

Termination of Services

A Fact Sheet from the Minnesota Disability Law Center

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There are four main ways that a special education student can stop receiving special education services: 1. a parent can deny or withdraw consent for services or may remove the student from the district; 2. an IEP team can determine the student is no longer eligible for services; 3. the student graduates with a regular education diploma or a special education diploma; and 4. the student may “age out” of service eligibility. Each of these avenues triggers different legal responsibilities for districts – this report reviews these responsibilities and identifies where districts have successfully navigated these avenues and where they have gone awry. This report also covers a district’s responsibility to monitor students for one year if they have been terminated from receiving services and still are in school.

Parent Refusal

One way a student may stop receiving services (or not get them in the first place) is for the parent to deny consent to services or withdraw consent for services. This can typically occur at the initial evaluation or initial provision of services. Parents may decide to withhold consent.¹ Similarly, after the student has been receiving services, the parent may entirely withdraw consent to provide services. In response the district may, but is not required to, engage in dispute resolution options, including mediation, conciliation or a due process hearing² The new IDEA reauthorization specifically states that if parents refuse consent for an initial evaluation or the initial provision of services, parents may not claim the district failed to offer a free appropriate public education (FAPE)³ and may not claim the protections available to students with disabilities regarding disciplinary actions.⁴

Additionally, parents may remove students from a district and place them in a non-public school or chose to home school them. Parents may also place students in another school district or a charter school in an effort to avoid special education services. In each situation, the public school districts where the student resides still must engage in child find efforts to determine if the students potentially need special education services.⁵

IEP Team Agreement

A second way for the student to stop receiving services is for the student’s IEP team to conclude the student no longer needs or is no longer eligible for services.⁶ This only applies if the student has not graduated with a special education diploma or if the student has not “aged out.”⁷ Federal law spells out the exact process for an IEP team determination that a student is no longer eligible for services. This process must include a reevaluation must be conducted to determine whether the student “is no longer a child with a disability.”⁸ Next, because the United States Office for

Civil Rights has indicated that the termination of a child's special education services constitutes a change of placement, the district must provide written notice to the parent, hold an IEP meeting, and before exiting the student ensure that the IEP team decided to terminate services.⁹ If a student no longer meets or does not meet eligibility criteria, the student may still be eligible for services under Section 504¹⁰ and nothing prevents a district from providing academic or other support services to students if they have needs.

There is some debate in Minnesota about the standard for termination of services. First, a recent due process hearing decision indicates that the student must continuously meet eligibility criteria to access services.¹¹ However, in contrast, a letter from the Minnesota Department of Education indicates that during a reevaluation

the team must determine if the child continues to be a child with a disability and continues to need special education. That is the standard. It is not necessary for the child to meet initial eligibility criteria in order to continue to receive services. This standard assures that children with disabilities will not be excluded from necessary special education and related services as a result of progress that stems from the provision of those services.”¹²

In support of its position this letter refers to 34 CFR §300.533, which requires an IEP team to identify data needed to determine “**whether the child continues to have such a disability**” and “**whether the child continues to need special education and related services.**” This regulation, however, only discusses evaluation and reevaluation *requirements*, not the *standard* for concluding whether a student is still eligible for services. It is unclear how a student can be eligible for services without being a child with a disability under state eligibility criteria. The MDE has long followed this interpretation in complaint decisions.¹³ For example, in one complaint decision, the MDE indicated the district was responsible for reinstating a student who had been terminated from services but had academic needs, even over the district's objection that the student no longer met eligibility criteria.¹⁴

In sum, for services to be terminated, the district must: 1. conduct a reevaluation; 2. the reevaluation must show the student is no longer a student with a disability based on eligibility criteria; 3. the parents must be notified in writing that the district seeks to change the student's placement by terminating services;¹⁵ 4. the district must hold an IEP team meeting to discuss the change in placement, and; 5. the IEP team must agree to the termination of services.

A hearing decision shows a district's successful attempt to terminate services through a due process hearing.¹⁶ If the district follows the correct procedures and includes the parent in each step, it will escape violations.¹⁷ Failure to do so will result in a violation and possibly compensatory education.¹⁸ Also, termination of services must be premised on the student's needs, not where the parent and student wish to attend school in the district.¹⁹

Graduation

Third, special education students are no longer eligible if they meet state and district graduation requirements and receive a regular education diploma.²⁰ If a student is expected to receive a regular education diploma and graduate, this graduation is a change of placement and requires notice to parents.²¹ Additionally, an IEP team meeting must be held and the team must agree to the change in placement.²²

It should also be noted that some students will turn 18 around the time they and their peers may graduate. This is important since parental rights transfer to the student at age 18, unless a guardian has been appointed. If the student gains parental rights, the district must provide all notices to the student and parent and seek consent from the student.²³

If a district simply issues a regular education diploma without following the procedures, it may be liable for compensatory education. The parents may contest the legality and appropriateness of the issuance of the diploma and force the district to provide compensatory education²⁴ or be responsible for a post-graduation remedy.²⁵ The district must also provide notice to and seek consent from students who have turned 18, unless a guardian has been appointed.²⁶

As a side note, in a 2004 due process hearing, a hearing officer reviewed an allegation that the district did not evaluate the student for special education services but instead tried to serve the student with Section 504 services and through the student's attendance in an alternative program.²⁷ The hearing took place shortly before the student's class graduation, and finding in favor of the student, the hearing officer ordered the student's IEP team to "consider how the student may participate" in the graduation ceremony, such as by receiving a blank piece of paper while walking with his peers in the ceremony.²⁸ The district refused to do so, arguing the order allowed the team to not allow the student to participate. The district also disputed the MDE's attempt to enforce the hearing officer's decision. Finally, the parents filed a lawsuit in federal court and succeeded²⁹; the student eventually participated in the ceremony.

Special education students can also graduate with a special education diploma. The terms "special education diploma" or "IEP diploma" do not appear in federal law. However, an IEP team can determine whether a special education student should take the state required tests and proceed towards a regular education diploma or if this route is inappropriate for a particular student.³⁰ If the IEP team determines the regular education diploma route is not appropriate, the IEP team can agree to the student graduating upon meeting IEP goals. Once the student achieves this, the student is entitled to receive the identical type of diploma that other students do.³¹

Aging Out

A fourth way for a student to no longer receive services is "aging out" or exceeding the age limitation in state and federal law. Minnesota has chosen to permit students to potentially receive services "from birth until July 1 after the child with a disability becomes 21 years old."³² Students may not receive services up to this limit if any of the three options discussed above apply.

Reinstatement

Current Minnesota law³³ requires districts to reinstate services to students whose services are ended within one year of termination.³⁴ A student's IEP team would presumably make this decision. If there is an evaluation less than 3 years old, the district is not required to conduct a new evaluation or document and implement two pre-referral interventions before reinstating services.³⁵

Declining academic performance following termination of services is one reason to reinstate services.³⁶ A district will also stay in compliance even if subsequent to a termination of services,

the student shows a decline in academics but the parent refuses reinstatement, provided that the district takes steps to provide services or supports.³⁷

This factsheet has reviewed the different ways in Minnesota that children with disabilities may decline or stop receiving special education services.

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¹ 34 CFR §300.300 requires a district to obtain consent prior to conducting the initial evaluation or a reevaluation and prior to the initial provision of services.

² 34 CFR §300.300 (a)(3)(i)

³ 34 CFR §300.300 (b)(4)

⁴ 34 CFR §300.534

⁵ 34 CFR §300.111 and 34 CFR §300.131

⁶ See Minnesota Department of Education Complaint Decision C1098

⁷ 34 CFR §300.305 (e)

⁸ 34 CFR §300.305 (e)

⁹ OSEP letter to Hagen-Gilden, 24 IDELR 294; 34 CFR §300.305 (e).

¹⁰ Section 504 is a federal anti-discrimination law that requires districts to ensure students with physical or mental impairments that substantially limit a student's major life activity (such as learning, walking, seeing, etc.) have equal access to the district's offerings. Section 504 may require the district to provide supports and services that may look similar to special education.

¹¹ Minnesota Department of Education Hearing Decision H582

¹² MDE Letter, Dated September 21, 2004. <http://education.state.mn.us/content/085479.pdf>

¹³ Minnesota Department of Education Complaint Decisions C1352, C1052

¹⁴ Minnesota Department of Education Complaint Decision C1352

¹⁵ OSEP letter to Hagen-Gilden, 24 IDELR 294;

¹⁶ Minnesota Department of Education Hearing Decision H582

¹⁷ Minnesota Department of Education Complaint Decisions C1098, 1924

¹⁸ Minnesota Department of Education Complaint Decisions C1089, 1352, 1052

¹⁹ Minnesota Department of Education Complaint Decision C1458

²⁰ Minn. Stat. §120B.02; Minn. R. 3501.0010, et.seq.

²¹ 34 CFR §300.305

²² OSEP letter to Hagen-Gilden, 24 IDELR 294

²³ 34 CFR §300.520, Minnesota Department of Education Complaint Decision C2040

²⁴ Minnesota Department of Education Complaint Decision C2040,

²⁵ Minnesota Department of Education Hearing Decision H337, Minnesota Department of Education Complaint Decision C1874

²⁶ Minnesota Department of Education Complaint Decision C2040

²⁷ Minnesota Department of Education Hearing Decision H577

²⁸ Id.

²⁹ Olson v. Robbinsdale, Civil Case No. 04-2707, District Court Judge Richard Kyle

³⁰ Minn. R. 3501.0090

³¹ Minnesota Statute §125A.04

³² Minnesota Statute §125A.03 (b); see also MDE Letter to Krumm, dated April 27, 2001

³³ The only current Minnesota law addressing termination of services is Minn. R. 3525.3100, which covers reinstatement of services. Previously, Minn. R. 3525.1356 specified the circumstances when termination would occur. This rule was repealed in 2000.

³⁴ Minn. R. 3525.3100

³⁵ *Id.*

³⁶ See Minnesota Department of Education Complaint Decision C1352

³⁷ Minnesota Department of Education Complaint Decision C1098