



**SUMMARY OF SPECIAL EDUCATION
COMPLAINT AND HEARING
SYSTEM DECISIONS**

Fiscal Year 2013 Report

Introduction

Authority/Purpose

The purpose of this report is to inform stakeholders of data collected from the complaint and hearing systems; to review the use of those systems over the last year; and to make recommendations for improvements so that Minnesota's complaint and hearing systems continue to be effective. The period covered by this report is FY 2013 (July 1, 2012, through June 30, 2013).

The Minnesota Department of Education's (MDE) general supervisory responsibility includes ensuring the implementation of the Individuals with Disabilities Education Act (IDEA)'s dispute resolution process consistent with IDEA requirements. MDE provides ongoing assistance and training to parents, districts, and other parties to resolve special education issues. For those special education issues that cannot be resolved informally between the parties, MDE has a special education dispute resolution process that includes special education complaints, due process hearings, and alternative dispute resolution.¹

History

The special education complaint and special education hearing systems have existed since the adoption of the IDEA in 1975. The IDEA has been reauthorized several times, most recently in 2004, with regulations effective in 2006.

Over the last seven years, the number of special education complaints opened by MDE has significantly declined, from a high of 121 complaints in FY 2007 to 52 in FY 2012 and 59 in FY 2013. This is due, in part, to the efforts of parents and districts to resolve disputes without a complaint or hearing. In addition, the Division of Compliance and Assistance continues to provide meaningful technical assistance to school districts via its website, telephone, and email responses, and through trainings provided throughout the school year.

Over the last seven years, the number of special education hearing requests has fluctuated between a low of 23 to a high of 38 requests. The majority of the hearing requests resulted in a settlement prior to hearing. The number of hearing decisions has ranged from a high of eight decisions in 2007 to two decisions in FY 2013.²

Special Education Complaint Process

The special education complaint process under Part B of IDEA is an integral part of MDE's general supervision responsibilities. The regulations adopted for implementation of IDEA set forth the process for filing special education complaints. The process allows parents and other

¹ A summary of the mediation process for FY 2013 is available on the MDE website at <http://education.state.mn.us/MDE/SchSup/ComplAssist/AltDispRes/index.html>.

² In addition to the decision opened and issued during FY 2013, an additional hearing decision from the prior fiscal year was issued after June 30, 2013 (12-028H and 13-020H).

individuals to resolve disputes related to alleged violations of state or federal special education law or rule. A parent, organization, or other individual may file a signed, written special education complaint on behalf of an individual child with a disability or may file a complaint that raises a systemic issue. MDE is only authorized to investigate alleged violations pertaining to special education requirements. MDE has information and a model complaint form on its special education complaints webpage. We also post redacted complaint decisions online.

The complaint process is limited to violations that occurred no more than one year before the date we received the complaint. The process offers individuals the opportunity to resolve alleged violations quickly and avoid the costs of a due process hearing. A parent who has filed a complaint can voluntarily engage in mediation with a district. MDE has 60 days to issue a written decision after a complaint is filed. The deadline may be extended due to exceptional circumstances or if the parties agree to mediation.

After reviewing all relevant information, MDE makes an independent determination as to whether the district is violating a special education requirement. We issue a written decision that addresses each allegation in the complaint and contains findings of fact and conclusions, and the reasons for our final decision. If we find that the district is in violation, technical assistance activities (e.g., training or a memorandum) and/or corrective action may be required to achieve compliance. In some cases a district may have to revise its policies.

Special Education Hearing Process

The special education hearing process is available to parents and districts to resolve disputes related to identification, evaluation, educational placement, or the provision of a free and appropriate public education of a student with a disability. In addition, a parent may appeal a disciplinary placement decision or a manifestation determination. MDE has information and a model complaint form on its special education hearing webpage. We also post redacted hearing decisions online.

In 2004, IDEA was reauthorized and amended to provide that within 15 days of receiving notice of a parent's special education hearing request, the district must convene a resolution session with the parent and the IEP team. At the session, the parent and IEP team discuss the hearing request and the facts that form the basis of the hearing request, so that the district has the opportunity to resolve the dispute.³ The resolution session can be waived in writing by both parties, or the parties may agree instead to use mediation.⁴ The purpose of the resolution session is to provide the parties with an opportunity to resolve issues promptly without the necessity of a formal and costly hearing. If the district has not resolved the special education hearing issues to the satisfaction of the parent within 30 days of receipt of the hearing request, the hearing may occur.⁵ A due process hearing is limited to violations that occurred no more

³ 34 C.F.R. § 300.510(a).

⁴ Id.

⁵ 34 C.F.R. § 300.510(b).

than two years before the date the parent or school district knew, or should have known, about the alleged action that forms the basis of the hearing request unless certain exceptions apply.⁶

Executive Summary

MDE's special education complaint and due process hearing systems continue to ensure that districts are meeting the needs of students who receive special education services under Part B of IDEA. During FY 2013, there were no Part C hearing requests or special education complaints.⁷ The most frequent issue raised by a parent/complainant in both the complaint and hearing process is that a student's individual education program (IEP) is not being consistently implemented. A summary of the complaint data is contained in this report.

Special Education Complaints

During FY 2013, 59 special education complaints were opened and 36 complaints resulted in a decision being issued.⁸ In addition, eight decisions were issued for complaints that had been opened during FY 2012. Forty-six complaint decisions were issued during FY 2013.

Sixteen complaints closed prior to issuing a decision for the following reasons:

- Eight complaints were resolved informally between the district and the complainant;
- Five complaints were closed as they did not allege a violation of special education law; and
- Three complaints were closed based upon a withdrawal by the complainant for other reasons.

Special Education Hearings

During FY 2013, MDE received 30 due process complaints.

One hearing was held and resulted in a decision. (In addition, one due process complaint from the prior year resulted in a hearing with a written decision issued during FY 2013.)

- Eleven hearing requests were settled prior to hearing;
- Eight hearing requests were withdrawn or dismissed prior to hearing;
- Ten hearing requests were pending as of June 30, 2013; and
- Two hearing decisions were appealed.

This report contains data related to the 46 complaint and hearing decisions issued (44 special education complaints and 2 hearing decisions with issues decided) during FY 2013. Additional

⁶ 34 C.F.R. § 300.511(e). See also 34 C.F.R. §§ 300.507-516; 34 C.F.R. § 300.532; Minn. Stat. § 125A.091, Subd. 12-28; OSEP Memorandum. Dispute Resolution Procedures under Part B of the Individuals with Disabilities Education Act (Part B) (July 23, 2013).

⁷ Part C Of IDEA: 34 C.F.R. § 303.1-303.734 addresses early intervention services for children from birth to three years of age.

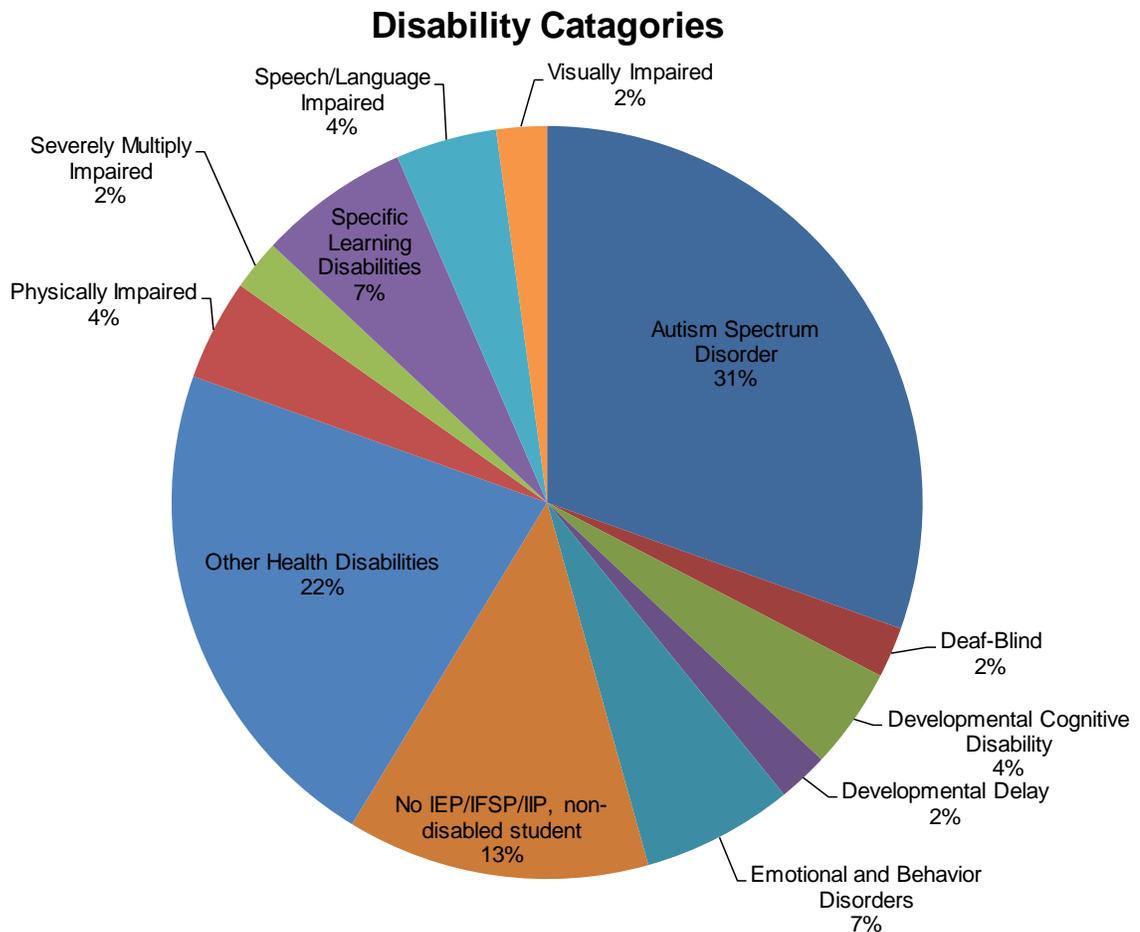
⁸ Seven complaint decisions were pending at the end of FY 2013.

information is provided in the charts on pages five and six. The charts show detailed data collected related to a student's disability, geographical area, grade level, whether the student was receiving Part B or Part C services, and the most common issues raised in the decisions.

A synopsis of each of the issued complaint and hearing decisions is provided on pages 11 through 17 unless a redacted decision was not made public due to data privacy concerns.

Students by Disability Category for Complaints and Hearings Issued FY 2013

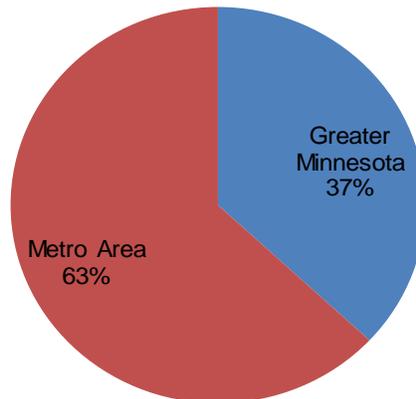
Overall, 43 percent of complaint and hearing decisions issued during FY 2013 involved students who were eligible for special education under the Autism Spectrum Disorder (ASD) and other health disabilities (OHD) eligibility criteria. The chart below illustrates the percentage of students by disability category for which the complaint and hearing decisions were issued.



Geographical Location for Complaints and Hearings Issued FY 2013

The chart below illustrates the geographical location of the districts involved in the complaints and hearings issued during FY 2013.

Geographical Area

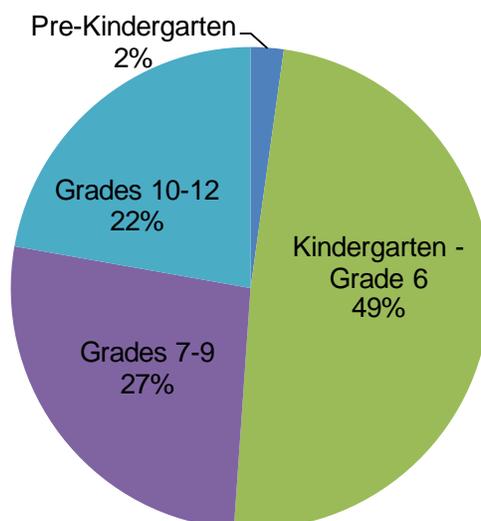


Seven county metropolitan areas (Hennepin, Ramsey, Anoka, Dakota, Scott, Carver, and Washington) were represented.

Student Grade Levels for Complaints and Hearings Issued FY 2013

The chart below illustrates the student's grade at the time we received the complaint or special education hearing request.

Student Grade Levels



Top Five Issues Raised for Complaints and Hearings Issued FY 2013

Please note that a complaint or hearing decision may include more than one issue.

1) Failure to implement a Student's Individualized Education Program (IEP)

Fifty percent (23) of the total complaints and hearing decisions issued during FY 2013 included an allegation that a student's IEP was not consistently implemented as written. The most common allegation is that a student's supplementary aids and services, such as adaptations, are not being consistently implemented. A common thread is that the adaptations are not written clearly to inform the parent, student, and staff members of the specific staff responsibilities and duties regarding implementation of the adaptations and modifications in the IEP.

2) Prior Written Notice of Proposed or Refused Action

The second most common issue, which was alleged 11 times, is the failure of the district to provide a timely and comprehensive notice of proposed special education services/prior written notice.

3) IEP Team Meetings

The third most common issue, which was alleged seven times, had to do with either inadequate or no notice of IEP team meetings or related to the lack of participation or attendance of all IEP team members.

4) Evaluation/Reevaluation

The fourth most common issue, alleged in six complaint and hearing decisions issued in FY 2013, included whether the evaluation was comprehensive and included all relevant information, and whether the eligibility category determination was appropriate.

5) Appropriateness of an IEP

The fifth most common issue raised concerned the appropriateness of the content of an IEP. This issue included the measurability of goals and objectives, regulated interventions/behavior intervention plan (BIP), the least restrictive environment, the present levels of academic achievement and functional performance, progress reporting, related services, and service delivery time.

Summary of Resolution of Complaints from FY 2007-FY 2013

Year	Opened Complaints	Complaints without Decision	Complaints with Decision	Pending Complaints Issued Subsequent Fiscal Year
2013	59	16	36	7
2012	51	21	22	8
2011	80	23	47	10
2010	67	22	24	21

Year	Opened Complaints	Complaints without Decision	Complaints with Decision	Pending Complaints Issued Subsequent Fiscal Year
2009	81	30	38	13
2008	89	35	45	9
2007	121	55	47	19

Summary of Resolution of Due Process Complaints from FY 2007-FY 2013

Fiscal Year (July 1-June 30)	Hearing Requests	Hearings Settled	Hearings Withdrawn	Hearings Dismissed	Decisions Issued	Pending Hearings Resolved Subsequent Fiscal Year
2013	30	11	6	2	1	10 (2 with issues adjudicated)
2012	38	19	6	4	1	8 (1 with issues adjudicated)
2011	26	11	2	5	2	6 (1 with issues adjudicated)
2010	26	9	2	2	3	10 (3 with issues adjudicated) ⁹
2009	23	6	1	4	3	9 (2 with issues adjudicated) ¹⁰
2008	31	11	0	9	1	10 (1 with issues adjudicated) ¹¹
2007	34	14	1	4	5	10 (3 with issued adjudicated) ¹²

⁹ 10-014H, 10-015H, and 10-019H

¹⁰ 09-104H and 09-019H

¹¹ 08-030H

¹² 07-023H, 07-031H, and 07-033H

FY 2013 Special Education Complaint Summary

During FY 2013, due to prompt attention by MDE staff, seven of eight complaint decisions that had been opened the prior fiscal year were issued on or before their due date. An extension was granted for one complaint decision that had multiple issues.

During FY 2013, MDE opened 59 complaints. Of those complaints, MDE issued 36 complaint decisions as of June 30, 2013. The final due date was extended on seven complaints for reasons which included multiple students in a systemic complaint. Twenty-nine complaint decisions were issued on or before their due date. Of the 36 complaint decisions issued, 28 resulted in corrective action.

Seven complaint decisions were pending as of June 30, 2013. Sixteen complaints were closed without the issuance of a decision. Half of the closures were due to a resolution reached between the parties. Five of the closures were due to the complainant failing to allege a violation of special education law. Three of the closures were withdrawals by the complainant for other reasons.

FY 2013 Special Education Hearing Summary

During FY 2013, the Office of Administrative Hearings (OAH) issued one decision with issues adjudicated that had been opened during the prior fiscal year.

During FY 2013, MDE received 30 due process complaints. Of those requests, OAH issued one decision with adjudicated issues. The final decision was issued on or before its due date. The hearing decision from the prior year was extended for good cause by the administrative law judge, as permitted under federal law¹³. Fifteen of the due process complaints were settled prior to hearing. Six of the due process complaints were closed based upon a withdrawal request. One of the due process complaints was dismissed.

Two due process complaints resulted in appeals to the federal district court. Both appeals are currently pending.

Conclusion

The Division of Compliance and Assistance will continue to provide technical assistance to school districts and charter schools, and our goal for FY 2014 will be to target the compliance areas most commonly raised in the special education complaint and due process hearing systems. The monitoring team continues to provide training to districts on a rotating schedule. That training addresses the top five compliance issues raised, including when a prior written notice is required to be sent to a parent or guardian and the content of the notice.

MDE is developing an electronic IEP system that will assist IEP teams in writing clear and measurable goals and objectives and supplementary aids and services, including adaptations.

¹³ 34 C.F.R. § 300.515(c) and Minn. Stat. § 125A.091, Subd. 20

In addition, MDE will train district staff to write measurable goals and objectives throughout the 2013/2014 school year.

The Division of Compliance and Assistance translated a number of documents that are available as of FY 2014 to help families learn about the special education process and student discipline documents. We will continue our efforts to inform advocacy groups of the translated documents and to ensure that families in which English is not the primary language spoken at home are aware of their right to file a special education complaint or due process hearing request.

The Division of Compliance and Assistance will continue to work on meeting the 60-day timeline for issuing special education complaints and meeting the timelines for hearing decisions.

Appendix A. Synopsis of Complaint and Hearing Decisions Issued during FY 2013

12-035C

08/16/12

St. Croix Prep #4120

The District did not obtain records before providing services and did not provide information sufficient for the parent to give informed consent.

12-041C

7/12/12

Brooklyn Center #286

The District was in violation for not implementing the Student's IEP as written, for not providing progress reports, and for failing to provide notice when it changed the provision of FAPE.

12-042C

7/12/12

Kasson-Mantorville #204

The District met, reviewed, and revised the Student's IEP as appropriate.

12-044C

7/23/12

Eastern Carver County #112

The District implemented the Student's IEP as written.

12-047C

7/25/12

West Central Area #2342

The District failed to implement the positive behavioral interventions and supports (PBIS) set forth in the Student's IEPs on two occasions during SY 2012. The District twice used restrictive procedures involving physical holds in non-emergency situations during SY 2012, and one staff member did not receive restrictive procedures training prior to the hold.

12-049C

8/13/12

Stillwater #834

The District failed to provide occupational therapy services and fidgets as set forth in the Student's IEP. The District also failed to provide adequate progress reporting.

12-050C

8/21/12

New Ulm #088

The District was not in violation of its child find obligation when it responded appropriately to the Student's declining grades and parent requests for modifications.

12-051C

8/24/12

Eastern Carver County #112

The District was in violation because the "social evaluation" performed was not sufficiently comprehensive to identify all of the Student's special education and related services needs.

13-002C

9/12/12

Delano #879

The District failed to specifically outline the individual responsibilities related to implementing the Student's IEP.

13-005C (unpublished)

13-006C

9/17/12

Spring Lake Park #16

The District complied with the legal requirements regarding paraprofessionals.

13-008C

10/22/12

Lake Benton #404

The District failed to provide proper prior written notice, and proper information about where an independent education evaluation (IEE) may be obtained and the agency criteria applicable for an IEE. The District failed to outline the amount of related services consistent with the Student's IEP and individual health plan (IHP).

13-009C

10/23/12

Moorhead #152

The District failed to provide sensory adaptations in the classroom setting and in the sensory/quiet room space primarily used by the Student.

13-010C

11/6/12

St. Paul #625

The District failed to timely review and revise the Student's IEP to address lack of progress and to consider positive behaviors and supports. The District failed to consistently implement two of the adaptations in the IEP.

13-011C

11/5/12

Prior Lake-Savage #719

The District implemented the Student's IEP as written.

13-014C

12/5/12

West Metro Education Program #6069

The District was in compliance when it provided special education and related services comparable to those from the previous district, which were sufficient to address the goals and objectives in the Student's previous IEP until it developed and proposed the Student's current IEP.

13-016C

3/20/13

Minnesota Transitions #4017

The District failed to specifically outline paraprofessional services in the Students' IEPs and failed to provide paraprofessional services. The District did not provide prior written notice or complete timely evaluations.

13-017C

12/10/12

Sauk Rapids-Rice #047

The District provided prior written notice when the Student's schedule was changed.

13-018C (unpublished)

13-019C

12/10/12

Anoka-Hennepin #011

The District did not have the proper persons in attendance at the IEP team meeting and did not provide prior written notice of its proposal following the IEP team meeting.

13-020C

12/11/12

West Metro #6069

The District did not develop a sufficiently detailed IEP that would inform the teacher and paraprofessional of their specific duties to implement the Student's IEP.

13-021C

12/14/12

Breckenridge #846

The District failed to develop an IEP specific enough for each teacher and provider to be informed of their specific duties related to implementing the IEP.

13-023C

Prior Lake-Savage #719

The District did not obtain written parental consent for the federal level IV placement or hold a conciliation conference within 10 calendar days from the date it received the Complainant's objection. The District did not implement the stay put IEP.

13-024C

2/13/2013

St. Clair #075

The District failed to timely conduct a reevaluation, failed to develop an appropriate IEP, and failed to timely hold a conciliation conference.

13-028C

Minneapolis #001

2/13/2013

The District failed to conduct a sufficiently comprehensive evaluation.

13-029C

2/13/13

Dover Eyota #533

The District was in violation when it proposed and implemented an IEP without measurable annual goals.

13-030C

3/18/13

Sartell #748

The District failed to conduct a comprehensive evaluation and failed to serve notice on the Complainant 14 calendar days before proposing to discontinue special education services to the Student. Additionally, the District failed to implement the Student's IEP.

13-031C

3/12/13

Bloomington #271

The District was in violation when it used a physical hold on the Student in response to the Student's minimal resistance, as it does not rise to the level of an emergency.

13-032C

4/4/13

Cambridge-Isanti #911

The District was in violation as the accommodations and modifications in the Student's IEP were too vague to offer meaningful guidance to the Student's teachers and were not reasonably calculated to provide educational benefit.

13-033C

3/21/13

Stillwater #834

The District was in violation when it eliminated the related service of transportation from the Student's IEP without first documenting that the Student was no longer in need of the related service.

13-035C

2/21/13

Minneapolis #001

The District was in violation when untrained staff used a restrictive procedure on the Student.

13-036C

3/26/13

Sartell #748

The District failed to implement the Student's IEP or provide the parent with proper Notice of Team Meeting.

13-037C

6/4/2013

St. Paul #625

The District failed to identify and evaluate the Student and developed procedures that delay a pupil's right to a special education evaluation.

13-038C (unpublished)

13-039C

3/28/13

St. Paul #625

The District failed to educate Student in the least restrictive environment when it moved the Student from a federal level 3 setting to the general education environment. The District did not provide prior written notice for the change in setting or report progress toward IEP goals.

13-040C

4/4/13

Prior Lake-Savage #719

The District failed to have not less than one regular education teacher at the Student's IEP team meeting.

13-043C

5/17/13

Minnetonka #276

The District failed to implement the Student's IEP.

13-045C

5/15/13

Sauk Rapids #47

The District failed to either evaluate or provide notice of its refusal to evaluate the Student after the Complainant's request for an evaluation.

13-046C

5/16/13

Brooklyn Center #286

The District was in violation when it failed to consider information provided by the parent when determining if the Student continues to have a disability and is in need of special education and related services.

13-047C

5/20/13

Minneapolis #001

The District failed to send written notice to the parent within two days of the use of restrictive procedures, and it failed to provide alternative educational services to the Student on the sixth and seventh consecutive days of suspension as required by statute.

13-049C

6/20/2013

North St. Paul-Maplewood #622

The District failed to implement the accommodations and modifications set forth in the Student's IEP.

13-050C

6/11/2013

Hopkins #270

The District was in compliance with its child find responsibilities.

13-051C

6/19/2013

Minneapolis #001

IDEA does not require districts to provide draft versions of due process documents prior to IEP team meetings. The District was in compliance.

13-052C

6/11/2013

Granada Huntley #2536

The District failed to propose an IEP that specifically outlined the specific program modifications, supports, and adaptations related to implementing the IEP and failed to determine the special education and related services that were needed for the Student to advance.

13-053C (unpublished)

12-028H

9/24/12

St. Paul #625

Determination of an eligibility label is an IEP team decision. The IEP team, including the Parent, selected the entrance criteria that most closely defined Student's disability. Experts agreed that Student has complex needs whose needs do not fit neatly into any of the 13 eligibility categories.

13-020H

5/13/13

White Bear #624

The District's proposed therapeutic placement of the Student was appropriate; and the District's proposed IEP offered the Student FAPE in the least restrictive environment.