Minnesota Department of Education

Q&A: Identification of Parent for Participation in Special Education Planning for a Child with a Disability

The Minnesota Department of Education (MDE), Division of Compliance and Monitoring, has developed this document to address questions raised by parents and school districts regarding identification of a parent to participate in special education planning for a child with a disability. The intention of this document is to provide helpful, general information to the public. It does not constitute legal advice nor is it a substitute for consulting with a licensed attorney. The information below should not be relied upon as a comprehensive or definitive response to your specific legal situation. This document may not include a complete rendition of applicable state and federal law.

Question 1: Who is considered a parent of a child with a disability?

Answer: A parent under the Individuals with Disabilities Education Act (IDEA) is defined as follows:

1. A biological or adoptive parent;
2. A foster parent, unless precluded under state law;
3. A relative or other individual acting in place of a biological/adoptive parent, with whom the child lives, or an individual who is legally responsible for the child's welfare;
4. A guardian who is generally authorized to act as the child's parent, or authorized to make educational decisions for the child. If the child is a ward of the state, the state is not considered a parent under IDEA; or
5. A surrogate parent appointed under Title 34, section 300.519, of the Code of Federal Regulations.

If more than one person meets the definition of a parent and attempts to act as the parent for special education purposes, then the biological or adoptive parent is presumed to be the parent under IDEA. However, if a judicial decree or order identifies a specific person or persons to act as the parent of the child or to make educational decisions on behalf of that child, then that person or persons would be considered the parent under IDEA.

Authority: 34 C.F.R. § 300.30(a) and 34 C.F.R. § 300.30(b).

Question 2: Under federal law, when would a surrogate parent be appointed to act as the parent under IDEA?

Answer: Under federal law, a school district is responsible to assign an individual to act as a surrogate parent to ensure that the rights of a child with a disability are protected under the following conditions:

1. No parent as defined in Title 34, section 300.30, of the Code of Federal Regulations can be identified;
2. The public agency, after reasonable efforts, cannot locate a parent;
3. The child is a ward of the state under the laws of that state; or
4. The child is an unaccompanied, homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act.

Authority: 34 C.F.R. § 300.519(a).

Question 3: Does any other entity have the authority to appoint an individual to act as a surrogate parent to ensure that the rights of a child with a disability are protected?

Answer: Yes. If a child with a disability is a ward of the State, a judge overseeing the child's case may alternatively appoint the surrogate parent. The appointed surrogate parent must meet the requirements in Title 34, sections 300.519(d)(2)(1) and (e) of the Code of Federal Regulations. The appointed surrogate parent would then meet the definition of parent under Title 34, section 300.30(a)(5), of the Code of Federal Regulations.

Authority: 34 C.F.R. § 300.519(c), and 34 C.F.R. § 300.30(a)(5).

Question 4: Does state law address the appointment of a surrogate parent?

Answer: Yes. Under Minnesota law, a school district is also responsible to assign an individual to act as a surrogate parent when the child's parent requests the appointment of a surrogate parent in writing. That request may be revoked in writing at any time.

Authority: Minn. R. 3525.2440.

Question 5: Under federal law, what are the duties of the school district in appointing a surrogate parent?

Answer: The duties of a school district include developing and implementing a process for determining whether a child needs a surrogate parent and assigning a surrogate parent to the child.

Authority: 34 C.F.R. § 300.519(b).

Question 5: Are there specific criteria a school district must follow when appointing a surrogate parent?

Answer: Yes. The school district's selection of a surrogate parent is based upon state law. In addition, under federal law, the school district must ensure that the individual selected as a surrogate parent:

1. is not an employee of the state educational agency (SEA), the local educational agency (LEA), or any other agency that is involved in the education or care of the child;
2. has no personal or professional interest that conflicts with the interest of the child the surrogate parent represents; and
3. has knowledge and skills that ensure adequate representation of the child.

Authority: 34 C.F.R. § 300.519(d).

Question 6: Are there state laws related to the selection of a surrogate parent?

Answer: Yes. A school district must make reasonable efforts to locate the parent of a child with a disability. Reasonable efforts may be made through documented phone calls, letters, certified letters with return receipts, and visits to the parent's last known address.

A surrogate parent may be removed by majority vote of the school board. The surrogate parent must be notified of the time and place of the meeting and the reasons for the proposed removal. The surrogate parent will be given the opportunity to be heard at that meeting. A school district may remove a surrogate parent for one of the following reasons:

1. Failure to perform the duties required in the individualized education program (IEP) team meeting and IEP process and those cited in IDEA federal statutes and regulations;
2. A conflict of interest as referenced in Title 34, section 300.515(c)(2), of the Code of Federal Regulations;
3. Actions that threaten the well-being of the assigned student;
4. Failure to appear to represent the student; or
5. The student no longer needs special education and related services.

A school district must ensure that the surrogate parent has the knowledge and skills necessary for adequate representation of the child by either making the information and training available to the surrogate parent or appointing a surrogate parent who has:

1. a knowledge of state and federal requirements related to IDEA;
2. a knowledge of district structure and procedures;

3. an understanding of the nature of the student's disability and needs; and
4. an ability to effectively advocate for an appropriate educational program for the student.

Authority: Minn. R. 3525.2435; Minn. R. 3525.2450; and Minn. R. 3525.2455.

Question 7: Do courts follow the same criteria as school districts when appointing a surrogate parent?

Answer: For surrogate parents appointed by the court for children who are wards of the state, the only requirement is that the surrogate parent must not be an employee of the SEA, LEA, or any other agency that is involved in the education or care of the child. A surrogate parent is not an employee of an agency solely because they are paid by the agency to serve as a surrogate parent.

In response to comments to the new regulation addressing wards of the state, the Office of Special Education Programs (OSEP) explained that the regulation followed the Act so as to interfere as little as possible with state practice in appointing individuals to act for the child.

> However, we would expect that in most situations, the court appointed individuals will not have personal or professional interests that conflict with the interests of the child and will have the knowledge and skills to adequately represent the interests of the child.

F. Reg. Vol. 71, page 46711. (August 14, 2006).

Authority: 34 C.F.R. § 300.519(c); 34 C.F.R. § 300.510(e); and Fed. Reg. Vol. 71, page 46711(August 14, 2006.); Letter to Thompson OSEP (September 15, 1995) 23 IDELR 890, 23 LRP 343.

Question 8: Under Minnesota law, when is a child with a disability considered a ward of the state?

Answer: Under Minnesota law, a child would be considered a ward of the state based upon a court order that transfers guardianship and the legal custody the child to the commissioner of human services.

In a juvenile court proceeding, the court may transfer guardianship and legal custody of the child to the commissioner of human services if:

1. The rights of the parents have been terminated, or
2. Both parents or the only known parent, are or is deceased and no guardian has been appointed pursuant to the Uniformed Probate Code.

Authority: Minn. Stat. § 260C.325; Minn. Stat. §§ 524.5-201-524.5-317 (Part of Uniform Probate Code).

Question 9: Can a guardian ad litem (GAL), who has been appointed in a family or juvenile proceeding, be appointed as a surrogate parent to make educational decisions on behalf of a child with a disability?

Answer: A guardian ad litem (GAL) is appointed in a family or juvenile court proceeding for the limited role of representing the best interest of the child in the court proceedings. The Minnesota rules addressing GAL responsibilities do not specifically address education.

If a child is a ward of the state, as defined under state law, and there is a court appointed guardian ad litem, the court overseeing the child's case could appoint a surrogate parent. If the GAL is not an employee of the SEA, LEA, or other agency involved in the education or care of the child, the court is not precluded from appointing a GAL as a surrogate parent.

If a school district is unable to identify a parent under Title 34, section 300.30, of the Code of Federal Regulations and determines that a surrogate parent should be appointed, the school district would need to determine if the GAL would meet the requirements for a surrogate parent. School districts should consider the GAL's role (family court custody proceedings, or child protection juvenile proceeding), whether that role would result in a conflict of interest and the availability of other individuals who meet the requirements for a surrogate parent.

Authority: Minn. Gen. R. Prac.108.01-03; Minn. Gen. R. Prac. 901-07; Minn. R. Juv. Del. P. 24.0-03; Minn. R. Adopt. P. 24.01-24.03; Minn. R. Juv. P. 26.01-05; Minn. Stat. § 518.165; Minn. Stat. § 260B.163; Minn. Stat. § 260C.163; Minn. Stat. § 260D.06; 34 C.F.R. § 300.519(c), and 34 C.F.R. § 300.30(a)(5).

Minnesota Department of Education

Q&A: Care and Treatment Transportation

The Minnesota Department of Education (MDE), Division of Compliance and Monitoring has developed this document to provide technical assistance to school districts and parents that have raised questions about Minnesota care and treatment facilities and the transportation requirements pertaining to students within the care and treatment facilities. The intention of this document is to provide helpful, general information to the public. It does not constitute legal advice nor is it a substitute for consulting with a licensed attorney. The information below should not be relied upon as a comprehensive or definitive response to your specific legal situation. This document may not include a complete rendition of applicable state and federal law.

Question 1: What facilities are considered to be care and treatment placements under the Minnesota laws?

Answer: Under the Minnesota Care and Treatment Rule (Minn. R. 3525.2325), when someone other than the district places students in the following facilities, they are considered to be placed for care and treatment:

1. chemical dependency and other substance abuse treatment centers;
2. shelter care facilities;
3. home, due to accident or illness;
4. hospitals;
5. day treatment centers;
6. correctional facilities;
7. residential treatment centers; and
8. mental health programs.

However, this list is not exclusive. When a child with a disability is placed in a foster facility, that is also considered a care and treatment facility under Minnesota statute. Therefore, if a student is placed for care and treatment by someone other than the district in a facility that is not explicitly itemized in this list found in Minnesota rule that student is not then denied the protections of the law. The rule is broadly construed to assure services to those students for whom it was intended—those who are unable to attend their regular school for medical, mental health, correctional or family situation reasons.

Authority: Minn. R. 3525.2325, subp. 1; Minn. Stat. § 125A.17.

Question 2: Is partial hospitalization considered a placement for care and treatment?

Answer: Yes. Partial hospitalization consists of multiple intensive short-term therapeutic services provided by a multi-disciplinary staff to treat the client's mental illness. These services are provided in an outpatient hospital facility or community mental health center that meets Medicare requirements to provide partial hospitalization services. Both hospital and mental health program facilities are listed as care and treatment facilities. Therefore, a student placed in partial hospitalization by someone other than the district is considered to be placed for care and treatment.

Authority: Minn. R. 9505.0370; Minn. R. 9505.0372.

Question 3: When a student is placed for care and treatment, which district is the resident district?

Answer: The district in which the student's parent or guardian resides is the resident district. If a student is homeless, the district, which enrolls the student, is the resident district.

Authority: Minn. Stat. § 125A.15; Minn. Stat. § 125A.51; Minn. R. 3525.0210, subp. 39.

Question 4: When a regular education student is temporarily placed for care and treatment in a day program, which district is responsible to provide transportation?

Answer: When a student is temporarily placed for care and treatment in a day program located in another district and continues to live within the resident district during the care and treatment, the resident district must provide necessary transportation to and from the care and treatment program for the student.

The resident district may establish reasonable restrictions on transportation, except if a Minnesota court or agency orders the student placed at a day program and the resident district receives a copy of the order; then the resident district must provide transportation to and from the program unless the court or agency orders otherwise. Transportation shall only be provided by the resident district during regular operating hours of the resident district.

Authority: Minn. Stat. § 125A.51.

Question 5: When a special education student is temporarily placed for care and treatment in a day program, which district is responsible to provide transportation?

Answer: When a special education student is temporarily placed for care and treatment in a day program located within another district and continues to live in the resident district during the care and treatment, the resident district must provide necessary transportation to and from the care and treatment program for the student.

The resident district may establish reasonable restrictions on transportation, except if a Minnesota court or agency orders the student placed at a day program and the resident district receives a copy of the order; then the resident district must provide transportation

to and from the program unless the court or agency orders otherwise. Transportation shall only be provided by the resident district during regular operating hours of the resident district.

Authority: Minn. Stat. § 125A.15.

Question 6: When a regular education student is temporarily placed in a residential program for care and treatment, which district is responsible to provide transportation?

Answer: When a regular education student is temporarily placed in a residential program for care and treatment, the district in which the student is placed must provide necessary transportation while the student is receiving instruction.

Authority: Minn. Stat. § 125A.51.

Question 7: When a special education student is temporarily placed in a residential program for care and treatment, which district is responsible to provide transportation?

Answer: When a special education student is temporarily placed in a residential program for care and treatment, the nonresident district in which the student is placed must provide necessary transportation while the student is attending the educational program.

Authority: Minn. Stat. § 125A.15.

Question 8: Which district pays for the transportation of students placed for care and treatment?

Answer: If the student is placed outside the resident district, the nonresident district may not bill the resident district for transportation costs. Transportation costs must be paid by the district responsible for providing the transportation and the state must pay transportation aid to that district.

Authority: Minn. Stat. §§ 125A.51; 125A.15.

Question 9: When a special education student is temporarily placed in a state institution, which district is responsible to provide transportation?

Answer: When a special education student is temporarily placed in a state institution, the district where the institution is located is responsible for providing transportation. Transportation costs must be paid by the district where the institution is located and the state must pay transportation aid to that district.

Authority: Minn. Stat. § 125A.16.

Minnesota Department of Education

Q&A: Personal Activity Reports (PARs) and Periodic Certifications

The Minnesota Department of Education (MDE), Division of Compliance and Monitoring, in collaboration with the Division of School Finance, has developed this document to assist school districts and parents who have raised questions about the requirement that districts maintain documentation in the form of PARs. The intention of this document is to provide helpful, general information to the school districts, charter schools, cooperatives and the public. It does not constitute legal advice, and is not a substitute for consulting with a licensed attorney. The information below should not be relied on as a comprehensive or definitive response to your specific legal situation. This document may not include a complete rendition of applicable state and federal law.

Question 1: **When does a district use the semi-annual documentation for federally funded special education personnel and when does the district need the more complex PAR?**

Answer: OMB Circular A-87 requires one of two forms be used. The first is called a "certification" and is completed at least once every six months. The second is called a personal activity report, is required at least monthly, and must coincide with pay periods. Which form is used is dependent on the employees cost objectives. See the next question.

Authority: 2 C.F.R. § 225 Appendix B (8)(h).

Question 2: **What is the agreed upon definition of a cost objective?**

Answer: A function, organizational subdivision, contract, grant, or other activity for which cost data are needed and for which costs are incurred.

Authority: 2 C.F.R. § 225 Appendix A (B)(11).

Question 3: **If an employee has various Uniform Financial Accounting and Reporting Standards (UFARS) program codes, are they required to do a PAR?**

Answer: The need for a PAR is determined based on the cost objectives of an individual, not UFARS program codes. The easiest way to determine if there is more than one cost objective is to look at how the individual is paid. Is more than one UFARS finance code used? Then a PAR is required. An example of this would be a special education teacher who spends a portion of the day working specifically on Coordinated Early Intervening Services (CEIS) in addition to their typical special education instructional time. Although both activities are funded by the Individuals with Disabilities Education Act, Part B, Section 611 funds, there are two clear cost objectives because this person is working on two

activities for which cost data are needed and for which costs are incurred separately. However, an individual may also have more than one cost objective within one UFARS finance code. This scenario is less common and may be specific to a local education agency (LEA) and the way they require their teachers to track their time.

Authority: 2 C.F.R. § 225 Appendix B (8)(h).

Question 4: Must districts maintain PARs and/or certifications for staff that are state and locally funded special education personnel?

Answer: No. The PARs and certifications required under A-87 are not required for state and locally funded special education personnel. However, the U.S. Office of Special Education Programs has indicated that staff must document time spent working in the area of special education. This documentation could include:

a. A PAR;

b. A certification;

c. Teacher's class lists;

d. Schedules of classes;

e. Timesheets; or

f. Duty rosters.

The important point to note is that this documentation must be able to substantiate that the employee provided special education and related services and the time those services were provided. Also, consider that if the school already has a PAR/certification system in place for some of their employees. It may be advantageous to continue with that system instead of developing and tracking a new system.

Authority: 2 C.F.R. § 225 Appendix B (8)(h).

Question 5: Is an electronic signature acceptable on a PAR and/or certification?

Answer: Yes.

Authority: MN Management and Budget Biweekly Time Reporting by Employees Policy PAY0016.

Question 6: If one person is providing speech therapy to both a district and a private school student, does that person have to prepare a PAR or complete a semi-annual certification?

Answer: The expenses have to be tracked separately for reporting proportionate share. Therefore, the speech therapist has two separate cost objectives. A PAR should be used.

Authority: 2 C.F.R. § 225 Appendix B (8)(h); 34 C.F.R. § 300.133.

Question 7: Are both a percentage and hourly breakdown of time necessary on a PAR, or is just one or the other acceptable?

Answer: Only one breakdown is necessary. You do not need both the percentage and the number of hours.

Authority: 2 C.F.R. § 225 Appendix B (8)(h).

Question 8: Should a PAR be completed and submitted to the payroll department after the hours are worked or after payroll is processed?

Answer: OMB Circular A-87 indicates after "pay periods" not payroll; therefore it would appear to be after the hours are worked, not the payment for services.

Authority: 2 C.F.R. § 225 Appendix B (8)(h).

Question 9: The LEA spreads payroll cost over 12 months although the school year does not include June, July, and August. Do employees paid with special education funds need to complete PARs for June, July, and August?

Answer: No. The year round contract delineates what hours and days employees are being paid for (i.e. 6 hours a day for 180 days per year). The PARs that are completed must cover that period of time for which work is completed.

Authority: 2 C.F.R. § 225 Appendix B (8)(h).

Question 10: If a special education teacher teaches several disabilities (i.e. autism, DCD, and LD), must the teacher's salary be allocated across those disabilities?

Answer: Yes. Salaries should be allocated across disabilities using the appropriate UFARS program codes. This is needed for aid calculations, data analysis and reporting purposes. However, as specified in Question 3, UFARS program code is not used to determine if a PAR or equivalent document should be used.

Authority: UFARS Manual; 2 C.F.R. § 225 Appendix B (8)(h).

Question 11: Has MDE provided guidelines and/or PAR templates for districts to use?

Answer: No. MDE has no plans to issue a PAR or certification template as districts can design a form that will have utility for their own district. As long as the requirements presented in OMB Circular A-87 are met, the form will most likely suffice.

Authority: 2 C.F.R. § 225 Appendix B (8)(h).

Question 12: Are completed PAR forms to be maintained at the district or sent to MDE?

Answer: The districts are to keep the PARs and certifications on file. Do not send them to MDE. In the event that MDE monitors your district, you will be instructed on how to submit the documentation.

Authority: 34 C.F.R. § 80.20 (b)(2).

Question 13: How long should documentation such as certifications and PARs be maintained by the district?

Answer: Federal requirements state that supporting documentation for expenditures be maintained for three years or until audited.

Authority: 34 C.F.R. § 80.42 (b)(1).

Minnesota Department of Education

Q&A: Clarification of Educational Record Definitions and Procedures As It Relates to Review Test Protocols Used in the Evaluation of a Student with a Disability

The Minnesota Department of Education (MDE), Division of Compliance and Monitoring has developed this document to provide technical assistance to school districts and parents that have raised questions about the procedures by which a parent may inspect and review and request copies of test protocols that are part of a child with a disability's evaluation or reevaluation. The intention of this document is to provide helpful, general information to the public. It does not constitute legal advice nor is it a substitute for consulting with a licensed attorney. The information below should not be relied upon as a comprehensive or definitive response to your specific legal situation. This document may not include a complete rendition of applicable state and federal law.

Question 1: How is the term "educational record" defined?

Answer: According to the Family Education Rights and Privacy ACT (FERPA), the term "education records" is defined as data directly related to a student that is maintained by an educational agency or institution or by a party acting on behalf of the local education agency or institution.

Authority: 34 C.F.R. § 99.3; Minn. Stat. § 13.32, Subd. 1.

Question 2: What is a test protocol?

Answer: A test protocol is the test instrument used to assess a student. The term commonly refers to written instructions on how a test must be administered as well as the test questions. A test protocol is an original creation of independent authors and/or organizations and may be protected by federal copyright law. Federal copyright law grants exclusive rights to the owner of a copyright to reproduce copies of the copyrighted material. Test protocols would include written test instruments used in evaluating a student for possible special education eligibility.

Authority: 17 U.S.C. § 106(1).

Question 3: When would a test protocol contain educational data?

Answer: Test protocols would only be considered educational data if a student's responses are recorded on the test protocol document and data in the document links it to that student, such as a name or student identification number. For example, a student's answer sheet, whether it is a separate document or is written into a test booklet, is considered an educational record. In contrast, a test protocol or question booklet that is separate from

the student's answers and is not personally identifiable to a particular student would not be considered an educational record.

Authority: School District U-46. 45 IDELR 74, 106 LRP 8777 (11/22/2005 Ill SEA); Letter to Mathews, 9 FAB 4, 105 LRP 58483, Family Policy Compliance Office, September 13, 2005; Letter to Anonymous, 14 FAB 32, 111 LRP 18281, Family Policy Compliance Office, August 16, 2010; Letter re: Scott City School District, 10 FAB 39, 107 LRP 47713, (FPCO 2007); Letter re: Moriah Central Sch. Dist., 8 FAB 14, 105 LRP 11195 (FPCO 2004).

Question 4: Does a parent have the right to view a student's educational record?

Answer: Yes. A local educational agency is required to allow parents to inspect and review a student's educational records that are collected, maintained, or used by that local educational agency. This would include responding to reasonable requests for explanations and interpretations of a student's written answers during a special education assessment which are not accompanied by the test protocol question booklet. It would also include inspecting and reviewing test protocols that meet the definition of an educational record.

Authority: 34 C.F.R. § 300.562(a); 34 C.F.R. § 99.10; 34 C.F.R § 300.562(b); Minn. Stat. § 13.02, Subd. 8; Minn. Stat. §§ 13.32, Subd. 3(c)(e); and 13.32, Subd. 10; Letter to Anonymous, 213 IDELR, 213 LRP 9087 (OSERS 1989); Letter to Thomas, 211 IDELR 240 (FPCO 1986).

Question 5: How can a local education agency comply with both FERPA and federal copyright laws?

Answer: It is not an infringement of federal copyright law to make copies of a copyrighted work if the purpose for copying the material is considered a fair use, as defined in Chapter 17, Section 107 of the United States Code. To determine if the reproduction is a fair use, factors to consider include the purpose of the use and the effect the reproduction will have on the document's potential market or value. In 2005, a federal court held that a test protocol containing educational data on a particular student could be subject to review and inspection and copied for parents consistent with state and federal law. This would be considered a fair use of copyrighted material, as the risk of a negative impact on the integrity of the testing instrument is minimal.

To further protect test protocol, a school district could mark or stamp the test protocol as copyrighted material and inform parents that further sharing of the test instrument could potentially be an infringement of the federal copyright law.

Authority: *See* 17 U.S.C. § 107; Newport-Mesa Unified School District v. State of California Department of Education, 371 F. Supp. 2d 1170 (US DC California, May 24, 2005); Sch. Dist. U-46, 45 IDELR 74, 9 FAB 16, 106 LRP 8777 (Ill. SEA 2005).

Question 6: What does it mean to inspect and review education records?

Answer:

A. The parent has the right to receive a response from the local education agency when a reasonable request is made for explanations and interpretations of the student's education records.

B. If a parent is effectively prevented from exercising their right to inspect and review the educational records, the local education agency must provide copies of the requested education records.

C. The parent has the right to have a representative inspect and review the student's records.

Authority: 34 C.F.R. § 300.562(b); Letter re: Scott City Sch. Dist., 10, FAB 39, 107 LRP 47713 (FPCO 2007).

Question 7: What situations would effectively prevent a parent from exercising his or her right to inspect and review the educational records?

Answer: One example is if the parent lives too far away from the local education agency to see the records in person (beyond commuting distance). Other examples could include a parent's disability or lack of transportation that would effectively prevent the parent from exercising their right to inspect and review the student's records. This determination is fact specific, and the local education agency would need to make its own determination.

Authority: 34 C.F.R. § 300.562(b)(2); Letter to Anonymous, 213 IDELR 188 (OSERS 1989; Letter to Kincaid, 213 IDELR 271 (OSERS 1989); Letter re: Scott City School District, 10 FAB 39, 107 LRP 47713, (FPCO 2007); 34 C.F.R. § 99.11.

Question 8: Does a noncustodial parent have the right to review and inspect his or her child's education records?

Answer: A noncustodial parent has the right to review and inspect his or her child's education records unless the district has been provided with evidence of a court order that specifically prohibits that parent's access to the educational records.

Authority: 34 C.F.R. § 300.562(c); 34 C.F.R. § 300.30(b)(1); 34 C.F.R. § 99.4; Minn. Stat. § 518.68; Lake Villa (IL) Sch. Dist. #41, 46 IDELR 292, 10 FAB 20, 106 LRP 60864 (OCR Midwestern Division 2006).

Question 9: Once a parent makes a request to inspect and review records, when must the local education agency respond to the request?

Answer: A local education agency must comply with the request within 10 business days of the request.

Authority: Minn. Stat. § 13.04, Subd. 3.

Question 10: If a parent is entitled to have a parent representative inspect and review the education records, can the representative obtain copies of the student's educational records?

Answer: No. IDEA provides for the inspection and review on behalf of a parent, if necessary; however, there is no corresponding right for the representative to obtain copies of the documents. The one exception under the Minnesota Government Data Practices Act (Data Practices Act) is if a parent has given written prior consent for one adult representative to attend a school conference. In that specific circumstance, the adult representative has the right to both attend the school conference and obtain copies of the student's relevant educational data.

Authority: 34 C.F.R. § 300.562(b)(3); 34 C.F.R § 99.10(d); Letter to Longest, 213 IDELR 173 (OSEP 1988); Minn. Stat. § 13.32, Subd. 10a.

Question 11: If a parent has the right to inspect and review education records, including a test protocol that meets the definition of educational data, does the parent also have the right to request copies of those records?

Answer: Yes. Minnesota law provides additional rights beyond those in FERPA regarding access to educational records. Under Minnesota law, a parent has the right to request to inspect their child's educational record and may request copies of the educational records of their child with a disability. One exception set forth in the Data Practices Act is personnel, licensing, or academic examination. This would include state assessments administered for graduation purposes. This exception is not applicable to test protocols used to determine a student's eligibility for special education, as they are not considered an academic examination

Authority: Minn. Stat. § 13.32, Subd. 10; Minn. Stat. § 13.34.

Question 12: Does the Data Practices Act contain any other provision related to the review and inspection and reproduction of educational data related to a student with a disability?

Answer: Yes. The Data Practices Act does not limit the frequency in which a parent can inspect the educational records of their child with a disability. An agency or institution cannot charge a

fee to a parent or guardian to retrieve the child's educational record. The agency or institution can charge a fee that reflects the costs of reproducing the records except when to do so would impair the ability of the child's parent or guardian, or the child who has reached the age of majority, to exercise their right to inspect and review those records.

Authority: Minn. Stat. §13.32, Subd. 10; Minn. Stat. § 13.04, Subd. 3.

Question 13: Who has authority to enforce the FERPA and IDEA regulations?

Answer:

A. Special education complaints can be filed with the Minnesota Department of Education (MDE) for violations of special education law, which would include title 34, section 300.562, of the Code of Federal Regulations . Further information can be found on the MDE website: www.education.state.mn.us/MDE/SchSup/SpecEdComp/ComplMonitor/Comp/index.html; 651-582-8689; email: mde.compliance-monitoring@state.mn.us.

B. Complaints regarding the enforcement of the Family Education Rights and Privacy Act (FERPA) can be filed with the Family and Compliance Office at the US Department of Education. www2.ed.gov/policy/gen/guid/fpco/index.html; 800-872-5327.

C. The Information Policy and Analysis Division of the Minnesota Department of Administration issues advisory opinions related to Chapter 13 compliance issues. www.ipad.state.mn.us/docs/opreqdp.html; 651-296-6733/800-657-3721/fax: 651-205-4219; email: info.ipad@state.mn.us.

D. The Minnesota Office of Administrative Hearings handles expedited data practices complaints. www.oah.state.mn.us/X-MGDPA/index.html.