



# NORTH DAKOTA DEPARTMENT OF **PUBLIC INSTRUCTION**

## **Informational Paper-**

### ***Home Education***

### ***And***

### ***Children with Disabilities***

**December, 2016**

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## Home Education and Children with Disabilities

The purpose of this informational paper is to provide clarification of the issues surrounding students with disabilities whose parents choose to educate them through home education. All references to North Dakota statutes in this document are made to North Dakota Century Code (NDCC) effective August, 2016. References to the Individuals with Disabilities Education Act (IDEA) are to the most recent reauthorization of the Act, which was enacted by Congress in 2004.

Changes to current and established school district practices regarding frequency, duration, setting and types of special education and related services because of this information are not recommended without talking to an attorney and the district's special education unit director.

**Education Program-** All North Dakota children of compulsory attendance age, or earlier if prescribed by law, must be educated in options listed in NDCC. Those choice options are approved public school enrollment, approved nonpublic school enrollment (which includes private schools), approved public or nonpublic residential schools, and home education. The differences in NDCC regarding approval, instructor qualifications, instructional subjects and instructional time distinguish public schools, nonpublic schools and home education as distinct and separate options. Approval, instructor qualifications, instructional subjects and instructional time for both public and nonpublic schools are defined in NDCC, 15.1-06- SCHOOLS, and 15.1-21- CURRICULUM AND TESTING. Home education is defined in NDCC, 15.1-23- HOME EDUCATION, as "a program of education supervised by a child's parent" in accordance with the requirements for approval, instructor qualifications, instructional subjects and instructional time listed in the home education chapter. Further clarification:

- Schools (both public and nonpublic) have the responsibility to apply for school approval from the state superintendent of public instruction. Schools administer and supervise the educational program described in NDCC at Title 15.1, Elementary and Secondary Education. Policies and procedures that outline how that education program meets requirements; and, the instructional programs, supplemental programs, co-curricular programs, and extra-curricular programs that are implemented to meet standards are the responsibility of the public school district and its member schools, or the governing board of the nonpublic school.
- Parents choosing the home education option are responsible to submit a statement of intent to supervise home education to the resident district or county superintendent. By definition, the program is under the supervision of the parent and decisions regarding how that program will meet requirements described in the home education chapter and the educational standards of the district are the responsibility of the parent.

*Note- Within the statement of intent is a requirement to list, "any public school courses in which the child intends to participate" (commonly called dual enrollment). By North Dakota statute, parents may choose to meet the requirements for instruction by having their child participate in courses provided in public schools, but the overall education program is still under their supervision.*

**Special Education and Related Services-** Several sections of the NDCC home education chapter address the responsibilities of the home education parent when their child has a disability. One section, 15.1-23-13- HOME EDUCATION- Disabilities- Services Plan, describes

parent responsibilities for the development of a service plan when the child has been identified by, “a multidisciplinary assessment team, using criteria established by the superintendent of public instruction” and that team, “determines that the child is disabled, that the child requires specially designed instruction due to the disability, and that this instruction cannot be provided without special education and related services.” This definition aligns with that of a child eligible for school district special education services under the IDEA.

Other sections, 15.1-23-14 and 15.1-23-15, describe the responsibilities of the home education parent when their child has been “determined to have a developmental disability by a licensed psychologist.” Developmental Disability is defined in NDCC, 25-01-02- DEVELOPMENTAL DISABILITY. It is different than the definition used in the first section of the home education chapter, and does not contain the language that identifies the child as a student eligible for special education services under the IDEA. The parent is still required in NDCC, 15.1-23-14, to develop a service plan.

The first section regarding the requirement for a service plan if identified by a multidisciplinary assessment team, contains language to address responsibilities of the parent when the multidisciplinary team, “determines that the child has a developmental disability.” This language in NDCC applies to a child that is referred to a multidisciplinary team, found to be a child with a developmental disability, as defined in the Developmental Disability chapter of NDCC, but not eligible for school district special education services under the IDEA. It could also apply in the case of a parent revoking consent for the provision of IDEA services, if the multi-disciplinary team identified the student as a child with a developmental disability, as defined by NDCC.

*Note- A school district should consult their special education unit director and perhaps an attorney to understand their liability and determine how to proceed on this issue.*

**Service Plan for Home Education-** The North Dakota Department of Public Instruction does not provide a service plan form or template. School districts may provide such a template or parents may develop their own. The following definitions from NDCC, 15.1-32- SPECIAL EDUCATION, provide guidance as to the North Dakota defined special education and related services required to be written into the service plan:

- Special Education- “instruction designed to meet the needs of a student with disabilities, transportation, and corrective and supporting services required to assist a student with disabilities in taking advantage of, or responding to, educational programs and opportunities.”
- Related Services- “transportation and developmental and corrective or supportive services required to assist a student with disabilities to benefit from special education.”

NDCC, 15.1-23-13 1.a. (2), requires the service plan demonstrate that qualified persons are used to address the child’s special education needs. Documenting the name of the individual or agency that the parent is using to deliver or supervise services is thus required.

NDCC requires the resident district superintendent to annually determine reasonable academic progress and base that determination on the child’s service plan. NDCC, 15.1-23-15, requires a parent supervising home education for a child with a developmental disability (as defined in NDCC) to file progress reports on or before November first, February first, and May first of each school year. Those reports must be prepared by the school district services plan team or the team selected and compensated by the parent. Using present levels of functioning to

summarize the child's special education and related service needs, and goals/objectives to outline the expected level of progress may be helpful, but not required.

*Note- The service plan template used when IDEA eligible students are enrolled in private schools and within the TieNet case management system, is not appropriate for use for home education. An IEP in TieNet is also not appropriate to outline these home education services.*

**Individuals with Disabilities Education Act (IDEA)-** The IDEA and its implementing regulations describe the responsibilities of the State and local education agencies (public school districts) to provide special education and related services, as defined under the IDEA, and determine the IDEA procedural safeguards that apply to students enrolled in public schools and nonpublic/private schools. It is clear within IDEA regulations that the status of a student's enrollment makes a difference in the IDEA provision of special education and related services, as well as in the procedural safeguards provided parents.

The IDEA does not, however, include language requiring public school districts to provide IDEA defined services and procedural safeguards to students placed in home education. There is controversy regarding whether students in home education can be viewed as receiving the same services and procedural safeguards as students placed in nonpublic/private schools. The United States Department of Education, Office of Special Education Programs (OSEP) in a 1992 guidance document, *Letter to Williams, 18 IDELR 742*, clarified that, "Home education is considered enrollment in a private school, for IDEA purposes, only if state law makes it so." Since NDCC distinguishes it as a separate option from nonpublic/private schools, as well as from public schools, most of the IDEA provisions for service and procedural safeguards do not apply. "Child Find" is an exception.

The Child Find section of IDEA regulation, §300.111, addresses responsibilities of the State Education Agency (SEA) to ensure that **ALL** children with disabilities residing in the State and "who are in need of special education and related services are identified, located, and evaluated." Public schools must, therefore, identify, locate and evaluate children in home education programs.

*Note- the State ensures compliance with the regulation by requiring Local Education Agencies (LEAs) to address such responsibilities in the eligibility documents and policy/procedure handbooks of their local special education unit.*

The services and procedural safeguards required in the IDEA during that process are explained below:

**Referral, evaluation and identification process-** A referral of a student in home education to the public school to determine eligibility for the school's special education program under the IDEA requires the school district to afford the parent full procedural safeguards as outlined in IDEA regulations. These procedural safeguards remain in place until the parent denies initial consent for the provision of services, thus choosing not to access the IDEA special education and related services offered by the school district. Without placement in the public school program, the parent has no right to the same procedural safeguards as when their child was identified, located and evaluated in the child find process.

In the above situation, before a parent can deny consent for the provision of services offered by the school district, the school district must develop and outline an offer of a

Free Appropriate Public Education (FAPE) that includes special education and related services and a least restrictive environment (LRE) where those services will be delivered. During the development and finalization of that offer the public school must provide the parent full procedural safeguards.

If consent for placement is denied, the public school must still provide the opportunity to review records under IDEA, §300.501. This procedural safeguard must be afforded the parents of a child with a disability regardless of the school or home education status.

**Student Identified & Receiving Public School Services under IDEA, Parent Decides to Home Educate-** Just as in the above situation, the parent is no longer afforded the procedural safeguards under IDEA except for the opportunity to review educational records under §300.501. If the decision of the parent to home educate is based on a disagreement with the school's offer of FAPE, the parent does have the right to continued full procedural safeguards if the student continues in the stay-put educational placement as described in IDEA, §300.518. The provisions in IDEA, §300.148, regarding the unilateral placement by a parent in a private school do not apply because home education is not considered a private school in NDCC.

**Special education and related services in these cases-** The parent is responsible to develop and implement the service plan required in NDCC. The parent may choose to develop it "through the school district," as provided in NDCC, 15.1-23-13. When parents request, a school district is obligated to meet and discuss the special education and related services needed by the child. Negotiations may follow that would commit district resources to assist the parent to meet those needs. The school district would be responsible for providing only those services that were committed during that negotiation. The setting where those services would be delivered, along with transportation, are also matters of negotiation. Agreed upon services would be listed by the parent on the required service plan, and would be provided for a full year or until the parent was required to submit a new statement of intent to home educate.

*Note-The parent may revoke consent for the IDEA provision of special education services offered by the district, but as described above, it may not release them from their obligation in Century Code to develop a service plan and provide state defined special education and related services if their child was identified with a developmental disability.*

*Note- Consent required under the IDEA is defined at §300.9. The parent must be "fully informed of all information relevant to the activity for which consent is sought;" and, the parent "must understand and agree in writing to the carrying out of the activity." Under IDEA, §300.300(b), a district must seek parental, informed consent for the initial provision of IDEA services. Whether the definition requires that a parent be provided information in regards to the service plan requirement in NDCC if they revoke consent for IDEA services and home educate at some point in the future as a part of that "informed consent," is a decision that the district will need to make after consulting their special education unit director and perhaps an attorney.*

**IDEA Eligible Student in Home Education, Parent Chooses to Dually Enroll in Public School Courses-** As defined in NDCC, the education program, including access to the general curriculum and the special education and related services of a child that is home educated are under the supervision of the parent. The parent must, therefore, develop and implement a program, including special education and related services that allows their child to achieve reasonable progress on the standards identified by and under the jurisdiction of the school district.

Dual enrollment is a common education practice. The practice as it relates to home education is to list in the statement of intent, “any public courses in which the child intends to participate.” Participation in public school coursework is allowed in NDCC. That participation, however, does not confer rights to a full range of IDEA special education and related services provided by the public school during the time that the child participates in the public school courses. The courses may include courses taught by special education staff and available to students without disabilities, but would not include the specially designed instruction or related services that are provided to other public school special education students, unless the school agreed to do so and it was documented on the parents’ service plan.

*Note- The dual enrolled student may be a student with a disability covered under Section 504 of the Rehabilitation Act. The school should follow their procedures for identification and delivery of reasonable accommodations under that section of the Act. Reasonable accommodations, however, are not the same as special education and related services. The parent would still be required to develop a service plan outlining the special education and related services that will be provided to their child.*

**Applicability to Preschool and Kindergarten Students-** Under IDEA regulations, §300.2(b) (2) and §300.101, and NDCC, 25-01.2-14, North Dakota school districts are responsible for the education of children of the State’s compulsory attendance ages and children in the State who are of preschool and kindergarten age, have been identified as a student with a disability and in need of special education and related services, and whose parents have provided consent for placement into the district’s special education program. Once identified as eligible and consent gained for placement in the district’s special education program, the parent must have their child in a program provided by the school district and determined by an individual education plan team, or use home education as an option to provide the needed special education and related services. The procedural requirements described in NDCC, Chapter 15.1-23 Home Education, must be followed. The same responsibilities pertaining to service delivery and procedural safeguards under the IDEA apply to home educated preschool and kindergarten age children.

**Table 1- Responsibility for IDEA Procedural Safeguards and FAPE**

	<b>Public School Enrollment</b>	<b>Private School Enrollment</b>	<b>Home Education</b>
<b>IDEA Procedural Safeguards- District Responsibility</b>	Full	Partial	Limited to Child Find & Opportunity to Review Records
<b>FAPE- Education Program including Special Education and Related Services</b>	District has Full Responsibility for FAPE and LRE	District Responsible for Special Education and Related Services Identified through Consultation with Private Schools	Parent has Full Responsibility for FAPE and Special Education/Related Services. (Can dually enroll in district courses, or participate in district extra-curricular activities, etc. Can develop and implement special education and related services through consultation with the district.)