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RECENT DECISIONS AND TRENDING ISSUES IN SPECIAL EDUCATION

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I. INTRODUCTION

This presentation will cover recent court and complaint decisions in the area of special education. It will also address other up and coming issues in special education that may be ripe for a lawsuit or complaint in the near future.

II. INDEPENDENT EDUCATIONAL EVALUATIONS

A. Legal Standards

1. "If a parent requests an independent educational evaluation, the public agency may ask for the parent's reason why he or she objects to the public evaluation. However, the public agency may not require the parent to provide an explanation and may not unreasonably delay either providing the independent educational evaluation at public expense or filing a due process complaint to request a due process hearing to defend the public evaluation." 34 C.F.R. § 300.502(b)(4).

2. 34 C.F.R § 300.502(e)

(1) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the public agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.

(2) Except for the criteria described in paragraph (e)(1) of this section, a public agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

B. Review of *Complaint Decision File 24-170C on behalf of L.L.B. from Delano 0879-01*, Case No. A24-1182 (Minn. Ct. App. April 21, 2025)

1. **Facts:** The student was evaluated in January 2022 and continued to be eligible for special education and related services. The district proposed an IEP derived from the results of that evaluation, and the parents affirmatively consented to the proposed IEP and a subsequent IEP in February 2023 based on the same evaluation. In total, the district proposed, and the parents provided either express or passive consent, to five total IEPs derived from the January 2022 evaluation. In February 2024, the parents asserted for the first time that they disagreed with the January 2022 evaluation and requested an IEE at public expense. The district refused the parents' IEE request, asserting that the parents had not expressed disagreement with the January 2022 evaluation; that the January 2022 evaluation was appropriate at the time it was completed; and that the district was not required to defend an evaluation that was over two years old.

2. **MDE Complaint, Investigation, and Decision**: The parents filed a complaint with the MDE alleging that the district failed to appropriately respond to an IEE request. The parents asserted that they met the precondition necessary to establishing the right to an IEE: disagreement with a district-conducted evaluation. The parents asserted it did not matter that the district evaluation was conducted over two years prior. The parents argued that the district's response to the IEE request was inappropriate because it did not select one of two options: (1) provide the IEE at public expense; (2) defend the appropriateness of the evaluation at a due process hearing under34 C.F.R. § 300.502(b)(1).

The district disagreed, citing a similar 2019 MDE Complaint Decision (Complaint Decision 19-032C (Jan. 11, 2019)) where the MDE embraced a district not selecting one of the two options when the parent used the IEE request as a "bargaining tool" when negotiating services (not based on a genuine disagreement with the prior evaluation).

When the complaint was filed, the MDE investigator had one phone call with the district's director of special education. The MDE investigator did not interview the parents, nor any relevant district staff as part of its investigation. Specifically, the MDE investigator did not seek to answer the question of whether the parents genuinely disagreed with the January 2022 evaluation. The MDE concluded that the district violated 34 C.F.R. § 300.502 when it failed to either (1) request a hearing to show that its evaluation was appropriate or (2) ensure than an IEE was provided at public expense.

3. **Minnesota Court of Appeals**. The district appealed the MDE's complaint decision to the Minnesota Court of Appeals. The Minnesota Court of Appeals reversed the MDE's decision on appeal for multiple reasons. First, the district asserted that the MDE's decision was arbitrary because it failed to investigate whether the parents actually "disagreed" with the January 2022 evaluation. A student's changed circumstances after multiple years, for example, do not reflect genuine disagreement with a state evaluation. The Minnesota Court of Appeals agreed and reversed the MDE's decision as arbitrary because it failed to conduct a balanced investigation.

   The district also argued that the MDE failed to follow its prior 2019 complaint decision in which it embraced a third option for responding to an IEE request. The Court of Appeals agreed that the MDE failed to file its prior complaint decision and noted the "striking similarities" between the facts of the 2019 complaint decision and this one (yet MDE reached a different result). The Court of Appeals noted that the MDE concluded a third option for responding to an IEE request was permissible in Complaint Decision 19-032C. Compl. Dec. File 24-170C, A24-170C, at 16 (Minn. App. Apr. 21. 2025) (recognizing that in Complaint Decision 19-032C "the district had a third option [for responding to an IEE] where the parents waited for over two years to request an IEE" which is "refuse to pay for the IEE on the basis that the parents must first consent to a reevaluation").

4. **What Are the Implications?**

   a. If a student's IEE needs a change, the district should consider reevaluating the student.

   b. When a district is presented with an IEE request on a two-year-old or more evaluation, a district may be able to refuse that IEE request and assert its right to reevaluate first.

   c. MDE's failure to conduct a balanced investigation of a complaint may be an appealable issue, particularly when credibility is crucial.

5. Update Since Minnesota Court of Appeals Decision.

a. Remand to MDE. The Minnesota Court of Appeals remanded the complaint to MDE for further consideration of the complaint, in light of the Court's decision. On remand, MDE distinguished its 2019 complaint decision, explaining that in the 2019 complaint decision, it determined the parents did not actually disagree with the district's evaluation and were simply using the IEE process as a bargaining tool. MDE also noted that it did not create a third option for responding to an IEE request in its 2019 complaint decision and that its 2019 complaint decision was not legally binding precedent. In addition, MDE conducted further investigation of the complaint. Following this investigation, MDE concluded that the parents "continued" to disagree with the evaluation since it was conducted. Based in part on the Parents' prior consent to prior written notice on the IEPs based on the evaluation and the lack of any stated disagreement with the evaluation until more than two years later, the district disagreed. Ultimately, MDE concluded, again, that the District violated IDEA when it refused to grant the parents' request for an IEE and failed to initiate a due process hearing to defend the January 2022 evaluation.

b. District's Second Appeal. In August, the District filed a second writ of certiorari to challenge the MDE's decision on remand. The second appeal is currently pending (A25-1336).

III. LOCATION OF SERVICES

A. Legal Standards

1. "For those children with a disability under sections 125A.03 to 125A.24 who attend nonpublic school at their parent's choice, a district may provide special instruction and services at the nonpublic school building, a public school, or a neutral site other than a nonpublic school . . . . The district shall determine the location at which to provide services on a student-by-student basis, consistent with federal law." Minn. Stat. § 126C.19, subd. 4(b).

B. Complaint Decision 24-022C

1. Facts: The student attended a nonpublic religious school located within the district. The district was responsible for providing specialized deaf and hard of hearing (DHH) services to the student under her IEP. During the 2022-2023 school year, the district provided services to the student via site visits to the nonpublic school she attended by an itinerant teacher. During the student's March 2023 IEP revision, the district proposed two alternative arrangements, the provision of DHH services in a virtual setting, and an arrangement in which the student would instead be transported from the

nonpublic school to a nearby district school to receive DHH services. Both parties agreed that virtual services were not appropriate, based on the student's lack of progress when virtual services were employed during COVID. The parents objected to the proposal to transport the student to a district school to receive DHH services.

Following the meeting, the district sent a proposed IEP and PWN to the student's parents which did include the provision of services at a district school, with the district transporting the student from and back to her nonpublic school. The proposal specified that transportation would take place before school, after school, or during the student's study hall so as not to reduce her instructional time. The parents objected to the prior written notice and requested a conciliation conference. The district held a conciliation conference and, following that conference, sent an additional PWN and a copy of the previously proposed IEP. The PWN proposed to provide 4 DHH instruction sessions at the nonpublic school in the following year, followed by a transition to services provided at the district school for the remainder of the year. The parents again objected and requested a conciliation conference.

The district held a second conciliation conference, and thereafter provided a PWN with a "final offer of services" which maintained the change in the student's service location, at the district's school with district transportation. The PWN offered three schedule options to the parents, each of which specifically explained how they would avoid disrupting the student's existing instructional schedule. The parents again objected and requested a conciliation conference. The district declined the parents' third request for a conciliation conference and provided its rationale on the provision of services at the district school. After a further exchange of emails, the district remained firm in its commitment to change the location of services.

In August of 2023, leading up to the 2023-24 school year, the parents provided the district with a letter from a medical provider recommending that the student's DHH services remain at the nonpublic school. The IEP team met August 31, 2024, and following this meeting, the district provided a PWN memorializing that it had seriously considered the recommendations of the parents and medical providers, but that DHH services would be provided at the district's schools, with district transportation. After some additional email correspondence between the parties, the parents filed a due process complaint alleging that the district improperly changed the student's educational placement and failed to provide conciliation conference memorandums following conciliation conferences on two occasions.

2. **Issue:** Did the district make an individualized determination regarding the location of special education services to be provided to the student?

3. **Decision:** As to the location of services, the MDE pointed out that the parents agreed with all aspects of the district's proposed IEP other than the location for services. Minn. Stat. § 126C.19, subd. 4(b) provides that "For those children with a disability under sections 125A.03 to 125A.24 who attend nonpublic school at their parent's choice, a district may provide special instruction and services at the nonpublic school building, a public school, or a neutral site other than a nonpublic school… The district shall determine the location at which to provide services on a student-by-student basis, consistent with federal law." The MDE concluded that the district properly made a determination on the location of services based on the needs of the individual student, not the rote application of a blanket policy, and accordingly found no violation of IDEA in the district's determination of the location of services.

4. **What Are the Implications?**

   a. When deciding location for nonpublic students, districts must conduct an individualized assessment based on the student's needs and circumstances.

   b. But ultimately, the district has the final say in location.

C. Complaint Decision 25-038C

1. **Facts:** The student engaged in two incidents of inappropriate sexual conduct with other students on special transportation during September 2024. In response, student was suspended for fifteen consecutive days, and the district ultimately transferred the student to another high school within the district to avoid ongoing contact between the student and the two peers. The parent objected to the transfer.

2. **Issue:** Did the district fail to consider the parent's concerns regarding the student's behavioral needs when deciding to change the location of student's services?

3. **Decision:** MDE determined that the district did not fail to consider the parent's concerns regarding the change of location of services. MDE noted that the student's IEP team met multiple times following the September 2024 incidents and, during those meetings, considered the parent's concerns.

4. **What Are the Implications?**

   a. While a parent may disagree with the service location, as long as the district considers the parent's input about the location of services, the district gets to determine location.

IV. CONCILIATION CONFERENCES

A. Legal Standards

1. "In addition to federal law requirements, a prior written notice shall: (1) inform the parent that except for the initial placement of a child in special education, the 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 (2) state that a parent who objects to a proposal or refusal in the prior written notice may: (i) request a conciliation conference under subdivision 7 or another alternative dispute resolution procedure under subdivision 8 or 9; or (ii) identify the specific part of the proposal or refusal the parent objects to and request a meeting with appropriate members of the individualized education program team." Minn. Stat. § 125A.091, subd. 3a.

2. "A parent must have an opportunity to request a meeting with appropriate members of the individualized education program team or meet with appropriate district staff in at least one conciliation conference if the parent objects to any proposal of which the parent receives notice under subdivision 3a. A district must hold a conciliation conference within ten calendar days from the date the district receives a parent's request for a conciliation conference. Except as provided in this section, 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." Minn. Stat. § 125A.091, subd. 7.

3. "[P]arents must have an opportunity to meet with appropriate district staff in at least one conciliation conference if the parents object to any proposal or refusal of which the parents are notified under Minnesota Statutes, section 125A.091, subdivision 2. If the parent refuses efforts by the district to conciliate the dispute with the district, the district is deemed to have satisfied its requirement to offer a conciliation conference." Minn. R. 3525.3700, subp. 1.

B. Let's Revisit Complaint Decision 24-022C

1. **Issue:** Did the district fail to hold proper conciliation conferences after the parents requested conciliation conferences?

2. **Decision:** On this issue, MDE found that the district had violated the IDEA

by failing to provide conciliation conference memorandums within five days of a conciliation conference hearing. Also, MDE held that the district was not in violation when it refused to hold additional conciliation conferences on the location topic past the second conference, because the parents were not requesting a conference on a topic related to identification, evaluation, or the educational placement of the student, nor the provision of FAPE to the student.

3. What Are the Implications?

a. Conciliation conference memorandums must be provided to parents within five school days after the conciliation conference.

b. There is a point at which a district may refuse to hold additional conciliation conferences.

C. Complaint Decision 25-222C

1. Facts: The parents alleged that the district failed to hold conciliation conferences as requested by the parents on two occasions. During the second half of the 2024-2025 school year, the parents repeatedly requested that the student receive special education services through a private provider outside of the school day. The district repeatedly denied the parents' request. The parties held two conciliation conferences on this issue and eventually participated in mediation.

During mediation, the parties reached an agreement resolving some of their disputes. As part of the agreement, the parents were to submit their proposed plan for the student's executive functioning support and ESY services to the district, and the district was to draft and propose a new IEP incorporating those matters. The parents' plan again included the student receiving services from an outside provider. In response, the district sent a proposed IEP and prior written notice rejecting the parents' proposed plan to utilize an outside service provider. The parents objected to the proposal and requested a conciliation conference.

The district declined to convene a conciliation conference, explaining that, unless the parents were willing to discuss options other than using an outside service provider, further meetings would not be productive. Along with this email, the district also issued another IEP proposal and prior written notice, specifically to incorporate ESY services with which the parents agreed. The parents again objected and again requested a conciliation conference. The district again declined to meet because the district felt it had considered the parents' request on multiple occasions and, thus, satisfied its burned to hold a conciliation conference.

2. **Issues:** Did the district violate special education law when it declined the parents' requests for conciliation conferences on an issue that the parties had already conciliated?

3. **Decision:** MDE determined that the district was in violation. MDE explained that, despite the district's belief that the parents would make the same requests during subsequent conciliation conferences, the parties had not conciliated the district's April 22, 2025 proposal for executive functioning services or the district's May 2, 2025 proposal for ESY services. MDE noted that the district was required to meet with the parents at least once to consider their concerns and the student's needs. The district also needed to provide a conciliation conference memorandum outlining its final proposal.

4. **Squaring This Decision with Complaint Decision 24-022C?**

   a. While a district may be able to refuse further conciliation conferences, this likely is not the case when the district is making new proposals that have not been conciliated before (even if some of the underlying issues have been conciliated).

V. SERVICE ANIMALS AND RELATED SERVICES

A. *Kimball Area Public Schools, Independent School District No. 739 v. I.R.M. by and through his parent, L.M., No. 23-CV-2637* (NEB/LIB), 2025 WL 1172007 (D. Minn. 2025)

1. **Facts:** The student qualified for special education and related services under a primary disability category of Autism Spectrum Disorder. Among other supports, student's IEP provided him with 1:1 paraprofessional support at all times while in school. Outside of school, student used a service dog to assist him by preventing elopement, by interrupting and redirecting student when student's sensory issues were triggered by events or objects in his environment, and by assisting student with transitions. The parent requested a meeting with district staff ahead of the 2022-2023 school year to discuss the prospect of student's service dog attending school with him. The school's principal initially expressed no concerns about the dog's presence. However, after meeting with the parent, the district informed parent that the dog could only attend school if the family provided a handler. The parent responded by contending that student's 1:1 paraprofessional could serve as the dog's handler, but the district refused based on district policy.

   The parent subsequently requested three accommodations from district staff: holding the dog's leash while student transitioned through the school, tethering and untethering the dog from student when necessary (such as for gym class or to use the restroom), and prompting student to cue the dog with

commands as needed. The district denied the parent's request. Shortly after, the parent began attending school with the student as the dog's handler.

In November 2022, the parent requested that student's IEP be amended to include the aforementioned accommodations. The district convened two IEP meetings to consider the parent's request but ultimately declined.

The district then completed a re-revaluation of student and subsequently proposed a new IEP that also did include accommodations related to the service dog. The parent objected to the IEP and filed a due process complaint. Following the hearing, the ALJ found that the use of the service dog was required for the district to provide student with a FAPE, that a handler for student's service dog was a "related service" as described by 34 C.F.R. § 300.34, and that student's proposed IEP did not provide student with a FAPE. The district appealed the decision to federal court.

2. **Issue:** Did the Administrative Law Judge err in deciding that (1) access to student's service dog was part of a FAPE, (2) a handler for the service dog was a "related service" as described by 34 C.F.R. § 300.34, and (3) student's proposed IEP did not provide student with a FAPE?

3. **Decision:** The federal district court reversed the ALJ's decision, finding that the proposed IEP, including its lack of accommodations related to the dog, was appropriate. With respect to the service dog, the court determined, based on the evidence in the record which predominantly indicated that the assistance provided by the dog to the student at school was minimal at best and the dog's presence in school was often detrimental to the student, the dog was not necessary to support the student, particularly because the minimal supports provided by the dog could be provided by district staff.

4. **What Are the Implications?**

a. A district is not required to tailor the IEP, or the services offered under an IEP, to the parents' preference. It needs to develop and implement an IEP that is reasonably calculated to enable the student to make academic progress.

b. A district's determinations with respect to educational programming are owed significant deference by reviewing courts: "This Court will not substitute its "own notions of sound educational policy for those of the school authorities." *Kimball* at 11. When a district makes determinations about a student's needs based on the experience of its staff members and observation of the student, and develops an IEP reasonably calculated to assist the student in making progress based on these assessments, a court will most often uphold the plan.

VI. CBD OIL AND RELATED SERVICES

A. Complaint Decision 25-023C

1. **Facts:** The student's resident district placed him in the district for transition programming during the 2023-2024 school year. During an IEP team meeting to discuss transition, the parent requested that school staff administer Charlotte's Web Oil, a form of CBD oil, as a medication to improve his ability to engage in educational programming. District policy did not allow for possession or use of medical cannabis, which included CBD products, on school grounds. The district sent a prior written notice declining to administer Charlotte's Web Oil to student on the basis of district policy and because the non-FDA approved oil, which was not prescribed by a doctor, presented potential risks. In addition, the district determined it could implement the student's IEP without administering the oil.

On September 25, 2023, the parent objected and requested a conciliation conference. The district scheduled a conciliation conference to discuss this. The district again declined to make an exception to its policy at the conference. However, it did state that it would allow the parent or person designated by the parent to administer the oil at a designated part of the building not owned by the district. On October 12, 2023, the parent again objected and requested a conciliation conference. The district held a second conciliation conference on November 3, 2023, and following that conference, again declined the parent's renewed request to have district staff administer the oil during the school day. The parties then participated in mediation, during which, the district maintained its position regarding administration of the oil by district staff but reiterated that parent or her designee could administer the oil to the student.

In December of 2023, the IEP team met to review and revise the IEP. The parent again requested the inclusion of the administration of Charlotte's Web Oil by a staff member in the IEP. The district again declined the parent's request by noting the parent or a designated person could administer the oil to the student at a designated location. The parent initially objected to the prior written notice and again requested a conciliation conference, but she later retracted her request and eventually consented to the IEP.

2. **Issue:** Must a district require its staff to administer cannabinoid-derived substances as a special education related service if such products violate the district's reasonable policies?

3. **Decision:** MDE found that the district did not violate special education law when it rejected the parent's request for staff to administer the oil at school. MDE quoted several Eighth Circuit decisions that generally stand for the

proposition a district does not have to do whatever a parent requests. And MDE noted that the district considered the parent's input and concerns on multiple occasions. Finally, MDE explained the district provided a "reasonable rationale" for rejecting the parent's request, offered alternative solutions, and complied with the procedural requirements when denying the request.

4. What Are the Implications?

a. This complaint decision serves as a good reminder that a district can reject a parent's request. Parent requests are not determinative. The IEP team must consider the request in light of the student's individual needs and the district's FAPE obligation.

b. While a district may reject a parent's request, it must actually consider the request and will likely need to provide a reasonable rationale for the denial.

c. Always document the denial of a request with an appropriate prior written notice.

VII. RESPONDING TO STUDENT BEHAVIORS

A. Legal Standards

1. "The IEP Team shall . . . in the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior." 20 U.S.C. § 1414(d)(3)(B)(i).

2. "The district must hold a meeting of the individualized education program or individualized family service plan team, conduct or review a functional behavioral analysis, review data, consider developing additional or revised positive behavioral interventions and supports, consider actions to reduce the use of restrictive procedures, and modify the individualized education program, individualized family service plan, or behavior intervention plan as appropriate. The district must hold the meeting: within ten calendar days after district staff use restrictive procedures on two separate school days within 30 calendar days or a pattern of use emerges and the child's individualized education program, individualized family service plan, or behavior intervention plan does not provide for using restrictive procedures in an emergency; or at the request of a parent or the district after restrictive procedures are used. The district must review use of restrictive procedures at a child's annual individualized education program or individualized family service plan meeting when the child's individualized education program or individualized family service plan provides for using restrictive

procedures in an emergency." Minn. Stat. § 125A.0942, subd. 2(c).

B. Complaint Decision 25-159C

1. Facts: The student qualified for special education and related services under the category of EBD and received his services in a small special education classroom setting. The student's IEP included two social emotional goals, among other goals, and 1:1 paraprofessional support for the entire school day. The IEP also included numerous behavioral supports as accommodations and a Behavior Support Plan (BSP).

During the 2024-2025 school year, the student began exhibiting increasingly aggressive behaviors at school. In September of the 2024-2025 school year, the student became elevated in gym class, used inappropriate language toward another student, and refused to leave the room unless two preferred male behavior support personnel were called. District staff moved the student to a different gym class in response. Following this incident, later the same month, student became agitated in his replacement gym class, and district staff employed a two-person transport, a two-person standing hold, and a supine hold in order to prevent student from engaging in dangerous behavior, including the removal of a banister from a stairwell, fighting a peer, and punching and kicking district staff.

After this incident, the district began providing the majority of the student's educational services in a separate space with one-to-one staff and without any peers. The district continued to provide all the student's direct instruction minutes and related services in the separate space. The student still attended two classes with other students. District staff established with the student that he could return to regular classes when he was able to be in class with a specific peer without making unsafe, inappropriate comments.

In October, district staff again used a physical hold with the student, in response to an incident where the student became escalated before a gym class and punched two staff members in the head, broke two exit signs, pulled off a stairway railing, and eloped from campus. The student was suspended for one day as a result of this conduct. The district held a suspension re-entry meeting to discuss the use of physical holds and adjustments to the student's BSP. District staff were updated on the most successful interventions when student started exhibiting behaviors. However, the district did not review the student's functional behavioral analysis (FBA), or revise the student's BIP or IEP. The district also returned the student to the one-to-one educational setting for three days following this incident.

Shortly after winter break in January 2025, the student antagonized a peer in a hallway, obtained scissors, and began destroying district property,

including a keyboard and mouse for a smartboard. The incident led to the student shoving two staff and attempting to elope, at which point a physical hold was used. The district responded by again returning the student to the one-to-one educational setting through February 3, 2025. This change in the student's placement was communicated to the student's parent. In communication with the district, the parent disagreed with the change, characterizing it as "isolation."

During an IEP team meeting latter in January, the district proposed a modified shortened school day due to the student's increasing school resistance and behavioral escalations. The parents agreed to this change. However, following the change, the student struggled to attend school through February. In March, the district proposed a reevaluation, but before the reevaluation could be completed, the student began attending another district.

2. **Issue:** Did the district appropriately plan for and respond to the student's behavioral needs, specifically by using other strategies (i.e. school discipline and removals, unilateral changes of placement, and restrictive procedures) in lieu of developing an appropriate IEP and/or BSP for the student?

3. **Decision:** MDE concluded that the district violated certain special education laws by failing to conduct periodic reviews to review and revise the student's IEP and/or BSP, as appropriate; failing to review the student's Functional Behavioral Assessment (FBA), or consider developing additional or revised positive behavioral interventions and supports to address the student's behavior; failing to address the student's anticipated behavioral needs and consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior; and failing to ensure each staff member was informed of their specific responsibilities related to implementing the student's IEP. MDE also found that the district complied with the law in only using restrictive procedures when an emergency existed.

4. **What Are the Implications?**

a. When a student's behaviors impact the student's ability to participate in the general education setting, the district should consider convening an IEP team meeting in order to discuss any change in placement that may be necessary to implement the student's current IEP.

b. For students with frequent behavioral incidents, communication with the IEP team and parents to discuss updating a student's BSP/BIP is advisable.

c. Frequent use of restrictive procedures may also warrant revising a student's IEP or BSP/BIP.

C. Is a Special Education Evaluation Necessary? Let's Discuss Complaint Decision 25-251C

1. **Facts:** The student open enrolled in the district in kindergarten as a general education student. In seventh grade, the student began exhibiting behavior issues, primarily related to class attendance. The student also engaged in some common middle school behaviors, like roaming the hallways with friends and disrupting other classes, and attention seeking behaviors, like making controversial comments in class. Prior to seventh grade, student had not exhibited these behaviors. The student did not exhibit any academic issues, scoring above average in standardized tests and earning passing grades in his classes. The student was referred to the district's interdisciplinary team meeting on four occasions, but the team never felt it was necessary to refer the student to the child study team for a possible special education evaluation. The district ultimately dropped the student from open enrollment due to the student's attendance issues. The parent then filed a complaint with MDE alleging that the district failed to evaluate the student for special education.

2. **Issue:** Did the district fail to identify the student as a student in need of special education services?

3. **Decision:** MDE concluded that the district was not in violation, noting the district followed its child find procedures by referring the student to the interdisciplinary team meetings. The interdisciplinary team ultimately determined it was not necessary to refer the student to the child student team because the student's behaviors were typical for the student's age and because the student did not demonstrate any academic needs.

4. **What Are the Implications?**

a. Behavioral issues may not always mean a special education evaluation is needed.

b. Have established child find procedures – and then follow them!

VIII. COMPARABLE SERVICES

A. Legal Standards

1. "In the case of a child with a disability who transfers districts within the

same academic year, who enrolls in a new school, and who had an IEP that was in effect in the same State, the local educational agency shall provide such child with a free appropriate public education, including services comparable to those described in the previously held IEP, in consultation with the parents until such time as the local educational agency adopts the previously held IEP or develops, adopts, and implements a new IEP that is consistent with Federal and State law." 20 U.S.C. § 1414(d)(2)(C)(i)(I).

B. Complaint 25-098C

1. **Facts:** The student transferred into the district in late October of 2024. The student had an IEP from her prior district, which included direct services for speech, social skills, and academic skills. The district offered the parents a "welcome meeting" when the student transferred into the district, which was intended to offer the parent an opportunity to discuss the student's special education service, but the parent declined. The parent subsequently alleged that the district "never offered a transition plan meeting related to [the student and student's sibling's] IEP, only asked about their allergies and what they like to eat and would be reaching out [to] the previous teacher at the [previous] school."

   When the student started attending, the district began providing student with direct services in the areas of speech, social skills, reading/writing, and math. The district provided the same service minutes in speech and academic skills (reading/writing and math) but provided 10 fewer service minutes in the area of social skills because the district wanted the student to participate in a small group with their peers and then transition with those peers to class.

   In November, the district proposed an IEP that largely memorialized the comparable services the district had been providing but also included a slight decrease in the frequency of speech services. At that time, the parent raised concerns about the reduction in social skills minutes and speech. In December, the district proposed a new IEP that increased social skills services but maintained the reduction in direct speech services. The parent raised concerns about transitions, which the district addressed through a new IEP proposal. Parent ultimately consented to this proposal.

   The district continued to press the change in speech language services, however, arguing that district uses a model in which direct speech/language related services are provided for three weeks, and indirect speech/language related services—such as collaboration with general education teachers, observation, or data collection—are provided during the fourth week each month. The parent also requested services to assist the student's focus and attentiveness, which the district included.

2. Issues

a. Did the district provide the student with services comparable to the student after the student transferred into the district and while the district developed a new IEP for the student?

b. Did the district consider the parent's concerns and the student's individual needs when developing a new IEP for the student?

3. Decision: MDE determined that the district provided comparable services to the student as required under IDEA, despite the slight decrease in speech and social skills services. MDE noted that the district offered to meet with the parent as part of the transfer process and consulted with the parent regarding the student's services until the parties could reach an agreement on a new IEP. With respect to the new IEP, MDE determined it was appropriate. MDE also found that the district addressed the parent's concerns when developing the IEP.

The parent submitted a similar complaint about a sibling of the student, and MDE reached the same decision.

4. What Are the Implications?

a. "Comparable services" does not necessarily mean the same exact services. Districts may need to, and can, adjust services to fit their service model.

b. Exact service minutes are not necessarily determinative.

c. It is important to consult with the parent regarding comparable services and, to the extent possible, address the parent's concerns about the services.

IX. OUT-OF-FIELD PERMISSION

A. Legal Standards

1. Federal Law. Federal law establishes requirements for teachers to be qualified to teach special education.

a. Typical Certification. Under federal law, each person employed as a public school special education teacher in a Minnesota elementary school, middle school, or secondary school must: (1) have obtained full Minnesota certification as a special education teacher, or passed Minnesota's special education teacher licensing examination, and

hold a license to teach in Minnesota as a special education teacher; (2) not have special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and (3) hold at least a bachelor's degree. See 34 C.F.R. § 300.156(c)(1).

In guidance to State Directors of Special Education, the U.S. Department of Education, Office of Special Education Programs, issued a Memorandum on October 4, 2022 (OSEP 22-01), clarifying that State education agencies "may not waive the special education or related services personnel certification or licensure requirements on an emergency, temporary, or provisional basis."

b. **Alternative Qualification Under 34 C.F.R. § 300.156(c)**. A teacher is also considered qualified to teach special education if that teacher is participating in an alternate route to special education certification program under which the teacher:

i. Receives high-quality professional development that is sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction, before and while teaching;

ii. Participates in a program of intensive supervision that consists of structured guidance and regular ongoing support for teachers or a teacher mentoring program;

iii. Assumes the functions as a teacher only for a specified period of time not to exceed three years; and

iv. Demonstrates satisfactory progress toward full certification as prescribed by the State.

2. State Guidance

a. **"The board must issue an out-of-field permission upon request by the designated administrator of the hiring district.** The applicant must initiate the application process, and the hiring district must show: (1) the applicant holds a valid Tier 2, 3, or 4 license; (2) the applicant holds a license other than for a related services professional under parts 8710.6000 to 8710.6400; (3) the applicant holds a bachelor's degree if required by statute or rule to teach the field for which the out-of-field permission is sought; (4) the applicant approves the request; (5) the district will provide professional development, mentorship, or other supports for the applicant in any content area assigned to an out-of-field permission; and (6) the position was posted for at least 15 days on the board-approved

statewide job board. The hiring district does not need to post the position on the board-approved statewide job board when: (a) the assignment is a full-time equivalency of 0.25 or less; or (b) the applicant is enrolled in and making meaningful progress, as defined by the provider, in a teacher preparation program aligned to the assignment." Minn. R. 8710.0320, subp. 2.

b. **MDE Memorandum.** On April 29, 2025, the MDE issued a guidance memorandum stating: "Without participation in a program that leads to obtaining certification as a special education teacher or a program that provides an alternate route to special education teacher certification under Minnesota law, a teacher who holds an OFP is not qualified to teach special education in Minnesota."

c. **Basis for MDE's Conclusion**. An OFP does not lead to obtaining certification as a special education teacher in Minnesota and is not recognized as an alternate route to certification as a special educator in Minnesota. The MDE's memorandum states:

> An example of a teacher who holds an OFP and is also participating in a program that leads to full Minnesota certification as a special education teacher, is when the teacher is obtaining a degree or certification in special education at a college and a) receives high-quality professional development that is sustained, intensive, and classroom- focused in order to have a positive and lasting impact on classroom instruction, before and while teaching; b) participates in a program of intensive supervision that consists of structured guidance and relate ongoing support for teachers or a teacher mentoring program; c) assumes the functions as a teacher only for a specified period of time not to exceed three years; and d) demonstrates satisfactory progress toward full certification as prescribed by the State.

B. Complaint Decision 25-197C

1. **Facts**: The district assigned the student a case manager who held a license in elementary education and received an OFP for special education from PELSB for the 2024-2025 school year. The case manager was not enrolled in a special education program or otherwise making progress toward obtaining full state certification as a special education teacher. But the district provided numerous supports to the case manager, including a special education teacher as a mentor, ongoing coaching and consultation from a special education administrator, and specific special education training.

2. **Issue**: Did the district fail to provide the student with services in conformity with the student's IEP when the district assigned a teacher with an OFP in

special education, but who had not obtained full state certification as a special education teacher, to provide services to student?

3. **Decision**: MDE determined that the district violated IDEA when it assigned a teacher with an OFP in special education, who had not obtained full state certification to teach special education, to provide services to the student. While MDE acknowledged that the district was providing a mentor, coaching, and training to the teacher, MDE took the position that an OFP is not an alternative route to certification.

4. **What Are the Implications?**

   a. Even if PELSB may issue an OFP for a teacher to teach special education, MDE likely will not consider the teacher qualified to teach special education under IDEA.

   b. MDE wants licensed special education teachers providing services to students. See Complaint Decision 25-058C.

X. QUESTIONS?