

## *Excell Academy for Higher Learning*

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

This document serves as the Total Special Education System Plan for *Excell 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).

Carina Abate-Wright, *Excell Academy's* special education director, is responsible for program development, coordination, and evaluation; in-service training; and general special education supervision and administration. Carina Abate-Wright may be reached at 651-399-0341.

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

The district's identification system is developed according to the requirement of non-discrimination as *Excell 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**

Excell Academy is a charter school and as such is responsible for the identification of students needing special education within grades K – 8 who attend the charter school.

Excell Academy enrolls students beginning at the age of 3.5 years. A student may be identified using A or B below.

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). *Excell Academy* not 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.*
1. 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 references instruments, language samples, or curriculum-based measures.*

*Excell Academy's* plan for identifying a child with a specific learning disability is consistent with Minnesota Rule 3525.1341. *Excell Academy* implements its interventions consistent with that plan. The plan details the specific scientific, research-based intervention (SRBI) approach, including timelines for progression through the model; any SRBI that is used, by content area; the parent notification and consent policies for participation in SRBI; procedures for ensuing fidelity of implementation; and a district staff training plan. *Excell Academy's* plan for identifying a child with a specific learning disability is attached as *Appendix A*.

## **B. Evaluation**

The team shall conduct 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.

*Excell 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.

### ***Evaluation Procedures***

Evaluations and reevaluations shall be conducted according to the following procedures:

- A. *Excell Academy* shall provide 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, *Excell Academy* shall:
  - 1. use 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 progress in the general curriculum, or for preschool pupils, to participate in appropriate activities;
  - 2. 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. use technically sound instruments that are designed to assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.
- A. *Excell 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.
  - A. 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.
  - B. 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.

***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 shall administer 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. Each district shall obtain 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. A district shall evaluate a pupil in accordance with this part before determining that the pupil is no longer a pupil with a disability.

When restrictive procedures are used twice in 30 days or when a pattern emerges and restrictive procedures are not included in a child's individualized education program or behavior intervention plan, the district must hold a meeting of the individualized education program team, conduct or review a functional behavioral analysis, review data, consider developing additional or revised positive behavioral interventions and supports, consider actions to reduce the use of restrictive procedures, and modify the individualized education program or behavior intervention plan as appropriate. At the meeting, the team must review any known medical or psychological limitations that contraindicate the use of a restrictive procedure, consider whether to prohibit that restrictive procedure, and document any prohibition in the individualized education program or behavior intervention plan. Excell Academy follows the restrictive procedure statute, Minnesota Statute 125A.094-125A.0942. See the restrictive procedure plan attached as Appendix E.

***Procedures for determining eligibility and placement***

- A. 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 shall:
  - 1. draw 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. ensure that the information obtained from all of the sources is documented and carefully considered.
  - 3. 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.

***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.

**C. Plan for Receiving Referrals**

*Excell 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**

*Excell Academy* provides a full range of educational service alternatives. All students with disabilities are provided the special instruction and services which are appropriate to their needs. The following is representative of *Excell 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 or IFSP.

Method of providing the special education services for the identified pupils:

- 1. one on one services
- 2. small group
- 3. direct teaching
- 4. in-direct services
- 5. co-teaching

B. Alternative sites available at which services may occur:

Excell Academy does not have alternative sites at which services may occur.

A. Available instruction and related services:

1. Social Work
2. Occupational Therapy
3. Developmental Adaptive Physical Education
4. Speech & Language Pathologist
5. Psychological services
6. Autism Spectrum Services
7. Development Cognitive Disabilities
8. Deaf/Hard of Hearing Services
9. Early Childhood Special Education Services
10. Audiology Services
11. Nursing Services

### III. Administration and Management Plan

*Excell 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:

<b>Staff Name and Title</b>	<b>Contact Information (phone/email/ mailing address/office location)</b>	<b>Brief Description of Staff Responsibilities relating to child study procedures and method of providing special education services</b>
Carina Abate-Wright, Special Education Director	<a href="mailto:Cabatewright@indigoed.org">Cabatewright@indigoed.org</a> , Indigo Education 1170 Red Fox Road Arden Hills, MN 55112	The Special Education Director monitors and implements systems of child study to support learners experiencing difficulties across all programs, as well as coordinating programming to meet the needs of diverse populations district-wide. The Special Education Director leads the incorporation of the child study process at various levels through professional development training, the development of processes, and provision of support services.
Mandi Zielske, Special Education Coordinator	<a href="mailto:mzielske@excellacademy.org">mzielske@excellacademy.org</a> 6510 Zane Ave North Brooklyn Park, MN 55429 763-533-0500	The Special Education Coordinator oversees the child study team to process requests as well as coordinate the identification, development, implementation and monitoring of interventions designed for students experiencing learning and/or emotional needs and difficulties. The Child Study Team may elect to gather further data through evaluation to determine if the student demonstrates a need for special education services. This coordinator schedules Child Study Team meetings and plans the structure for evaluations.

- B. Due Process assurances available to parents: *Excell 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. *Excell 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. *Excell 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, *Excell Academy* informs parents of other dispute resolution processes, including at least medication 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 *Excell Academy's* Procedural Safeguard Notice, attached as *Appendix C*.

#### IV. Operating Procedures of Interagency Committees

*The following yellow highlighted information is required by the Minnesota Department of Education to be included in this document, however this information does NOT pertain to Natural Science Academy. As a K-5 charter school, Natural Science Academy does not provide services to students over grade five or under age five and therefore does not participate in the Community Transition Interagency Committee, or the local Interagency Early Intervention Committee.*

**A. Community Transition Interagency Committee:**

*Excell Academy does not have a community transition interagency as it is a K-8 public school.*

#### V. Interagency Agreements the District has Entered

Excell Academy 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:

<b>Name of Agency</b>	<b>Terms of Agreement</b>	<b>Agreement Termination/ Renewal Date</b>	<b>Comments</b>
Power of Relationships	collaboration with students and staff of Excell Academy	Annually	Formal

#### VI. Special Education Advisory Council

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

- A. *Excell Academy's* Special Education Advisory Council is individually established.
- B. *Excell Academy's* Special Education Advisory Council is *not* a subgroup of existing board/council/committee.

- C. *Excell Academy's* Special Education Advisory Council consists of the following individuals:
1. Mandi Zielske  
(Special Education Coordinator)
  1. Paige Parr  
(school district employee)
  1. Deb Johnson  
(school district employee)
  1. Amy Sauve  
(school district employee)
  1. Jartue Kroma  
(school district employee)
  1. Mya Cary  
(parent of student with disability)
  1. Staneshia Stevenson  
(parent of student with disability)
  1. Maya Rennie  
(parent of student with disability)
  1. Jamoma Jahnagile  
(parent of student with disability)
  1. Shalice Shince  
(parent of student with disability)
- A. *Excell Academy's* Special Education Advisory Council meets one time per year.
- B. The operational procedures of *Excell Academy's* Special Education Advisory Council are attached as *Appendix D*.

## VII. Assurances

Code of Federal Regulations, section 300.201: Consistency with State policies. *Excell 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 given.

# Appendix A

## *Specific Learning Disabilities Identification*

"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

## *Student Teacher Support Team Procedure*

1. General Education staff bring up a concern to an STST member and schedule a date to discuss at STST meeting (Tuesdays during teacher prep times). STST members include other grade-level teachers, Sabrina Williams, Justin Balvin, Tom Anderson, Joy Fehring, Nancy Young, Jennifer Uttech
2. BEFORE the meeting, General Education staff will:
  - a. complete and return “FORM A: STST Initial Referral”
  - b. complete and return “FORM B: STST Areas of Functioning Checklist”
  - c. invite family and other involved staff to the STST meeting
3. BEFORE the meeting, STST members will:
  - a. collect the student’s cumulative file and health file to bring to meeting
  - b. upon request, observe the student in their general education classroom
4. AT the STST initial referral meeting:
  - a. team review history and complete “FORM C: Intervention Planning”
  - b. use problem solving model to determine appropriate interventions
  - c. determine how data will be collected: by whom? how often? what data sheets?
  - d. set a follow up date to review post-intervention data after 2 or more weeks
5. AFTER the STST meeting, general education staff will:
  - a. implement interventions discussed at STST meeting and collect data
  - b. seek support from STST members with any questions or concerns
  - c. invite/remind parents, SST members, WIN teachers, etc to follow up meeting
6. AFTER the STST meeting, STST members will:
  - a. send a letter about interventions home to parents if they did not attend meeting
  - b. provide support and any materials discussed at the meeting to general education
7. AT the Follow-up STST meeting(s):
  - a. review post-intervention data compared to baseline data
  - b. determine if additional interventions/referral for evaluation would be appropriate
  - c. if additional interventions should be pursued, schedule another follow up meeting
  - d. intervention plan data will be added to cumulative file
  - e. share results with parents at meeting or via letter
8. IF Referral for Special Education Evaluation is determined to be appropriate:
  - a. Special Education Department will meet and review all data and documentation from STST team. After reviewing, a determination will be made regarding further action.

- b. If the Special Education Department determines an evaluation is needed they will notify the general education teacher to call the parents to set up a evaluation planning meeting.
- c. If the Special Education Department determines that an evaluation for special education services is not appropriate, STST will meet again with the teacher and other members to determine next steps.

**Excell Academy STST Form A: Initial Referral**

To be filled out by general education staff and returned to STST members PRIOR TO initial STST meeting

Person referring: \_\_\_\_\_ Date of request: \_\_\_\_\_

**Learner information:**

Name: \_\_\_\_\_ DOB: \_\_\_\_\_ Gender: M F

Grade: \_\_\_\_\_ Classroom/Homeroom Teacher: \_\_\_\_\_

Parent/Guardian Names: \_\_\_\_\_

Phone #(s): \_\_\_\_\_ Email: \_\_\_\_\_

Address: \_\_\_\_\_

Describe the student's strengths:

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Describe the reason for referral (be specific):

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How have you tried to help this student so far?

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**Date parent contacted regarding concerns:** \_\_\_\_\_ **contact method:** \_\_\_\_\_

Parent response to concerns:

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Who have you invited to the STST meeting?

\_\_ parents \_\_ SST members \_\_ WIN teacher \_\_ other: \_\_\_\_\_

**Background Information:**

Other services provided in the past (special education, Title 1, etc)?

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Home language: \_\_\_\_\_ ELL services? yes no

Has this student ever been retained? yes no

Has this student ever been evaluated for special education? If yes, when and what were the results?

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Most recent achievement tests scores:

NWEA-MAP Reading: \_\_\_\_\_ NWEA-MAP Math: \_\_\_\_\_

Other assessments/scores: \_\_\_\_\_

## Excell Academy STST Form B: Areas of Functioning Checklist

To be filled out by general education staff and returned to STST members PRIOR TO initial STST meeting

**Student Name:** \_\_\_\_\_ **Grade:** \_\_\_\_\_ **Teacher Name:** \_\_\_\_\_ **Date:** \_\_\_\_\_

Instructions: For each area of functioning listed below (NOTE: double sided), please rate this learner's performance as compared to his or her grade level peer group. Please note concerns related to skills marked as a 1 or 2 or identified as "yes" at the bottom of each section.

### EMOTIONAL and SOCIAL DEVELOPMENT

	Below Average		Average	Above Average	
Makes and Keeps Friends	1	2	3	4	5
Compromises and negotiates	1	2	3	4	5
Accepts consequences of own behavior	1	2	3	4	5
Makes age appropriate choices	1	2	3	4	5
Expresses emotions appropriately	1	2	3	4	5
Emotional comfort/mood	1	2	3	4	5
Interacts appropriately with peers	1	2	3	4	5
Interacts appropriately with adults	1	2	3	4	5
Interprets social cues	1	2	3	4	5

Please elaborate on areas of concern: \_\_\_\_\_

### BEHAVIORAL SKILLS

	Below Average		Average	Above Average	
Arrives on time and is prepared	1	2	3	4	5
Uses class time appropriately	1	2	3	4	5
Shows age-appropriate impulse control	1	2	3	4	5
Stays on-task	1	2	3	4	5
Respects the property/space of others	1	2	3	4	5
Uses language acceptable to the situation	1	2	3	4	5
Manages/completes classroom tasks within time allotted	1	2	3	4	5
Works/studies independently	1	2	3	4	5
Follows school rules	1	2	3	4	5
Follows teacher rules and requests	1	2	3	4	5
Sits and remains seated to complete a task	1	2	3	4	5
Requests assistance appropriately	1	2	3	4	5

Dishonest: lies, cheats, steals	Yes	No
Verbal Aggression	Yes	No
Physical Aggression	Yes	No
Concerns of Self-injury	Yes	No
Suspension/Dismissal	Yes	No

Please elaborate on areas of concern: \_\_\_\_\_

### FUNCTIONAL SKILLS

	Below Average		Average	Above Average	
Follows 2-3 step directions	1	2	3	4	5
Carries out self-care skills independently	1	2	3	4	5
Participates appropriately in large and small groups	1	2	3	4	5
Finds locations in school/community independently	1	2	3	4	5
Uses clock/calendar/money in age-appropriate manner	1	2	3	4	5
Adapts to unexpected changes in routines and schedules	1	2	3	4	5
Gives self-identification information (birthday, address, etc)	1	2	3	4	5

Please elaborate on areas of concern: \_\_\_\_\_

**INTELLECTUAL FUNCTIONING**

	Below Average		Average	Above Average	
Understands basic directions	1	2	3	4	5
Rate of learning	1	2	3	4	5
Logical reasoning	1	2	3	4	5
Problem solving	1	2	3	4	5
Use of age-appropriate vocabulary	1	2	3	4	5
Memory skills	1	2	3	4	5
Retains concepts taught and mastered over time	1	2	3	4	5
Knowledge of age-appropriate factual information	1	2	3	4	5
Applies learned skills and concepts to new tasks	1	2	3	4	5
Please elaborate on areas of concern: _____					

---

**ACADEMIC PERFORMANCE**

	Below Average		Average	Above Average	
Phonemic awareness	1	2	3	4	5
Reads grade level sight vocabulary	1	2	3	4	5
Uses word attack skills for reading	1	2	3	4	5
Understands material read to him/her	1	2	3	4	5
Understands material read independently	1	2	3	4	5
Writes complete sentences	1	2	3	4	5
Uses capitalization/punctuation/spelling	1	2	3	4	5
Communicates ideas in written form	1	2	3	4	5
Number sense	1	2	3	4	5
Calculates numbers at grade level	1	2	3	4	5
Applies math skills in problem-solving	1	2	3	4	5
Please elaborate on areas of concern: _____					

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**COMMUNICATION**

	Below Average		Average	Above Average	
Speaks clearly (without articulation errors)	1	2	3	4	5
Speaks fluently (without stuttering)	1	2	3	4	5
Uses appropriate voice quality	1	2	3	4	5
Uses complete and grammatically correct sentences	1	2	3	4	5
Tells a story or describes events in a logical sequence	1	2	3	4	5
Responds to content area questions	1	2	3	4	5
Participates in classroom discussions	1	2	3	4	5
Follows written instructions	1	2	3	4	5
Follows oral instructions	1	2	3	4	5
Can express ideas clearly	1	2	3	4	5
Please elaborate on areas of concern: _____					

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**MOTOR ABILITY**

	Below Average		Average	Above Average		
Demonstrates appropriate gross motor skills		1	2	3	4	5
Demonstrates appropriate strength and endurance in motor tasks	1	2	3	4	5	
Functions without adaptive/corrective equipment	1	2	3	4	5	
Prints/writes legibly	1	2	3	4	5	
Copies information from board to paper	1	2	3	4	5	
Age-appropriate ability to manipulate school tools (pencil, scissors, glue)	1	2	3	4	5	
Reacts appropriately (doesn't overreact) to sensory stimuli	1	2	3	4	5	
Please elaborate on areas of concern: _____						

---

**Excell Academy STST FORM C: Intervention Planning**

To be filled out at STST meeting with team

Student Name: \_\_\_\_\_ Grade: \_\_\_\_\_ Birthdate: \_\_\_\_\_

Teacher Name: \_\_\_\_\_ Date of initial STST referral meeting: \_\_\_\_\_

**1. Background Information**

a. Information from cumulative file, report cards, standardized testing:

\_\_\_\_\_  
\_\_\_\_\_

b. Background factors which may have affected learning or behavior (eg. primary language, absenteeism, discipline infractions, retention, etc):

\_\_\_\_\_  
\_\_\_\_\_

c. Other information from staff members, parents/guardians, outside agencies:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**2. Current levels of Performance (baseline data: eg. test scores, % off task, etc):**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**3. Areas of Strength (things the student enjoys or is good at):**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**4. Areas of presenting concerns:**

- |  |   |   |
|--|---|---|
| <input type="checkbox"/> reading             | <input type="checkbox"/> oral language        | <input type="checkbox"/> behavioral         |
| <input type="checkbox"/> writing             | <input type="checkbox"/> fine motor           | <input type="checkbox"/> emotional          |
| <input type="checkbox"/> math                | <input type="checkbox"/> gross motor          | <input type="checkbox"/> social interaction |
| <input type="checkbox"/> vision              | <input type="checkbox"/> health               |   |
| <input type="checkbox"/> hearing             | <input type="checkbox"/> functional/self-help |   |
| <input type="checkbox"/> speech/articulation | <input type="checkbox"/> attention/focus      |   |
| <input type="checkbox"/> other: _____        |   |   |

**5. Health Concerns:**

- a. Chronic health concerns: \_\_\_\_\_
- b. medications/treatments: \_\_\_\_\_
- c. vision screening dates/results: \_\_\_\_\_
- d. hearing screening dates/results: \_\_\_\_\_
- e. corrective lenses?    yes    no    f. hearing amplification?    yes    no

**Primary area of concern 1:** \_\_\_\_\_

Baseline data related to Intervention 1:

---

---

Description of Intervention 1 (research based, individualized, including instructional component):

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---

Who will implement intervention and collect data? \_\_\_\_\_

When will intervention be implemented/how often? \_\_\_\_\_

What type of data will be collected to measure progress? \_\_\_\_\_

(Attach data sheets) How often will progress be measured? \_\_\_\_\_

**Date of Intervention 1 review:** \_\_\_\_\_

Benchmark progress/Level of performance post-intervention:

---

---

improvement shown

continue intervention

limited improvement shown

revise intervention

no improvement shown

refer for special education evaluation

**Primary area of concern 2:** \_\_\_\_\_

Baseline data related to Intervention 2:

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Description of Intervention 2 (research based, individualized, including instructional component):

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Who will implement intervention and collect data? \_\_\_\_\_

When will intervention be implemented/how often? \_\_\_\_\_

What type of data will be collected to measure progress? \_\_\_\_\_

(Attach data sheets) How often will progress be measured? \_\_\_\_\_

**Date of Intervention 2 review:** \_\_\_\_\_

Benchmark progress/Level of performance post-intervention:

---

---

improvement shown

continue intervention

limited improvement shown

revise intervention

no improvement shown

refer for special education evaluation

Next steps:

no further concerns

no further action needed

- improvement shown
- limited improvement shown
- no improvement shown

- continue implementing interventions
- revise interventions
- refer for special education evaluation

Special Education Team meeting date: \_\_\_\_\_

- pursue evaluation for special education services
- continue STST problem solving

Special Education Evaluation Planning meeting date: \_\_\_\_\_

- parent agrees, start evaluation for special education services, evaluation due date: \_\_\_\_\_
- parent disagrees, continue STST problem solving

# Appendix C

## *Procedural Safeguards*

### 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:

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

1. the identification of your child;
2. the evaluation and educational placement of your child;
3. the provision of a free appropriate public education (FAPE) to your child; or
4. 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. A description of the action proposed or refused by the district, 34 C.F.R. § 300.503(b)(1);
- b. An explanation of why the district proposes or refuses to take the action, 34 C.F.R. § 300.503 (b)(2);
- c. 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);
- d. 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);
- e. Sources for you to contact to obtain assistance in understanding these procedural safeguards, 34 C.F.R. § 300.503(b)(5);
- f. 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
- g. 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: Mandi Zielske, Special Education Coordinator

Phone: 763-533-0500

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. Within ten calendar days from the date the district receives notice of your objection to its

proposal or refusal in the district's prior written notice, the district will ask you to attend 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:

- A. 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.
- B. 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.

- C. 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).
- D. 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.
- E. 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.
- F. 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.
- G. 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/IIIP (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:

- a. 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;
- b. Have your representative inspect and review the records on your behalf, 34 C.F.R. § 300.613(b)(3);
- c. 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
- d. 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/IIP, 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:

- a. Be in writing and be signed by the individual or organization filing the complaint, 34 C.F.R. § 300.153(a);
- b. Allege violations of state or federal special education law or rule, 34 C.F.R. § 300.153(b)(1);
- c. State the facts upon which the allegation is based, 34 C.F.R. § 300.153(b)(2);
- d. Include the name, address and telephone number of the person or organization making the complaint, 34 C.F.R. § 300.153(b)(3);
- e. 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);
- f. 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);

- g. 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
- h. 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:

- A. The name of your child, 34 C.F.R. § 300.508(b)(1); Minn. Stat. § 125A.091, Subd. 14(b);
- B. The address of your child, 34 C.F.R. § 300.508(b)(2); Minn. Stat. § 125A.091, Subd. 14(b);
- C. The name of the school your child is attending, 34 C.F.R. § 300.508(b)(3); Minn. Stat. § 125A.091, Subd. 14(b);
- D. 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

- E. 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:

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

- 1. Have your child, who is the subject of the hearing, present, 34 C.F.R. § 300.512(c)(1);
- 2. Open the hearing to the public, 34 C.F.R. § 300.512(c)(2); and
- 3. 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).

### **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:

1. 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
2. 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:

1. 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);
2. 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);
3. Whenever you dispute the manifestation determination, 34 C.F.R. §§ 300.530 and 300.532(a); and
4. 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:

1. 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);
2. Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance while at school, on school premises, or at a school function under the jurisdiction of the school district or MDE. This does not include alcohol or tobacco, 34 C.F.R. § 300.530(g)(2); or
3. 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/IIP 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:

- A. 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
- B. 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/IIP 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:

1. The removal is for more than 10 school days in a row, 34 C.F.R. § 300.536(a)(1); or
2. Your child has been subjected to a series of removals that constitute a pattern because:
3. The series of removals total more than 10 school days in a year, 34 C.F.R. § 300.536(a)(2)(i);
4. 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
5. 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:

1. 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);
2. 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
3. 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:

- A. 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
- B. 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 Advisory Committee*

### Mission Statement for Special Education Advisory Committee

The mission of Excell Academy's Special Education Advisory Committee is to provide a collaborative environment for parents, students, and school officials to discuss special education programming within the district.

### Statement of Purpose

In order to increase the involvement of parents of children with disabilities in district policy making and decision making, school districts must have a special education advisory council that incorporates into the district's special education system plan. Our overall purpose is advise and advocate for our special education students.

At least half of the designated council members must be parents of students with disabilities. When a nonpublic school is located in the district, the council must include at least one member who is a parent of a nonpublic school student with a disability, or an employee of a non public school if no parent or a nonpublic school student with a disability is available to serve. Each local council must meet no less than one each year. The numbers, frequency of meetings, and operational procedures are to be locally determined. **(MN Statue 125.24)**

### SEAC at Excell Academy

The Special Education Advisory Committee (SEAC) at is an administrative committee that represents the interests of all district learners with disabilities. It provides input on special education issues, program development, parental concerns and involvement, and department priorities to the Director of Special Education and department. It aims to promote positive, proactive communication between families, school, and community actively seeking input from students and parents.

### Members

The SEAC will be comprised of a minimum of 5 members. The community will include district parents, special education teacher(s), and special education coordinator.

### Activities Focus of Special Education Advisory Committee

- Conduct a scheduled meeting where they collaboratively identify and encourage the use of evidence-based and promising practices in special education.
- Serve as an information source to all stakeholders regarding the special education programs, policies, and procedures.
- Create and provide helpful literature and communications pertaining to relevant topics discussed by the SEAC and Excell Academy Administration.
- Information provided from SEAC will be incorporated into the annual special education narrative which is presented to the Board of Directors of Excell Academy.

# Appendix E

## *Restrictive Procedures Plan*

The Excell Academy Use of Restrictive Procedures Plan is developed in accordance with Minnesota Statute 125A.0942, Subd. 1, “Schools that intend to use restrictive procedures are required to maintain and make publicly accessible in an electronic format on a school or district Web site or make a paper copy available upon request describing a restrictive procedures plan for children with disabilities.”

This plan includes the restrictive procedures the school intends to use; how the school will implement a range of positive behavior strategies and provide links to mental health services; how the school will monitor and review the use of restrictive procedures, including conducting post-use debriefings and convening an oversight committee; and written description and documentation of the training staff completed.

Excell Academy uses restrictive procedures only in response to behavior(s) that constitutes an emergency, even if written into a student’s Individualized Education Plan (IEP) or Behavior Support Plan (BSP).

Restrictive procedures may be used only by a licensed special education teacher, school social worker, school psychologist, National Behavior Analyst Board certified behavior analyst, a person with a master’s degree in behavior analysis, other licensed education professional, paraprofessional (MINN. STAT. 120B363 (2016)), or mental health professional (MINN. STAT. 245.4871 Subd. 27 (2016)), who has completed the training outlined in this plan.

### *Definitions from Minnesota Statute 125A.0941*

**Restrictive procedures:** the use of physical holding or seclusion in an emergency. Restrictive procedures must not be used to punish or otherwise discipline a child.

**Emergency:** a situation where immediate intervention is needed to protect a child or other individual 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.

**Physical holding:** physical intervention intended to hold a child immobile or limit a child’s movement, where body contact is the only source of physical restraint, and where immobilization is used to effectively gain control of a child in order to protect a child or other individual from physical injury. The term physical holding does not mean physical contact that:

1. helps a child respond or complete a task;
2. assists a child without restricting the child’s movement;
3. is needed to administer an authorized health-related service or procedures; or

4. is needed to physically escort a child when the child does not resist or the child's resistance is minimal.

**Physical escort:** a physical escort means physical intervention or contact used as a behavior management technique to guide a student to safety or away from an unsafe or potentially harmful and escalating situation. A physical escort is not considered a restrictive procedure as the student does not resist or the resistance is minimal.

**Seclusion:** means confining a child alone in a room from which egress is barred. Egress may be barred by an adult locking or closing the door in the room or preventing the child from leaving the room. Removing a child from an activity to a location where the child cannot participate in or observe the activity is not seclusion.

**Mechanical restraint:** the use of devices to limit a student's movement or hold a student immobile. The term does not mean mechanical restraints used to:

1. treat a student's medical needs;
2. protect a student known to be at risk of injury resulting from lack of coordination or frequent loss of consciousness; or
3. position a student with physical disabilities in a manner specified in the student's plan of care.

**Positive behavioral interventions and supports:** means interventions and strategies to improve the school environment and teach children the skills to behave appropriately.

Excell Academy is a responsive classroom school. All students receive instruction in social emotional learning. Excell Academy uses PBIS and SOAR (self-control, ownership, achieve, respect) to support positive behavioral interventions and supports.

**Prone restraint:** means placing a child in a face down position.

**Functional behavioral assessment (FBA):** means a process for gathering information to maximize the efficiency of behavioral supports. FBA includes a description of problem behaviors and the identification of events, times, and situations that predict the occurrence and nonoccurrence of the behavior. An FBA also identifies the antecedents, consequences, and reinforcers that maintain the behavior, the possible functions of the behavior, and possible positive alternative behaviors. An FBA includes a variety of data collection methods and sources that facilitate the development of hypotheses and summary statements regarding behavioral patterns.

Prior to using any restrictive procedure, the IEP team must conduct a FBA. The team must also document that it has ruled out any other treatable cause for the behavior, for example, a medical or health condition, for the interfering behavior. (MINN. R. 3525.0210 (2016)).

### ***Description and Documentation of Staff Training***

Staff who design and use behavioral interventions will complete training in the use of positive feedback and strategies as well as restrictive procedures.

Excell Academy staff members are initially certified through the Crisis Prevention Intervention program (CPI) and receive annual refreshers through the CPI program.

CPI addresses the state requirements for a restrictive procedure training program which includes training on:

- positive behavioral interventions
- communicative intent of behaviors
- relationship building
- alternatives to restrictive procedures, including techniques to identify events and environmental factors that may escalate behavior
- de-escalation methods
- standards for using restrictive procedures
- obtaining emergency medical assistance
- the physiological and psychological impact of physical holding
- monitoring and responding to a child's physical signs of distress when physical holding is being used
- recognizing the symptoms of and interventions that may cause positional asphyxia when physical holding is used

A database of CPI trained staff is kept on file electronically.

A Crisis Team is identified at Excell Academy. The Crisis Team in collaboration with the school administrative team designs the emergency response plan and reviews it periodically.

### ***Physical Holding, Seclusion and Prohibited Procedures***

#### **Physical Holding**

Physical holding as defined above, may only be used in an emergency as defined above. A program that uses physical holding shall meet the following requirements:

1. it is the least intrusive intervention that effectively responds to the emergency;
2. physical holding is not used to discipline a noncompliant child;
3. physical holding ends when the threat of harm ends and the staff determines the child can safely return to the classroom or activity;
4. staff directly observes the child while physical holding is being used;
5. each time physical holding is used, the staff person who implements or oversees the physical holding documents, as soon as possible after the incident concludes, the following information:
  - a. a description of the incident that led to the physical holding;
  - b. why a less restrictive measure failed or was determined by staff to be inappropriate or impractical;
  - c. the time the physical holding began and the time the child was released; and a brief record of the behavioral and physical status

Excell Academy uses the following types of physical holding:

- Children's Control (CC)
- Team Control (TC)
- Team Escort (TE)

### Seclusion

Excell Academy does not utilize seclusion.

### Prohibited Procedures

The following actions or procedures are considered prohibited by Minnesota Statute. Prohibited actions or procedures will not be used on student:

1. engaging in conduct prohibited under Minnesota Statute 121A.58;
2. requiring a child to assume and maintain a specified physical position, activity, or posture that induces physical pain;
3. totally or partially restricting a child'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 child's access to equipment and devices such as walkers, wheelchairs, hearing aids, and communication boards that facilitate the child's functioning, except when temporarily removing the equipment or device is needed to prevent injury to the child or others or serious damage to the equipment or device, in which case the equipment or device shall be returned to the child as soon as possible;
6. interacting with a child in a manner that constitutes sexual abuse, neglect, or physical abuse under Minnesota Statute 626.556;
7. withholding regularly scheduled meals or water;
8. denying access to bathroom facilities; and
9. physical holding that restricts or impairs a child's ability to breathe, restricts or impairs a child's ability to communicate distress, places pressure or weight on a child's head, throat, neck, chest, lungs, sternum, diaphragm, back, or abdomen, or results in straddling a child's torso.

Nothing in this section precludes the use of reasonable force under Minnesota Statutes 121A.582; 609.06 subdivision 1; and 609.379.

### ***Monitoring the Use of Restrictive Procedures***

Excell Academy Special Education Coordinators will monitor the use of restrictive procedures through their direct and frequent contact with service providers. Service providers must document the use of restrictive procedures and submit this documentation to coordinators within 24 hours of completion.

Excell Academy will make reasonable efforts to notify the parent on the same day a restrictive procedure is used on the child, or if the school is unable to provide same-day notice, notice will be sent within two days by written or electronic means or as otherwise indicated by the child's parent.

Post-debriefing meetings will be held to review the required documentation:

1. a description of the incident that led to the physical hold or seclusion;
2. why a less restrictive measure failed or was determined by the staff to be inappropriate or impractical;
3. the time the physical holding or seclusion began and the time the child was released; and
4. a brief record of the child's behavioral and physical status.

#### IEP Team Response to the Use of Restrictive Procedures

When a restrictive procedure is used, staff must notify the parent/guardian on the same day, or if the school is unable to provide same-day notice, notice must be sent within two days by written or electronic means or as otherwise indicated by the child's parent/guardian. The IEP or BSP must indicate how the parent/guardian wants to be notified when a restrictive procedure has been used.

1. Document the parent/guardian notification in the student's communication log.
2. The Restrictive procedures form must be completed within 24 hours of the incident.
3. Team must convene within 48 hours for a debriefing of the incident. Members of the debriefing meeting include: any individuals involved in the situation, a licensed staff member, and a neutral party. The neutral party must facilitate the debriefing meeting.
4. The completed Restrictive Procedure Form and Restrictive Procedure Debriefing Form will be uploaded by district staff and can be found in the special education due process forms system under "History".

The IEP Team will meet within ten (10) calendar days after a district staff use restrictive procedures on two separate school days within thirty (30) calendar days or a pattern of use emerges and the child's Individualized Education Plan (IEP) or behavior support plan (BSP) does not provide for using restrictive procedures in an emergency, or at the request of the parent.

The IEP team will conduct or review a functional behavior analysis, review data, consider developing additional or revised positive behavioral interventions and supports, consider actions to reduce the use of restrictive procedures, and modify the IEP or BSP as appropriate. At this meeting the IEP team must review any known medical or psychological limitations that contraindicate the use of restrictive procedure, consider whether to prohibit that restrictive procedure, and document any prohibition in the IEP or BSP.

The IEP team must review the use of restrictive procedures at the student's annual IEP meeting when the student's IEP provides for using restrictive procedures in an emergency. The IEP or behavioral intervention plan shall indicate how the parent wants to be notified when a restrictive procedure is used.

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 ten or more school days during the same school year, the team, as appropriate, either must consult with other professionals working with the child; 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 child.

***District Oversight Committee***

Excell Academy shall convene an oversight committee to review quarterly the use of restrictive procedures based on patterns 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 program-wide 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.

***Excell Academy Oversight Committee Members:***

Justin Balvin, Academic Dean

Dewitt Davison, Special Education Behavior Coach

Mandi Zielske, Special Education Coordinator

***Mental Health Resources***

Excell Academy mental health resources can be found on the Excell Academy website at:

<http://www.excellacademy.org/mental-health-resources/>