

Questions and Answers: Public School District Responsibilities to Provide Free Appropriate Public Education (FAPE) for Nonpublic School Students

The Minnesota Department of Education (MDE), Division of Compliance and Assistance, has developed this document to provide technical assistance to parents and school districts that have questions regarding students who are attending nonpublic school in Minnesota and are also eligible for special education and related services. Minn. Stat. §§ 120A.22, subd. 5 and 125A.18. 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 rendition of applicable state and federal law.

Question 1: What is a nonpublic school?

Answer: Under Minnesota law, a nonpublic school includes any school that is not a public school, where a student that is a resident of Minnesota can attend school and meet compulsory instruction requirements. This includes private school, a church or religious organizations, and home school.

Authority: Minn. Stat. § 123B.41, subd. 9.

Question 2: What is the obligation of Minnesota public school districts to provide special education and related services and procedural due process rights to nonpublic school students?

Answer: The public school district where the nonpublic school is located is obligated to provide a FAPE to nonpublic school students. Minnesota law extends the same procedural due process rights to Minnesota nonpublic school students as those given to public school students.

Authority: Minn. Stat. §§ 125A.18 and 125A.03(a)(2) and (4). *See also* Special Sch. Dist. No. 1, Minneapolis Pub. Schs. v. R.M.M., 861 F.3d 769, 774 (8th Cir. 2017) (holding that “a plain reading of Minnesota state law shows that private school students have a right to a FAPE.”).

Question 3: In addition to providing FAPE, what are the other primary responsibilities of the district where the nonpublic school is located?

Answer:

- Identify students with disabilities attending the nonpublic school.

Authority: 34 C.F.R. § 300.131.

- Conduct reevaluations of students previously identified for special education services and attending the nonpublic school.

See Minn. Stat. § 125A.03(a).

- Determine the location of special education and related services, which may be at the nonpublic school building, a public school, or at a neutral site other than a nonpublic school, consistent with federal law.

Authority: 34 C.F.R. §§ 300.115 and 300.116, and Minn. Stat. § 126C.19, subd. 4(b).

[See also Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schools, U.S. Department of Education, Office of Special Education and Rehabilitative Services \(OSERS\), page 24, \(Rev. Apr. 2011\).](#)

- Engage in a consultation process during the “design and development of special education and related services” for the students.

Authority: 34 C.F.R. § 300.134.

For more information about the consultation process, [see Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schools, U.S. Department of Education, Office of Special Education and Rehabilitative Services \(OSERS\), pages 8-10, \(Rev. Apr. 2011\).](#)

Question 4: At parent request, can a district provide less service than necessary for the nonpublic school student to receive a FAPE?

Answer: No. Just as the law requires for public school students, the district must *provide* all services necessary for FAPE. It is not sufficient only to make a FAPE *available* for the nonpublic school student.

See Special Sch. Dist. No. 1, Minneapolis Pub. Schs. v. R.M.M., 861 F.3d 769, 776 (8th Cir. 2017) (“[B]ecause state law defines special instruction and services as a FAPE, . . . districts [are required] to provide a FAPE to nonpublic school students.” The court in *R.M.M.* also expressly rejected the school district’s argument that “Minnesota law requires only that public schools make a FAPE available to private school students.” (emphasis in original)).

Question 5: What can a district do if a nonpublic school parent only wants some special education and related services, and those services alone would not provide a FAPE?

Answer: Again, as in the case with public school students, the district must provide FAPE, despite parental preference to the contrary. When faced with a parent’s anticipated or actual refusal to consent for a proposed IEP, in addition to conciliation conference requirements, the district must consider alternative dispute resolution processes available, facilitated team meetings, mediation, and/or a due process hearing.

See Special Sch. Dist. No. 1, Minneapolis Pub. Schs. v. R.M.M., 861 F.3d. 769 (8th Cir. 2017) (impartial due process hearings are available to resolve disputes involving the provision of FAPE to nonpublic school students).

Question 6: Can a parent revoke consent to all special education and related services for their nonpublic school student?

Answer: Yes, if the parent chooses to do so. The revocation of parental consent must be in writing and the district must provide prior written notice.

Authority: 34 C.F.R. §§ 300.9 and 300.300.