

# **Early Childhood Special Education (ECSE) Open Enrollment - Clarification of Responsibilities for Identification, Evaluation, the Initial Provision of Services, and Transportation**

This document does not address children who are currently open enrolled in a state recognized voluntary pre-Kindergarten program. This document also does not address the use of a school board agreement to obtain special education services in the district in which Head Start or child care services are located. Minn. Stat. Section 125A.13. The open enrollment statute is cited throughout this document and is located on the [MDE Website](https://www.revisor.mn.gov/statutes/?id=124D.03) (<https://www.revisor.mn.gov/statutes/?id=124D.03>).

## **Identification and Initial Evaluation**

A resident district is responsible for the initial evaluation, initial Individual Family Service Plan (IFSP)/Individualized Education Program (IEP) and initial placement unless a child is placed outside of the district through an education choice option such as open enrollment. Minn. R. 3525.0800, subp. 3, Minn. R. 3525.0210, subp. 39.

## **Open Enrollment**

“Child with a disability” means a child identified under federal and state special education law as meeting eligibility criteria. Minn. Stat. 125A.02, 34 C.F.R. 300.8, and 34 C.F.R. 303.21.

The enrollment options program enables any pupil to attend a school or program in a district or program in a district in which the pupil does not reside, subject to the limitations in Minn. Stat. 124D.03.

A “pupil” includes a child with a disability. See Minn.R. 3525.0210, subp. 36, and Minn. Stat. Section 121A,41 Subd. 7.

Once a preschool aged child has been evaluated and found eligible for and in need of special education and related services, that child meets the definition of pupil and a parent may initiate the open enrollment process in the district of their choice.

School boards may set capacities for how many pupils at a particular grade level or program may be serviced by a site. Minn. Stat. § 124D.03, Subd. 2 and 6. A school board's standards for acceptance and rejection of open enrollment applications may include the capacity of a program, excluding special education services. Minn. Stat. § 124D.03, Subd. 6. However, early childhood special education (ECSE) is not a grade but rather a program of special education services. Accordingly, ECSE open enrollment cannot be closed based upon the capacity of the ECSE program. When a child is open enrolled for ECSE, the district in which the student open enrolls will determine the appropriate site for special education services. This could include a public or private preschool program, Head Start or community-based child care facility, or the child's home.

## **January 15<sup>th</sup> Deadline**

The open enrollment statute sets a deadline of January 15<sup>th</sup> for submission of an application to the nonresident district. Minn. Stat. § 124D.03, Subd. 5. That deadline is waived if either the resident or nonresident district receives Achievement and Integration revenue. Minn. Stat. § 124D.03, Subd. 7. A current list of the districts receiving Achievement and Integration revenue is maintained on the [MDE website](http://education.state.mn.us/MDE/dse/acint/) (<http://education.state.mn.us/MDE/dse/acint/>). The January 15<sup>th</sup> deadline is also waived for families who move after December 1. See Minn. Stat. Section 124D.03, Subd. 7(c).

## **District Response to the Open Enrollment Request**

Once the district receives the request for open enrollment the district must respond within state timelines as described in Minn. Stat. Section 124D.03 subd. 5. (The nonresident district must respond by February 15<sup>th</sup>, unless the January 15<sup>th</sup> deadline for open enrollment applications is waived. The response is due within 90 days under the Achievement and Integration deadline waiver). However, the Minnesota Department of Education (MDE) strongly encourages expedited determinations for ECSE applications.

Once the parent or guardian receives an acceptance of open enrollment and notifies the non-resident district of their intent to enroll, the non-resident district becomes the providing district. Minn. Stat. § 124D.03, Subd. 5. See also, Minn. R. 3525.0800, subp.8.

## **Initial Provision of Services**

The resident district must either obtain the parent's refusal for the initial provision of special education and related services or hold the IFSP or IEP team meeting within the timelines set forth under Part B and Part C federal regulations. (Part B 34 C.F.R. § 300.323, and Part C 34 C.F.R. § 303.310(a)). Under both Part C and Part B, a parent may refuse to provide informed consent for the initial provision of services. 34 C.F.R. § 303.420(a)(3) and 34 C.F.R. § 300.300.

If a preschool aged child who has been found eligible for special education and related services enters the providing district without an IFSP or IEP, the providing district is responsible for the development of the initial IFSP or IEP, including a placement determination based on the needs of the individual child. Minn. R. 3525.0850, subp. 8.

If there is a public preschool program available, the providing district may choose to make a free and appropriate public education (FAPE) available to a preschool child with a disability in the district's public preschool program. In situations where the number of public preschool programs is limited the providing district may provide special education and related services in a variety of settings including a regular Voluntary pre-Kindergarten or kindergarten class, public or private preschool program, Head Start or community-based child care facility, or in the child's home. See U.S. Department of Education and Health and Human Services [Policy Letter on the Inclusion of Children with Disabilities in Early Childhood Programs \(September 14, 2015\)](#)

<https://www2.ed.gov/policy/speced/guid/earlylearning/joint-statement-full-text.pdf>

and [Dear Colleague Letter \(January 9, 2017\)](#)

<https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/preschool-lre-dcl-1-10-17.pdf>

## **Transportation Responsibilities**

Upon parent request, the nonresident district must provide transportation within its borders. Minn. Stat. § 124D.03, Subd. 8. The open enrolling district is not obligated but may transport beyond its border or reimburse parents for the cost of transporting to the border. Minn. Stat. § 124D.03, Subd. 8.

If a preschool aged child's IFSP or IEP includes transportation as a related service or early intervention service the open enrolling district must continue providing transportation consistent with the IFSP or IEP unless the child's team makes an individual determination that transportation is no longer necessary in order for the child to receive FAPE and notice and consent requirements are met for revising the IFSP or IEP. 34 C.F.R. § 300.34(c)(16) and 34 C.F.R. § 303.13(b)(16).

## ECSE OPEN ENROLLMENT

A child not yet enrolled in Kindergarten is evaluated by resident district\* and found eligible for and in need of special education and related services.

Under Part C, a meeting to develop the IFSP must be held within 45 days of the referral -

Under Part B, within 30 days of the eligibility determination, the Resident District must hold an IEP Team meeting to develop the initial IEP -

UNLESS

### Receiving District Path

The child is open enrolled in another district through the following process:

Once the child has been determined eligible, the parent/guardian may seek open enrollment in a non-resident district using the open enrollment form approved by MDE. No IEP is necessary to seek open enrollment.

ECSE open enrollment may not be closed.

If either district receives Achievement and Integration Funding the receiving district must respond within 90 days. However, MDE strongly encourages expedited determinations for ECSE applications

If neither district receives Achievement and Integration Funding, and the receiving district has set a January 15<sup>th</sup> deadline for open enrollment and no exception applies\*\* the receiving district must respond by February 15.

The parent/guardian receives and acceptance of open enrollment and notifies the receiving district of their intent to enroll. The receiving district becomes responsible for the provision of special education and related services, including the development of the initial IFSP/IEP, if one has not yet been developed.

### Resident District Path

Within the timelines stated above the resident district has made reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services and the parent refuses to provide consent.

Informed consent, in this context, means a parent/guardian has been given an explanation of what special education and related services are and the types of services that might be needed for their child, rather than the exact services that would be included in an IFSP/IEP. This can be done with a PWN.

A district is not prevented from convening an IFSP/IEP Team meeting and developing an IFSP/IEP as a means of informing the parent about the services that would be provided with the parent's consent. However, if you have met the requirements above, you cannot be liable for failure to convene an IFSP/IEP Team meeting or developing an IFSP/IEP for a child whose parent/guardian has refused consent or failed to respond to the request for consent to the initial provision of special education and related services.

\* Starting fiscal year 2017, charter schools with a state-recognized/approved voluntary pre-K program will be responsible for child find and the special education evaluation of students enrolled in its pre-K program.

\*\* The January 15<sup>th</sup> timeline must be waived for families who moved after December 1 of the school year or when the child is born after the deadline.

## ECSE OPEN ENROLLMENT AND TRANSPORTATION

A child not yet enrolled in Kindergarten is evaluated by resident district\* and found eligible for and in need of special education and related services.

The child is entitled to transportation to and from home when special education instruction and services are provided in a location other than the child's home.

The child's IFSP or IEP Team determines transportation is necessary in order for the child to receive FAPE

The child's IFSP or IEP Team determines transportation is NOT necessary in order for the child to receive FAPE

Transportation is included in the child's IFSP as an early intervention service or IEP as a related service. Notice and consent requirements must be followed for including or removing this service from the IFSP or IEP.

Transportation may be reflected in the IFSP or IEP but is NOT an early intervention service or related service.

Child is open enrolled in a non-resident district.

Child is open enrolled in a non-resident district.

Transportation is provided in compliance with the child's IFSP or IEP.

Transportation is provided within the district borders, if requested by the parent.