 125A.091, Subd. 12.

### **Responding to the Hearing Request**

If you file a hearing request and you did not previously receive a prior written notice from the district about the subject matter of the hearing request, the district must send you a written explanation of why the district refused to take the action raised in the hearing request within 10 days of receiving the hearing request. This explanation must include a description of other options considered by the IEP team, why those options were rejected, a description of each evaluation procedure, assessment, record, or report that the district used as the basis for the proposed or refused action, and a description of the factors relevant to the district's proposal or refusal decision. Minn. Stat. § 125A.091, Subd. 14(e)(1).

The district can assert that the hearing request does not meet the requirements under state law. A hearing request is considered sufficient unless the party who received the request notifies the hearing officer in writing within 15 days of receiving the request that they believe the request does not meet statutory requirements. The hearing officer must determine whether the hearing request meets statutory requirements within 5 days of receiving the request and notify the parties. Minn. Stat. § 125A.091, Subd. 14(e) (1) and (2).

Upon receiving your hearing request, the district must also send you a written response that addresses the issues you raised in the hearing request within 10 days of receiving the request. Minn. Stat. § 125A.091, Subd. 14(f).

### **Disclosure of Additional Evidence Before a Hearing**

A prehearing conference must be held within 5 business days of the date the commissioner appoints a hearing officer. This conference can be held in person, at a location within the district, or by telephone. Minn. Stat. § 125A.091, Subd. 15. At least 5 business days before a hearing,

you and the district must disclose to each other all evaluations of your child completed by that date and recommendations based on those evaluations that are intended to be used at the hearing. 34 C.F.R. § 300.512(b)(1). A hearing officer may refuse to allow you to introduce any undisclosed evaluations or recommendations at the hearing without consent of the other party. 34 C.F.R. § 300.512(b)(2).

### **The Hearing Decision**

A hearing decision must be issued and provided to each party within 45 calendar days, or within an appropriately extended time period, upon the expiration of the 30-day resolution period after the due process complaint was received by the state agency. 34 C.F.R. § 300.515; Minn. Stat. § 125A.091, Subd. 20(a). A hearing officer may extend the time beyond the 45-day period if requested by either party for good cause shown on the record. 34 C.F.R. § 300.515(c); Minn. Stat. § 125A.091, Subd. 18, 20(a). A hearing officer must conduct oral arguments in a hearing at a time and place that is reasonably convenient to you and your child. Minn. Stat. § 125A.091, Subd. 20(a). A hearing officer's decision on whether your child received FAPE must be based on evidence and arguments that directly relate to FAPE. 34 C.F.R. § 300.513. The hearing decision is final unless you or the district files a civil action. 34 C.F.R. §§ 300.514(a)-(b) and 300.516(a). A hearing officer lacks the authority to amend a decision except for clerical and mathematical errors. Minn. Stat. § 125A.091, Subd. 20(b).

### **Separate Request for Due Process Hearing**

You have the right to file a separate due process complaint on an issue separate from a due process complaint already filed. 34 C.F.R. § 300.513(c).

### **Free or Low-Cost Legal Resources**

The district must inform you of any free or low-cost legal and other relevant services available in the area if you request the information or if you or the school district file a due process complaint. 34 C.F.R. § 300.507(2)(b). A list of free or low-cost legal resources is also available on [MDE's Special Education Hearings web page](#) (MDE > Select School Support > Compliance and Assistance > Special Education Hearings).

### **COMPLAINT AND HEARINGS DATABASE**

Final decisions on special education complaints and due process hearings are available to the public on the MDE website. 34 C.F.R. § 300.513(d). MDE maintains a public database called the Complaints, Hearings and Letters Search Engine. Decisions available in the database are redacted and all personally identifiable information is removed. This database is available on the Compliance and Assistance webpage on the MDE website at: <http://w20.education.state.mn.us/WebsiteContent/ComplianceSearch.jsp>.

### **CIVIL ACTION**

When you or the district disagrees with the findings or decisions made by a hearing officer, either party may file a court action. The action may be brought in federal district court or the state court of appeals. 34 C.F.R. §§ 300.514(b) and 300.516(a). Different standards of review apply in each court. An appeal to the state court of appeals must be made within 60 calendar days of your receipt of the decision. Minn. Stat. § 125A.091, Subd. 24. An appeal to federal district court must be made within 90 days of the date of the decision. 34 C.F.R. § 300.516(b); Minn. Stat. § 125A.091, Subd. 24.

## **PLACEMENT DURING A HEARING OR CIVIL ACTION**

During a hearing or court action, unless you and the district agree otherwise, your child will remain in the educational placement where he/she is currently placed and must not be denied initial admission to school. 34 C.F.R. §§ 300.518(a) and (b) and 300.533. This is commonly referred to as the “stay-put” rule.

Two exceptions to the “stay-put” rule exist:

Students may be removed from their educational setting for not more than 45 school days to an interim alternative educational placement for certain weapon, drug or serious bodily injury violations, 34 C.F.R. § 300.530(g)(1)-(3); and

A hearing officer’s decision agreeing with you that a change in placement is appropriate as the “stay-put” placement during subsequent appeals, 34 C.F.R. § 300.518(d).

## **EXPEDITED HEARINGS**

You (the parent) or the district can request an expedited hearing in the following situations:

Whenever you dispute the district’s proposal to initiate or change the identification, evaluation or educational placement of your child or the district’s provision of FAPE to your child, Minn. Stat. § 125A.091, Subd. 14(a); 34 C.F.R. § 300.532(a) and (c)(1); 34 C.F.R. 300.507(a) and 34 C.F.R. § 300.503(a)(1);

Whenever you dispute the district’s refusal to initiate or change the identification, evaluation or educational placement of your child or the district’s provision of FAPE to your child, Minn. Stat. § 125A.091, Subd. 14(a); 34 C.F.R. § 300.532(a) and (c)(1); 34 C.F.R. § 300.507(a); 34 C.F.R. § 300.503(a)(2);

Whenever you dispute the manifestation determination, 34 C.F.R. §§ 300.530 and 300.532(a); and

Whenever the district believes that maintaining the current placement of your child is substantially likely to result in injury to the child or to others, 34 C.F.R. § 300.532(b)(2)(ii).

You or a school district may file a written request for an expedited due process hearing as described above. Minn. Stat. § 125A.091, Subd. 19; 34 C.F.R. § 300.532(c)(1).

## **Timelines for Expedited Hearings**

Expedited hearings must be held within 20 school days of the date the hearing request is filed. The hearing officer must issue a decision within 10 school days after the hearing. Minn. Stat. § 125A.091, Subd. 19; 34 C.F.R. § 300.532(c)(2). A resolution meeting must occur within 7 days of receiving the hearing request, unless you and the school district agree in writing to either waive the resolution meeting or use the mediation process. Minn. Stat. § 125A.091, Subd. 19; 34 C.F.R. § 300.532(c)(3) and (3)(i). The expedited due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of receiving the request. Minn. Stat. § 125A.091, Subd. 19; 34 C.F.R. § 300.532(c)(3)(ii).

## **Dismissal of Complaint**

If the school district is unable to obtain your participation in the resolution meeting or mediation after reasonable efforts have been made and the school district does not agree to waive the

meeting in writing, the school district may, at the conclusion of the 30-day period, request that a hearing officer dismiss your due process complaint. 34 C.F.R. § 300.510(b)(4).

### **Placement by a Hearing Officer**

A hearing officer may decide to move your child to an interim alternative educational setting for up to 45 school days if the hearing officer determines your child is substantially likely to injure himself or herself or others if he/she remains in the current placement. 34 C.F.R. § 300.532(b)(2)(ii).

### **Right to Appeal Decision**

You or the district can appeal the decision of a hearing officer in an expedited due process hearing. 34 C.F.R. §§ 300.532(c)(5) and 300.514.

## **INTERIM ALTERNATIVE EDUCATIONAL PLACEMENT**

The district may change your child's educational placement for up to 45 school days, if your child:

Carries a dangerous weapon to or possesses a dangerous weapon at school, on school premises, or at a school function under the jurisdiction of the school district or MDE as defined in federal law, 34 C.F.R. § 300.530(g)(1);

Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance while at school, on school premises, or at a school function under the jurisdiction of the school district or MDE. This does not include alcohol or tobacco, 34 C.F.R. § 300.530(g)(2); or

Inflicts serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the school district or MDE as defined in federal law, 34 C.F.R. § 300.530(g)(3).

On the date the district decides to remove your child and the removal is a change of placement of a child with a disability because of a violation of a code of student conduct, the school district must notify you of that decision, and provide you with the procedural safeguards notice. 34 C.F.R. § 300.530(h).

The IEP/IIIP team determines the interim alternative educational setting and appropriate special education services. 34 C.F.R. §§ 300.530(d)(5) and 300.531. Even though this is a temporary change, it must allow your child:

To continue to participate in the general education curriculum and progress towards meeting goals set out in your child's IEP, although in a different setting, 34 C.F.R. §§ 300.530(d)(1)(i) and (d)(4); and

Include services and modifications designed to prevent the behavior from recurring, 34 C.F.R. § 300.530(d)(1)(ii).

If your child is placed in an interim alternative educational setting, an IEP/IIIP meeting must be

convened within 10 school days of the decision. 34 C.F.R. § 300.530(e)(1). At this meeting, the team must discuss behavior and its relationship to your child's disability. The team must review evaluation information regarding your child's behavior, and determine the appropriateness of your child's IEP/IIP and behavior plan. The team will then determine if your child's conduct was caused by, or had a direct relationship to his or her disability, or if your child's conduct was the direct result of the school district's failure to implement the IEP. 34 C.F.R. § 300.530(e)(1).

### **ATTORNEY'S FEES FOR HEARINGS**

You may be able to recover attorney fees if you prevail in a due process hearing. 34 C.F.R. § 300.517(a)(1)(i). A judge may make an award of attorney's fees based on prevailing rates in your community. 34 C.F.R. § 300.517(c)(1). The court may reduce an award of attorney's fees if it finds that you unreasonably delayed the settlement or decision in the case. 34 C.F.R. § 300.517(c)(4)(i). If the district prevails and a court agrees that your request for a hearing was for any improper purpose, you may be required to pay the district's attorney's fees. 34 C.F.R. § 300.517(a)(iii).

### **EXCLUSIONS AND EXPULSION OF PUPILS WITH A DISABILITY**

Before your child with a disability can be expelled or excluded from school, a manifestation determination must be held. Minn. Stat. § 121A.43(d). If your child's misbehavior is related to his or her disability, your child cannot be expelled.

When a child with a disability is excluded or expelled under the Pupil Fair Dismissal Act, Minnesota Statutes Sections 121A.41-56, for misbehavior that is not a manifestation of the child's disability, the district shall continue to provide special education and related services after the period a period of suspension, if imposed. Minn. Stat. § 121A.43(d).

### **DISCIPLINARY REMOVALS**

If a child with a disability is removed from his or her current educational placement, this is considered a change of placement if:

- The removal is for more than 10 school days in a row, 34 C.F.R. § 300.536(a)(1); or
- Your child has been subjected to a series of removals that constitute a pattern because:
  - The series of removals total more than 10 school days in a year, 34 C.F.R. § 300.536(a)(2)(i);
  - Your child's behavior is substantially similar to your child's behavior in previous incidents that resulted in a series of removals, 34 C.F.R. § 300.536(a)(2)(ii); and
  - Of additional factors such as the length of each removals, the total amount of time your child has been removed, and the proximity of the removals to one another, 34 C.F.R. § 300.536(a)(2)(iii).

The determination of whether a pattern of removals constitutes a change of placement is made by the district. 34 C.F.R. § 300.536(b)(1). If this determination is challenged it is subject to review through due process and judicial proceedings. 34 C.F.R. § 300.536(b)(2).

### **CHILDREN NOT DETERMINED ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES**

If your child has not been determined eligible for special education and related services and

violates a code of student conduct, and the school district knew before the discipline violation that your child was a child with a disability then your child can utilize the protections described in this notice. 34 C.F.R. § 300.534(a).

A district is deemed to have knowledge that your child is a child with a disability if, before the behavior that brought about the disciplinary action occurred:

You expressed concern in writing to supervisory or administrative personnel at the district or to your child's teacher that your child is in need of special education and related services, 34 C.F.R. § 300.534(b)(1);

You requested an evaluation related to eligibility for special education and related services under Part B of the IDEA, 34 C.F.R. § 300.534(b)(2); or

Your child's teacher or other district personnel expressed specific concerns about a pattern of behavior demonstrated by your child directly to the district's director of special education or to other district supervisory staff, 34 C.F.R. § 300.534(b)(3).

### **Exceptions to a District's Knowledge**

A district would not be deemed to have such knowledge if:

You have previously refused consent for an evaluation of your child or you have previously refused special education services, 34 C.F.R. § 300.534(c)(1)(i)-(ii); or

Your child has already been evaluated and determined to not be a child with a disability under Part B of IDEA, 34 C.F.R. § 300.534(c)(2).

### **Conditions that Apply if There is No Basis of Knowledge.**

If a district does not have knowledge that your child is a child with a disability prior to taking disciplinary measures against your child, your child may be subjected to similar disciplinary consequences that are applied to children without disabilities who engage in similar behaviors. 34 C.F.R. § 300.534(d).

If a request is made for an evaluation of your child during the time period in which your child is subjected to disciplinary measures, the evaluation must be conducted in an expedited manner. 34 C.F.R. § 300.534(d)(2)(i). Until the evaluation is complete, your child remains in the educational placement determined by the district, which can include suspension or expulsion without educational services. 34 C.F.R. § 300.534(d)(2)(ii). In Minnesota, regular special education services are provided on the sixth day of a suspension and alternative education services are provided.

### **REFERRAL TO AND ACTION BY LAW ENFORCEMENT AND JUDICIAL AUTHORITIES**

A district can report a crime committed by a child with a disability to appropriate authorities and State law enforcement and judicial authorities can exercise their responsibilities under the law related to crimes committed by a child with a disability. 34 C.F.R. § 300.535(a).

### **Transmittal of records**

If a district reports a crime committed by a child with a disability, the district must ensure that copies of the child's special education and disciplinary records are transmitted to the appropriate authorities to whom the crime is reported for consideration. However, the district may only transmit copies of your child's special education and disciplinary records to the extent permitted

by FERPA. 34 C.F.R. § 300.535(b).

### **PRIVATE SCHOOL PLACEMENT**

IDEA does not require the district to pay for the cost of educating your child, including special education and related services, at a private school if the district made FAPE available to your child and you chose to place your child in a private school. 34 C.F.R. § 300.148(a). However, you may be able to recover tuition expenses for a private school placement if you informed the district of your intent to enroll your child in a private school at public expense in a timely manner and if a hearing officer finds that the district did not promptly make FAPE available to your child prior to your child being enrolled in the private school and if the private placement is appropriate. You must inform the district of your intent to place your child in a private placement at public expense at the most recent IEP/IIP meeting prior to removal of your child from public school or by written notice to the district at least 10 business days prior to removal of your child from public school. 34 C.F.R. § 300.148(c)-(d).

Your notice must state why you disagree with the district's proposed IEP/IIP or placement. If a hearing officer or court finds that the district failed to provide or is unable to provide your child with an appropriate education and that the private placement is appropriate, you may be reimbursed for the cost of the private placement. Failure to tell the school of your intent to enroll your child in a private school at public expense, failure to make your child available for evaluation prior to placing your child in a private school after the district has given you notice of its intent to evaluate your child, or other unreasonable delay on your part could result in a reduction or denial of reimbursement for the private school placement. 34 C.F.R. § 300.148(d).

A hearing officer cannot reduce or deny the cost of reimbursement if: the district prevented you from being provided with this notice; you did not receive notice of your responsibilities as discussed above in this section; or if compliance with the above requirements would likely result in physical harm to your child and if you failed to provide the required notice because you cannot write in English or if compliance with the above requirements would likely result in serious emotional harm to your child. 34 C.F.R. § 300.148(e).



## **Appendix D**

### ***Special Education Parent Advisory Council***

#### **Aspen Academy**

1. All parents of students with disabilities are invited to participate in Aspen Academy's Special Education Advisory Council (SEAC).
2. Meetings are held three times per year.
3. Meetings will be announced through Aspen Academy's website.
4. At least 50% of SEAC members will be parents of students of disabilities.
5. Aspen Academy SEAC is an advisory committee to the Aspen Academy School Board, advising on the needs of students with disabilities. The goal of the SEAC is to increase parent/guardian involvement in district policy making and decision making involving students with disabilities. Meetings will provide a forum for parents to address special education concerns and dialogue about education strategies and student successes. The committee is open to all parents, including those without children enrolled with an IEP.

## **Appendix E**

### **Restrictive Procedures Plan**

#### *Aspen Academy*

In accordance with Minn. Stat. §§ 125A.094 and 125A.0942, every school district is required to develop and make publicly accessible in an electronic format on a school or district website or make a paper copy available upon request a plan that discloses its use of restrictive procedures with special education students. The plan must list the restrictive procedures that the school district intends to use; describe how the school district will implement a range of positive behavior strategies and provide links to mental health services, describe how the school district will monitor and review the use of restrictive procedures, including post-use debriefings and convening an oversight committee to undertake a quarterly review of the use of restrictive procedures based on patterns or problems indicated by similarities in the time of day, day of the week, duration of the use of a procedure, the individuals involved, or other factors associated with the use of restrictive procedures, the number of times a restrictive procedure is used schoolwide and for individual children the number and types of injuries, if any, resulting from the use of restrictive procedures, whether restrictive procedures are used in non-emergency situations, the need for additional staff training, and proposed actions to minimize the use of restrictive procedures; and includes a written description and documentation of the training any staff members who will be using restrictive procedures have completed to show they have the skills set out in Minn. Stat. § 125A.0942, subd. 5.

#### **Restrictive procedures**

Aspen Academy uses restrictive procedures only in emergency situations. “Emergency” means a situation where immediate intervention is needed to protect the student or other individuals from physical injury. “Emergency” does not mean circumstances such as: a child who does not respond to a task or request and instead places his or her head on a desk or hides under a desk or table; a child who does not respond to a staff person’s request unless failing to respond would result in physical injury to the child or other individual; or an emergency incident has already occurred and no threat of physical injury currently exists. Restrictive procedures must not be used to punish or otherwise discipline a child.

#### *Restrictive Procedures Used*

The restrictive procedure that Aspen Academy staff may use in an emergency situation is physical holding. Physical holding is a physical intervention intended to hold a student immobile or limit a student’s movement, where body contact is the only source of physical restraint, and where immobilization is used to effectively gain control of a student in order to protect a student or other individual from physical injury.

The physical holding must:

- (1) be the least intrusive intervention that effectively responds to the emergency;
- (2) not be used to discipline a noncompliant student;
- (3) end when the threat of harm ends and the staff determines the child can safely return to the classroom or activity;
- (4) be observed directly by staff while the physical holding is being used; and
- (5) be documented as soon as possible after the incident concludes by the person who implemented the physical hold or oversaw the hold.

### *Restrictive Procedures Not Used*

Aspen Academy does not use the restrictive procedures of:

Seclusion – confining a student alone in a room from which egress is barred, including by an adult locking or closing the door in the room or preventing the student from leaving the room. Removing a student from an activity to a location where the student cannot participate in or observe the activity is not seclusion if the student is not confined alone in a room from which egress is barred.

Mechanical Restraint: Physical holding does not include the application of mechanical restraints for bus transportation, sensory needs, or medical needs as these procedures are documented in the student’s Individual Education Program (IEP).

### **How Aspen Academy will implement a range of positive behavior strategies and links to available mental health services**

Aspen Academy will only use physical holds in emergency situations. Aspen Academy staff will implement a range of positive behavior strategies as a proactive approach to teaching positive behavior skills to students, thereby reducing students exhibiting challenging behaviors and the need for the use of physical holds. These positive behavior strategies include: redirection, correction, staff escort to breakout space, allow student to go to safe place to relax/regroup, planned ignoring, conflict mediation, verbal de-escalation, process with staff, exit other peers, offer alternative activities, offer sensory tools, social stories, staff hand off, proximity control.

To obtain service or a referral to a service provider, the family should contact their primary care clinic, physician or insurance provider. Aspen Academy maintains mental health resource links for families on its website: <https://aspenacademymn.org/current-families/resources/health-office/>

### **How Aspen Academy will monitor and review the use of restrictive procedures by Aspen Academy staff:**

Who may use restrictive procedures: Restrictive procedures may be used in emergency situations only by the following staff who have been properly trained in the skills and knowledge areas described in Minn. Stat. § 125A.0942, subd. 5, which are set out subsequently in this plan: licensed special education teacher, school social worker, school principal, school psychologist, other licensed education professional, paraprofessional as described in Minn. Stat. § 120B.363, and mental health professional covered by Minn. Stat. § 245.4871, subd. 27.

### *Reasonable Force*

According to Minn. Stat. §121A.582 (Attachment A), a teacher or school principal, in exercising the person's lawful authority, may use reasonable force when it is necessary under the circumstances to correct or restrain a student or prevent bodily harm or death to another. A school employee, school bus driver, or other agent of a district, in exercising the person's lawful authority, may use reasonable force when it is necessary under the circumstances to restrain a student or prevent bodily harm or death to another.

### **Procedures to follow if a restrictive procedure is used**

1. Parent Notification: School staff shall make reasonable efforts to notify the parent on the same day a restrictive procedure is used on the student, or if the school is unable to provide same-day notice, notice is sent to the parent by written or electronic means within two days of the procedure being used or as otherwise indicated in the student's IEP. (See Parent Notice form in Attachment B.)
2. Reporting of Use of Restrictive Procedure: Either the staff person who implements or the staff person who oversees the use of a restrictive procedure shall inform school administration of the use of the restrictive procedure as soon as possible and shall complete and finalize the restrictive procedures report form in SpEd Forms no later than the next working day. The restrictive procedures report must include:
  - a. a description of the incident that led to the use of the restrictive procedure;
  - b. state why a less restrictive measure failed or was determined by staff to be inappropriate or impractical;
  - c. state the time the restrictive procedure began and the time the student was released from the hold; and
  - d. give a brief record of the student's behavioral and physical status during and after the use of the restrictive procedure.
3. Staff Debriefing after Use of Restrictive Procedure: The building administrator or their designee and the staff involved in the use of the restrictive procedure are expected to debrief after every use of a restrictive procedure. This debriefing includes completing and finalizing the debriefing form in SpEd Forms to review and discuss the restrictive procedure.

4. Including Plan for Use of a Restrictive Procedure in Student's IEP: A student's IEP team may include a plan for using a restrictive procedure in the student's IEP but may only use the restrictive procedure in situations that constitute an emergency. If a plan is included in the student's IEP, the IEP must also indicate how the parent wants to be notified when a restrictive procedure is used. The district must review use of restrictive procedures at a student's annual IEP meeting when the student's IEP provides for using restrictive procedures in an emergency.
5. Use of Restrictive Procedures on Two School Days in 30 Calendar Days: If restrictive procedures are used on two separate school days within 30 calendar days or if a pattern of use of the restrictive procedure emerges and the student's IEP or behavior intervention plan does not provide for using restrictive procedures in an emergency; the district must hold an IEP meeting within ten calendar days after district staff use the restrictive procedures on the second day. This meeting can also be requested by the parent or the district after restrictive procedures have been used.

At this meeting the team must:

- a. review the student's Functional Behavior Assessment (FBA);
- b. review other data connected to the behavior(s) that prompted the use of the restrictive procedure;
- c. consider developing additional or revised positive behavioral interventions and supports;
- d. consider actions that could be taken to reduce the use of restrictive procedures;
- e. consider developing a Behavior Support Plan (BSP) or modifying an existing BSP or consider other revisions to the student's IEP;
- f. review any known medical or psychological limitations, including any medical information the parent provided voluntarily, that contraindicate the use of a restrictive procedure; and
- g. consider whether to prohibit a restrictive procedure and, if so, document any prohibition in the student's IEP.

If the IEP team determines that existing interventions and supports are ineffective in reducing the use of restrictive procedures or the district uses restrictive procedures on a child on 10 or more school days during the same school year, the team, as appropriate, either must consult with other professionals working with the student; consult with experts in behavior analysis, mental health, communication, or autism; consult with culturally competent professionals; review existing evaluations, resources, and successful strategies; or consider whether to reevaluate the student.

6. Oversight Committee: At least quarterly, the District will convene an oversight committee which will include the following individuals: Special Education Director, Special Education

Coordinator, Building Principal/Executive Director, and school social worker. This oversight committee will review the aggregate data on the use of restrictive procedures in the District looking: for patterns or problems indicated by similarities in the time of day, day of the week, duration of the use of a procedure, the individuals involved, or other factors associated with the use of restrictive procedures; at the number of times a restrictive procedure is used school wide and for individual students; at the number and types of injuries, if any, resulting from the use of restrictive procedures; at whether restrictive procedures are used in non-emergency situations; at whether additional staff training on behavior interventions and restrictive procedures is needed; and at proposed actions to minimize the use of restrictive procedures.

### **Description of Staff Training**

Staff members who use restrictive procedures shall complete training in the following skills and knowledge areas:

1. positive behavior interventions;
2. communicative intent of behaviors;
3. relationship building;
4. alternatives to restrictive procedures, including techniques to identify events and environmental factors that may escalate behavior;
5. de-escalation methods;
6. standards for using restrictive procedures only in an emergency;
7. obtaining emergency medical assistance;
8. the physiological and psychological impact of physical holding and seclusion;
9. monitoring and responding to a student's physical signs of distress when physical holding is being used;
10. recognizing the symptoms of and interventions that may cause positional asphyxia when physical holding is used;
11. district policies and procedures for timely reporting and documenting each incident involving use of a restricted procedure; and
12. school wide programs on positive behavior strategies.

The District will keep a list of the training offered in the District each year to staff to meet the twelve skill and knowledge areas described above. The District will also keep documentation of the staff members who attend those training sessions.

### **Prohibited Procedures**

District staff members are prohibited from using the following actions or procedures:

1. engaging in corporal punishment which is defined by Minnesota statute to be conduct involving:
  - (1) hitting or spanking a person with or without an object; or
  - (2) unreasonable physical force that causes bodily harm or substantial emotional harm.

2. requiring a student to assume and maintain a specified physical position, activity, or posture that induces physical pain;
3. totally or partially restricting a student's senses as punishment;
4. presenting an intense sound, light, or other sensory stimuli using smell, taste, substance, or spray as punishment;
5. denying or restricting a student's access to equipment and devices such as walkers, wheelchairs, hearing aids, and communication boards that facilitate the student's functioning, except when the temporary removal of the equipment or device is needed to prevent injury to the student or others or serious damage to the equipment or device, in which case the equipment or device shall be returned to the student as soon as possible;
6. interacting with a student in a manner that constitutes sexual abuse, neglect, or physical abuse as those terms are defined in Minn. Stat. § 626.556;
7. withholding regularly scheduled meals or water;
8. denying access to bathroom facilities;
9. physical holding that restricts or impairs a student's ability to breathe, restricts or impairs a student's ability to communicate distress, places pressure or weight on a student's head, throat, neck, chest, lungs, sternum, diaphragm, back, or abdomen, or results in straddling a child's torso; and
10. prone restraints.

Nothing in this plan precludes the use of reasonable force as allowed under Minn. Stat. §§ 121A.582, 609.06, subd. 1, and 609.379 (these laws are set out in Attachment A).

### **Attachment A (Restrictive Procedures Plan)**

#### **121A.582 STUDENT DISCIPLINE; REASONABLE FORCE.**

##### *Subdivision 1. Reasonable force standard.*

- (a) A teacher or school principal, in exercising the person's lawful authority, may use reasonable force when it is necessary under the circumstances to correct or restrain a student or prevent bodily harm or death to another.

(b) A school employee, school bus driver, or other agent of a district, in exercising the person's lawful authority, may use reasonable force when it is necessary under the circumstances to restrain a student or prevent bodily harm or death to another.

(c) Paragraphs (a) and (b) do not authorize conduct prohibited under section 125A.0942.

*Subd. 2. Civil liability.*

(a) A teacher or school principal who, in the exercise of the person's lawful authority, uses reasonable force under the standard in subdivision 1, paragraph (a), has a defense against a civil action for damages under section 123B.25.

(b) A school employee, bus driver, or other agent of a district who, in the exercise of the person's lawful authority, uses reasonable force under the standard in subdivision 1, paragraph (b), has a defense against a civil action for damages under section 123B.25.

*Subd. 3. Criminal prosecution.*

(a) A teacher or school principal who, in the exercise of the person's lawful authority, uses reasonable force under the standard in subdivision 1, paragraph (a), has a defense against a criminal prosecution under section 609.06, subdivision 1.

(b) A school employee, bus driver, or other agent of a district who, in the exercise of the person's lawful authority, uses reasonable force under the standard in subdivision 1, paragraph (b), has a defense against a criminal prosecution under section 609.06, subdivision 1.

**609.06 AUTHORIZED USE OF FORCE.**

*Subdivision 1. When authorized.*

Except as otherwise provided in subdivision 2, reasonable force may be used upon or toward the person of another without the other's consent when the following circumstances exist or the actor reasonably believes them to exist:

(1) when used by a public officer or one assisting a public officer under the public officer's direction:

(a) in effecting a lawful arrest; or

(b) in the execution of legal process; or

(c) in enforcing an order of the court; or

(d) in executing any other duty imposed upon the public officer by law; or

(2) when used by a person not a public officer in arresting another in the cases and in the manner provided by law and delivering the other to an officer competent to receive the other into custody; or

(3) when used by any person in resisting or aiding another to resist an offense against the person; or

(4) when used by any person in lawful possession of real or personal property, or by another assisting the person in lawful possession, in resisting a trespass upon or other unlawful interference with such property; or (5) when used by any person to prevent the escape, or to



retake following the escape, of a person lawfully held on a charge or conviction of a crime; or (6) when used by a parent, guardian, teacher, or other lawful custodian of a child or pupil, in the exercise of lawful authority, to restrain or correct such child or pupil; or (7) when used by a school employee or school bus driver, in the exercise of lawful authority, to restrain a child or pupil, or to prevent bodily harm or death to another; or (8) when used by a common carrier in expelling a passenger who refuses to obey a lawful requirement for the conduct of passengers and reasonable care is exercised with regard to the passenger's personal safety; or (9) when used to restrain a person with a mental illness or a person with a developmental disability from self-injury or injury to another or when used by one with authority to do so to compel compliance with reasonable requirements for the person's control, conduct, or treatment; or (10) when used by a public or private institution providing custody or treatment against one lawfully committed to it to compel compliance with reasonable requirements for the control, conduct, or treatment of the committed person.

*Subd. 2. Deadly force used against peace officers.*

Deadly force may not be used against peace officers who have announced their presence and are performing official duties at a location where a person is committing a crime or an act that would be a crime if committed by an adult.

**609.379 PERMITTED ACTIONS.**

*Subdivision 1. Reasonable force.*

Reasonable force may be used upon or toward the person of a child without the child's consent when the following circumstance exists or the actor reasonably believes it to exist:

- (a) when used by a parent, legal guardian, teacher, or other caretaker of a child or pupil, in the exercise of lawful authority, to restrain or correct the child or pupil; or
- (b) when used by a teacher or other member of the instructional, support, or supervisory staff of a public or nonpublic school upon or toward a child when necessary to restrain the child from self-injury or injury to any other person or property.

*Subd. 2. Applicability.*

This section applies to sections 260B.425, 260C.425, 609.255, 609.376, 609.378, and 626.556.

**Attachment B (Restrictive Procedures Plan)**



Date	
Student Name	
Grade	
Date of Use of Restrictive Procedure	
Time Restrictive Procedure Began	
Time Restrictive Procedure Ended	
Type of Intervention: Physical Holding	<p style="text-align: center;"><u>Type of hold</u></p> <input type="checkbox"/> SINGLE PERSON CONTROL <input type="checkbox"/> TEAM CONTROL (TWO PERSON) <input type="checkbox"/> TRANSPORT POSITION (TWO PERSON)

REASON FOR USE OF RESTRICTIVE PROCEDURE: