

# HOPE Community Academy Total Special Education System (TSES)

This document serves as the Total Special Education System Plan for HOPE Community 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, 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).

HOPE Community Academy's special education director, Lisa Greenberg, is responsible for program development, coordination, and evaluation; in-service training; and general special education supervision and administration. Lisa Greenberg may be reached at 651-255-8857 or [lgreenberg@designlearn.net](mailto:lgreenberg@designlearn.net).

## I. Child Study Procedures

The district's identification system is developed according to the requirement of nondiscrimination as HOPE Community 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

HOPE Community Academy serves students Grades K-10. HOPE Community Academy does not service students under the category of Part C. HOPE Community Academy's plan for identifying a child with a specific learning disability is consistent with Minnesota Rule 3525.1341 using the discrepancy model. HOPE Community Academy's plan for identifying a child with a specific learning disability is attached as Appendix A.

### Referral Process

HOPE Community Academy utilizes its Intervention/Child Study committee to assist with the implementation of Response to Intervention (RTI initiatives), which is the preferred pre-referral process method and potential identifier of special education evaluation and eligibility. While the RTI process is not actively in place, at this time it is used to ensure that appropriately research-based interventions are being implemented for HOPE Community Academy students. It is not yet being used as a method to identify Specific Learning Disabilities through the SRBI approach. HOPE Community Academy employs the discrepancy model (Criteria A, B, and C) as its method for identifying students with a Specific Learning Disability. This practice is consistent with Minnesota Rule 3525.1341.

HOPE Community Academy will proceed with the discrepancy model until it is determined that the Team has all of the required components and processes in place to use the SRBI (Criteria D) approach with fidelity and integrity in place to identify Specific Learning Disabilities.

### B. Evaluation

The evaluation used to determine whether a child is eligible for Special Education services must be conducted in a manner consistent with Code of Federal Regulations, title 34, part 303.321. It must be based on informed clinical opinion; and must be multidisciplinary in nature, involving two or more

disciplines or professions; and must be conducted by personnel trained to utilize appropriate methods and procedures. The evaluation must include:

The evaluation must include:

- A. A review of the child's current records related to health status and medical history;
- B. An evaluation of the child's levels of cognitive, physical, communication, social or emotional, and adaptive developmental functioning;
- C. An assessment of the unique needs of the child in terms of each of the developmental areas in item B; and
- D. At least one documented, systematic observation in the child's daily routine setting by an appropriate professional or, if observation in the child's daily setting is not possible, the alternative setting must be justified.

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.

HOPE Community 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. HOPE Community 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, HOPE Community 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.
  - (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.

C. HOPE Community Academy ensures that:

- (1) Tests and other evaluation materials used to evaluate a child under this part are selected and administered so as not be discriminatory on a racial or cultural basis, and are provided and administered in the pupil's native language or other mode of communication, unless it is clearly not feasible to do so;
- (2) Materials and procedures used to evaluate a child with limited English proficiency are selected and administered to ensure that they measure the extent to which the child has a disability and needs special education and related services, rather than measure the child's English language skills;
- (3) Any standardized tests that are given to the child have been validated for the specific purpose for which they are used, are administered by trained and knowledgeable personnel, and are administered in accordance with any instructions provided by the producer of such tests;
- (4) The child is evaluated in all areas of suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;
- (5) Evaluation tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the pupil are provided;
- (6) If an evaluation is not conducted under standard conditions, a description of the extent to which it varied from standard conditions must be included in the evaluation report;
- (7) Tests and other evaluation materials include those tailored to evaluate specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient;
- (8) Tests are selected and administered so as best to ensure that if a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills, unless those skills are the factors that the test purports to measure; and
- (9) In evaluating each pupil with a disability, the evaluation is sufficiently comprehensive to identify all of the pupil's special education and related service needs, whether or not commonly linked to the disability category in which the pupil has been classified.

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

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

**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 need 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 federal requirements determining that the pupil is no longer a pupil with a disability.

The district intends to use restrictive procedures in accordance with Minnesota Statute 125A.094-125A.0942. See attached Restrictive Procedure Plan in Appendix B.

### ***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 Minnesota Rule 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.
- B. 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 Minnesota Rule 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**

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

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

HOPE Community Academy provides a full range of educational service alternatives. While the district embraces a fully inclusive model to the extent appropriate, all students with disabilities are provided the special instruction and services, which are appropriate to their needs. The following is representative of HOPE Community 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 instruction, supports, and 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.

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

- (1) Direct instruction in general education
- (2) Small group instruction in general education
- (3) Direct 1:1 instruction in resource room
- (4) Small group instruction in resource room
- (5) Paraprofessional support in general education
- (6) Indirect instruction by Special Education Teachers, Related Staff Personnel, and Paraprofessionals

### **B. Sites available at which services may occur:**

- (1) HOPE Community Academy, 720 Payne Avenue, St. Paul, MN, 55130
- (2) If student needs exceed the resources available at HOPE Community Academy, the Special Education team will work with parents and the resident district to determine alternate programming.

C. Related services available:

- (1) School Psychologist
- (2) Speech/Language Pathologist
- (3) Occupational Therapist
- (4) Autism Spectrum Disorders Consultant
- (5) Developmental Disabilities Consultant
- (6) Deaf and Hard of Hearing (DHH) Consultant
- (7) Low Incidence Specialists, available as needed

**III. Administration and Management Plan.**

HOPE Community 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>	<b>Additional Information</b>
Designs for Learning- Special Education Director Lisa Greenberg	651-255-8857; <a href="mailto:lgreenberg@designlearn.net">lgreenberg@designlearn.net</a> ; 2233 University Ave W. Suite 450 St. Paul, MN 55114	Develop, coordinate, train and supervise the school's special education processes, due process and Total Special Education System Manual.	Assist with the development of programming for students in special education. Assist with the hiring and recruiting of Special Education staff.
Maychy Vu; School Director	651-796-4500; <a href="mailto:maychyu@hope-school.org">maychyu@hope-school.org</a> ; 720 Payne Avenue, St. Paul, MN 55130	Serves as Administrative Designee for IEP meetings; provides supervision and guidance to all staff; evaluates, hires and recruits staff; provides	Represents the school at Board Meetings.

Staff Name and Title	Contact Information (phone/email/ mailing address/office location)	Brief Description of Staff Responsibilities relating to child study procedures and method of providing special education services	Additional Information
		guidance and decision making for curriculum and programming decisions.	
Melissa Damon; Principal	651-796-4500; <a href="mailto:melissadamon@hope-school.org">melissadamon@hope-school.org</a> ; 720 Payne Avenue, St. Paul, MN 55130	Serves as Administrative Designee for IEP meetings; provides supervision and guidance to special education staff.	
Katy Snider; Special Education Coordinator	651-796-4500; <a href="mailto:katysnider@hope-school.org">katysnider@hope-school.org</a> ; 720 Payne Avenue, St. Paul, MN 55130	Provides direct and indirect services to students in special education; leads Child Study Team Meetings.	

B. Due Process assurances available to parents: HOPE Community 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) HOPE Community 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. HOPE Community 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, HOPE Community Academy informs parents of other dispute resolution processes, including at least mediation and facilitated team meetings. The fact that an alternative dispute resolution process was used is admissible in evidence at any subsequent proceeding. State-provided mediators and team meeting facilitators shall not be subpoenaed to testify at a due process hearing or civil action under special education law nor are any records of mediators or state-provided team meeting facilitators accessible to the parties.
- (7) Descriptions of the mediation process, facilitated team meetings, state complaint, and impartial due process hearings may be found in HOPE Community Academy's Notice of Procedural Safeguards, attached as Appendix D.

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

HOPE Community Academy, as a charter school, is not required to enter into interagency agreements. HOPE Community Academy will contract with various entities as needed to meet the needs of our students.

## **VI. Special Education Advisory Council**

To increase the involvement of parents of children with disabilities in district policymaking and decision making, HOPE Community Academy has a Special Education Advisory Council.

- A. HOPE Community Academy's Special Education Advisory Council is not a subgroup of an existing board/council/committee.
- B. At least half of HOPE Community Academy's Special Education Advisory Council's members are parents of students with a disability.
  - 1) The district does not have a nonpublic school located in its boundaries.

Each local council meets no less than once each year.

- C. HOPE Community Academy's Special Education Advisory Council meets at least one time per year.
- D. The operational procedures of HOPE Community Academy's Special Education Advisory Council are attached as Appendix E.



## VII. Assurances

Code of Federal Regulations, section 300.201: Consistency with State policies. HOPE Community Academy, in providing for the education of children with disabilities within its authority, 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

### HOPE Community Academy's Plan for Identifying a Child with a Specific Learning Disability

A. Definition of Specific Learning Disability: (10)(i) Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. (ii) Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage. (34 C.F.R. § 300.8(c)(10).)

“Specific learning disability” means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The disorder is:

A. manifested by interference with the acquisition, organization, storage, retrieval, manipulation, or expression of information so that the child does not learn at an adequate rate for the child's age or to meet state-approved grade-level standards when provided with the usual developmental opportunities and instruction from a regular school environment; and

B. demonstrated primarily in academic functioning, but may also affect other developmental, functional, and life adjustment skill areas; and may occur with, but cannot be primarily the result of: visual, hearing, or motor impairment; cognitive impairment; emotional disorders; or environmental, cultural, economic influences, limited English proficiency or a lack of appropriate instruction in reading or math. (Minn. R. 3525.1341, subp. 1.)

B. Criteria for Specific Learning Disability: Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage. (34 C.F.R. § 300.10.)

To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider, as part of the evaluation described in sections 300.304 through 300.306 (1) Data that demonstrate that prior to, or as part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and (2) Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.

A child is eligible and in need of special education and related services for a specific learning disability when the child meets the criteria in items A, B, and C or in items A, B, and D. Information about each

item must be sought from the parent and must be included as part of the evaluation data. The evaluation data must confirm that the effects of the child's disability occur in a variety of settings. The child must receive two interventions, as defined in Minnesota Statutes, section 125A.56, prior to evaluation, unless the parent requests an evaluation or the IEP team waives this requirement because it determines the child's need for an evaluation is urgent.

A. The child does not achieve adequately in one or more of the following areas: oral expression, listening comprehension, written expression, basic reading skills, reading comprehension, reading fluency, mathematics calculation, or mathematical problem solving, in response to appropriate classroom instruction, and either:

(1) the child does not make adequate progress to meet age or state-approved grade-level standards in one or more of the areas listed above when using a process based on the child's response to scientific, research-based intervention (SRBI); or

(2) the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, state-approved grade-level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability. The performance measures used to verify this finding must be representative of the child's curriculum or useful for developing instructional goals and objectives. Documentation is required to verify this finding. Such documentation includes evidence of low achievement from the following sources, when available: cumulative record reviews; classwork samples; anecdotal teacher records; statewide and district-wide assessments; formal, diagnostic, and informal tests; curriculum-based evaluation results; and results from targeted support programs in general education.

B. The child has a disorder in one or more of the basic psychological processes which includes an information processing condition that is manifested in a variety of settings by behaviors such as inadequate: acquisition of information; organization; planning and sequencing; working memory, including verbal, visual, or spatial; visual and auditory processing; speed of processing; verbal and nonverbal expression; transfer of information; and motor control for written tasks.

C. The child demonstrates 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 comprehension, reading fluency, mathematics calculation, or mathematical problem solving. The demonstration of a severe discrepancy shall not be based solely on the use of standardized tests. The group shall consider these standardized test results as only one component of the eligibility criteria. The instruments used to assess the child's general intellectual ability and achievement must be individually administered and interpreted by an appropriately licensed person using standardized procedures. 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 child's chronological age level.

The following option D will not be implemented unless requested by a parent;

D. The child demonstrates an inadequate rate of progress. Rate of progress is measured over time through progress monitoring while using intensive SRBI, which may be used prior to a referral, or as part of an evaluation for special education. A minimum of 12 data points are required from a consistent intervention implemented over at least seven school weeks in order to establish the rate of progress. Rate of progress is inadequate when the child's: (1) rate of improvement is minimal and continued intervention will not likely result in reaching age or state-approved grade-level standards; (2) progress will likely not be maintained when instructional supports are removed; (3) level of performance in repeated assessments of achievement falls below the child's age or state-approved grade-level standards; and (4) level of achievement is at or below the fifth percentile on one or more valid and reliable achievement

tests using either state or national comparisons. Local comparison data that is valid and reliable may be used in addition to either state or national data. If local comparison data is used and differs from either state or national data, the group must provide a rationale to explain the difference.

## Appendix B

### HOPE Community Academy's Restrictive Procedures Plan

#### Restrictive Procedures

In August of 2011, the state of Minnesota established standards regarding the use of Restrictive Procedures with students identified with disabilities in Minnesota public schools. On July 1, 2013, and May 21, 2014, amendments to Minnesota Statutes sections 125A.0941 and 125A.0942, with respect to the use of restrictive procedures on children with disabilities in Minnesota public schools went into effect.

HOPE Community Academy is committed to using positive behavioral interventions and supports to ensure that all students' needs are being met. HOPE Community Academy utilizes positive behavioral interventions to enhance academic and social behavior outcomes for all students by emphasizing the use of data for informing decisions about the selection, implementation, and progress monitoring of evidence-based behavioral practices and organizing resources and systems to improve durable implementation fidelity.

Minn. Stat. 125A.0941(d)

#### Restrictive Procedures

HOPE Community Academy intends to use only the following Restrictive Procedures: Physical Holding. Physical Holding will only be used if the student is at risk of injuring themselves or others.

HOPE Community Academy intends to use the following types of physical holding:

- Crisis Prevention Institute's (CPI) Children's Control Position
- Crisis Prevention Institute's (CPI) Team Control Position

Minn. Stat. 125A.0942, Subd. 1(1)

#### Definitions:

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

Minn. Stat. § 125A.0941(f). (Amended, 2013?)

**Emergency: A situation where immediate intervention is needed to protect a student or other individual from physical injury.** Emergency does not mean circumstances such as a student 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;
- does not respond to a staff person's request unless failing to respond would result in physical injury to the student or other individual;
- has regained control after an emergency incident has already occurred and no threat of physical injury currently exists.

Minn. Stat. § 125A.0941(b). (Amended, 2013)

**Physical Holding:** Intending to hold a student immobile or limit a student's movement, where body contact is the only source of physical restraint, and where immobilization is used to effectively gain control of a student in order to protect a student or other individual from physical injury.

Minn. Stat. § 125A.0941(c). (Amended, 2013)

The term “*physical holding*” does not mean physical contact that:

- Helps a student respond or complete a task
- Assists a student without restricting the child’s movement
- Is needed to administer an authorized health-related service or procedure
- Is needed to physically escort a student when the student does not resist or the student’s resistance is minimal
- Physical holding may not be used to punish or otherwise discipline a student.

Minn. Stat. 125A.0941(f)

**HOPE Community Academy does not use prone restraint.**

**Seclusion\*:** Confining a student alone in a room from which egress is barred. Seclusion occurs when an adult closes or locks the door, leaving a student alone in the room or preventing the student from leaving the room.

Minn. Stat. § 125A.0941(g). (Amended, 2013)

The term seclusion does not mean removing a student from an activity to a location where the student cannot participate in or observe the activity.

Minn. Stat. 125A.0941(f)

**\* HOPE Community Academy does not use seclusion.**

**Monitoring the Use of Restrictive Procedures:**

**HOPE Community Academy** monitors and reviews the use of Restrictive Procedures in the following manner:

**Documentation:** Each time physical holding is used with a student with disabilities, the staff person who implements or oversees the physical holding shall document, as soon as possible after the incident concludes but within 24 hours, the following information on the school district online custom website:

- A description of the incident that led to the physical holding
- Why a less restrictive measure failed or was determined by staff to be inappropriate or impractical
- The time the physical holding began and the time the student was released
- A brief record of the student’s behavioral and physical status

Minn. Stat. 125A.0942, Subd. 1(2)

Additional information regarding Restrictive Procedures can be found at the Minnesota Department of Education website at <http://education.state.mn.us/MDE/SchSup/ComplAssist/RestProc/>

Minn. Stat. 125A.0942, Subd. 1(2)

**Post-Use Debriefings:** Each time physical holding is used, the staff person who implemented or oversaw the physical holding shall conduct a post-use debriefing with the staff involved, ideally within 24 hours, but no later than 48 hours after the incident concludes.

The post-use debriefing will review the following requirements to ensure the physical holding was used appropriately:

- Whether the physical holding was used in an emergency.  
Minn. Stat. 125A.0942, Subd. 3 8
- Whether the physical holding was the least intrusive intervention that effectively responds to the emergency.  
Minn. Stat. 125A.0942, Subd 3(1)9
- Whether the physical holding ended when the threat of harm ended, and the staff determined that the student could safely return to the classroom or activity.  
Minn. Stat. 125A.0942, Subd. 3(2)10
- Whether the staff directly observed the student while physical holding was being used.  
Minn. Stat. 125A.0942, Subd. 3(3)11
- Whether the documentation was completed correctly.  
Minn. Stat. 125A.0942, Subd. 3(4)
- Whether the parents were correctly notified.  
Minn. Stat. 125A.0942, Subd. 2(b)12 and  
Minn. Stat. 125A.0942, Subd. 2(d)13
- Whether an IEP team meeting needs to be scheduled.  
Minn. Stat. 125A.0942, Subd. 2(c)14
- Whether the appropriate staff used physical holding.  
Minn. Stat. 125A.0942, Subd. 2(a)
- Whether the staff that used physical holding was appropriately trained.  
Minn. Stat. 125A.0942, Subd.

If the post-use debriefing determines that physical holding was not used appropriately, **HOPE Community Academy** will ensure that immediate corrective action is taken, via review of statutes on Restrictive Procedures, mandating additional training or refresher training in area of infraction, formal reprimand or application of other formal disciplinary procedures.

### **Oversight Committee:**

**HOPE Community Academy** has identified an oversight committee to undertake a quarterly review of the use of restrictive procedures based on patterns or problems indicated by similarities in the time of day, day of the week, duration of the use of a procedure, the individuals involved, or other factors associated with the use of restrictive procedures; the number of times a restrictive procedure is used school-wide and for individual students; the number and type of injuries, if any, resulting from the use of restrictive procedures; whether restrictive procedures are used in nonemergency situations; the need for additional staff training; and proposed actions to minimize the use of restrictive procedures; and includes a written description and documentation of the training staff completed under subdivision 5.

Minn. Stat. § 125A.0942, subd.1(a).

Schools annually must publicly identify oversight committee members who must at least include:

- (1) A mental health professional, school psychologist, or school social worker
- (2) An expert in positive behavior strategies
- (3) A special education administrator
- (4) A general education administrator

Minn. Stat. § 125A.0942, Subd. 1(b)

**HOPE Community Academy** oversight committee meets quarterly. The committee consists of the following members:

School Administrator: Maychy Vu

Special Education Director: Lisa Greenberg

School Social Worker: TBD

School Expert in Positive Behavior Strategies: TBD

### **Staff Training**

**HOPE Community Academy** provides a range of tiered strategies as a proactive approach to teaching positive behaviors skills, thereby reducing students' challenging behaviors and the need for the use of restrictive procedures. **HOPE Community Academy** maintains a list of trainings offered in the District each year in order to staff to meet the knowledge areas listed below, including Nonviolent Crisis Intervention and training on de-escalation techniques. The District will also maintain documentation of the staff members who attend those trainings.

**HOPE Community Academy** staff will receive training in the following skills and knowledge areas:

Crisis Prevention Institute (CPI) Nonviolent Crisis Intervention

- Alternative to Restrictive Procedures, including techniques to identify events and environmental factors that may escalate behaviors
- De-escalation Methods
- Positive Behavioral Interventions
- Standards for Using Restrictive Procedures
- Physiological and Psychological Impact of Physical Holding and Seclusion
- Recognizing the symptoms of and interventions that may cause positional asphyxia when physical holding is used

**HOPE Community Academy** staff will receive training in the following skills and knowledge areas:

Restrictive Procedures Documentation and Skills Training

- District Policies and Procedures for Timely Reporting and Documenting Each Incident Involving Uses of a Restrictive Procedure
- School-wide Programs on Positive Behavior Strategies
- Relationship Building
- Communicative Intent of Behaviors
- Monitoring and responding to a child's physical signs of distress when physical holding is being used
- Obtaining Emergency Medical Assistance

Minn. Stat. 125A.0942, Subd. 1(3) and Subd. 5

In order to be considered trained in the use of Restrictive Procedures, staff must complete training in:

- Nonviolent Crisis Intervention developed by the Crisis Prevention Institute: 8 hours of initial training; 3–4-hour refresher training annually. Refresher Training Options Include:



- Restrictive Procedures Documentation and Skills Training

A master list of staff trained in the use of Restrictive Procedures will be maintained and updated quarterly.

**Procedures to follow if a Restrictive Procedure is used:**

1. Parent Notification: School staff shall make reasonable efforts to notify the parent on the same day a restrictive procedure is used on the student, or if the school is unable to provide same-day notice, notice is sent to the parent by written or electronic means within two days (48 hours) of the procedure being used or as otherwise indicated in the student's IEP.
2. Reporting of Use of Restrictive Procedure: Either the staff person who implements or the staff person who oversees the use of a restrictive procedure shall inform the building administrator of the use of the restrictive procedure as soon as possible and shall complete the online restrictive procedures form within two days (48 hours). The restrictive procedures report form must include:
  - a description of the incident that led to the use of the restrictive procedure;
  - state why a less restrictive measure failed or was determined by staff to be inappropriate or impractical;
  - state the time the restrictive procedure began and the time the student was released from the hold; and
  - give a brief record of the student's behavioral and physical status during and after the use of the restrictive procedure.
3. Staff Debriefing after Use of Restrictive Procedure: Staff involved in the use of the restrictive procedure are expected to debrief after every use of a restrictive procedure. This debriefing could occur during completion of the online restrictive procedures reporting form.
4. Including Plan for Use of a Restrictive Procedure in Student's IEP: A student's IEP team may include a plan for using a restrictive procedure in the student's IEP but may only use the restrictive procedure in situations that constitute an emergency. If a plan is included in the student's IEP, the IEP must also indicate how the parent wants to be notified when a restrictive procedure is used. The district must review use of restrictive procedures at a student's annual IEP meeting when the student's IEP provides for using restrictive procedures in an emergency.
5. Use of Restrictive Procedure Twice in 30 Days: If a restrictive procedure is used on two separate days within 30 calendar days or if a pattern of use of the restrictive procedure emerges and the student's IEP or behavior intervention plan does not provide for using restrictive procedures in an emergency, the district must hold an IEP meeting within ten calendar days after district staff use the second restrictive procedure. The parent or the district may call this meeting after restrictive procedures have been used. At this meeting the team must:
  - Review the student's Functional Behavior Assessment (FBA);
  - Review other data connected to the behavior(s) that prompted the use of the restrictive procedure;
  - Consider developing additional or revised positive behavioral interventions and supports;
  - Consider actions that could be taken to reduce the use of restrictive procedures;
  - Consider developing a Behavior Intervention Plan (BIP) or modifying an existing BIP or consider other revisions to the student's IEP;
  - Review any known medical or psychological limitations, including any medical information the parent provided voluntarily, that contraindicate the use of a restrictive procedure; and

- Consider whether to prohibit a restrictive procedure and, if so, document any prohibition in the student's IEP.

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

Link to mental health services: <https://www.mentalhealth.gov/>

### **Prohibited Procedures**

**HOPE Community Academy** will never use the following prohibited procedures on a student:

Minn. Stat. 125A.0942, Subd. 4(1-9)

- Engaging in conduct prohibited under section 121A.58 (corporal punishment).
- Requiring a student to assume and maintain a specified physical position, activity, or posture that induces physical pain.
- Totally or partially restricting a student's senses as punishment.
- Presenting an intense sound, light, or other sensory stimuli using smell, taste, substance, or spray as punishment.
- Denying or restricting a student's access to equipment or devices such as walkers, wheelchairs, hearing aids, and communication boards that facilitate the student's functioning, except when temporarily removing the equipment or device as needed to prevent injury to the student or others or serious property damage to the equipment or device, in which case the equipment or device shall be returned to the student as soon as possible.
- Interacting with a student in a manner that constitutes sexual abuse, neglect, or physical abuse under section 626.556 (reporting maltreatment of minors).
- Withholding regularly scheduled meals or water.
- Denying access to bathroom facilities.
- Physical holding that impairs a student's ability to breathe.

**ADDENDUM A:** Forms used by HOPE Community Academy to Document the Use of Restrictive Procedures

Use of Restrictive Procedures: Physical Holding form. SpEd Forms

[https://15.spedforms.org/admin/reports/pdf\\_forms/PhysicalHoldBlank.pdf](https://15.spedforms.org/admin/reports/pdf_forms/PhysicalHoldBlank.pdf)

Staff Debriefing Meeting form. SpEd Forms

[https://15.spedforms.org/admin/reports/pdf\\_forms/staff\\_debriefing.pdf](https://15.spedforms.org/admin/reports/pdf_forms/staff_debriefing.pdf)

Use of Restrictive Procedures 2015-2016 District Summary Data form. Minnesota Department of Education

<file:///C:/Users/kathl/Downloads/Restrictive%20Procedures%20District%20Summary%20Data%20Form%20Ext%202015-16.pdf>

**ADDENDUM B: Reasonable Force Standard (MN Statute 121A.582)**

Subdivision 1. REASONABLE FORCE STANDARD.

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

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

(c) Paragraphs (a) and (b) do not authorize conduct prohibited under sections 121A.58 and 121A.67.

Subdivision 2. Civil liability.

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

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

Subdivision 3. Criminal prosecution.

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

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

Subdivision 4. Supplementary rights and defenses.

Any right or defense in this section is supplementary to those specified in section 121A.58, 121A.67, 123B.25, or 609.06, subdivision 1.

**609.06 AUTHORIZED USE OF FORCE.**

Subdivision 1. When authorized.

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

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

- (a) in effecting a lawful arrest; or
- (b) in the execution of legal process; or
- (c) in enforcing an order of the court; or
- (d) in executing any other duty imposed upon the public officer by law; or

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

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

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

(5) when used by any person to prevent the escape, or to retake following the escape, of a person lawfully held on a charge or conviction of a crime; or

(6) when used by a parent, guardian, teacher, or other lawful custodian of a child or pupil, in the exercise of lawful authority, to restrain or correct such child or pupil; or

(7) when used by a school employee or school bus driver, in the exercise of lawful authority, to restrain a child or pupil, or to prevent bodily harm or death to another; or

(8) when used by a common carrier in expelling a passenger who refuses to obey a lawful requirement for the conduct of passengers and reasonable care is exercised with regard to the passenger's personal safety; or

(9) when used to restrain a person who is mentally ill or mentally defective from self-injury or injury to another or when used by one with authority to do so to compel compliance with reasonable requirements for the person's control, conduct, or treatment; or

(10) when used by a public or private institution providing custody or treatment against one lawfully committed to it to compel compliance with reasonable requirements for the control, conduct, or treatment of the committed person.

#### 609.379 PERMITTED ACTIONS.

##### Subdivision 1. Reasonable force.

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

(a) when used by a parent, legal guardian, teacher, or other caretaker of a child or pupil, in the exercise of lawful authority, to restrain or correct the child or pupil; or

(b) when used by a teacher or other member of the instructional, support, or supervisory staff of a public or nonpublic school upon or toward a child when necessary to restrain the child from self-injury or injury to any other person or property.

## Appendix C

### HOPE Community Academy's Referral Process for Special Education

1. If the referral is from the student's parent/guardian, a special education teacher will be assigned to guide the evaluation process.
2. The team will meet with the parent/guardian within 10 days to discuss academic, behavioral, and social concerns, review any documentation/reports the parent brings forward and determine a course of action.
3. The team may determine additional in-class interventions are necessary. If so, these interventions will be implemented for a minimum of six and a maximum of eight weeks. Data will be collected and the team will reconvene to review the effectiveness of the intervention. A maximum of two evidence based interventions will be implemented. If the interventions are not effective, the team will proceed to an evaluation planning meeting.
4. If the team decides to waive the intervention(s) and to proceed with an initial evaluation, an evaluation plan will be developed and a Prior Written Notice, along with a Notice of Procedural Safeguards, will be presented to the parent/guardian. HOPE Community Academy will not proceed with an initial evaluation until it receives parental permission.
5. If the referral is from a physician, private or public programs, or health and human services agencies, the Special Ed Teacher will contact the parent to share the concern and to determine if the parent wishes to move forward with the referral.
6. If the parent does wish to move forward with the referral, the team will follow the process as outlined in items #2 and #3 above.

\*When parents request a Special Education evaluation, interventions may be determined to be unnecessary.

## Appendix D



### **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:

1. 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);
2. 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);
3. The first time you or the district requests a due process hearing in a school year, 34 C.F.R. § 300.504(a)(2);
4. 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
5. Upon your request, 34 C.F.R. § 300.504(a)(4).

#### **PRIOR WRITTEN NOTICE**

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

- the identification of your child;

- the evaluation and educational placement of your child;
- the provision of a free appropriate public education (FAPE) to your child; or
- When you revoke consent for services for your child in writing and before the district stops providing special education and related services, 34 C.F.R. §§ 300.503(a)(1)-(2) and 300.300(b)(4)(i).

This written notice must include:

1. A description of the action proposed or refused by the district, 34 C.F.R. § 300.503(b)(1);
2. An explanation of why the district proposes or refuses to take the action, 34 C.F.R. § 300.503(b)(2);
3. 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);
4. 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);
5. Sources for you to contact to obtain assistance in understanding these procedural safeguards, 34 C.F.R. § 300.503(b)(5);
6. 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
7. 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 \_\_\_\_\_

Phone \_\_\_\_\_

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 Minnesota Care for health-related services the first time, and each year, the district must inform you in writing that:

1. 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 Minnesota Care and whether those services may be billed to Medical Assistance or Minnesota Care.
2. Before billing Medical Assistance or Minnesota Care 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.
3. The district will bill Medical Assistance or Minnesota Care for the health-related services on your child's IEP. Minn. Stat. § 125A.21, Subd. 2(c)(1).
4. The district may not require you to sign up for or enroll in Medical Assistance or Minnesota Care or other insurance programs for your child to receive special education services.
5. 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.
6. The district may not use your child's benefits under Medical Assistance or Minnesota Care 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.
7. 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:

1. 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;
2. Have your representative inspect and review the records on your behalf, 34 C.F.R. § 300.613(b)(3);
3. Request that the district provide copies of your child's educational records to you, 34 C.F.R. § 300.613(b)(2); Minn. Stat. § 13.04, Subd. 3; and
4. Review your child's records as often as you wish in accordance with state law, 34 C.F.R. § 300.613(c). State law provides that if you have been shown private data and have been informed of its meaning, that data does not need to be disclosed to you for a period of 6 months unless a dispute or action is pending or new information is created or collected. Minn. Stat. § 13.04, Subd. 3.

## **Transfer of Rights**

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

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

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

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

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

## **Record of Access by Others**

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

## **Consent to Release Records**

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

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

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

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

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

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

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

### **Transfer of Records**

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

### **Destruction of Records**

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

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

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

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

### **MEDIATION**

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



any time during the mediation, you or the district may end the mediation. 34 C.F.R. §§ 300.506 and 300.152(a)(3)(ii).

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

## **FILING A WRITTEN COMPLAINT**

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

1. Be in writing and be signed by the individual or organization filing the complaint, 34 C.F.R. § 300.153(a);
2. Allege violations of state or federal special education law or rule, 34 C.F.R. § 300.153(b)(1);
3. State the facts upon which the allegation is based, 34 C.F.R. § 300.153(b)(2);
4. Include the name, address and telephone number of the person or organization making the complaint, 34 C.F.R. § 300.153(b)(3);
5. 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);
6. 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);
7. 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
8. 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:

1. The name of your child, 34 C.F.R. § 300.508(b)(1); Minn. Stat. § 125A.091, Subd. 14(b);
2. The address of your child, 34 C.F.R. § 300.508(b)(2); Minn. Stat. § 125A.091, Subd. 14(b);
3. The name of the school your child is attending, 34 C.F.R. § 300.508(b)(3); Minn. Stat. § 125A.091, Subd. 14(b);
4. 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
5. 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:

1. 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);
2. Present evidence and confront, cross-examine and compel the attendance of witnesses, 34 C.F.R. § 300.512(a)(2);
3. 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
4. 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).

## Free or Low-Cost Legal Resources

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

## COMPLAINT AND HEARINGS DATABASE

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

## CIVIL ACTION

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

## PLACEMENT DURING A HEARING OR CIVIL ACTION

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

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

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

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

If your child is placed in an interim alternative educational setting, an IEP/IIIP meeting must be convened within 10 school days of the decision. 34 C.F.R. § 300.530(e)(1). At this meeting, the team must discuss behavior and its relationship to your child's disability. The team must review evaluation information regarding your child's behavior, and determine the appropriateness of your child's IEP/IIIP 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:
  - a. The series of removals total more than 10 school days in a year, 34 C.F.R. § 300.536(a)(2)(i);
  - b. 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
  - c. 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:

1. 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
2. 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/IIIP 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/IIIP 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 E

### HOPE Community Academy's Special Education Advisory Council Operational Procedures

1. All parents of students identified with a disability are invited to participate in the Special Education Advisory Council (SEAC).
2. All Special Education Teachers will be invited; at least one will attend.
3. All General Education Teachers will be invited; at least one will attend.
4. Agenda items will be solicited from parents and staff. Additional items may be added at the meeting.
5. Meetings are held at least one time per year.
6. Meetings will be announced through written invitation/notification at least one month in advance of the meeting.
7. 50% of those in attendance will be parents of students with a disability.
8. The mission of HOPE Community Academy's SEAC is to provide a forum for parents and staff to share ideas, identify concerns, and advise the district, to improve services for children with disabilities.