



## **Special Education Procedures Manual:**

Updated 2021 - 2022

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The **MAINE VIRTUAL ACADEMY (MEVA)** follows federal (I.D.E.A) and Maine guidelines regarding providing a free and appropriate public education (F.A.P.E) to students eligible for special education services under the supervision of the school's Special Education Department. The Maine Unified Special Education Regulations (M.U.S.E.R <https://www.maine.gov/doe/learning/specialed/laws>) serves as a basis for policies and procedures for the Special Education Department.

The MEVA Special Education Department consists of the LEA representative as Head of School/Special Education Director, the Special Education Administrator, five Special Education Teachers and two Special Education EdTech III support personnel.

As MEVA is a virtual learning environment, special educational services and supports are provided through online learning platforms, online meetings, phone meetings, and electronic communications. For this educational environment to successfully meet the needs of the learners we serve, consistent and ongoing communication from teachers and staff, as well as from parents, students, and designated learning coaches is essential.

MEVA takes steps, including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities as provided to students without disabilities. Nonacademic, extracurricular services and activities include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the school district, referrals to agencies that aid individuals with disabilities and employment of students, including both employment by the school district and assistance in making outside employment available.

## **Parent Engagement/Attendance**

Maine Virtual Academy views parents as a vital part of the learning process and encourages parents to not only take a leading role in their child's education but to be an active participant in the IEP process. Maine Virtual Academy staff work to provide parents with the support and tools necessary to ensure that their student is successful in the virtual learning environment. If a parent is struggling to support their student in this unique environment, MEVA staff will work with that parent to provide various strategies to assist them in providing the student the best learning experience.

It is the parent's responsibility to attend all scheduled Special Education meetings, maintain consistent and ongoing communication with teachers and therapists, return all IEP and eligibility paperwork in a timely manner, and be an active participant in their child's education.

If a parent does not follow through on the above items, it could jeopardize the student's enrollment status. MEVA teachers and/or administration will provide notice to families regarding any noncompliant action that may compromise the student's enrollment status. Prior to a change in a special education student's enrollment status, notice will be given to the parent and the IEP Team will meet.

## **Confidentiality**

MAINE VIRTUAL ACADEMY staff adheres to all portions of FERPA regarding student educational records and personal information.

Any correspondence, electronic or otherwise, referencing a student will only include the student's first initial, last name, and/or student identification number.

At the start of each academic year, parental consent to having special education documents sent digitally via school email system is requested and documented via a signed form sent to parents via DocuSign (if in agreement or mailed to them for signature to indicate their consent or decline. Parents who do not consent will have documentation mailed via USPS. Special education documents including IEP notifications, IEP's and evaluations are sent directly to the legal guardian.

The Family Educational Rights and Privacy Act (FERPA) affords parents and students who are 18 years of age or older ("eligible students") certain rights with respect to the student's education records. These rights are:

1. The right to inspect and review the student's education records within 45 days after the day the school receives a request for access.

Parents or eligible students should submit to the Head of School [or appropriate school official] a written request that identifies the records they wish to inspect. The special education registrar will arrange for access and notify the parent or eligible student of the time and place where the records may be inspected.

2. The right to request the amendment of the student's education records that the parent or eligible student believes are inaccurate, misleading, or otherwise in violation of the student's

privacy rights under FERPA.

Parents or eligible students who wish to ask the MEVA to amend a record should write the Head of School [or appropriate school official], clearly identify the part of the record they want changed and specify why it should be changed. If the school decides not to amend the record as requested by the parent or eligible student, the school will notify the parent or eligible student of the decision and of their right to a hearing regarding the request for amendment. Additional information regarding the hearing procedures will be provided to the parent or eligible student when notified of the right to a hearing.

3. The right to provide written consent before the school discloses personally identifiable information (PII) from the student's education records, except to the extent that FERPA authorizes disclosure without consent.

One exception, which permits disclosure without consent, is disclosure to school officials with legitimate educational interests. A school official is a person employed by the school as an administrator, supervisor, instructor, or support staff member (including health or medical staff and law enforcement unit personnel) or a person serving on the school board. A school official also may include a volunteer or contractor outside of the school who performs an institutional service or function for which the school would otherwise use its own employees and who is under the direct control of the school with respect to the use and maintenance of PII from education records, such as an attorney, auditor, medical consultant, or therapist; a parent or student volunteering to serve on an official committee, such as a disciplinary or grievance committee; or a parent, student, or other volunteer assisting another school official in performing his or her tasks. A school official has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibility.

Upon request, the school discloses education records without consent to officials of another school district in which a student seeks or intends to enroll or is already enrolled if the disclosure is for purposes of the student's enrollment or transfer. [NOTE: FERPA requires a school district to make a reasonable attempt to notify the parent or student of the records request unless it states in its annual notification that it intends to forward records on request.]

4. The right to file a complaint with the U.S. Department of Education concerning alleged failures by the [School] to comply with the requirements of FERPA. The name and address of the Office that administers FERPA are:

Family Policy Compliance Office  
U.S. Department of Education  
400 Maryland Avenue, SW Washington,  
DC 20202

FERPA permits the disclosure of PII from students' education records, without consent of the parent or eligible student, if the disclosure meets certain conditions found in § 99.31 of the FERPA regulations. Except for disclosures to school officials, disclosures related to some judicial orders or lawfully issued subpoenas, disclosures of directory information, and disclosures to the parent or eligible student, § 99.32 of the FERPA regulations requires the school to record the disclosure. Parents and eligible students have a right to inspect and review the record of disclosures. A school may disclose PII from the education records of a student without obtaining prior written consent of the parents or the eligible student:

- To other school officials, including teachers, within the educational agency or institution whom the school has determined to have legitimate educational interests. This includes contractors, consultants, volunteers, or other parties to whom the school has outsourced institutional services or functions, provided that the conditions listed in § 99.31(a)(1)(i)(B)(1) - (a)(1)(i)(B)(2) are met. (§99.31(a)(1))
- To officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll, or where the student is already enrolled if the disclosure is for purposes related to the student's enrollment or transfer, subject to the requirements of § 99.34. (§ 99.31(a)(2))
- To authorized representatives of the U. S. Comptroller General, the U. S. Attorney General, the U.S. Secretary of Education, or State and local educational authorities, such as the State educational agency (SEA) in the parent or eligible student's State. Disclosures under this provision may be made, subject to the requirements of § 99.35, in connection with an audit or evaluation of Federal- or State supported education programs, or for the enforcement of or compliance with Federal legal requirements that relate to those programs. These entities may make further disclosures of PII to outside entities that are designated by them as their authorized representatives to conduct any audit, evaluation, or enforcement or compliance activity on their behalf. (§§ 99.31(a)(3) and 99.35)
- In connection with financial aid for which the student has applied or which the student has received, if the information is necessary to determine eligibility for the aid, determine the amount of the aid, determine the conditions of the aid, or enforce the terms and conditions of the aid. (§ 99.31(a)(4))
- To State and local officials or authorities to whom information is specifically allowed to be reported or disclosed by a State statute that concerns the juvenile justice system and the system's ability to effectively serve, prior to adjudication, the student whose records were released, subject to § 99.38. (§ 99.31(a)(5))

- To organizations conducting studies for, or on behalf of, the school, in order to: (a) develop, validate, or administer predictive tests; (b) administer student aid programs; or (c) improve instruction. (§99.31(a)(6))
- To accrediting organizations to carry out accrediting functions. §99.31(a)(7))
- To parents of an eligible student if the student is a dependent for IRS tax purposes. (§ 99.31(a)(8))
- To comply with a judicial order or lawfully issued subpoena. (§99.31(a)(9))
- To appropriate officials in connection with a health or safety emergency, subject to § 99.36. (§ 99.31(a)(10))
- Information the school has designated as “directory information” under § 99.37. (§ 99.31(a)(11))

## Special Education Records

### Federal Guidelines

(a) Destruction means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

(b) Education records means the type of records covered under the definition of “education records” in 34 CFR part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g (FERPA)).

(c) Participating agency means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of the Act. (Authority: 20 U.S.C. 1221e-3, 1412(a)(8), 1417(c))

*§300.614 Record of access.*

Each participating agency must keep a record of parties obtaining access to education records collected, maintained, or used under Part B of the Act (except access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records. (Authority: 20 U.S.C.1412(a)(8) ; 1417(c)) *§300.613 Access rights.*

(a) Each participating agency must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this part. The agency must comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing pursuant to §300.507 or §§300.530 through 300.532, or resolution session pursuant to §300.510, and in no case more than 45 days after the request has been made.

(b) The right to inspect and review education records under this section

Includes:

- (1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;
- (2) The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and
- (3) The right to have a representative of the parent inspect and review the records.

(c) An agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable Maine law governing such matters as guardianship, separation, and divorce. (Authority: 20 U.S.C. 1412(a)(8) ; 1417(c))

## **Maine Confidentiality Requirements**

*Each school administrative unit shall adopt and implement procedures to protect the confidentiality of student records, in accordance with the federal Family Educational Rights and Privacy Act of 1974 and the Individuals with Disabilities Education Act.*

Destruction means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable. Education records means the type of records covered under the definition of educational records in 34 CFR Part 99 (regulation implementing the Family Educational Rights and Privacy Act of 1974, [(FERPA) 20 USC 1232g])

Participating agency means any agency or institution which collects, maintains, or uses personally identifiable information, or from which information is obtained, *under these rules.* [34 CFR 300.611]

### **Access rights**

Each SAU must permit parents to inspect and review any education records relating to their child which are collected, maintained, or used by the SAU under these regulations. The SAU must comply with a request without unnecessary delay and before any meeting regarding an IEP or any hearing pursuant to 34 CFR 300.507 or 300.530 through 300.532, or resolution session pursuant to 34 CFR 300.510, and in no case more than 45 days after the request has been made under Part B and no more than 10 days after the parent makes the request to inspect and review records under Part C [34 CFR 303.405(a)]. The right to inspect and review education records under this section includes:

- A. The right to a response from the SAU to reasonable requests for explanations and

interpretations of the records.

B. The right to request that the SAU provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records.

C. The right to have a representative of the parent inspect and review the records. An SAU may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce. [34 CFR 300.613]

### **Record of access**

Each SAU must keep a record of parties obtaining access to education records collected, maintained, or used under part B of IDEA (except for access by parents and authorized employees of the school), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records. [34 CFR 300.614]

### **List of types and locations of information**

Each SAU must provide parents on request a list of the types and locations of educational records collected, maintained, or used by the SAU. [34 CFR 300.616]

### **Special Education Record Maintenance**

All students' special education records are to be kept on school premises in a secure, limited access area. These files are to be separate from the students' general education files. It is recommended that a reference sheet be copied on brightly colored paper be placed within the general education student file indicating that there is additional information within a special education file.

Each special education student will have either a physical or an electronic special education file. Any physical file should be divided into multiple sections and organized according to the MEVA Special Education File Organizational Chart. At the beginning of each file, in Section 1, will be a File Access Log documenting each time someone accesses the file and a copy of the MEVA Special Education File Organizational Chart which should be used as a file checklist and updated each time a file is reviewed.

When the file is too full to be easily manageable move oldest archived documents to a separate 'thinned file' – manila folder housed within same hanging folder as main special education folder. Thinned file will also hold any monthly therapy progress notes submitted for the student. Electronic

files will be in a secure location with ability to control access to student records. Each file will be clearly labeled with student ID, name and date of document. Each assigned special education teacher is responsible for ensuring that all required items are in the student's special education folder. Special Education teachers are expected to coordinate with office staff to update the files at the MEVA office throughout the school year and as necessary in the summer months. If any documents are missing, the special education teacher will contact the MEVA office staff and ask that a faxed record request or certified letter record request be made. The type of request will be determined by the number of requests that had been made previously.

### **Special Education Records Request Procedures**

1. Request current documents from parent during the enrollment process.
2. Upon receiving information that there is a student with special needs approved for enrollment in MEVA or enrolled in MEVA, the school will contact the previous school by telephone. The school will explain that MEVA is requesting special education records and that MEVA has a copy of the release of information signed by the parent. Ask the person from the previous school where MEVA should send this fax to (to whose attention and at what fax #). It is not unusual for special education records to be kept at another school or the district main office.
3. MEVA will send a first request for records along with a release of information signed by the parent to each student's previous district containing a cover sheet asking that the student's special education records be sent to MEVA. What documents are needed will be specified on the fax coversheet. Keep the fax confirmation sheet, if applicable in the student file. Please note that pursuant to Federal statutes permission of the parent is not required when records are requested by authorized school personnel so do not delay the records request if you do not have signed release of records.
4. If the requested special education records have not been received within 7 calendar days or if partial special education records were sent, a second fax for request of records will be sent. If partial special education records were sent, it will be indicated on the second fax along with what documentation is still needed. The fax confirmation sheet, if applicable, should be kept in the student's file.
5. If complete special education records are not received within 7 calendar days of the second fax request for special education records, a certified letter will be sent with the student's information and what documentation is needed (or still needed if partial records were sent). If complete records are not received within 10 days of the certified letter being sent, the Special Education Administrator and LEA as Head of School and Special Education Director will be notified.

6. The status of each student's records request will be updated in the MEVA special education student tracker located within the online platform to ensure compliance to time frames.
7. Three years after a student withdraws or graduates, any physical special education file will be transferred to electronic format and maintained without time limitation on a secure server. The physical file will be shredded once the electronic format has been stored.

## **Procedural Safeguards & Parent and Student Rights\***

*MEVA must distribute the notice of procedural safeguards set forth in Appendix 1 of this rule at the time specified in the notice. Independent Educational evaluations, Attorneys' fees and discipline are not applicable to children and their families' birth through age two. The parents of a child eligible under the Part C program may determine whether they, their child, or other family members will accept or decline any early intervention service under this rule, and may decline such service after first accepting it, without jeopardizing other early intervention services under this rule.*

A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents only one time a school year, except that a copy also must be given to the parents:

- (1) Upon initial referral or parent request for evaluation;
- (2) Upon receipt of the first Maine complaint under §§300.151 through 300.153 and upon receipt of the first due process complaint under §300.507 in a school year;
- (3) In accordance with the discipline procedures in §300.530(h); and
- (4) Upon request by a parent.

A public agency may place a current copy of the procedural safeguards notice on its Internet Web site if a Web site exists.

The procedural safeguards notice must include a full explanation of all of the procedural safeguards available under §300.148, §§300.151 through 300.153, §300.300, §§300.502 through 300.503, §§300.505 through 300.518, §300.520, §§300.530 through 300.536 and §§300.610 through 300.625 relating to:

- (1) Independent educational evaluations;
- (2) Prior written notice;
- (3) Parental consent;

- (4) Access to education records;
- (5) Opportunity to present and resolve complaints through the due process complaint and Maine complaint procedures, including—
  - (i) The time period in which to file a complaint;
  - (ii) The opportunity for the agency to resolve the complaint; and
  - (iii) The difference between the due process complaint and the Maine complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures;
- (6) The availability of mediation;
- (7) The child’s placement during the pendency of any due process complaint;
- (8) Procedures for students who are subject to placement in an interim alternative educational setting;
- (9) Requirements for unilateral placement by parents of children in private schools at public expense;
- (10) Hearings on due process complaints, including requirements for disclosure of evaluation results and recommendations;
- (11) Maine -level appeals (if applicable in the Maine) ;
- (12) Civil actions, including the time period in which to file those actions; and
- (13) Attorneys’ fees.

#### Notice in understandable language

The notice must be:

1. Written in language understandable to the general public; and
2. Provided in your native language or other mode of communication you use, unless it is clearly not feasible to do so.

If your native language or other mode of communication is not a written language, your SAU must ensure that:

1. The notice is translated for you orally by other means in your native language or other mode of communication.
2. You understand the content of the notice; and
3. There is written evidence that 1 and 2 have been met.

## **Surrogate Parents**

### **Federal Guidelines**

§300.519 Surrogate parents.

- (a) General. Each public agency must ensure that the rights of a child are protected when:

- (1) No parent (as defined in §300.30) can be identified;
- (2) The public agency, after reasonable efforts, cannot locate a parent;
- (3) The child is a ward of the Maine under the laws of the State of Maine; or
- (4) The child is an unaccompanied homeless youth as defined in section 725(6) of the McKinney- Vento Homeless Assistance Act (42 U.S.C.11434a(6)).

(b) Duties of public agency.

The duties of a public agency under paragraph (a) of this section include the assignment of an individual to act as a surrogate for the parents. This must include a method—

- (1) For determining whether a child needs a surrogate parent; and
- (2) For assigning a surrogate parent to the child.

(c) Wards of the State of Maine. In the case of a child who is a ward of the State of Maine, the surrogate parent alternatively may be appointed by the judge overseeing the child’s case, provided that the surrogate meets the requirements in paragraphs (d)(2)(i) and (e) of this section.

(d) Criteria for selection of surrogate parents.

- (1) The public agency may select a surrogate parent in any way permitted under Maine law.
- (2) Public agencies must ensure that a person selected as a surrogate parent
  - (i) Is not an employee of the SEA, the LEA, or any other agency that is involved in the education or care of the child;
  - (ii) Has no personal or professional interest that conflicts with the interest of the child the surrogate parent represents; and
  - (iii) Has knowledge and skills that ensure adequate representation of the child.

## **Maine Guidelines**

1. Rules. The commissioner shall adopt rules to determine when a surrogate parent is needed and the criteria for selection of a surrogate parent.

2. Objection to appointments. When a child with a disability is a state ward and the Department of Health and Human Services has notified the school administrative unit and the Department of Education that the Department of Health and Human Services objects to the appointment of the foster parent as the surrogate parent, the foster parent may not be automatically appointed to serve as surrogate parent for the child with a disability. When a child with a disability is a state ward and the Department of Health and Human Services objects to the appointment of the foster parent as the surrogate parent, the Department of Health and Human Services shall recommend to the Department of Education an individual to serve as surrogate parent.

## **Child Find Query**

Child find questions are completed by the parent within the online enrollment portal. These questions are asked again by the Personal Admissions Liaison (PAL) during the enrollment approval and placement process.

Once the school year begins, the assigned general education teacher will again conduct a probe to determine if the student present with any academic need(s). Any student for whom a parent answers that they previously or are currently receiving special education services is immediately referred to the Special Education Administrator or designee.

Any special education or evaluation records shared by the parent with the assigned homeroom teacher are forwarded to the special education department at MEVA so that they can be reviewed by the school psychologist and/or Special Education Administrator or designee to determine next steps.

## **MEVA Child Find Policy**

Special Notice distributed to district January 21, 2021 issuing guidance on new policy recommendation for servicing students beyond age 20:

<https://mainedoenews.net/2021/01/21/administrative-letter-change-in-the-ending-age-for-special-education-eligibility-effective-immediately/>

MEVA seeks to ensure that all students within its school are identified, located and evaluated who are school-age (5 through the school year in which they turn 20) and who are in need of special education and supportive assistance - including homeless children, state wards, state agency clients, students who have been suspended or expelled, students receiving home instruction, children incarcerated in county jails, children who have the equivalent of 10 full days of unexcused absences or 7 consecutive school days of unexcused absences during the school year, highly mobile children (including migrant or homeless), and children who are suspected of being disabled and in need of special education and supportive assistance even though they are advancing from grade to grade. MEVA's child find responsibility shall be accomplished through a school-wide process which, while not a definitive or final judgment of a student's capabilities or disability, is a possible indicator of special education needs. Final identification of students with disabilities and programming for such students occurs only after an appropriate evaluation and a determination of eligibility by the IEP Team.

The child find process shall include obtaining data on each child through multiple measures, direct assessment and parent information regarding the child's academic and functional performance, gross and fine motor skills, receptive and expressive language skills, vision, hearing and cognitive skills.

If the child find process indicates that a student may require special education and supportive services in order to benefit from regular education, the student shall be referred to the IEP Team to determine the student's eligibility for special education services. School staff, parents or agency representatives or other individuals with knowledge of the child may refer children to the IEP team if they believe that the student, because of a disability, may need special education and supportive services in order to benefit from regular education. Such a referral should follow the school's pre-referral and referral policy.

Legal Reference: 34 CFR § 300.111 (2066)

Ch. 101, IV (2) (2007 (Me. Dept. of Educ. Regulations)

## **Enrollment & Intake Procedures**

When a student with a disability enrolls in MEVA, an IEP meeting must be held within 30 school days of the student's first day of school to review the existing records and develop the IEP to reflect the needs of the student. The procedures below address the three situations in which a student would enroll into MEVA and provision of special education services would be decided. **Note: *Holidays, spring break, teacher professional development days, or other school recognized "no school" days for students (for example Memorial Day), do not count towards the 30-school day timeline.***

Procedures for Students with a Current IEP:

A. Students from other districts within MAINE:

1. The student must be placed based on his/her current IEP; therefore, the Special Education Case Manager must review all documents received during the enrollment process. If there are any questions about the documents, contact the Special Education Administrator or designee for guidance or clarification. An IEP meeting shall be held 30 school days of the student's first day of school to review the previous IEP and develop a new IEP to reflect comparable services in the virtual environment.
2. When the records arrive, but no later than 30 days from the date of the intake IEP meeting, review them and use the following procedure:
  - a. If the eligibility is current, make any changes to the IEP as necessary based on receipt of

additional information.

b. If the eligibility is out of date, but the IEP is current, convene an IEP meeting. At that meeting, obtain parental consent for evaluation and begin the evaluation process.

B. For any students transferring from outside MAINE, the following procedures will be followed:

1. The student must be placed based on his/her current IEP therefore the Special Education Case Manager must review all documents received during the enrollment process. If there are any questions about the documents, contact the Special Education Administrator or designee for guidance or clarification.

2. Within 30 school days of the student's first school day, an IEP meeting shall be held to obtain Consent for Evaluation in order to evaluate records received or make a referral for comprehensive evaluation.

3. A review of the student's records by the Special Education Administrator or designee and a School Psychologist will be conducted to determine eligibility. A recommendation based on MAINE eligibility requirements will be made.

a) If the recommendation is that the student **MEETS** MAINE eligibility requirements

i) An IEP meeting will be held, eligibility will be determined by the IEP team, and an initial IEP will be developed.

ii) Parental Consent for Placement will be requested.

iii) Upon receipt of Parental Consent for Placement, the newly developed IEP will be implemented immediately.

iv) The eligibility due date will remain the same as the out of Maine eligibility.

b) If the recommendation is that the student **WILL NOT MEET** MAINE eligibility requirements, then:

i) The Case Manager will convene an IEP meeting per MEVA procedures and send out a Notice of the Meeting to the parent within 10 days of the receipt of records.

ii) The team, at a minimum, shall consist of the case manager, regular education teacher, parent/legal guardian, student (as appropriate), and a School Administrator. An explanation of the evaluation and eligibility determination processes will be documented in the written notice and Parental Consent for Evaluation will be obtained at that time (See Parental Consent section)

iii) Upon completion of the evaluation and eligibility report, the School Administrator will communicate with the Case Manager to schedule the eligibility meeting.

iv) If a concern arises following the eligibility meeting, the parent can address these

concerns with the team at any time and/or request evaluations to further the decision process. The IEP eligibility team will then collect data through the RTI process.

### **Procedures for Students WITHOUT Current IEP's Enrolling at MEVA**

- A. If a student has a private evaluation, the MTSS teams will review the documents received. If teachers have questions about the documents they received, they should contact their Special Education Administrator or designee for guidance.
- B. If a student transfers from a private special educational setting seeking special education services, the type of disability and severity must be considered. Teachers should contact their Special Education Administrator or designee. The Special Education Administrator or designee will attend the IEP meeting to give guidance on appropriate services to be provided.
- C. If a parent requests an immediate psychological evaluation or referral to special education bypassing the MTSS process: Explain the Maine commitment regarding MTSS to the parents. If the parent is not in agreement for the student to be involved in the MTSS process, an immediate referral for testing will be made by MEVA staff and the Consent to Evaluate signed.

## **Parental Consent**

**Consent.** Consent means that:

- A. The parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language or other mode of communication; and
- B. The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and the parent understands that the granting of consent is voluntary on the parent's part and may be revoked at any time. If a parent revokes consent, that revocation is not retroactive, (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked). If the parent revokes consent in writing for their child's receipt of special education and related services, the SAU is not required to amend the child's education records to remove any references to the receipt of special education and related services because of the revocation.

MEVA is required to obtain informed written consent for any action requested. Parental consent is voluntary and may be revoked at any time. Consent is required for the following actions:

1. to conduct an initial evaluation;

2. to conduct a reevaluation;
3. initial placement to receive special education and related services on the IEP; and
4. before disclosure of personally identifiable information that is subject to confidentiality.

Consent for the initial evaluation does not provide consent for initial placement. Consent for the initial evaluation may be given electronically, however the parent must personally sign for consent, prior to, or at the time of the evaluation. The eligibility decision must be made within 45 school days of receipt of the virtually signed parental consent.

### **Absence of consent**

For initial evaluation.

If the parent of a child, enrolled in public school or seeking to be enrolled in public school does not provide consent for an initial evaluation, or if the parent during the initial evaluation process, fails to respond to a request to provide the consent, the SAU may, but is not required to pursue the initial evaluation of the child by utilizing the procedures, if appropriate.

If a parent refuses consent for evaluation, the Case Manager will contact the Special Education Administrator or designee for further guidance. If, after two weeks, the parent fails to respond to multiple varied attempts to contact him/her to obtain consent for evaluation, the Case Manager will contact Special Education Administrator to refer the student back to MTSS.

### **Parental Consent for Reevaluation**

Must obtain informed parental consent, prior to conducting any reevaluation of a child with a disability.

If the parent refuses to consent to the reevaluation, the MEVA may, but is not required to, pursue the reevaluation by using the consent override procedures outline by MUSER. The informed parental consent need not be obtained if the SAU can demonstrate that it made reasonable efforts to obtain such consent; and the child's parent has failed to respond.

### **Federal Guidelines**

Section 300.300, regarding parental consent, has been revised, as follows:

(1) Paragraph (a) of §300.300, regarding consent for initial evaluation, has been changed to

provide that the public agency proposing to conduct initial evaluation to determine if a child qualifies as a child with a disability must, after providing notice consistent with §§300.503 and 300.504, obtain informed consent, consistent with §300.9, from the parent of the child before conducting the evaluation. A new paragraph (a)(1)(iii) has been added to require a public agency to make reasonable efforts to obtain the informed consent from the parent for an initial evaluation.

(2) Section 300.300(a)(3), regarding a parent's failure to provide consent for initial evaluation, has been changed to clarify, in a new paragraph (a)(3)(ii), that the public agency does not violate its obligation under §300.111 and §§300.301 through 300.311 if it declines to pursue the evaluation.

(3) Section 300.300(b), regarding parental consent for services, has been modified by a new paragraph (b)(2) that requires a public agency to make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services.

(4) Section 300.300(c)(1), regarding parental consent for reevaluations, has been modified to clarify that if a parent refuses to consent to a reevaluation, the public agency may, but is not required to, pursue the reevaluation by using the consent override procedures in §300.300(a)(3), and the public agency does not violate its obligation under §300.111 and §§300.301 through 300.311 if it declines to pursue the evaluation or reevaluation.

(5) A new §300.300(d)(4) has been added to provide that if a parent of a child who is home schooled or placed in a private school by the parent at the parent's expense, does not provide consent for an initial evaluation or a reevaluation, or the parent fails to respond to a request to provide consent, the public agency (A) may not use the consent override procedures (described elsewhere in §300.300), and (B) is not required to consider the child eligible for services under the requirements

## **Initial Evaluations**

### **Federal Guidelines**

#### **§300.301 Initial evaluations.**

(a) General. Each public agency must conduct a full and individual initial evaluation, in accordance with §§300.305 and 300.306, before the initial provision of special education and related services to a child with a disability under this part.

(b) Request for initial evaluation. Consistent with the consent requirements in §300.300, either a parent of a child or a public agency may initiate a request for an initial evaluation

to determine if the child is a child with a disability.

(c) Procedures for initial evaluation. The initial evaluation— (1)(i) Must be conducted within 60 days of receiving parental consent for the evaluation; or (ii) If the Maine establishes a timeframe within which the evaluation must be conducted, within that timeframe; and (2) Must consist of procedures—

(i) To determine if the child is a child with a disability under §300.8; and

(ii) To determine the educational needs of the child. (d) Exception. The timeframe described in paragraph (c)(1) of this section does not apply to a public agency if—

(1) The parent of a child repeatedly fails or refuses to produce the child for the evaluation; or

(2) A child enrolls in a school of another public agency after the relevant timeframe in paragraph (c)(1) of this section has begun, and prior to a determination by the child's previous public agency as to whether the child is a child with a disability under §300.8.

(e) The exception in paragraph (d)(2) of this section applies only if the subsequent public agency is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent public agency agree to a specific time when the evaluation will be completed. (Authority: 20 U.S.C. 1414(a))

#### **§300.304 Evaluation procedures.**

(a) Notice. The public agency must provide notice to the parents of a child with a disability, in accordance with §300.503, that describes any evaluation procedures the agency proposes to conduct.

(b) Conduct of evaluation. In conducting the evaluation, the public agency must—

(1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining—

(i) Whether the child is a child with a disability under §300.8; and (ii) The content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities);

(2) Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and

(3) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

(c) Other evaluation procedures. Each public agency must ensure that—

(1) Assessments and other evaluation materials used to assess a child under this part—

(i) Are selected and administered so as not to be discriminatory on a racial or cultural basis;

(ii) Are provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer;

(iii) Are used for the purposes for which the assessments or measures are valid and reliable;

(iv) Are administered by trained and knowledgeable personnel;  
and

(v) Are administered in accordance with any instructions provided by the producer of the assessments.

(2) Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

(3) Assessments are selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).

(4) The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;

(5) Assessments of children with disabilities who transfer from one public agency to another public agency in the same school year are coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as possible, consistent with §300.301(d)(2) and (e), to ensure prompt completion of full evaluations.

(6) In evaluating each child with a disability under §§300.304 through 300.306, the evaluation is sufficiently comprehensive to identify all the child's special education and related service needs, whether commonly linked to the disability category in which the child has been classified.

(7) Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.

(Authority: 20 U.S.C. 1414(b)(1)-(3), 1412(a)(6)(B))

## **MEVA**

The initial evaluation must be completed within 45 days from the date virtual signature for parental consent is received by MEVA. When permission is given for the initial evaluation and less than 45 days of school are left in the school year, the school still has 45 days to complete the evaluation. The 45-day count stops on the last calendar day for the school year and starts again when students return for the following school year.

*It is important to note that when school is closed for holidays, spring break, teacher professional development, or other federally and school recognized days off (such as Memorial Day), those days do not count towards the 45-day timeline.*

- A Special Education representative will attend MTSS meetings where the committee will review documented interventions that have been provided to the student as part of instruction in the general education instructional setting and refer a student for an evaluation to determine eligibility for special education. Within one school day of the MTSS meeting, the Homeroom Teacher will refer the student for evaluation.
- The Special Education Administrator will collaborate with the Related Services Coordinator who will manage evaluation referrals.
- The Special Education Administrator will communicate the MEVA timeline and any relevant procedures to the contracted evaluators. Contracted evaluators will be responsible for communicating with the parent prior to the eligibility meeting to review evaluation findings.
- The Special Education Administrator will monitor the contracted evaluators and that evaluation results have been reviewed with the parents.
- The contracted evaluator will complete the relevant portions of the Comprehensive Eligibility forms as directed by the School Psychologist or Special Education Administration.
- The Special Education Administrator will monitor the progress of the evaluation such that the evaluation will be completed within allowable timelines.
- The Special Education Administrator and Related Service Manager will collaborate to schedule the eligibility meeting prior to the end of the 45-day timeline.
- Parents have the right for their child to have a reevaluation at least every three years. The

- parents or the IEP team can request a reevaluation more frequently. Generally,
- comprehensive evaluations shall not occur more frequently than one time per year unless the parent and the school agree that one is needed.

Finally, parents have the right to be involved in the decision about their child's eligibility and the programs and services the child needs as part of the initial evaluation and any subsequent reevaluations or redeterminations.

## **Reevaluations**

### **Federal Guidelines**

#### **§300.303 Reevaluations.**

(a) General. A public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with §§300.304 through 300.311—

(1) If the public agency determines that the educational or related service needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or

(2) If the child's parent or teacher requests a reevaluation.

(b) Limitation. A reevaluation conducted under paragraph (a) of this section:

(1) May occur not more than once a year, unless the parent and the public agency agree otherwise; and

(2) Must occur at least once every 3 years, unless the parent and the public agency agree that a reevaluation is unnecessary. (Authority: 20 U.S.C. 1414(a)(2))

#### **§300.305 Additional requirements for evaluations and reevaluations.**

(a) Review of existing evaluation data. As part of an initial evaluation (if appropriate) and as part of any reevaluation under this part, the IEP Team and other qualified professionals, as appropriate, must—

(1) Review existing evaluation data on the child, including—

(i) Evaluations and information provided by the parents of the child;

(ii) Current classroom--based, local, or Maine assessments, and classroom-based observations; and

(iii) Observations by teachers and related services providers; and

(2) On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine—

(i) Whether the child is a child with a disability as defined in 34 CFR 300.8 [Section VII], and the educational needs of the child, or, in case of a reevaluation of a child, whether the child continues to have such a disability and such educational needs;

(ii) The present levels of academic achievement and related developmental needs of the child;

(iii) Whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and

(iv) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the individualized education program of the child and to participate, as appropriate, in the general education curriculum.

(b) Conduct of review. The group described in paragraph (a) of this section may conduct its review without a meeting.

(c) Source of data. The public agency must administer such assessments and other evaluation measures as may be needed to produce the data identified under paragraph 3(a) of this section.

(d) Parental consent. Following prior written notice each SAU shall obtain informed written parental consent, in accordance with subsection (1)(A)(4), prior to conducting any reevaluation of a child with a disability, except that such informed parental consent need not be obtained if the SAU can demonstrate that it had taken reasonable measures to obtain such consent and the child's parent has failed to respond. If the parent refuses to consent to the reevaluation, the SAU may, but is not required to, pursue the reevaluation by using the consent override procedures in 34 CFR 300.300(a)(3) [Section XVI.2]. The SAU does not violate its obligation under child find and evaluation and eligibility determination if it declines to pursue the evaluation or reevaluation. [34 CFR 300.300(c)(ii,iii)]

(e) Requirements if additional data are not needed.

If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability, and to determine the child's educational needs.

(1) The public agency must notify the child's parents of:

(i) That determination and the reasons for the determination; and

(ii) The right of the parents to request an assessment to determine whether the child continues to be a child with a disability, and to determine the child's educational needs.

(2) The public agency is not required to conduct the assessment described in paragraph

(d)(1)(ii) of this section unless requested to do so by the child's parents.

(f) Evaluations before change in eligibility.

(1) Except as provided in paragraph (e)(2) of this section, a public agency must evaluate a child with a disability in accordance with §§300.304 through 300.311 before determining that the child is no longer a child with a disability.

(2) The evaluation described in paragraph (e)(1) of this section is not required before the termination of a child's eligibility under this part due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for FAPE under Maine law.

(3) For a child whose eligibility terminates under circumstances described in paragraph (e)(2) of this section, a public agency must provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals. (Authority: 20 U.S.C. 1414(c))

### **MEVA Procedures for Re-Evaluation**

The purpose of a reevaluation is to review current evaluation information and to consider what additional information might be needed to decide whether the child continues to have a disability and to determine the needs of the child.

A reevaluation of the child's needs is to be conducted at least once every three years. The reevaluation may be conducted at any time if the district feels the needs of the child should be reevaluated or if the child's teacher or parent requests a reevaluation. However, a reevaluation may not occur more than once a year unless the parent and the district agree to more than one a year.

At the time of reevaluations, the decision of whether to reevaluate the student, or to continue eligibility without additional data, will be made using the Review of Existing Educational Data process and document.

The district must provide written notice to the parent and must receive written informed parental consent before conducting any reevaluation of a child with a disability. Once signed consent is received the evaluation will be scheduled and conducted. The IEP reevaluation committee then reviews the reasons for the reevaluation, as well as existing evaluation data, including any information provided by the parent.

As a best practice, the discussion of the re-evaluation process will be held at the annual review IEP meeting prior to the three-year eligibility due date - to ensure adequate time to conduct new testing if needed.

### **Parent Rights Regarding Evaluation**

#### **MEVA**

Parents have the right to request that their child receive a full and complete evaluation to determine whether he/she has a disability and needs special education and/or related services. Parent Rights in Maine states that parents have the right, when an initial evaluation for determination is being conducted, for their child to receive a full and complete evaluation. This includes having the child assessed in all areas of the suspected disability (including but not limited to behavior, academics, communication, social skills, and daily living skills).

It is important to note that when school is closed for students on holidays, spring break, teacher professional development, or other federally and school -recognized student days off (such as Memorial Day), those days do not count towards the 45-day window.

This evaluation can consist of several sources of information, including more than one test. These tests must be given in the language that the child normally uses (native language), unless it is not possible to do so.

In addition, parents have the right for their child to be given appropriate tests by qualified examiners. The initial evaluation must be completed within 45 school days from the date the parents sign permission for the evaluation.

Parents have the right for their child to have a reevaluation at least every three years. The parents or the teacher can make a request for reevaluation in less than three years if needed. In order to be accurate and valid, reevaluations shall not occur more frequently than one time per year unless the parents and the school agree one is needed.

Finally, parents have the right to be involved in the decision about their child's eligibility and the programs and services the child needs as part of the first evaluation and the reevaluation.

## **Independent Educational Evaluation**

### **Federal Guidelines**

§300.502 Independent educational evaluation.

(a) General.

(1) The parents of a child with a disability have the right under this part to obtain an independent educational evaluation of the child, subject to paragraphs (b) through (e) of this section.

(2) Each public agency must provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be

obtained, and the agency criteria applicable for independent educational evaluations as set forth in paragraph (e) of this section.

(3) For the purposes of this subpart—

(i) Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question; and

(ii) Public expense means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with §300.103.

(b) Parent right to evaluation at public expense.

(1) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency, subject to the conditions in paragraphs (b)(2) through (4) of this section.

(2) If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either—

(i) File a due process complaint to request a hearing to show that its evaluation is appropriate; or

(ii) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to §§300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria.

(3) If the public agency files a due process complaint notice to request a hearing and the final decision is that the agency's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

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

(5) A parent is entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees.

(c) Parent- initiated evaluations.

If the parent obtains an independent educational evaluation at public expense or shares with the public agency an evaluation obtained at private expense, the results of the evaluation—

(1) Must be considered by the public agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child; and

(2) May be presented by any party as evidence at a hearing on a due process complaint

under subpart E of this part regarding that child.

(d) Requests for evaluations by hearing officers. If a hearing officer requests an independent educational evaluation as part of a hearing on a due process complaint, the cost of the evaluation must be at public expense.

(e) Agency criteria.

(1) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the public agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation. (2) Except for the criteria described in paragraph (e)(1) of this section, a public agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense. (Authority: 20 U.S.C.1415(b)(1) and (d)(2)(A))

## **MEVA**

As an Independent Evaluation is conducted by an outside entity, the evaluator may not be under contract with the school or affiliate partners. Prior to independent evaluation taking place, the parent must agree to the evaluator and the evaluator must provide a quote for the evaluation that is approved by the School Administration. In this instance, in order to be reimbursed for the evaluation an invoice and VV9 must be submitted. MEVA will refer to resources from the Maine Department of Education to determine Maine approved ranges of independent educational evaluation cost.

## **Eligibility**

### **Federal Guidelines**

§300.306 Determination of eligibility.

(a) General. Upon completion of the administration of assessments and other evaluation measures—

(1) A group of qualified professionals and the parent of the child determines whether the child is a child with a disability, as defined in §300.8, in accordance with paragraph (b) of this section and the educational needs of the child; and

(2) The public agency provides a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.

(b) Special rule for eligibility determination. A child must not be determined to be a child with a disability under this part

(1) If the determinant factor for that determination is:

(i) Lack of appropriate instruction in reading, including the essential components of

reading instruction (as defined in section 1208(3) of the ESEA);

(ii) Lack of appropriate instruction in math; or

(iii) Limited English proficiency; and

(2) If the child does not otherwise meet the eligibility criteria under §300.8(a).

(c) Procedures for determining eligibility and educational need.

(1) In interpreting evaluation data for the purpose of determining if a child is a child with a disability under §300.8, and the educational needs of the child, each public agency must:

(i) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and

(ii) Ensure that information obtained from all these sources is documented and carefully considered.

(2) If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance with §§300.320 through 300.324.

### **Federal Eligibility Categories**

Autism Spectrum Disorder, Deaf- Blind, Deafness, Developmental Delay, Emotional Disturbance, Intellectual Disability, Multiple Disabilities, Orthopedic Impairment, Other Health Impairment, Specific Learning Disability, Speech Impairment, Hearing Impairment, Traumatic Brain Injury, Visual Impairment including Blindness

### **MEVA**

Once the evaluation is completed, the eligibility team, including the parent, will decide whether the student is eligible for special education services. This involves meeting eligibility requirements as well as not having exclusionary criteria that would prevent eligibility. The parent is included on the team and is provided a copy of the evaluation report as well as a copy of the eligibility decision.

If there is no report from an evaluation specialist, such as the district's psychologist, then the eligibility report can serve as the evaluation report if it is comprehensive enough to document the results of the evaluation.

Many times, a parent will request a copy of the evaluation report prior to the eligibility meeting in order to read and understand the results of the evaluation. The law does not require that the

parent be provided with a copy prior to the eligibility decision. On occasion, it is appropriate to provide it prior to a meeting. Other times, the report is not provided until a time at which the evaluation specialist can meet with the parent to explain the results of the evaluation.

Many of the assessments that are administered as part of the evaluation have results that are reported in numbers that have little meaning to a parent or others until an explanation is also provided. If the results are confusing or upsetting to the parent, it may be necessary to conduct a meeting to discuss the results of the evaluation and then convene a later meeting for the eligibility decision.

In order to be eligible to receive special education services, the student must meet the requirements of one or more of the following categories:

Autism Spectrum Disorder, Deaf -Blind, Deafness, Developmental Delay, Emotional Disturbance, Intellectual Disability, Multiple Disabilities, Physical Impairment, Other Health Impairment, Specific Learning Disability, Speech & Language Impairment, Hearing Impairment, Traumatic Brain Injury, Visual Impairment, including Blindness.

## **Additional Procedures for Identifying Children with Specific Learning Disabilities**

### **Federal Guidelines**

§300.307 Specific learning disabilities.

(a) General. A Maine school must adopt, consistent with §300.309, criteria for determining whether a child has a specific learning disability as defined in §300.8(c)(10). In addition, the criteria adopted by the Maine—

- (1) Must not require the use of a severe discrepancy between intellectual ability and achievement for determining whether a child has a specific learning disability, as defined in §300.8(c)(10);
- (2) Must permit the use of a process based on the child's response to scientific, research-based intervention; and
- (3) May permit the use of other alternative research-based procedures for determining whether a child has a specific learning disability, as defined in §300.8(c)(10).

(b) Consistency with Maine criteria. A public agency must use the Maine criteria adopted pursuant to paragraph (a) of this section in determining whether a child has a specific learning disability.

(Authority: 20 U.S.C. 1221e-3; 1401(30); 1414(b)(6))

## **Parent IEP & Eligibility Meeting Notification Process**

### **Federal Guidelines**

(a) Notice. The public agency must provide notice to the parents of a child with a disability, in accordance with §300.503, that describes any evaluation procedures the agency proposes to conduct.

### **MEVA**

Parent input will be gathered for initial meeting date and time. If, after 48 hours, no response or consensus is reached, a date/time will be set by school staff **allowing for 7 days** notification. The parent should be sent a certified letter *and standard letter* which describe the intentions of the IEP team to have the meeting.

If the parent does not attend the meeting, then the IEP team may choose to develop the IEP without parent attendance and send a copy of the IEP to the parent.

Initial eligibility meetings may not be held without the parent. If the parent does not attend after three eligibility meeting attempts, school staff are to collaborate with the Special Education Manager for assistance in determining next steps.

If the parent responds and indicates that they wish to participate in the development of the IEP, but cannot meet, school staff must document the means in which they attempted to involve the parent before conducting the IEP without the parent. There should be at least three contact attempts for this. This should only be done if the delay of the IEP meeting will cause timelines to not be met.

The parent may opt to waive the 7-day notification and hold the IEP meeting earlier. This is documented within the notes of the IEP and the parent signs the notice of meeting indicating that they have chosen to waive this right. If an IEP or Eligibility Meeting needs to be rescheduled after an invite has been sent to team members, the case manager will generate a new invitation and send it to the IEP team.

### **Parent Request for IEP Meeting**

Upon request for an IEP meeting from a parent or other team member, the assigned special education teacher will gather parent input for meeting time and date within 48 hours of the initial request, with every attempt for 10 days notification of the meeting time/date to the IEP team.

Notice of the meeting will be sent to parent via email, unless traditional mail is requested. If the request is not honored or the meeting is unnecessarily delayed, the parent may contact the Lead Special Education Teacher or the Special Education Manager at the school for assistance

## **Advanced Written Notice by the District**

### **Federal Guidelines**

Written prior notice to the parents of the child, in accordance with subsection (c)(1), whenever the local educational agency--

(A) proposes to initiate or change; or

(B) refuses to initiate or change, the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child.

(1) Content of prior written notice. --The notice required by subsection (b)(3) shall include--

(A) a description of the action proposed or refused by the agency;

(B) an explanation of why the agency proposes or refuses to take the action and a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;

(C) a statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;

(D) sources for parents to contact to obtain assistance in understanding the provisions of this part;

(E) a description of other options considered by the IEP Team and the reason why those options were rejected; and

(F) a description of the factors that are relevant to the agency's proposal or refusal.

### **MEVA**

Case managers will inform the parents of actions being proposed or refused regarding their child by giving written notice **before** the district proposes or refuses to initiate or change the following:

- identification (process to determine eligibility),
- evaluation (nature and scope of assessment procedures),
- educational placement (educational placement of children including graduation), or
- FAPE (the provision of a free appropriate public education to children).

Prior Written Notice is often contained within the IEP document if the discussion occurred during an IEP meeting. At other times, the parent will request, and the district will respond in writing.

The prior written notice will contain

- a description of the action refused or proposed by the district;
- an explanation of why the district refuses or proposes to take the action;
- a description of the evaluation procedure, assessment, records, or report used as a basis for the proposed or refused action;
- a statement that the parents have the protections of the procedural safeguards;
- the sources for the parents to contact to understand the procedural safeguards;

A description of other options the IEP team considered and the reasons why those options were rejected; and a description of other factors that are relevant to the district’s proposal or if a scheduled IEP or evaluation meeting must be rescheduled before the meeting begins (by parent or team member request), and this is agreed upon by the parent, a new invitation should be generated and sent to the team members.

When scheduling all IEP meetings (including, Reevaluations, Manifest Determination Reviews, etc), where prior notice is required to invite the team, the following contact protocol should be used:

Case managers must attempt at least three parent contacts before they may decide to proceed with scheduling a meeting. \*

The first two contact attempts must be a combination of phone or email. These attempts must be documented and noted in TVS and EDMS. The third attempt of contact is a combination of either a letter or email. \*All three attempts of contact must be for the same meeting date, time, and location.

## **IEP Meeting Protocols**

### **Federal Guidelines**

§300.324 Development, review, and revision of IEP.

(a) Development of IEP:

- (1) General. In developing each child’s IEP, the IEP Team must consider—
  - (i) The strengths of the child;
  - (ii) The concerns of the parents for enhancing the education of their child;
  - (iii) The results of the initial or most recent evaluation of the child; and
  - (iv) The academic, developmental, and functional needs of the child.
- (2) Consideration of special factors, The IEP Team must—
  - (i) In the case of a child whose behavior impedes the child’s learning or that of

others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior;

(ii) In the case of a child with limited English proficiency, consider the language needs of the child as those needs relate to the child's IEP;

(iii) In the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP Team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child;

(iv) Consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and

(v) Consider whether the child needs assistive technology devices and services.

(3) Requirement with respect to regular education teacher. A regular education teacher of a child with a disability, as a member of the IEP Team, must, to the extent appropriate, participate in the development of the IEP of the child, including the determination of—

(i) Appropriate positive behavioral interventions and supports and other strategies for the child; and

(ii) Supplementary aids and services, program modifications, and support for school personnel consistent with §300.320(a)(4).

(4) Agreement.

(i) In making changes to a child's IEP after the annual IEP Team meeting for a school year, the parent of a child with a disability and the public agency may agree not to convene an IEP Team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP.

(ii) If changes are made to the child's IEP in accordance with paragraph (a)(4)(i) of this section, the public agency must ensure that the child's IEP Team is informed of those changes.

(5) Consolidation of IEP Team meetings. To the extent possible, the public agency must encourage the consolidation of reevaluation meetings for the child and other IEP Team meetings for the child.

(6) Amendments. Changes to the IEP may be made either by the entire IEP Team at an IEP Team meeting, or as provided in paragraph (a)(4) of this section, by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated.

(b) Review and revision of IEPs

(1) General. Each public agency must ensure that, subject to paragraphs (b)(2) and (b)(3) of this section, the IEP Team

(i) Reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and

(ii) Revises the IEP, as appropriate, to address:

(A) Any lack of expected progress toward the annual goals described in §300.320(a)(2), and in the general education curriculum, if appropriate;

(B) The results of any reevaluation conducted under §300.303;

(C) Information about the child provided to, or by, the parents, as described under §300.305(a)(2);

(D) The child's anticipated needs; or

(E) Other matters.

(2) Consideration of special factors.

In conducting a review of the child's IEP, the IEP Team must consider the special factors described in paragraph (a)(2) of this section.

(3) Requirement with respect to regular education teacher.

A regular education teacher of the child, as a member of the IEP Team, must, consistent with paragraph (a)(3) of this section, participate in the review and revision of the IEP of the child.

(c) Failure to meet transition objectives—

(1) Participating agency failure. If a participating agency, other than the public agency, fails to provide the transition services described in the IEP in accordance with §300.320(b), the public agency must reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the child set out in the IEP.

(2) Construction. Nothing in this part relieves any participating agency, including a Maine vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to children with disabilities who meet the eligibility criteria of that agency.

(d) Children with disabilities in adult prisons:

(1) Requirements that do not apply. The following requirements do not apply to children with disabilities who are convicted as adults under Maine law and incarcerated in adult prisons:

(i) The requirements contained in section 612(a)(16) of the Act and §300.320(a)(6) (relating to participation of children with disabilities in general assessments).

(ii) The requirements in §300.320(b) (relating to transition planning and transition services) do not apply with respect to the children whose eligibility under Part B of the Act will end, because of their age, before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.

(2) Modifications of IEP or placement.

(i) Subject to paragraph (d)(2)(ii) of this section, the IEP Team of a child with a disability who is convicted as an adult under Maine law and incarcerated in an adult prison may modify the child's IEP or placement if the Maine has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

(ii) The requirements of §§300.320 (relating to IEPs), and 300.112 (relating to LRE), do not apply with respect to the modifications described in paragraph (d)(2)(i) of this section. (Authority: 20 U.S.C. 1412(a)(1), 1412(a)(12)(A)(i), 1414(d)(3), (4)(B), and (7); and 1414(e))

## **MEVA**

1. IEP Meetings can be held in online meeting room or participating by teleconference.
2. Case managers will invite relevant and required team members via Outlook email meeting invitation – which includes the IEP invite and Maine Procedural Safeguards.
3. The recommended order of the meeting is outlined below:

### **ORDER OF THE MEETING**

1. The student's name, purpose of meeting, date and time allotted should be clearly stated
2. An introduction of each team member along with their role is to be done by the meeting facilitator or by each member themselves.
3. Case managers should defer to related service providers, school psychologists, or other participants who have submitted information for the IEP development (via the PLAAFP, goals and objectives, and/or supplemental aids), when that member's content is discussed.
4. Each section of the IEP will be reviewed and updated as appropriate. Not all sections will be applicable to every student.
5. Once the IEP has been reviewed and updated in its entirety, the actions to be taken as a result of the IEP meeting should be reviewed.

- a. Type of meeting and statement of confidentiality
- b. Student Information
- c. Primary Disability (and as applicable Secondary Disability) along with the Re-evaluation of Eligibility Date
- d. Current Descriptive Information
- e. Parent concerns
- f. Teacher Input:
  - i. Allow each team member to provide input in this area
  - ii. Student's Strengths – include not only academic strengths but also student's interests and hobbies so you can relate to the student on another level other than academic and the student's personality. This section should also include the student's progress in the OLS to date in all academic areas.
- g. How the student's disability affects progress and involvement in the general curriculum
- h. Present Level of Performance – only those areas that need to be updated
- i. Consideration of Special Factors for IEP Development
- j. Measurable Annual Goals and Benchmarks for IEP and Transition Activities.
- k. Supplemental Aids
- l. Program Participation
- m. Classroom Accommodations (\*)
- n. Maine/District Mandated Tests and Accommodations (\*)
- o. Special Education and Related Services
  - i. Type of Service
  - ii. Provider
  - iii. Sessions per (day, week, month or year)
  - iv. Time per session
  - v. Beginning/-Ending Dates
  - vi. Location of Services

\*A Maine statement of assurance (\*) should be reviewed at the meeting and sent along with the IEP to the parent if a therapist has not been identified or assigned at the time of the meeting.

- p. LRE and General Education
- q. Extended School Year
- r. Transition Service
- s. Informed Parental Consent

6. The meeting facilitator should ask if there are any further questions and/or concerns. Address as appropriate.
7. The meeting facilitator should officially conclude the meeting by thanking everyone for attending.
8. After the meeting is done, the case manager will update the draft document with items discussed and agreed upon during the meeting.

\*Please note that the order in which the IEP will be reviewed may vary from what is outlined below.

- t. Type of meeting and statement of confidentiality
- u. Student Information
- v. Primary Disability (and as applicable Secondary Disability) along with the Re-evaluation of Eligibility Date
- w. Current Descriptive Information
- x. Parent concerns
- y. Teacher Input:
  - i. Allow each team member to provide input in this area
  - ii. Student's Strengths – include not only academic strengths but also student's interests and hobbies so you can relate to the student on another level other than academic and the student's personality. This section should also include the student's progress in the OLS to date in all academic areas.
- z. How the student's disability affects progress and involvement in the general curriculum
  - aa. Present Level of Performance – only those areas that need to be updated
  - bb. Consideration of Special Factors for IEP Development
  - cc. Measurable Annual Goals and Benchmarks for IEP and Transition Activities.
  - dd. Supplemental Aids
  - ee. Program Participation
  - ff. Classroom Accommodations (\*)
  - gg. Maine/District Mandated Tests and Accommodations (\*)
  - hh. Special Education and Related Services
    - i. Type of Service
    - ii. Provider
    - iii. Sessions per (day, week, month or year)
    - iv. Time per session
    - v. Beginning/-Ending Dates
    - vi. Location of Services

\*A Maine statement of assurance (\*) should be reviewed at the meeting and sent along with the IEP to the parent if a therapist has not been identified or assigned at the time of the meeting.

- ii. LRE and General Education
- jj. Extended School Year
- kk. Transition Service
- ll. Informed Parental Consent

\*Note: District Representatives (LEAs) are not to sign IEPs if changes need to be made based on discussions and decisions in the meeting.

#### Considerations of Time, Facilitation, and Attendance:

If the IEP is headed towards exceeding the allotted time for the meeting (based on the invite), the case manager should pause the meeting, and ask participants if they can stay. If there is consensus to stay, proceed with the meeting.

Case managers should not serve as proxies for related service providers or other relevant participants that are absent. Recall that in the event of a related service provider's absence, the parent must agree that the identified member's presence is not needed, and that provider must have submitted input for the IEP meeting as appropriate.

If team members cannot stay, then the meeting should be postponed and resumed at an agreed upon time, not to exceed five school days after the current meeting (not counting the day of the current meeting).

A general education teacher, special education teacher, and LEA (district representative) must be present the entire time and cannot be dismissed prior to the end of the meeting.

Parents who attend the meeting must stay until the end.

## **Transition Services**

### **Federal Guidelines**

(a) Transition services means a coordinated set of activities for a child with a disability that—

- (1) Is designed to be within a results- oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's

movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;  
(2) Is based on the individual child's needs, considering the child's strengths, preferences, and interests; and includes—

- (i) Instruction;
- (ii) Related services;
- (iii) Community experiences;
- (iv) The development of employment and other post-school adult living objectives; and
- (v) If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

(b) Transition services for children with disabilities may be special education, if provided as specially designed instruction, or a related service, if required to assist a child with a disability to benefit from special education. (Authority: 20 U.S.C.1401(34))

## **MEVA**

Transition Service Plans must be developed for each child prior to the start of high school. Beginning not later than the IEP to be in effect when the student begins ninth grade or turns 16, or younger if determined appropriate by the IEP team, the transition plan must be updated annually thereafter; the Transition Plan must include appropriate measurable postsecondary goals and the transition services (*including courses of study*) needed to assist the student in reaching those goals. Training and guidance for Special Education Case Managers on developing Transition Plans will be provided by MEVA leadership staff. The plan details the student's needs based on an age-appropriate assessment and the course of study (diploma type) the child plans to earn. This must be updated at least annually and is the road map to post-secondary outcome goals (what the student plans to do after high school). When students turn 18, all due process rights transfer to them. They must be informed of this Transfer of Rights at age 17. Transition requires support from multiple sources so the student and his or her family can make choices, develop connections, and access resources.

## **Transfer of Rights**

### **Federal Guidelines**

§300.520 Transfer of parental rights at age of majority.

(a) General. A Maine may provide that, when a child with a disability reaches the age of majority under Maine law that applies to all children (except for a child with a disability who has been determined to be incompetent under Maine law)—

- (1)
  - (i) The public agency must provide any notice required by this part to both the child and the parents; and
  - (ii) All rights accorded to parents under Part B of the Act transfer to the child;
- (2) All rights accorded to parents under Part B of the Act transfer to children who are incarcerated in an adult or juvenile, Maine or local correctional institution; and
- (3) Whenever a Maine provides for the transfer of rights under this part pursuant to paragraph (a)(1) or (a)(2) of this section, the agency must notify the child and the parents of the transfer of rights. (b) Special rule. A Maine school must establish procedures for appointing the parent of a child with a disability, or, if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the period of the child's eligibility under Part B of the Act if, under Maine law, a child who has reached the age of majority, but has not been determined to be incompetent, can be determined not to have the ability to provide informed consent with respect to the child's educational program. (Authority: 20 U.S.C. 1415(m))

In the state of MAINE, when a student reaches 18 years old, he/she is an adult unless legal action is taken. On or before a student's 17th birthday, MEVA is to inform the parents and the student that, at age 18, the student attains the age of majority in Maine and will become his or her own educational decision maker. This will be noted within the IEP completed by MEVA. MEVA may also inform parents of other options or about where to get more information about guardianships, powers of attorney, and any other options. For example, it may be that for some students, a guardianship or a more limited form of transfer of rights would be necessary.

Beginning at age 18, the school is to send all notices to both the parent and the student, but the student will provide informed written consent for any action requested by the district. When the student turns 18, he or she becomes the educational decision maker; but, while the student is eligible under IDEA, the parents retain the rights to all notices of meetings, notices of changes in program or placement, and notices of evaluations.

For students that are 16 or older, an MEVA student's case manager will address the age of majority issue, within the IEP, to inform the family of their rights and for the purposes of transferability of the IEP document.

## Functional Behavior Assessment/Behavior Intervention Plans

### Federal Guidelines

(ii) Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur.

### MEVA

\*\*Prior to starting any FBA data collection PARENT PERMISSION must be obtained.

\* Special Education Teacher/School has 60 school days to gather information, analyze data, develop a behavior plan, and hold an IEP Meeting.

1. Problem Behavior is Defined
2. Parent/Guardian, General Education Teacher (at least one), and Special Education Teacher would complete **Behavior Observation Data**
  - a. Parent/Guardian completes **Behavior Observation Data** form observing student at home (Special Education Teacher educates Parent/Guardian on completing forms as needed)
  - b. General Education Teacher completes **Behavior Observation Data** form “observing” student in their breakout room
  - c. Special Education Teacher completes **Behavior Observation Data** form “observing” twice (minimum); in a breakout room and (if possible) in a face-to-face setting
3. Special Education Teacher completes **Student Interview** form with student
4. Special Education Teacher completes **FBA Summary Documentation** Form Analyze data to develop Behavior Intervention Plan and hold IEP case conference to review and finalize plan.

## Reporting IEP Progress

### Federal Guidelines

- (i) How the child’s progress toward meeting the annual goals will be measured; and
- (ii) When periodic reports on the progress the child is making toward meeting the annual goals (such as through quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided

### MEVA

Progress Monitoring should be a fluid and consistent routine for all special education services. Data should drive the IEP goals and interventions and show positive growth. If positive growth towards

goals is not achieved interventions and IEP goals should be revisited and amended as appropriate to meet the individual needs of each student. This guide is to assist schools in assuring progress monitoring and services documentation, data collection and review, and appropriate service implementation to assist in student growth and achievement.

MEVA case managers will conduct small group instruction to provide services that support IEP goals. Goal acquisition reporting, small group attendance, and any behavioral concerns will be notated in the Total View School (TVS) system. This will be managed by the case manager in a 'running note' where the case manager edits a previously developed note on the student's progress. The running note is only edited by the case manager and is viewable by the student's general education teachers and administrators.

Related service providers will provide goal progress monitoring on both a request basis and a set quarterly progress calendar. Quarterly progress monitoring is a set schedule communicated by the Related Service Coordinator at the beginning of a given school year. The related service providers will complete an MEVA created goal progress form and return to the case manager of the given student by the agreed upon date.

## **Extended School Year Services (ESY)**

### **Federal Guidelines**

§300.106 Extended school year services.

(a) General.

(1) Each public agency must ensure that extended school year services are available as necessary to provide FAPE, consistent with paragraph (a)(2) of this section.

(2) Extended school year services must be provided only if a child's IEP Team determines, on an individual basis, in accordance with §§300.320 through 300.324, that the services are necessary for the provision of FAPE to the child.

(3) In implementing the requirements of this section, a public agency may not—

(i) Limit extended school year services to categories of disability; or (ii) Unilaterally limit the type, amount, or duration of those services.

(a) Definition.

As used in this section, the term extended school year services means special education and related services that—

(1) Are provided to a child with a disability—

- (i) Beyond the normal school year of the public agency;
  - (ii) In accordance with the child's IEP; and
  - (iii) At no cost to the parents of the child; and
- (2) Meet the standards of the SEA. (Approved by the Office of Management and Budget under control number 1820-0030) (Authority: 20 U.S.C. 1412(a)(1))

## **MEVA**

In general, extended school year (ESY) refers to special education and/or related services provided beyond the normal school year of a public agency for the purpose of providing FAPE to a student with a disability. These services are distinct from enrichment programs, summer school programs, and compensatory services and are not simply an extension of time. ESY services are not so much a regression and recoupment issue as they are an issue of FAPE. Unrecouped regression, over time, may be evidence that FAPE is not being provided. In other words, it is not the case that a student is entitled to ESY services, but that the student will not receive FAPE if ESY services are not provided. These services, at no cost to the parent, will vary in type, intensity, location, inclusion of related services, and length of time, depending on the individual needs of the student.

ESY services are only necessary to FAPE when the benefits a disabled child gains during the regular school year will be significantly jeopardized if the child is not provided with an educational program during breaks in instruction. ESY services are intended to address critical life skills. ESY is not about gaining new skills or making progress above what is gained during the regular school year. ESY is NOT the same as compensatory.

The consideration of ESY services is a part of the individualized education program (IEP) process. The IEP, in accordance with the Regulations Governing Special Education Programs for Children with Disabilities in Maine, must have a statement of the projected dates for initiation of services and the anticipated duration of the services. The IEP must address the provision of ESY services, if required, for the student to receive FAPE. Frequency and duration of services do not have to be at same level as during the school year.

ESY is not a separate planning process since it is part of the IEP process. Thus, an IEP meeting must be held to consider if a student needs ESY services and must be conducted like any other IEP meeting with appropriate prior notice. If seen as separate, it may lead to the segmentation of services for the student and further lead to situations where these services are considered or open to discussion for some students, but not for all. Therefore, a separate IEP should not be developed for ESY services; the current or an amended IEP should be used. Goals must be identified to be worked on during ESY. These will not be new goals rather goals carried over from

current regular school year IEP.

### **What Extended School Year Services Are Not**

Because ESY services are uniquely designed to provide FAPE to students with disabilities, it is necessary to emphasize that these services are:

- Not based on the category of student's disability - services must be based on the student's unique educational needs;
- Not mandated twelve-month services for all students with disabilities;
- Not a childcare service;
- Not necessarily a continuation of the total IEP provided to a student with a disability during the regular school year;
- Not required to be provided all day, every day, or each day;
- Not an automatic program provision from year to year;
- Not summer school per se, compensatory services, or enrichment programs;
- Not required to be provided in a traditional classroom setting; and
- Not a service to be provided to maximize each student's potential

**Determining the Need for Extended School Year Services** The determination of need for ESY services must occur within the context of the IEP team meeting. The IEP team should consider the need for these services at least annually, but must consider the need at other times, if so requested. The request to consider ESY services may be initiated by the parent, the student, the student's teacher(s), related service providers, or administrators. It is important that the decision regarding whether ESY services are provided not be delayed. The IEP Team should make the decision early enough to ensure that parents can meaningfully exercise their due process rights if they wish to challenge an ESY decision. The IEP Team must remember that it is not acceptable to pre-limit ESY services to a set number of days or hours of service nor restrict the provision of ESY services for administrative convenience. Likewise, ESY services may not be limited by the financial resources of the school system. Students who will not receive FAPE without ESY services are entitled to these services. Therefore, it is not appropriate for a district to limit ESY services to predetermined disability categories, nor to categorically exclude certain students with disabilities.

If a teacher suspects that a child may be eligible for ESY services, all supporting documentation must be sent to the Special Education Manager for review prior to the ESY meeting being held.

### **Exit from Special Education/Parent Revocation**

#### **MEVA**

MEVA must reevaluate a child with a disability before determining that the child is no longer a child

with a disability who requires special education services.

However, reevaluation is not needed when the student

- graduates with a regular diploma, or
- exceeds the age of eligibility for FAPE (age 20) before the start of the school year.

MEVA must, however, provide the student with a summary of academic and functional performance that includes recommendations for meeting post-secondary goals when the student is graduating with a regular diploma or aging out of school. Best practice would also include providing the summary of performance for the student who receives a special education diploma or other exit document.

Parents who request that their child be taken out of special education must provide the request in writing and will be provided a summary of their student's current academic and functional performance. The case manager will complete the revocation process with the parent/guardian, which requires a signature. The completed paperwork, i.e., the signed revocation form and the summary of performance paperwork will be completed and filed in the student's physical file.

## **Signature Collection**

MEVA is required to collect signatures for the following areas:

1. Evaluations/Re-Evaluations
2. Revocation of Consent for Services/Placement
3. Initial Consent for Placement
4. Identification of a Student with a Learning Disability
5. Receipt of Procedural Safeguards and
6. Transfer of Rights/Age of Majority

## **Related Services**

### **Federal Guidelines**

§300.34 Related services.

General.

(a) Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech- language pathology and audiology services, interpreting services, psychological

services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training.

(b) Exception; services that apply to children with surgically implanted devices, including cochlear implants.

(1) Related services do not include a medical device that is surgically implanted, the optimization of that device's functioning (e.g., mapping), maintenance of that device, or the replacement of that device.

(2) Nothing in paragraph (b)(1) of this section—

(i) Limits the right of a child with a surgically implanted device (e.g., cochlear implant) to receive related services (as listed in paragraph (a) of this section) that are determined by the IEP Team to be necessary for the child to receive FAPE.

(ii) Limits the responsibility of a public agency to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school; or

(iii) Prevents the routine checking of an external component of a surgically implanted device to make sure it is functioning properly, as required in §300.113(b).

## **MEVA**

MEVA provides related services to all eligible students according to what is prescribed by the Individual Education Plan. Contracts are secured with private clinics, therapists, hospitals and local districts throughout the Maine to provide therapy for MAINE VIRTUAL ACADEMY students. MEVA is responsible for providing related services and will attempt to secure services within a reasonable distance from the student's residence.

Once a student has been identified as needing related services as outlined on their IEP, it is the responsibility of the assigned teacher to the school's Related Service Manager, so that a service provider can be assigned to the student.

If the related service is occupational or physical therapy or evaluation, it is the parent's responsibility to provide a prescription from their child's physician for that service. This can be sent to the MEVA office or assigned special education teacher.

Once a therapist is identified, the therapist contacts the family to set up the therapy schedule. Once the therapist is provided to family, the school has met the obligation of the IEP in providing access to services.

It is the contracted provider's responsibility to provide all required documentation of services within given timelines and to notify the MAINE VIRTUAL ACADEMY of any absences from therapy and/or any concerns that they may have concerning the student's academic needs or performance. It is the parent's responsibility to ensure their student attends therapy sessions and to notify the MAINE VIRTUAL ACADEMY of any concerns with the contract provider or any changes that may prohibit the student from attending therapy.

If a student has consistent truancy, then the IEP team will meet to determine if services are still deemed necessary. The parent has the right to decline services for their student at any time.

A statement of assurance is provided to the parent regarding provision of services for any related services that are deemed necessary and appropriate by the IEP team but do not have a therapist available or assigned.

### **Compensatory Services**

When a student has not been provided therapy services that are deemed appropriate on the student's IEP due to the school's failure to locate a therapist, that student is owed compensatory services. These services can be delivered within a normal school week in conjunction with current services or during school breaks when normal services would not be provided. The determination as to the appropriate method of delivering compensatory services should be done in consultation with the therapist as some students will not benefit from additional services within small time frames.

A plan for the delivery of compensatory services will be developed by the IEP team within 2 weeks of a therapy provider being identified. Compensatory services will not be provided when the parent has declined a provider who is within a reasonable distance (60-minute drive or less) from the student's home address. Compensatory services are calculated using the start date of the services on the IEP and the first day that therapy has been provided.

*Example:*

*Student A has an IEP dated 8-24-2010 which includes 60 mpw of speech therapy.*

*School was unable to locate a provider in the student's area until 10-12-2010.*

*There are seven weeks during which school was in session that the student did not receive therapy as stated on the IEP. Therefore, a compensatory service plan will be developed by 10-26-10 (2 weeks after start of therapy) accounting for a total of 420 minutes of speech therapy.*

Compensatory services will not be provided for sessions that are missed due to student or parent illness, transportation issues, or general truancy.

The compensatory plan will be based upon the statement of assurance provided to the parent at previous IEP meeting. The IEP team will meet to determine appropriate therapy frequency and duration and then Maine within the IEP the time frame that services will be delivered and how they will be delivered.

## **Transportation**

If transportation is required for a student to receive services as outlined on their IEP, MEVA will work with the family to ensure that appropriate transportation is provided. Transportation arrangements will vary depending on the service location and transportation options in that area of the Maine. Arrangements may include bus tokens, taxi credits, contracts with local transportation providers, or reimbursement to the parent directly based on the federal mileage rate. Reimbursement for mileage will be approved by the Special Education Manager or designee. Proper documentation must be submitted (\*) for reimbursement to be made.

## **Assistive Technology**

Assistive technology (AT) is a component of the educational programs of students with disabilities. Assistive Technology Devices are any items, equipment, products, or system, whether acquired commercially, teacher made, modified, or customized, that are used to increase maintain, or improve the functional capabilities of children with disabilities. For example, some students' ability to learn, compete, work and interact with others may improve with the use of the following:

- adapted toys,
- switches,
- computers,
- amplification systems,

- wheelchairs,
- memory aids,
- magnifiers,
- augmentative communication devices, and
- other adapted devices.

Assistive Technology Services are services needed to support effective use of AT devices. AT services may include:

- training or technical assistance for the child and/or the child's family, and
- training or technical assistance for professionals, employers, or other individuals who are substantially involved in the major life functions of an individual with a disability. Services also include selecting, designing, fitting, customizing, adapting, applying, retaining, repairing, or replacing assistive technology devices.

MEVA will provide assistive technology and or adapted materials as needed to provide each child FAPE.

## **Accessible Instructional Materials**

MEVA will provide print instructional materials in an accessible format to students who are blind or other print disabled. These materials must be provided in a timely manner, usually about the same time as the traditional materials are received by other students, unless unusual circumstances exist. Accessible formats include braille, audio, or digital text, but do not include the altering of the content. It is the special education teacher's responsibility to notify the Special Education Manager or designee of any special instructional materials needed by students on their caseload as soon as possible in order to allow sufficient time for such materials to be delivered to the student.

## **Manifestation Determination**

### **Federal Guidelines**

(e) Manifestation determination.

- (1) Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to Determine:

- (i) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
- (ii) If the conduct in question was the direct result of the LEA's failure to implement the IEP.

(2) The conduct must be determined to be a manifestation of the child's disability if the LEA, the parent, and relevant members of the child's IEP Team determine that a condition in either paragraph (e)(1)(i) or (1)(ii) of this section was met.

(3) If the LEA, the parent, and relevant members of the child's IEP Team determine the condition described in paragraph (e)(1)(ii) of this section was met, the LEA must take immediate steps to remedy those deficiencies.

(f) Determination that behavior was a manifestation. If the LEA, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team must:

(1) Either:

- (i) Conduct a functional behavioral assessment, unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or
- (ii) If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and

(2) Except as provided in paragraph(g) of this section, return the child to the placement from which the child was removed, unless the parent and the LEA agree to a change of placement as part of the modification of the behavioral intervention plan.

(g) Special circumstances. School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child:

- (1) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of an SEA or an LEA;
- (2) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA; or
- (3) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA.

(h) Notification. On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the LEA must notify the parents of that decision, and provide the parents the procedural safeguards

notice described in §300.504.

(i) Definitions. For purposes of this section, the following definitions apply:

(1) Controlled substance means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

(2) Illegal drug means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

(3) Serious bodily injury has the meaning given the term “serious bodily injury” under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.

(4) Weapon has the meaning given the term “dangerous weapon” under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code. (Authority: 20 U.S.C. 1415(k)(1) and (7))

## **Dispute Resolution**

### **Federal Guidelines**

#### **§300.152 Minimum Maine complaint procedures.**

(a) Time limit; minimum procedures. Each SEA must include in its complaint procedures a time limit of 60 days after a complaint is filed under §300.153 to—

(1) Carry out an independent on-site investigation, if the SEA determines that an investigation is necessary;

(2) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;

(3) Provide the public agency with the opportunity to respond to the complaint, including, at a minimum

(i) At the discretion of the public agency, a proposal to resolve the complaint; and

(ii) An opportunity for a parent who has filed a complaint and the public agency to voluntarily engage in mediation consistent with §300.506;

(4) Review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part B of the Act or of this part; and

(5) Issue a written decision to the complainant that addresses each allegation in the complaint and contains:

(i) Findings of fact and conclusions; and

(ii) The reasons for the SEA’s final decision.

(b) Time extension; final decision; implementation. The SEA’s procedures described in paragraph (a) of this section also must—

- (1) Permit an extension of the time limit under paragraph (a) of this section only if—
    - (i) Exceptional circumstances exist with respect to a particular complaint; or
    - (ii) The parent (or individual or organization, if mediation or other alternative means of dispute resolution is available to the individual or organization under Maine procedures) and the public agency involved agree to extend the time to engage in mediation pursuant to paragraph (a)(3)(ii) of this section, or to engage in other alternative means of dispute resolution, if available in the Maine; and
  - (2) Include procedures for effective implementation of the SEA’s final decision, if needed, including
    - (i) Technical assistance activities;
    - (ii) Negotiations; and
    - (iii) Corrective actions to achieve compliance.
- (c) Complaints filed under this section and due process hearings under §300.507 and §§300.530 through 300.532.
- (1) If a written complaint is received that is also the subject of a due process hearing under §300.507 or §§300.530 through 300.532 or contains multiple issues of which one or more are part of that hearing, the Maine must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved using the time limit and procedures described in paragraphs (a) and (b) of this section.
  - (2) If an issue raised in a complaint filed under this section has previously been decided in a due process hearing involving the same parties—
    - (i) The due process hearing decision is binding on that issue; and
    - (ii) The SEA must inform the complainant to that effect.
  - (3) A complaint alleging a public agency’s failure to implement a due process hearing decision must be resolved by the SEA. Approved by the Office of Management and Budget under control numbers 1820–0030 and 1820–0600)  
(Authority: 20 U.S.C. 1221e–3) §300.153 Filing a complaint.
- (a) An organization or individual may file a signed written complaint under the procedures described in §§300.151 through 300.152.
- (b) The complaint must include—
- (1) A statement that a public agency has violated a requirement of Part B of the Act or of this part;
  - (2) The facts on which the statement is based;

- (3) The signature and contact information for the complainant; and
  - (4) If alleging violations with respect to a specific child—
    - (i) The name and address of the residence of the child;
    - (ii) The name of the school the child is attending;
    - (iii) In the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney- Vento Homeless Assistance Act (42 U.S.C. 11434a (2)), available contact information for the child, and the name of the school the child is attending;
    - (iv) A description of the nature of the problem of the child, including facts relating to the problem; and
    - (v) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.
- (c) The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with §300.151.
- (d) The party filing the complaint must forward a copy of the complaint to the LEA or public agency serving the child at the same time the party files the complaint with the SEA. (Approved by the Office of Management and Budget under control numbers 1820–0030 and 1820–0600) (Authority: 20 U.S.C. 1221e–3)

## **MEVA**

Disputes that are resolved at the local level may preserve and even strengthen the relationship between the school and the parent. While the parent always has the right to request Mediation or a Due Process Hearing and should always be informed of this right, many times issues can be resolved at a less intense level as system personnel and parents seek mutual understanding and agreement. The following four (4) step process may be used to resolve problems before they grow to the level requiring Mediation or a Due Process Hearing:

**Step One:** Contact the assigned Special Education Teacher or Special Education Manager via e-mail and/or by phone.

**Step Two:** Hold an IEP team meeting to discuss concerns of the IEP team members.

**Step Three:** If ‘Step Two’ is unsuccessful, contact the MEVA Head of School via e-mail and/or by phone.

**Step Four:** If ‘Step Three’ is unsuccessful, contact the Regional Special Education Manager via e-mail and/or phone.

Although the goal should always be to resolve disputes at the local level, sometimes situations

require the assistance of persons not directly involved with the issues at hand.

## **Stay Put**

During the pendency of any administrative or judicial proceeding, including mediation (if the school district or other public entity voluntarily agrees to participate in mediation), unless the school district and the parents or student (if at least 18 years of age or emancipated) otherwise agree, the student shall remain in his or her present educational placement and continue in his or her present eligibility status and special education and related services, if any. If mediation fails to resolve the dispute between the parties, the parent (or student if 18 years of age or older or emancipated) shall have 10 days after the mediation concludes to file a request for a due process hearing in order to continue to invoke the “stay put” provisions of this subsection (j).

The costs for any special education and related services or placement incurred following 45 days after the initial request for evaluation shall be borne by the school district if the services or placement is in accordance with the final determination as to the special education and related services or placement that must be provided to the child, provided that during that 45-day period there have been no delays caused by the child's parent.

## **POLICY ON USE OF PHYSICAL RESTRAINT AND SECLUSION**

The Maine Virtual Academy Governing Board has adopted this policy and the accompanying procedures to implement the standards for use of physical restraint and seclusion with students, as required by state law and regulations, and to support a safe school environment. Physical restraint and seclusion, as defined by this policy, may only be used as an emergency intervention when the behavior of a student presents an imminent risk of serious physical injury to the student or others.

State law and MDOE Rule Chapter 33 do not restrict or limit the protections available to school officials under 20-A M.R.S.A. § 4009, but those protections do not relieve school officials from complying with this policy/procedure.

The Superintendent has overall responsibility for implementing this policy and the accompanying procedure, but may delegate specific responsibilities as they deems appropriate.

### **1. Definitions**

The following definitions apply to this policy and the accompanying procedure:

- A. 1. **Physical restraint:** A personal restriction that immobilizes or reduces the ability of a student to move their arms, legs, or head freely.

**2. Physical restraint does not include any of the following:**

- a. Physical escort: A temporary, voluntary touching or holding of the hand, wrist, arm, shoulder or back to induce a student to walk to a safe location.
- b.. Physical prompt: A teaching technique that involves voluntary physical contact with the student and that enables the student to learn or model the physical movement necessary for the development of the desired competency.
- c.. The use of adaptive devices or mechanical supports to achieve proper body position, balance or alignment to allow greater freedom of movement than would be possible without the use of such devices or supports.
- d.. The use of vehicle safety restraints when used as intended during the transport of a student in a moving vehicle.

- B. 1. **Seclusion:** The involuntary isolation or confinement of a student alone in a room or clearly defined area from which the student does not feel free to go or is physically denied exit.

**2. Seclusion does not include:**

- a. A timeout, An intervention where a student requests, or complies with an adult request for, a break.

**2. Procedures for Implementing Physical Restraint and Seclusion**

The requirements for implementing physical restraint and seclusion, as well as incident notices, documentation and reporting are included in the accompanying procedure, JKAA-R.

**3. Annual Notice of Policy/Procedure**

**Maine Virtual Academy** shall provide annual notice to parents/legal guardians of this policy/procedure by means determined by the Superintendent/designee.

**4. Training Requirements**

- A. All school staff and contracted providers shall receive an annual overview of this policy/procedure.
- B. **Maine Virtual Academy** will ensure that there are a sufficient number of administrators/designees, special education and other staff who maintain certification in a restraint and seclusion training program approved by the Maine Department of Education. A list of certified staff shall be updated annually and maintained in the Superintendent's Office, in each school office and in the school unit's Comprehensive Emergency Management Plan.

## 5. Parent/Legal Guardian Complaint Procedure

A parent/legal guardian who has a complaint concerning the implementation of this policy/procedure must submit it in writing to the Superintendent as soon as possible. The Superintendent/designee shall investigate the complaint and provide written findings to the parent/legal guardian within twenty (20) business days of receiving the complaint, if practicable.

A parent/legal guardian who is dissatisfied with the result of the local complaint process may file a complaint with the Maine Department of Education. The Department of Education will review the results of the local complaint process and may initiate its own investigation at its sole discretion. The Department shall issue a written report with specific findings to the parent/legal guardian and the school unit within 60 calendar days of receiving the complaint.

Legal References: 20-A M.R.S.A. §§ 4014, 4502(5)(M); 4009

Me. DOE Reg., ch. 33

Cross References: JKAA-R – Procedures on Physical Restraint and Seclusion

JK – Student Discipline

KLK/KLG-R – Relations with Law Enforcement **OR**

**KLGA/KLGA-R – Relations with School Resource Officers**

EBCA – Comprehensive Emergency Management Plan

# PROCEDURES ON PHYSICAL RESTRAINT AND SECLUSION

These procedures are established for the purpose of meeting the obligations of **Maine Virtual Academy** under state law/regulations and Board Policy JKAA governing the use of physical restraint and seclusion. These procedures shall be interpreted in a manner consistent with state law and regulations.

## 1. Physical Restraint

To the extent possible, physical restraint will be implemented by staff certified in a training program approved by the Maine Department of Education. If untrained staff have intervened and initiated a physical restraint in an emergency, trained staff must be summoned to the scene to assume control of the situation if the emergency continues.

This procedure does not preclude law enforcement personnel from implementing physical restraints consistent with their professional responsibilities.

### A. Permitted Uses of Physical Restraint

1. Physical restraint may be used only when the behavior of a student presents an imminent risk of serious physical injury to the student or others, and only after other less intrusive interventions have failed or been deemed inappropriate. The physical restraint must end immediately upon the cessation of the imminent risk of serious physical injury to the student or another person, and should involve the least amount of force necessary to protect the student or other person.

“Serious physical injury” is a physical injury that a reasonable person would consider to be serious for the victim if it were to occur.

2. Prescribed medications, harnesses, seat belts and other assistive or protective devices may be used as permitted by law and described in Policy JKAA.
3. Parents/legal guardians may be requested to provide assistance with their child at any time.

### B. Prohibited Forms and Uses of Physical Restraint

1. Physical restraint used for punitive purposes; as a therapeutic or educational intervention; for staff convenience; or to control challenging behavior.
2. Physical restraint used solely to prevent property destruction or disruption of the environment in the absence of a risk of serious physical injury.

3. Physical restraint that is life threatening, restricts breathing or restricts blood flow to the brain, including prone restraint.
4. Physical restraint that relies on pain for control, including but not limited to joint hyperextension, excessive force, unsupported take-downs (e.g., tackles), the use of any physical structure (e.g., wall, railing or post), punching and hitting.
5. Physical restraint that is contraindicated based on the child's disability, health care needs, or medical or psychiatric condition if documented in:
  - A health care directive or medical management plan;
  - A school-approved behavior plan;
  - An IEP or an Individual Family Service Plan (IFSP); or
  - A school-approved 504 or ADA plan.
6. Aversive procedures, and mechanical and chemical restraints.
  - a. Aversive procedures are defined as the use of a substance or stimulus, intended to modify behavior, which the person administering it knows or should know is likely to cause physical and/or emotional trauma to a student, even when the substance or stimulus appears to be pleasant or neutral to others. Such substances and stimuli include but are not limited to infliction of bodily pain (e.g., hitting, pinching, slapping); water spray; noxious fumes; extreme physical exercise; costumes or signs.
  - b. Mechanical restraints are defined as any restraint that uses a device to restrict a student's freedom of movement. Such restraints do not include adaptive devices or mechanical supports to achieve proper body position, balance or alignment to allow greater freedom of movement, or the use of vehicle safety restraints when used as intended during the transport of a student in a moving vehicle.
  - c. Chemical restraints are defined as the use of drug or medication that is not prescribed as the standard treatment of a student's medical or psychiatric condition by a licensed physician or other qualified health professional acting under the scope of the professional's authority under state law that is used on a student to control behavior or restrict freedom of movement.

**C. Monitoring Students in Physical Restraint**

1. At least two adults must be present at all times when physical restraint is used except when, for safety reasons, waiting for a second adult to arrive is precluded by the particular circumstances.

2. The student must be continuously monitored until they no longer present a risk of injury or harm to the student or others.
3. If an injury occurs, applicable school policies and procedures should be followed.

**D. Termination of Physical Restraint**

1. The staff involved in the use of physical restraint must continually assess for signs that the student in physical restraint is no longer presenting an imminent risk of serious physical injury to themselves or others, and the physical restraint must be discontinued immediately after it is determined that the imminent risk of serious physical harm has ended.
  - a. The time a student is in physical restraint must be monitored and recorded.
  - b. If physical restraint continues for more than ten (10) minutes, an administrator/designee shall determine whether continued physical restraint is warranted, and shall continue to monitor the status of the physical restraint every ten (10) minutes until the restraint is terminated.
  - c. If attempts to release the student from physical restraint have been unsuccessful and the student continues to present behaviors that create an imminent risk of serious physical injury to the student or to others, then staff may request additional assistance from other school staff, parents, medical providers, or other appropriate persons or organizations.

**2. Seclusion**

To the extent possible, seclusion will be implemented by staff certified in a training program approved by the Maine Department of Education. If untrained staff have intervened and initiated seclusion in an emergency, trained staff must be summoned to the scene as soon as possible.

A “timeout” where a student requests, or complies with an adult request, for a break is not considered seclusion under this procedure. Seclusion also does not include any situation where others are present in the room or clearly defined area with the student (including but not limited to classrooms, offices and other school locations).

**A. Permitted Uses and Location of Seclusion**

1. Seclusion may be used only as an emergency intervention when the behavior of a student presents an imminent risk of serious bodily injury to the student or others, and only after other less intrusive interventions have failed or been deemed inappropriate. The seclusion must end immediately upon the cessation of the imminent risk of serious physical injury to the student or another person. "Serious physical injury" is a physical injury that a reasonable person would consider to be serious for the victim if it were to occur.
2. Seclusion may be achieved in any part of a school building with adequate light, heat, ventilation and of normal room height.
  - a. Seclusion may not take place in a locked room.
  - b. If a specific room is designated as a seclusion room, it must be a minimum of sixty (60) square feet; have adequate light, heat and ventilation; be of normal room height; contain an unbreakable observation window in a wall or door; and must be free of hazardous material and objects which the student could use to self-inflict bodily injury.
3. Parents/legal guardians may be requested to provide assistance with their child at any time.

**B. Prohibited Uses of Seclusion**

1. Seclusion used for punitive purposes; as a therapeutic or educational intervention; for staff convenience; or to control challenging behavior.
2. Seclusion used solely to prevent property destruction or disruption of the environment in the absence of an imminent risk of serious physical injury.
3. Seclusion that is life threatening.
4. Seclusion that is contraindicated based on the child's disability, health care needs, or medical or psychiatric condition if documented in:
  - A health care directive or medical management plan;
  - A school-approved behavior plan;
  - An IEP or IFSP; or
  - A school-approved 504 or ADA plan.

**C. Monitoring Students in Seclusion**

1. At least one adult must be physically present at all times to continuously monitor a student in seclusion. The adult, while not present in the room or defined area, must be situated so that the student is visible at all times.
2. The student must be continuously monitored until they no longer presents an imminent risk of serious physical injury to the student or to others.
3. If an injury occurs, applicable school policies and procedures should be followed.

**D. Termination of Seclusion**

1. The staff involved in the seclusion must continually assess for signs that the student is no longer presenting an imminent risk of serious physical injury to the student or others, and the seclusion must be discontinued as soon as the imminent risk ceases.
  - a. The time a student is in seclusion must be monitored and recorded.
  - b. If seclusion continues for more than ten (10) minutes, an administrator/designee shall determine whether continued seclusion is warranted, and shall continue to monitor the status of the seclusion every ten (10) minutes until the seclusion is terminated.
  - c. If attempts to release a student from seclusion have been unsuccessful and the student continues to present behaviors that create an imminent risk of serious physical injury to the student or to others, then staff may request additional assistance from other school staff, parents, medical providers, or other appropriate persons or organizations.

**4. Notification and Reports of Physical Restraint and Seclusion Incidents**

For the purposes of this procedure, an “incident” consists of all actions between the time a student begins to create an imminent risk of serious physical injury and the time the student ceases to pose that imminent risk and returns to their regular programming.

**A. Notice Requirements**

After each incident of physical restraint or seclusion:

1. A staff member involved in the incident shall make an oral notification to the administrator/designee as soon as possible, but no later than the end of the school day.

2. An administrator/designee shall notify the parent/legal guardian about the physical restraint or seclusion (and any related first aid provided) as soon as practical, but within the school day in which the incident occurred. The administrator/designee must utilize all available phone numbers or other available contact information to reach the parent/legal guardian. If the parent/legal guardian is unavailable, the administrator/designee must leave a message (if the parent/legal guardian has a phone and message capability) to contact the school as soon as possible. The parent/legal guardian must be informed that written documentation will be provided within seven (7) calendar days.
3. If the physical restraint or seclusion incident occurred outside the school day, the notifications must be made as soon as possible and in accordance with the school unit's usual emergency notification procedures.
4. If serious bodily injury or death of a student occurs during the implementation of physical restraint or seclusion, the **Maine Virtual Academy's** emergency notification procedures shall be followed and an administrator/designee shall notify the Maine Department of Education within twenty-four (24) hours or the next business day.

#### **B. Incident Reports**

Each use of physical restraint or seclusion must be documented in an incident report. The incident report must be completed and provided to an administrator/designee as soon as practical, and in all cases within two (2) school days of the incident. The parent/legal guardian must be provided a copy of the incident report within seven (7) calendar days of the incident.

The incident report must include the following elements:

1. Student name;
2. Age, gender and grade;
3. Location of the incident;
4. Date of the incident;
5. Date of report;
6. Person completing the report;
7. Beginning and ending time of each physical restraint and/or seclusion;
8. Total time of incident;
9. Description of prior events and circumstances;

10. Less restrictive interventions tried prior to the use of physical restraint and/or seclusion and, if none were used, the reasons why;
11. The student behavior justifying the use of physical restraint or seclusion;
12. A detailed description of the physical restraint or seclusion used;
13. The staff person(s) involved, their role in the physical restraint or seclusion, and whether each person is certified in an approved training program;
14. Description of the incident, including the resolution and process of returning the student to his/her program, if appropriate;
15. Whether the student has an IEP, 504 Plan, behavior plan, IHP (individual health plan) or any other plan.
16. If a student and/or staff sustained bodily injury, the date and time of nurse or other response personnel notification, and any treatment administered;
17. The date, time and method of parent/legal guardian notification;
18. The date and time of administrator/designee notification.
19. Date and time of staff debriefing.

Copies of the incident reports shall be maintained in the student's file and in the school office.

**5. School Unit Response Following the Use of Physical Restraint or Seclusion**

- A. Following each incident of physical restraint or seclusion, an administrator/designee shall take these steps within two (2) school days (unless serious bodily injury requiring emergency medical treatment occurred, in which case these steps must take place as soon as possible, but no later than the next school day):
  1. Review the incident with all staff persons involved to discuss: (a) whether the use of physical restraint or seclusion complied with state and school board requirements and (b) how to prevent or reduce the need for physical restraint and/or seclusion in the future.
  2. Meet with the student who was physically restrained or secluded to discuss: (a) what triggered the student's escalation and (b) what the student and staff can do to reduce the need for physical restraint and/or seclusion in the future.

- B. Following the meetings, staff must develop and implement a written plan for response and de-escalation for the student. If a plan already exists, staff must review it and make revisions, if appropriate. For the purposes of this procedure, “de-escalation” is the use of behavior management techniques intended to cause a situation involving problem behavior of a student to become more controlled, calm and less dangerous, thus reducing the risk of injury or harm.

**6. Procedure for Students with Three Incidents in a School Year**

The school unit will make reasonable, documented efforts to encourage parent/legal guardian participation in the meetings required in this section, and to schedule meetings at times convenient for parents/legal guardians to attend.

**A. Special Education/504 Students**

- 1. After the third incident of physical restraint and/or seclusion in one school year, the student’s IEP or 504 Team shall meet within ten (10) school days of the third incident to discuss the incident and consider the need to conduct an FBA (functional behavioral assessment) and/or develop a BIP (behavior intervention plan), or amend an existing one.

**B. All Other Students**

- 1. A team consisting of the parent/legal guardian, administrator/designee, a teacher for the student, a staff member involved in the incident (if not the administrator/designee or teacher already invited), and other appropriate staff shall meet within ten (10) school days to discuss the incidents.
- 2. The team shall consider the appropriateness of a referral to special education and, regardless of whether a referral to special education is made, the need to conduct an FBA (functional behavioral assessment) and/or develop a BIP (behavior intervention plan)

**7. Cumulative Reporting Requirements**

**A. Reports Within the School Unit**

- 1. Each building administrator must report the following data on a quarterly and annual basis:
  - a. Aggregate number of uses of physical restraint;
  - b. Aggregate number of students placed in physical restraint;
  - c. Aggregate number of uses of seclusion;

- d. Aggregate number of students placed in seclusion;
  - e. Aggregate number of students with disabilities having IEPs or 504/ADA plans who are placed in physical restraint;
  - f. Aggregate number of students with disabilities having IEPs or 504/ADA plans who are placed in seclusion;
  - g. Aggregate number of serious physical injuries to students related to the use of physical restraints;
  - h. Aggregate number of serious physical injuries to students related to the use of seclusion;
  - i. Aggregate number of serious physical injuries to staff related to the use of physical restraints; and
  - j. Aggregate number of serious physical injuries to staff related to the use of seclusion.
2. The Superintendent shall review the cumulative reports and identify any areas that could be addressed to reduce the future use of physical restraint and seclusion.

**B. Reports to Maine Department of Education**

- 1. The Superintendent shall submit an annual report to the Maine Department of Education on an annual basis that includes the information in Section 7.A.1 above.

Legal Reference: 20-A M.R.S.A. §§ 4014, 4502(5)(M); 4009

Me. DOE Rule., ch. 33

Cross Reference: JKAA-R – Procedures on Physical Restraint and Seclusion

JK – Student Discipline

KLK/KLG-R – Relations with Law Enforcement **OR**

**KLGA/KLGA-R – Relations with School Resource Officers**

EBCA – Comprehensive Emergency Management Plan

### **Disciplinary Removal of Students with Disabilities and Administrative Procedure**

MEVA has numerous safeguards governing the discipline and removal of students with disabilities, including what is known as a “manifestation determination” when questions surround whether a student’s disability contributed to attendance or behavior/conduct leading to discipline, which may or may not trigger the need for MEVA to implement a Functional Behavioral Assessment (FBA) or Behavior Intervention Plan (BIP). The Special Education Director will decide on the best way to handle the situation, given the specific circumstances of the situation.