
State and Federal Requirements

CHAPTER 2

As shown in the previous chapter, the number of children served in special education and the cost for these services have generally increased over the last several years. Although the reasons behind these increases are varied and complex, policy makers and special education administrators have pointed to state and federal regulations as factors that drive up cost or incidence. This chapter examines the legal requirements that school districts must meet to receive state and federal funds to serve students with disabilities. Identifying which regulatory provisions can be specifically attributed to state rather than federal mandates may be useful to state policy makers as they seek ways to control special education costs in the future. Specifically, our research focused on the following questions:

- **What does the federal Individuals with Disabilities Education Act (IDEA) require of Minnesota school districts?**¹
- **How do Minnesota laws and rules differ from what is minimally required by the federal government?**

To answer these questions, we compared federal laws and regulations on special education to state laws and rules in this area. We also talked with special education administrators and staff, representatives from various advocacy groups, and staff from the Minnesota Department of Children, Families & Learning and the U. S. Department of Education. Finally, we reviewed the literature on special education.

We focused on the major differences between the federal Individuals with Disabilities Education Act and various state laws and rules for special education. We did not examine what is required under other related federal laws such as the Rehabilitation Act of 1973 (Section 504) and the Americans with Disabilities Act of 1991 that may give special education students and students who do not qualify for special education but who have a disability further rights. Also, we did not examine federal court rulings, complaint decisions, policy letters issued by the federal government, or additional requirements that school districts may have adopted. Finally, this analysis does not evaluate the cost or quality of special education services, the effectiveness of the various federal and state requirements that school districts must meet, or school district compliance.²

¹ P. L. 94-142.

² The Office of Monitoring and Compliance in the Department of Children, Families & Learning routinely monitors school district compliance with state and federal special education regulations.

Overall, we found that the federal government lays out broad requirements regarding special education eligibility, parent rights, individual education plans that include appropriate related services, and educational services in the least restrictive environment. In contrast, the state determines specific entrance and exit criteria for disability groups and due process procedures while local school districts determine the amount and type of instruction and related services students may receive. Our analysis showed that Minnesota policy makers have adopted additional or more specific state requirements that: extend special education to more children than required under federal law, implement a multi-faceted due process system, lay out specific deadlines for school districts, establish some maximum student/teacher caseloads, and impose additional paperwork requirements related to delivering special education services.

MAJOR FEATURES OF SPECIAL EDUCATION LAW

The Individuals with Disabilities Education Act guarantees all children with disabilities a free, appropriate public education. According to federal regulations, this means special education and related services that: (a) are provided at public expense, under public supervision and direction, and without charge, (b) meet state and federal standards, (c) include preschool, elementary, and secondary school education, and (d) are provided according to a written individual education plan.³ An appropriate education means that the individual educational needs of children with disabilities are being met as adequately as the needs of children without disabilities. This includes not only their academic needs, but their social and developmental needs as well.

As indicated in Chapter 1, states are not specifically required to participate in IDEA, although they are still obligated under the Fourteenth Amendment to the U.S. Constitution to provide children with disabilities a free, appropriate public education. States that choose to participate in IDEA receive federal funds to help them serve children with disabilities 6 through 17 years of age.⁴ Participating states are not required to serve children with disabilities from birth through 5 years of age or from ages 18 through 21 if their own laws preclude it. However, states that serve these children receive additional federal funds. We found that:

- **Minnesota has chosen to participate in all facets of IDEA and receives federal funds to help ensure that all children with disabilities from birth through 21 years of age are provided a free, appropriate public education.**

Minnesota has participated in IDEA for students ages 6 to 21 years since the 1976-77 school year, the first year of implementation. Since then, the Legislature has expanded its special education program to include both younger and older children. In 1985, school districts were required to serve children with disabilities

³ Throughout the rest of this chapter, we use the term special education to also include related services.

⁴ All states have chosen to participate in IDEA.

Federal law guarantees all children with disabilities a free, appropriate public education.

ages 3 through 5 years and, in 1987, children with disabilities from birth through 2 years of age were added. Finally, in 1994, special education eligibility was extended to students until their twenty-second birthday.

Below we describe what the federal government minimally requires of school districts at each step in the process of providing special education services to children with disabilities ages 3 through 21.⁵ We then examine how state laws and regulations impose additional requirements on school districts, focusing on the major differences between IDEA and state requirements. It should be noted that children with disabilities receive special education in a complex and highly regulated environment, often with diverse agencies and service providers involved. In addition, federal and state reimbursement systems require significant documentation from school districts. To further complicate matters, local mandates may place more requirements upon special education administrators and staff.

Identification and Referral of Children

Identification, the first step in the process of providing special education to children, refers to the continuous and systematic efforts of school districts to identify, locate, and screen children, birth through 21 years of age, who might need special education. Referral is the formal, ongoing process that school districts use to review information about children suspected of having a disability and needing special services and sending them to special educators to determine program eligibility.

School districts must identify all children who might need special education.

Federal Requirements

The federal government requires each school district to have procedures that ensure that all children living in their jurisdiction who have a disability, regardless of age or severity, and who need special education are identified, located, and assessed for eligibility. Although IDEA does not require that school districts *actually provide* special education services to all children under 6 years of age or over 17 years, districts must locate them. This “child find” process must also include a way of determining which children are currently receiving needed services and which are not.

Additional State Requirements

Although the federal government requires that districts have procedures in place to identify all children who might need special education, it does not explain what these systems should look like. For the most part, state regulations specifically impose two additional requirements upon school districts, as shown in Figure 2.1.

⁵ We excluded children with disabilities from birth through 2 years of age (infants and toddlers) because state and federal requirements as well as services for this age group are different than they are for older children. In addition, infants and toddlers make up less than one percent of special education enrollment.

Figure 2.1: Identification and Referral: Additional State Requirements

School Districts Must:

- Have regular education teachers try two prereferral interventions before referral for special education eligibility testing.
- Conduct referral reviews before testing students for special education eligibility.

Source: Office of the Legislative Auditor review of state and federal regulations.

First, the state has implemented some procedures to help divert some children from special education by better meeting their needs in the regular education system. For example:

- **Minnesota law requires that regular education teachers try at least two different instructional strategies or alternatives in their classroom before referring students to special education for eligibility testing.**

These procedures, called prereferral interventions, may include trying special work groups, using different materials or teaching methods, or using specific rewards or incentives for students who are having problems in the regular classroom.

Second:

- **Minnesota regulations require that school districts specifically review all special education referrals before testing students for eligibility.**

Through this process, known as the referral review, districts look at students' performance in nine areas to help decide whether special education testing is warranted and what types of tests should be used. The nine areas are: intellectual functioning, academic performance, communications, motor ability, vocational potential, sensory status, physical status, emotional and social development, and behavior and functional skills. In addition, district staff must look at whether the prereferral interventions that the regular education teacher tried were adequate. Finally, districts use the referral review process to select who should be involved in the formal assessment of the child to determine special education eligibility, including those who may implement a program for that child. Upon the recommendation of a 1994 legislative task force, school districts have not had to document these reviews beginning with the 1995-96 school year.⁶

Assessment for Eligibility

Assessment is the process of using formal and informal procedures to determine students' eligibility for special education. Formal procedures include medical

⁶ Minnesota Department of Education, *Task Force on Education for Children with Disabilities Final Report* (St. Paul, January 1994).

diagnoses as well as norm-referenced, validated tests such as the Stanford-Binet Intelligence Test and the Woodcock Johnson Psychoeducational Battery. Informal procedures include classroom observations, behavior checklists, and personal interviews. Results from these procedures should reflect students' present levels of performance and are to be used as the basis for later educational planning.

Federal Requirements

Federal regulations require that students be tested for special education eligibility before receiving special education. Districts use the assessment process to determine whether students have a disability and whether they are eligible to receive special education services. Simply having a disability does not automatically qualify a student for special education. According to federal regulations, children with disabilities means those with: mental retardation, hearing impairments including deafness, speech or language impairments, visual impairments including blindness, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, specific learning disabilities, deaf-blindness, or multiple disabilities, and who, because of these impairments, need special education. While federal regulations define each of these disabilities, they do not specify the exact criteria that must be met to qualify.

As discussed earlier, states need not serve children with disabilities ages 3 through 5. When states elect to serve this group, they must serve all such children with disabilities and may further elect to serve children in this age group who are experiencing developmental delays. Similarly, providing early intervention services to children birth through 2 years of age who have a developmental delay or a diagnosed physical or mental condition that is likely to result in a developmental delay is optional.

Once referred to special education, multidisciplinary teams that include at least one teacher or other specialist who is knowledgeable about students' suspected disabilities determine whether they are eligible for special education. For children suspected of having a learning disability, the team must include their regular education teacher and at least one person qualified to conduct individual diagnostic examinations, such as a school psychologist, speech-language pathologist, or a remedial reading teacher.

Special education assessments must cover all areas related to a child's suspected disability. Assessment teams must select and administer valid assessment materials that are not culturally or racially discriminatory and are in students' native language. Trained personnel must administer the tests. No single procedure, such as an intelligence test, can be used to determine eligibility or an appropriate education program.

According to federal regulations, districts must notify parents "a reasonable amount of time" before formally assessing their children. Parents must consent in writing the first time that their child is assessed for special education. If they refuse to consent, districts cannot override their decision without obtaining the approval of an impartial hearing officer through a formal hearing. Once a child has

Special education students must be reassessed at least once every three years.

received special education, parents need not specifically consent to later assessments (referred to as reassessments, which must occur at least once every three years). In addition, school districts must reassess students whenever their parents or the students themselves (if they are over 18 years of age) request it. Districts cannot refuse these requests without initiating an administrative hearing first.

Special education assessments are generally done at the school district's expense. Parents who disagree with the district's assessment may obtain an independent one at the district's expense. If the district does not want to pay for an independent assessment, it must initiate an administrative hearing where a hearing officer decides who will pay for it.

Federal regulations require that district staff write assessment summary reports for children suspected of having a learning disability. As we saw in Chapter 1, students with learning disabilities made up the largest share of the special education population in fiscal year 1996--about 38 percent. Thus, they probably comprise the largest proportion of annual assessments. Reports on these students must document: (a) whether the child has a learning disability and the basis for that determination; (b) the relevant behavior observed in the child and the relationship of that behavior to academic functioning; (c) any educationally relevant medical findings; (d) the existence of a severe discrepancy between intellectual ability and achievement -- the main criterion for a learning disability; and (e) the effects of economic, cultural, or environmental disadvantage on the child. Team members must certify in writing that the report reflects their conclusions; dissenting members must each submit a separate statement.

Additional State Requirements

As shown in Figure 2.2, Minnesota has adopted various assessment provisions beyond those that are required by the federal government. For example, federal regulations generally do not contain specific deadlines for school districts. However, our analysis showed that:

- **Minnesota regulations contain specific deadlines that school districts must meet when assessing students and notifying parents about assessment plans.**

For example, when parents request that their child be assessed for special education eligibility, districts must notify parents of their decision within 10 school days after receiving their request. Assessments of students who have never received special education before (referred to as initial assessments) must be completed within 30 school days of parental consent. Districts must complete all other assessments within 30 school days after they receive parents' consent or after the 10 day response time has elapsed.

In addition:

Figure 2.2: Assessment: Additional State Requirements

School Districts Must:

- Respond to parents' request for assessment with 10 days.
- Conduct assessments within 30 days of parental consent.
- Assess transition needs by age 14 or grade 9, which comes first.
- Write assessment summaries for all students tested for special education eligibility.
- Include behavior intervention component in assessment, when appropriate.
- Assure that all special education children from birth through 21 years of age meet state eligibility criteria.
- Document each case where the eligibility criteria are overridden.
- Adhere to state exit criteria for students who leave special education.
- Write exit summaries for some special education students.

Source: Office of the Legislative Auditor review of state and federal regulations.

- **Minnesota rules require that districts assess certain “transition” needs of special education students two years earlier than the federal government.**

Transition needs refers to special services that are designed to move special education students out of secondary school into other activities like postsecondary education, employment, adult services, independent living, or community participation. According to state regulations, districts must conduct, as part of the assessment process, a multidisciplinary assessment of secondary transition needs by age 14 or grade 9, whichever comes first, as opposed to age 16 in federal regulations. Areas of assessment must be relevant to students' needs and may include work, recreation and leisure, home living, community participation, and postsecondary training and education opportunities. In contrast, federal regulations do not specifically require districts to assess students' transition needs, although these needs must be addressed later when individual education programs are developed.

In addition, we found that:

- **Minnesota has chosen to provide special education to more groups of children than minimally required by the federal government.**

As discussed earlier, Minnesota has chosen to serve all children with disabilities from birth through 21 years of age. In addition to serving children ages 3 through 5 who have specific disabilities or conditions known to lead to disabilities, the state has elected to provide special education to children in this age group who have substantial developmental delays.

Federal regulations set forth broad definitions of nine disabling conditions which could qualify children for special education. We found that:

- **With one major exception for serious emotional disorders, Minnesota has adopted definitions for disability categories that are largely consistent with federal definitions.**

The federal definition of serious emotional disorders excludes children who are socially maladjusted and focuses solely on children with serious emotional problems. However, the state's definition includes children who have sustained disorders of conduct or adjustment when it adversely affects educational performance. In Minnesota's regulations, this disability category is called emotional or behavioral disorders. It is not possible to determine how many more students Minnesota may have chosen to serve through special education because the eligibility criteria do not require diagnosing or distinguishing between emotional and behavioral disorders. Also, some professionals have argued that there is no practical way to separate emotional problems from behavioral problems.

State regulations set forth special education eligibility criteria.

Federal regulations generally leave it up to individual states to determine the specific criteria that a child would have to meet to qualify for special services.⁷ As we discussed in Chapter 1, simply having a disability does not necessarily make a child eligible for special education. Until the 1991-92 school year, Minnesota did not have statewide eligibility criteria. School districts could use either the eligibility guidelines that the Department of Education had developed or they could develop their own criteria. As might be expected, eligibility varied widely around the state.⁸ To increase consistency, the 1989 Legislature required that the Department of Education develop and the State Board of Education adopt statewide eligibility criteria for special education.⁹ Our analysis showed that:

- **Minnesota regulations require that students who receive special education services meet the eligibility criteria for at least one of 13 special education categories.**

For example, federal regulations do not establish criteria to help school districts identify students with mental impairments, but simply defines the disability to mean "subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior."¹⁰ In contrast, the state's entrance criteria for mental handicaps further require that such students (a) have an intelligence quotient below 70, and (b) perform at or below the 15th percentile on certain behavior measures, such as literacy and vocational competency.

As noted earlier, federal regulations set forth general entrance criteria for learning disabilities, but not for other disabilities. They require that students with learning

⁷ Federal regulations set forth entrance criteria for learning disabilities only.

⁸ For greater detail, see: Minnesota Office of the Legislative Auditor *Evaluation of Special Education* (St. Paul, 1984).

⁹ *Minn. Laws* (1989), Chap. 329, Art. 3, Sec. 1. The Department of Education has since been renamed the Department of Children, Families & Learning.

¹⁰ 34 CFR 300.7 (b) (5).

disabilities meet two criteria: (1) they do not achieve commensurate to their age and ability in certain areas, such as oral expression, basic reading skills, or mathematics calculation, and (2) they exhibit a severe discrepancy between achievement and intellectual ability in one of these areas that is not due to some other disability or environmental, cultural, or economic disadvantage. Minnesota's regulations are more specific in that they require a severe discrepancy at least 1.75 standard deviations below the mean for other students of the same age. They also require the assessment team to have enough assessment data to show that a student with a learning disability has an "information processing condition" that results in certain behaviors, such as poor organization or memory skills, in a variety of settings.

The state's criteria for early childhood special education extends eligibility to children through 6 years of age as opposed to 5 years of age under federal regulations. This permits the state to provide special education services to 6 year olds who are developmentally delayed or have a medical condition that hinders normal development, such as fetal alcohol syndrome and maternal drug use, in addition to those identified as having a specific disability.

In addition, state regulations set forth eligibility criteria for specially designed physical education programs for special education students who cannot participate in regular physical education programs. To be eligible, students must meet the criteria for one of the state's disability categories and have a substantial delay or disorder in physical development. Regular education students with conditions such as obesity or temporary illnesses or injuries are not eligible for these physical education programs.

Minnesota regulations permit school districts to override the state's eligibility criteria on a case-by-case basis. Special education directors must record each time that they permit students to receive services even though they have not met the state's eligibility criteria. They must document why the eligibility criteria yielded invalid results and what data were used instead to determine eligibility. Team members who do not agree with the override must sign statements that explain why they disagree. According to data collected by the Task Force on Education of Children with Disabilities, school districts seldom use this process.¹¹

Unlike federal regulations, state regulations set forth general criteria for leaving special education. According to state rules, special education must be discontinued under the following circumstances: students have met their individual education plan goals and objectives and can succeed in regular education or community programs without special education; the medical disease or condition has been corrected; the physical or other health impairment no longer adversely affects educational performance; students have successfully completed either district or IEP graduation requirements; or they are 22 years of age.

Although we did not examine whether state regulations *should* exceed federal requirements, we did find that state regulations require more paperwork of school

State regulations determine which students are eligible for special education services, but school districts can override eligibility criteria on a case-by-case basis.

¹¹ Minnesota Department of Education, *Task Force on Education for Children with Disabilities II Final Report* (St. Paul, January 1995), 11.

districts than federal regulations alone.¹² For example, as we discussed earlier, the federal government requires districts to write assessment summaries whenever students are tested for a learning disability. We found that:

- **State regulations go considerably beyond federal provisions by requiring districts to write assessment summaries for all students tested for special education eligibility.**

In 1995, the State Board of Education amended the content of assessment summaries to make them less repetitive and to reduce districts' paperwork. Although these summaries are not as specific as those required by the federal government for learning disabilities, they must include: assessment results and interpretations, students' present levels of performance in the areas assessed, eligibility status, names and titles of assessment team members, and report date. As we discuss later in Chapter 3, almost two-thirds of special education directors who we surveyed in 1996 said that paperwork involved some or much wasteful or unnecessary spending in their district. As we noted in Chapter 1, districts assessed 5,725 students who did not qualify for special education during fiscal year 1995 and another 256 who qualified but were not receiving services.

In addition, our analysis showed that:

- **State regulations require that assessment teams specifically analyze students' negative or offensive behavior whenever certain regulated procedures to change students' behavior may be used.**¹³

Under certain circumstances, district staff may use certain "behavior intervention" techniques to try to teach students to use appropriate behavior in place of offensive or dangerous behavior. These techniques include using manual, mechanical, or locked restraints, time outs for seclusion, and temporarily delaying or withdrawing food or water. Assessment teams must analyze the purpose, effect, and seriousness of the offending behavior and document that they have ruled out any treatable cause for it, such as a medical or health condition.

Finally:

- **Minnesota regulations require that school districts write exit summaries for some students who leave special education and return full time to regular education.**

These summaries must indicate whether students achieved their latest individual education plan goals or objectives, their most recent assessment results, and any recommendations about future needs. Recently, the state has reduced its requirements in this area. Before the 1994-95 school year, state regulations required that

¹² The 1994 report of the Task Force on Education for Children with Disabilities made numerous recommendations to reduce some of the paperwork that is required of school districts. Most of these recommendations were adopted for the 1995-96 school year. See: Minnesota Department of Education, *Final Report* (1994).

¹³ The 1989 Legislature directed the State Board of Education to adopt a behavior intervention policy to prevent abuse of school children.

school districts conduct follow-up reviews at least one year after students leave special education and return to regular education full-time. These reviews had to be done at least 12 months after special education services were discontinued to determine if school progress was satisfactory. Since the 1995-96 school year, state rules simply permit students to be readmitted to special education programs within 12 months of exiting without having to go through the prereferral and assessment processes if they have been recently tested and current performance data are available.

Finally, federal regulations require that students receiving special education be assessed at least once every three years. To help reduce needless testing, state regulations were amended in 1995 to require that, if intelligence test results from the two previous reassessments are consistent and valid, then reassessing intelligence is not necessary. However, districts must still reassess students in other areas, such as achievement.

**Special
education
students must
have individual
education plans.**

Individual Education Plans

Individual education plans (IEPs) refer to special education students' personalized, written educational plans that are developed in team meetings, using data from the assessment process. They include, among other things, individual goals and objectives for each student and the specific special education services that they will receive.

Federal Requirements

School districts are responsible for initiating and conducting team meetings to develop, review, and revise special education students' IEPs. Generally, at least four individuals should be present at team meetings: one or both parents; the child, if appropriate; the child's teacher; and another district staff person qualified to provide or supervise special education and authorized to commit district resources. If the district is developing its first IEP for a student, either a member of the assessment team or another member of the IEP team who is knowledgeable about the test procedures used and the results obtained must be present. Others may be invited to attend meetings at either the district's or parents' discretion.

If neither parent can attend, the district must obtain their input in other ways, for example through individual or conference telephone calls. Meetings can be conducted without parents present when districts are unable to convince them to come. In these cases, districts must keep records of their attempts to arrange meetings at mutually agreed upon times and places. These records may include detailed listings of telephone calls made or attempted and their results; visits to parents' homes and their results; and correspondence.

When districts expect to discuss students' transition needs, they must invite the students to the meeting as well as representatives of other agencies that might provide or pay for training or other transition services. If students cannot attend, districts must consider their interests and preferences. If invited agencies cannot

Individual education plans are developed in team meetings.

attend, districts must obtain their participation in other ways, for example, conference telephone calls.

According to federal regulations, school districts must hold team meetings to develop IEPs within 30 calendar days after determining that special education is needed. After that, districts must initiate and conduct meetings to review each student's IEP at least once a year. More IEP meetings are required under certain circumstances. For example, if other agencies do not provide agreed-upon transition services, districts must call a meeting to identify other strategies for meeting transition objectives and, if necessary, revise the IEP.

According to the federal government, IEPs must be written at team meetings and districts cannot come to an IEP meeting with one already prepared. Furthermore, they must be implemented as soon as possible after being developed. These plans must include:

- (a) A statement about the child's present level of educational performance.
- (b) Annual goals and short-term instructional objectives that focus on offsetting or reducing the problems caused by the child's disability.
- (c) Criteria and evaluation procedures and schedules for determining, at least annually, whether short-term instructional objectives are being met.
- (d) The special education and related services to be provided and the extent to which the child can participate in regular education programs.
- (e) Projected dates for initiating services and the anticipated duration of those services.
- (f) For students who are at least 16 years of age, needed transition services, including, if appropriate, a statement about each public agency's responsibilities.

In addition, IEPs that deal with transition must indicate whether services are needed in each of the following areas and how those determinations were made: instruction, community experiences, and employment and post-school adult living objectives and, if appropriate, the acquisition of daily living skills and functional vocational assessment. The Individuals with Disabilities Education Act suggests that statements about needed transition services should include commitments by participating agencies to meet any financial responsibilities that they may have. Nothing in federal regulations relieves participating agencies of the responsibility to provide or pay for any transition services that they would otherwise provide to students with disabilities who meet their eligibility criteria.

Additional State Requirements

Figure 2.3 summarizes the major ways in which Minnesota's special education laws and rules require more of school districts than federal regulations. As shown:

Figure 2.3: Individual Education Plan: Additional State Requirements

School Districts Must:

- Hold at least two IEP meetings yearly, and more under certain circumstances.
- Expand IEP meetings to include more people, under certain circumstances.
- Appoint IEP case managers.
- Address transition needs and graduation requirements by age 14 or grade 9, whichever comes first.
- Include conditional intervention procedures in IEPs when appropriate.
- Send parents a copy of their child's IEP whenever there are significant changes.

Source: Office of the Legislative Auditor review of state and federal regulations.

- **Minnesota regulations require more frequent IEP meetings than federal regulations.**

Whereas federal regulations call for at least one annual meeting to develop a student's IEP, Minnesota regulations require districts to hold one annual meeting to develop the IEP and another meeting during the year to review it. In addition, IEP meetings must be held whenever districts use emergency interventions to protect someone from physical injury or emotional abuse or to prevent property damage twice in one month. Certain student discipline measures require more meetings. For example, IEP meetings must be held within five days of students' suspension, as we discuss later.

We found that Minnesota regulations also place more requirements on the composition of the IEP team than do federal regulations. According to state regulations, whenever students are taught by a multidisciplinary team, the team member licensed in the student's primary disability must participate in developing and reviewing the IEP. Districts must designate an IEP team member as IEP manager to coordinate the delivery of services and be parents' primary contact. In addition, the team must include the following persons:

- (a) When conditional procedures are being considered, one team member knowledgeable about relevant ethnic and cultural issues;
- (b) When appropriate, someone with the same minority or cultural background or who is knowledgeable about the student's cultural or racial background or disability; and
- (c) When districts' request one, a county representative to help develop a joint IEP for a student who may need transition services or is eligible for services from other agencies.

Also, we found that:

- **District IEP meetings must address some subjects earlier than the federal government requires while addressing other matters not required by the federal government at all.**

For example, state regulations require that transition services be addressed in IEPs for all students by grade 9 or age 14, whichever comes first. The federal government requires transition planning to begin at least by age 16, but encourages districts to begin the process sooner. Also, in Minnesota, IEPs must address high school graduation requirements by grade 9 or age 14, and annually thereafter by indicating which courses are appropriate for students, which require modification, and which are inappropriate.

In addition, Minnesota requires districts to document what aversive techniques may be used to change special education students' offensive or dangerous behavior, when warranted. These procedures, referred to as conditional interventions, can only be used if they are part of a student's IEP or in certain emergencies.¹⁴ Before using these techniques, the IEP team must: identify the frequency and severity of behavior being targeted; identify at least two positive interventions used and the effectiveness of each; and design and implement conditional interventions based upon the student's present levels of performance, needs, goals, and objectives. The team must document the results of these techniques in the IEP. Furthermore, districts must have policies related to conditional interventions that include ongoing personnel development activities in this area, documentation procedures regarding their use, and procedures for reviewing emergency situations when conditional interventions are used. Finally, Minnesota requires that IEPs: indicate whether students need paraprofessional services and their responsibilities; document which team members attend IEP meetings; address Braille proficiency for students who are blind; and indicate students' present levels of performance in the nine areas discussed earlier.

When school districts propose to significantly change students' IEPs, they must send a copy of the current IEP and any proposed changes to the parents as part of the notification process. State regulations define a significant change to mean that: IEP goals have been completed or need to be revised; a specific service needs to be added or deleted; the educational setting, time needed to accomplish goals, or time spent with students who do not have disabilities needs to be changed; or conditional intervention is needed.

Finally, we found that:

- **In developing a student's individual education plan, Minnesota regulations permit school districts to consider cost in choosing how to provide the appropriate services.**

Districts may consider cost in developing individual education plans.

¹⁴ As discussed earlier, these techniques include using manual, mechanical, or locked restraints, time outs for seclusion, and temporarily delaying or withdrawing food or water.

Federal regulations do not directly address the issue of cost in planning services. However, the 1995 Legislature allowed districts to consider cost when deciding among essentially equivalent services available to a child with a disability.¹⁵

Services in the Least Restrictive Environment

Educational placement decisions are made by the IEP team. The team must ensure that children with disabilities receive their education in the least restrictive environment possible and, to the maximum extent appropriate, are educated with children that do not have disabilities. As discussed in Chapter 1, the least restrictive environment is a regular education classroom and the most restrictive is a self-contained residential program located off-site.

Federal Requirements

Federal law requires that special education students have access to the same variety of educational programs and services as students without disabilities, including art, music, industrial arts, homemaking, and vocational education. Districts must notify special education students about the availability of vocational programs at least one year before the students are eligible for these programs, but at least by the beginning of the 9th grade. Furthermore, districts must ensure that special education students are not steered toward more restrictive career interests than regular education students with similar interests. Finally, special education students must have an equal opportunity to participate in nonacademic and extracurricular activities, such as meals, recess, athletics, recreation, clubs, and student employment.¹⁶

Each district must have a full continuum of services available in different settings to children with disabilities, including instruction in regular classes, resource rooms, special classes, special schools, home instruction, and instruction in hospitals and institutions.¹⁷ Unless IEPs require some other arrangement, special education students are to be educated in the school that they would normally attend if they did not have a disability and, if they must attend school elsewhere, proximity to home must be considered.

Federal regulations require districts to consider modifying regular education before moving a child to a more restrictive placement, such as a resource room or separate class. Although federal regulations provide little guidance to districts in this area, the courts generally have examined four factors in considering the appropriateness of a placement: the educational benefit of being in the regular class-

Special education students must be included in regular education classes whenever possible.

¹⁵ *Minn. Laws* (1st Spec. Sess. 1995), Chap. 3, Art. 3, Sec. 1, Subd. 3a.

¹⁶ Regarding physical education, special education students must have the opportunity to participate with regular education students unless they are enrolled full-time in a separate facility or need a specially designed physical education program, as indicated in their IEP.

¹⁷ Chapter 1 defines the various educational settings.

room, nonacademic benefits, effect on regular education teachers and other students, and cost.¹⁸

In addition to requiring that school districts educate children with disabilities, IDEA requires that districts provide special education students with whatever related services they might need to learn. Federal regulations define related services as transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education. This includes audiology, counseling, early identification and assessment, medical services for diagnostic or assessment purposes, occupational therapy, parent counseling and training, physical therapy, psychological services, recreation, school health services, social work in schools, and speech pathology.

Districts must provide special devices, like wheelchairs, when students need them in school.

Also, federal regulations require that school districts make assistive technology devices and services available to those students who need them. An assistive technology device is any item, piece of equipment, or system, whether acquired commercially, modified, or customized, that is used to increase, maintain, or improve students' functioning, including specialized computers, books on tape, wheelchairs, and calculators. Assistive technology services help students select, acquire, or use such devices.

Additional State Requirements

For the most part, federal regulations do not regulate how school districts actually provide education services, regular or special, to special education students. However, as shown in Figure 2.4, Minnesota's laws and regulations go beyond federal requirements in some important ways. For example:

- **State regulations set forth specific staffing arrangements under certain circumstances.**

Since the 1995-96 school year, the maximum number of children that a teacher can serve (referred to as teacher caseload) in any early childhood special education program is from 12 to 14 children, depending upon the children's ages. Early childhood programs, which serve children from birth through 6 years of age, can be located in a variety of settings, including home, district-operated early childhood special education classrooms, and certain community-based programs that are licensed by the Department of Human Services. State rules require that districts lower caseloads based upon students' severity of disability or the delay, travel time, and number of different programs serving the students.

District-operated early childhood special education classes must use at least one paraprofessional while children are in attendance. The maximum number of students in a classroom with one teacher and one paraprofessional is 8; the maximum number with an early childhood education team of two or more professionals is 16.

¹⁸ Edwin W. Martin, Reed Martin, and Donna L. Terman, "The Legislative and Litigation History of Special Education," *The Future Of Children* (Center for the Future of Children: Los Altos, Spring 1996), 35.

Figure 2.4: Services in the Least Restrictive Environment: Additional State Requirements

School Districts Must:

- Adhere to maximum teacher caseloads for early childhood special education students and students who receive special education services for at least half the school day.
- Employ a special education director, either solely or in conjunction with other districts.
- Provide a minimum number of hours of instruction to early childhood special education students and students in care and treatment.
- Award special education students who graduate from high school diplomas identical to those received by regular education students.
- Transport students who attend sectarian schools to a neutral site for special education.

Source: Office of the Legislative Auditor review of state and federal regulations.

State-required teacher caseloads for students ages 7 through 21 who receive special education for at least half but less than a full day range from 3 to 15 students per teacher and caseloads for teachers of students who receive special education for a full day range from 4 to 8, depending upon the specific disability and the number of paraprofessionals. Teacher caseloads for students receiving services less than half of the day are based upon local district policy.

In addition, state regulations set forth certain administrative staffing arrangements. School districts must employ a special education director, either singly or in cooperation with other districts. Rules specify the conditions under which a director may be employed full or part time, based upon enrollment size or the number of cooperating districts.

While federal regulations do not address the length of the school year for special education students, federal courts have held that districts must have extended year services available for some special education students.¹⁹ This means that districts must make special education services available during the summer and other regular school vacations when necessary. Thus:

- **Minnesota regulations require that school districts make special education services available year-round to students whose condition would significantly deteriorate without them.**

However, during the summer and other vacations, districts need to only maintain special education students' knowledge and skills, not add to them. For example, if a child would be likely to forget the alphabet over the summer, districts would have to provide special services to help the child remember it. However, if the child always had problems identifying which letters were vowels, the district would not be expected to resolve this during the summer. Also, special education

During the summer, districts only need to maintain students' knowledge and skills, not add to them.

¹⁹ Martin, Martin, and Terman, "History," 36-37.

services need not be academic. For example, districts might help students maintain social skills by paying for park-based summer recreation programs.

Also, we found that:

- **State rules specify the minimum duration of special education instruction for students who are in certain care and treatment and early childhood special education programs.**

Students who receive care and treatment include those in substance abuse treatment centers, shelters, hospitals, correctional facilities, and day treatment mental health programs, as well as home.²⁰ Special education students who receive care and treatment services full time outside their schools for more than 170 days must receive instruction that is tailored to their individual needs for at least one-half the normal school day; students who are served at home must receive at least an average of two hours a day of one-to-one instruction. Students placed for less than 171 days must receive small group instruction for at least one-half the regular school day or at least an average of one hour a day of one-to-one instruction. For early childhood special education, students must receive a minimum of one hour per week of direct or indirect services.

Federal regulations do not address graduation requirements for special education students. As indicated earlier, state regulations mandate that graduation requirements be delineated in IEPs. Special education students may have their own individual graduation requirements or they may be required to meet all or part of the same requirements as for regular education students. Regardless, state law requires that, upon completing secondary school, special education students who have satisfactorily met their IEP objectives must receive diplomas that are identical to those of regular education students.

Federal regulations do not specifically prohibit districts from delivering some special education services to nonpublic school students at their own schools.²¹ However:

- **Minnesota regulations require that school districts transport students who attend sectarian schools to a neutral site to receive special education services from them.**

Neutral sites are public centers, nonsectarian nonpublic schools, and other locations that are not physically or educationally identified with the functions of the nonpublic school. For example, students from a sectarian school who need

²⁰ School districts are financially responsible for educating students who are placed for care and treatment, including special and regular education students. A legislative task force examined several issues relating to educating children in care and treatment and made several recommendations to improve service delivery. See: Minnesota Department of Education *Task Force II Final Report* (1995).

²¹ In 1993, the U. S. Supreme Court ruled that school districts could use public funds to pay for certain neutral services in sectarian schools. See *Zobrest v. Catalina Foothills School Dist.*, 113 S.Ct. 2462 (1993). Since that time, various circuit court rulings have held that states pay for such services while others have not. Currently, the State of Minnesota is involved in a lawsuit that would require it to provide paraprofessional services to two disabled children in a sectarian school.

Special education students may be suspended if their offending behavior is not related to their disability.

special speech services must travel to another location, such as a public school or clinic, to receive them from a school district. Special education services that are directed at sectarian staff, such as consultations, must also be provided off-site or by telephone. However, diagnostic and health-related services may be provided at a sectarian school. On the other hand, state regulations permit school districts to deliver special education services to students who attend nonsectarian schools

Finally, our analysis also showed that:

- **Minnesota regulations set forth specific suspension and expulsion policies that are absent in IDEA but present in other federal laws.**

1994 amendments to the federal Improving America's Schools Act help change the ways schools can deal with disciplining special education students and Minnesota regulations incorporate these elements. For example, under certain circumstances, state regulations permit the IEP team to place special education students in interim alternative placements for up to 45 days, even if parents object. Minnesota law has such a provision when students with disabilities bring guns to school.

Minnesota's statutes permit school districts to suspend special education students only if their offending behavior is not related to their disability.²² Such decisions are made either by IEP teams or through administrative hearings brought under the Minnesota Pupil Fair Dismissal Act.²³ State regulations require that IEP teams meet within 5 school days of a suspension to determine whether the misconduct is related to a disability and to review the IEP to see if changes are warranted. Special education students cannot be suspended for more than 10 consecutive days.²⁴

Likewise, school districts cannot expel or exclude special education students from school when it has been determined in an IEP meeting or administrative hearing that the offending behavior is related to their disability. Expulsion prohibits students from attending school for one year and exclusion prohibits them from attending for the remainder of the school year. When the offending behavior is not related to their disability, they may be excluded or expelled, although districts must still provide special education services to them.²⁵

Due Process

Due process refers to parents' rights and responsibilities in all aspects of acquiring, developing, planning, and implementing special education for their children.

²² *Minn. Stat.* §127.27, Subd. 10.

²³ *Minn. Stat.* §127.26-127.39.

²⁴ According to data collected by the Department of Children, Families & Learning, 17, 21 and 33 percent of suspensions reported by a sample of rural, suburban, and urban school districts respectively involved students with disabilities. See: Minnesota Department of Children, Families & Learning, *Student Suspension and Expulsion*, (St. Paul, January 1996), 12.

²⁵ Expulsion or exclusion would represent a significant change of placement for a special education student and would therefore require the IEP team to rewrite the student's IEP.

Federal law guarantees parents certain rights.

Federal Requirements

Federal regulations require that parents receive written notice “a reasonable time” before districts propose to initiate or change, or refuse to initiate or change, the identification, assessment, or educational placement of their child. Districts must write these notices in a language or manner that is understandable to the parents. In addition, notices must include an explanation of all procedural safeguards available to parents; a description of what is being proposed and why; other options considered and why they were discarded; evaluation procedures, tests, records, or reports used as a basis for the proposal; and any other relevant factors.

There are specific notice requirements depending on the type of notice involved. Regarding IEP meetings, districts must try to ensure that one or both parents are present or given the opportunity to participate by notifying them “early enough” about an IEP meeting. Districts must schedule meetings at mutually agreed upon times and places. The meeting notice must include the meeting’s purpose, its time and location, and who will attend. For meetings that will deal with transition services, notices must indicate so, invite the student, and list other agencies invited.

Notices about assessment and placement decisions must inform parents that their prior, written consent must be obtained before a district initially assesses their child. However, if state law requires parents’ consent before initial assessment (as it does in Minnesota), state procedures govern the agency’s ability to override parents’ refusal. Notices must inform parents of their right to obtain an independent assessment of their child’s needs that may, under certain circumstances, be done at district expense; districts must provide parents, upon request, information about where to obtain one. Also, notices must inform parents that, during a hearing or complaint process, the child’s educational placement will not change, unless parents and the district agree.

School districts’ notices about hearings must inform parents that they or the district may initiate an administrative hearing on any matter related to a proposal or refusal to initiate or change the identification, evaluation, or placement of their children. Notices must inform parents that hearings will be conducted by the state agency or local district, whichever is designated in statutes (in Minnesota, the school district is designated) and that, upon request, the district will inform them of the availability of free or low-cost legal services. Districts must inform parents about who may actually conduct the hearing and that the district has a list of persons, along with their qualifications, that they may review. Districts must inform parents that: (a) they can be represented by an attorney or have other individuals with them; (b) oral arguments must be conducted at a time and place reasonably convenient to them; (c) any party has a right to present evidence, compel witnesses to testify, and confront and cross-examine witnesses; (d) the student can be present; (e) parents may decide to open the hearing to the public; (f) any party can prohibit introducing evidence not disclosed at least five days before the hearing; (g) parents may obtain a record of the hearing and the findings of fact; (h) the hearing officer must render a decision and mail out copies of it within 45 days of the request for a hearing (although an extension may be granted at the request of

either party), and (i) the results of a hearing are final, unless appealed to the state agency.

In the event of an appeal, commonly referred to as a hearing review, the hearing review officer must examine the entire hearing record, ensure that hearing procedures met due process requirements, seek additional evidence if necessary, and give a copy of the written findings and decision to all parties. During such an appeal, the hearing officer may permit the district or parents to present oral or written arguments. The review officer's decision must be mailed out no later than 30 calendar days after districts receive a request for a review unless extensions are granted. Notices must inform parents that the review officer's decision is final, unless they appeal in state or federal civil court. Finally, notices must inform parents that, under certain circumstances, courts may award them reasonable attorney's fees if they prevail.

Finally, federal regulations require the Department of Children, Families & Learning to have a written complaint system. Parents may file a complaint with the department if they think that state or federal laws and regulations have been violated. The department's Office of Monitoring and Compliance must investigate these complaints.

Additional State Requirements

Overall, we found that:

- **State policy makers have chosen to set up a multi-faceted dispute resolution system for parents and districts, with specific deadlines that school districts must meet.**

The Individuals with Disabilities Education Act requires that each state designate one entity, either the state education agency or the local school district, to be responsible for conducting administrative hearings. However, states that choose to have local districts responsible for holding administrative hearings must also have a state-level hearing review process. In Minnesota, the Legislature has chosen to have local school districts responsible for conducting administrative hearings. Thus, we also have a state-level hearing review process.

Federal regulations require that hearings be held whenever parents request it and whenever districts refuse parents' request to assess a student for special education services. In addition, state regulations require hearings whenever parents refuse to provide written permission for an initial assessment or placement of their child.

As shown in Figure 2.5, we found that:

- **Minnesota statutes and rules place considerably more requirements on school districts regarding the administrative hearings process than do federal regulations.**

Figure 2.5: Due Process: Additional State Requirements

School Districts Must:

- Conduct administrative hearings.
- Submit a brief within 5 days when districts request a hearing or respond to parents' brief within 5 days of receipt, with additional findings available at least 5 days before the hearing.
- Along with parents, agree on the selection of the hearing officer.
- Send written notices about the time and location of the hearing to parents 10 days in advance.
- Hold administrative hearings within 30 days of request.
- Send parents a witness list within 5 days of request.
- Bear the burden of proof during the hearing.
- Prove its case with a preponderance of evidence to be upheld by the hearing officer.
- Allow hearing decisions to be appealed to the Commissioner of Children, Families & Learning.
- Inform parents about the availability of low-cost legal services.
- Offer parents conciliation meetings to resolve differences.
- Make mediation services available as an alternative to the administrative hearings process.

Source: Office of the Legislative Auditor review of state and federal regulations.

The 1995 Legislature amended the state's due process procedures to address some of the concerns of special education professionals and hearing officers, which we discuss in Chapter 3.²⁶ Currently, whoever requests a hearing must give the other party a brief written statement regarding the particulars of their objection, the reasons for it, and the remedies sought within 5 business days after requesting a hearing.²⁷ The other party must provide a written response within 5 days of receipt.

School districts must provide parents with a written notice of their rights and the procedures for the administrative hearings process within 5 days after their request for a hearing. This includes informing them on a variety of matters as listed in Figure 2.5, such as the selection of the hearing officer, access to witness lists and other written documents, and deadlines for issuing rulings.

Also, state regulations require districts to inform parents of free or low-cost legal services in their area, whereas federal regulations simply say that this information must be made available, upon request. Minnesota regulations require that all due process notices include a response form indicating whether parents approve or disapprove of the proposed action and identify a person to send it to or call.

²⁶ *Minn. Laws* (1st Spec. Sess. 1995), Chap. 3, Art. 3, Sec. 2.

²⁷ *Minn. Stat.* §120.17, Subd. 3b. (e).

Minnesota has alternative mechanisms to help resolve disputes.

In addition to the formal administrative hearing process:

- **The Minnesota Legislature has implemented two other mechanisms to resolve disputes: conciliation conferences and mediation.**

Although conciliation conferences are not mandated by law, Minnesota statutes indicate that conciliation conferences “serve better than formal hearings to promote communication between parents and school staff and to reach prompt, shared decisions about educational programs for children with a disability.”²⁸ Districts must offer parents the opportunity to meet with appropriate district staff to informally discuss their differences. Parents generally have 10 to 14 calendar days after the district has notified them of a proposed action to object, and districts have 10 days to schedule a conciliation conference after receiving the parents’ written objection. Within 7 calendar days after parents and the district agree that the last conciliation conference was held, districts must provide the parents with a written memorandum that states the school’s proposed action. These results are not binding in that parents and districts can still use other due process options, such as an administrative hearing, mediation conference, or state or federal civil court.

In addition, Minnesota statutes require that the Department of Children, Families & Learning set up a mediation process as another informal alternative to the administrative hearings process.²⁹ These sessions are run by trained mediators. Like conciliation conferences, mediation is not binding in that parents may still pursue an administrative hearing or civil court.

SUMMARY

In this chapter, we have compared requirements that school districts must meet under the federal Individuals with Disabilities Education Act with those required under state laws and regulations. Generally, we found that Minnesota regulations place additional or more specific requirements on school districts in a number of areas. First, the state has extended its special education program to permit it to serve more children than required under federal law. On the other hand, it also requires regular education teachers to try alternative methods of dealing with students before referring them to special education for assessment. Second, the state has implemented a multi-faceted due process system that gives parents and districts more opportunities to resolve disputes. As we discuss in Chapter 3, due process procedures are a major source of frustration for special education directors and advocacy groups. Third, unlike federal regulations, Minnesota’s regulations set forth specific deadlines that school districts must meet. Fourth, state regulations set forth maximum student/teacher caseloads for some disability groups and educational settings. Fifth, state regulations impose a greater administrative burden on special education staff by requiring additional documentation in some areas.

²⁸ *Minn. Stat.* §120.172.

²⁹ *Minn. Stat.* §120.17, Subd. 3b.(d).

Recognizing which special education requirements can be attributed to state rather than federal laws and regulations may be useful to policy makers as they seek ways to control special education costs. Although our analysis did not examine the cost implications of additional state requirements, some requirements might be expected to increase costs. For example, state criteria that extend special education services to more students than federally required could raise special education costs because more children could be served. Likewise, establishing maximum student/teacher caseloads might effect the overall number of special education staff in school districts. On the other hand, some additional state regulations may save money. For example, requiring regular education teachers to try two interventions before referring children to special education may reduce incidence and decrease unnecessary assessments if done effectively, thereby saving money. Likewise, a multi-faceted due process system as well as some additional paperwork may reduce districts' litigation costs in the long run.