

CHAPTER 3525
STATE BOARD OF EDUCATION
INSTRUCTION AND SERVICES FOR
HANDICAPPED CHILDREN

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STANDARDS AND PROCEDURES

3525.0200 DEFINITIONS.

Subpart 1. **Scope.** The following terms used throughout parts 3525.0200 to 3525.4700 shall have the following meanings ascribed to them.

Subp. 2. **Days.** "Days" shall be construed to exclude Saturdays, Sundays, and days school is not in session when used in parts 3525.1100 to 3525.3600. "Days" shall be construed to mean calendar days when used in parts 3525.3700 to 3525.4700.

Subp. 3. **Education.** "Education" includes the terms "educational service," "educational program," "special education services," and "regular education program" as they are defined and used herein, and means any appropriate training, instruction, and aids and services designed to further the intellectual, academic, verbal, physical, emotional, cultural, adaptive behavior, sensory, or social development of the student.

Subp. 4. **Formal educational assessment.** "Formal educational assessment," referred to in these rules also as an "assessment," is defined as an individual evaluation, conducted in accordance with recognized professional standards and the provisions of parts 3525.2500 to 3525.2800, of a person's performance and/or development for the purpose of determining the need for initiation or change in his or her educational program including special education services.

Subp. 5. **Handicapped persons.** "Handicapped persons" includes the term "student," and "child" or "person" and means those "handicapped children" as defined by Minnesota Statutes, section 120.03 and amendments or supplements thereto. Determination of a handicapping condition shall be made by qualified personnel in accordance with recognized professional standards and consistent with the provisions of parts 3525.2500 to 3525.2900. These rules shall not apply to persons receiving home or hospital instruction unless they have a presenting handicapping condition as described in this subpart.

Subp. 6. **Individual educational program plan.** "Individual educational program plan" referred to in these parts also as a "program plan," means a written statement for each handicapped person setting forth the person's educational needs and the educational program, including special education services, to be provided to such person. The program plan shall be developed in accordance with and contain the information required by part 3525.2900.

Subp. 7. **Initial formal assessment.** "Initial formal assessment" means the first formal assessment of a child provided by the district.

Subp. 8. **Initial placement and provision of services.** "Initial placement and provision of service(s)" means the first special education placement and provision of special education service(s) by the district.

Subp. 9. **Least restrictive alternative.** "Least restrictive alternative" means the principle that to the maximum extent appropriate, handicapped persons, including those in public or private institutions or other care facilities, are educated with persons who are not handicapped, and that special classes, separate schooling, or other removal of handicapped persons from the regular educational environment shall occur only when and to the extent that the nature or severity of the handicap is such that education in regular classes with the use of special education services cannot be achieved satisfactorily. Furthermore, there must be an indication that the person will be better served outside of the regular program. For the purposes set forth therein this principle shall include the following "Continuum of Placement Model."

Continuum of Placement Model

Level 1. Students in regular classrooms functioning appropriately without any special education services. This level includes assessment services, monitoring, observation and follow-up.

Level 2. Students with handicaps functioning appropriately in the regular education program with the assistance of special education supportive services being provided to the classroom teacher.

Level 3. Students with handicaps functioning appropriately in a primary placement in a regular education program, but needing direct service assistance from special education personnel.

Level 4. Students with handicaps functioning appropriately with a primary placement in a special education program.

Level 5. Students with handicaps functioning appropriately in a primary placement in a special education program at a nonresidential school for children and youth who are handicapped.

Level 6. Students with handicaps functioning appropriately in a primary placement in a special education program at a residential facility for children and youth who are handicapped.

Subp. 10. **Nondiscrimination.** Nondiscrimination for purposes of parts 3525.0200 to 3525.4700 means the requirement that school districts shall:

A. not discriminate in any manner in the full utilization of or benefit from any educational institution of the services rendered thereby because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, or disability, and otherwise comply with the provisions of Minnesota Statutes, chapter 363; and

B. provide procedures that ensure that in accordance with recognized professional standards, testing and evaluation materials and procedures utilized for the purposes of identification, assessment, classification, educational program plan development, educational placement including special education services, program implementation, review and evaluation, notice and hearing are selected and administered so as not to be discriminatory including cultural discrimination. All such procedures and materials shall take into account the special limitations of handicapped persons and the racial or cultural differences presented by persons and must be justified on the basis of their usefulness in making educational program decisions which will serve the individual student.

Subp. 11. **Parent.** "Parent" or "parents" include a biological mother or father, an adoptive mother or father, a legally appointed guardian, or such agency or other person appointed pursuant to part 3525.2400. All rights and responsibilities as provided herein belong to a person when the person is 18 years of age, unless the person is under legal guardianship.

Subp. 12. **Primary placement in a regular education program.** "Primary placement in a regular education program" means an educational program wherein a regular classroom teacher(s) has the primary responsibility for the student's daily program planning, for parent conferences, and for curriculum content; and where special education staff member(s) play no daily role in the education of the student or where they are providing part-time supporting instruction or services for the student.

Subp. 13. **Primary placement in a special education program.** "Primary placement in a special education program" means an educational program wherein a special education staff member(s) has the primary responsibility for the student's daily program planning, for parent conferences, and for curriculum content; and where regular classroom teacher(s) play no role in the education of the student or where they are providing part-time supporting instruction or services for the student.

Subp. 14. **Proposed action.** "Proposed action" for purposes of parts 3525.0200 to 3525.4700 shall be construed to mean a providing school district's proposed initiation or change or refusal to initiate or change a child's educational placement or special education services as set forth in part 3525.2900, subpart 5 or an educational assessment or reassessment as set forth in parts 3525.2600 to 3525.2800.

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Subp. 15. **Providing school district.** "Providing school district" means a school district as that term is defined and used under Minnesota Statutes, section 120.02 which maintains an educational program for the handicapped person.

Subp. 16. **Public, private, or voluntary agencies.** "Public, private, or voluntary agencies" for purposes of parts 3525.0200 to 3525.4700 includes organizations which provide services to preschool and/or school age children. Public schools are not included in this definition.

Subp. 17. **Recognized professional standards.** "Recognized professional standards" means reasonable principles and concepts accepted by acknowledged experts that bear a direct relation to the particular needs of the student.

Subp. 18. **Regular education program.** "Regular education program" means the normal elementary or secondary education environment, including the instruction, training, aids, and services in the classroom or other appropriate places.

Subp. 19. **Resident school district.** "Resident school district" means the district where the handicapped person's parent or guardian resides or the district designated by the commissioner as provided in Minnesota Statutes, section 120.17, subdivisions 6 and 8a.

Subp. 20. **Special education services.** "Special education services" means any specially designed instruction to meet the unique needs of a handicapped person, including classroom instruction or instruction in the home, hospital, institution, residential facility, or other public or private facility providing special instruction and services pursuant to Minnesota Statutes, sections 120.17 and 124.32. This term includes, but not by way of limitation, the education, instruction, training, aids and services, and/or ancillary or supplementary and supportive aids and services necessary for the education of handicapped persons. This term also includes, but not by way of limitation, related services such as transportation, and developmental, corrective, and other supportive services including medical and counseling services, except that such medical services shall be for diagnostic or assessment purposes only, as may be required to assist a handicapped person to benefit from special education services. For purposes of parts 3525.0200 to 3525.4700 the term also means and includes a "primary placement in a special education program" as that term is defined and used herein; and "special instruction and services," "supplementary services," and "special education program" as those terms are defined and used in Minnesota Statutes, section 120.17.

Subp. 21. **School age.** "School age" means the age of four to 21 years for all handicapped children as defined in Minnesota Statutes, section 120.03 and shall not extend beyond secondary school or its equivalent.

Subp. 22. **Special education facility.** "Special education facility" means a school or any portion thereof, supplemental facility, or any other building or structure or part thereof, intended for use of or likely to be used in meeting the educational and related needs of handicapped children.

Statutory Authority: *MS s 120.17 subd 3*

3525.0300 PROVISION OF FULL SERVICES.

All children and youth who are handicapped and who are eligible for special education services shall have access to free appropriate public education, as that term is defined by applicable law, suited to each child's individual needs including the special education appropriate to his or her development. All school districts shall provide for such education suitable to students' individual needs regardless of the severity of the child's mental, physical, or emotional disability, or other impairment or handicap. The responsibility of the school district is not diminished by the availability of nonpublic schools or other services which may be located within the district.

Statutory Authority: *MS s 120.17 subd 3*

3525.0400 LEAST RESTRICTIVE ALTERNATIVE.

To the extent that there are no detrimental effects, children who are handicapped shall be educated with children who do not have handicaps and shall attend regular classes. A handicapped person shall be removed from a regular educational program only when the nature or severity of the handicap is such that education in a regular educational program cannot be accomplished satisfactorily. Furthermore, there must be an indication that the person will be better served outside of the regular program. The needs of the person shall determine the type and amount of services needed.

Statutory Authority: *MS s 120.17 subd 3*

3525.0500 INDIVIDUALIZED PROGRAMS.

All children who are handicapped must be afforded special education services based on an individual educational plan. Such programs need to include an assessment of the student's performance utilizing licensed personnel, a determination of the student's needs in a team process, an identification of appropriate goals and objectives, a selection of teaching strategies designed to enhance learning, delivery of services in an environment which is conducive to learning, and periodic review and evaluation of the performance of the student.

Statutory Authority: *MS s 120.17 subd 3*

3525.0600 PROCEDURAL SAFEGUARDS.

When a change in the educational placement or special education service of a child is proposed, including the assessment and program planning processes, procedural safeguards must be assured by the school district. Parents and guardians, and students when appropriate, have the right to be informed of all significant educational decisions. When a child's parents or legal guardians are not available, the school district shall contact the local county welfare department and request the public welfare system intervene on behalf of the child.

Statutory Authority: *MS s 120.17 subd 3*

3525.0700 PARENTAL INVOLVEMENT.

Parents of handicapped children have a right to be involved by the school district in the education decision-making process. Only by consistent and direct involvement of parents will the school receive sufficient input to design and implement an effective program for the handicapped student. Parents and schools are encouraged to cooperate in an open and objective manner, utilizing periodic conferences when possible so that formal hearings are necessary only when substantive disagreements exist between the parties.

Statutory Authority: *MS s 120.17 subd 3*

3525.0800 ACCOUNTABILITY FOR INSTRUCTION AND SERVICES.

As provided in Minnesota Statutes, section 120.17, subdivision 2, the district of residence is responsible for maintaining an appropriate program for all eligible handicapped persons regardless of the method or location of instruction utilized. However, if the handicapped person lives outside of his district of residence under the provisions of Minnesota Statutes, section 120.17, subdivisions 6 and 7, the district where the child lives is responsible for providing an appropriate program for the child as set forth in state statutes and parts 3525.0200 to 3525.4700 including the notice and hearing provisions. In such cases the district of residence is responsible for assuming the cost of the educational program. If the districts do not agree on the tuition rate, either district may appeal to the commissioner as provided in Minnesota Statutes, section 120.17, subdivision 4. The district shall not purchase special educational services for a child from a public or private agency when such service is available or can be made available

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and can be more appropriately provided as the least restrictive alternative within the district. Whenever it is appropriate for a district to purchase special education service for children who are handicapped and who reside in the district, it continues to be the responsibility of the school district, consistent with the provisions of Minnesota Statutes and parts 3525.0200 to 3525.4700, to assure and ascertain that such children and youth receive the education and related services and rights to which they are entitled.

Statutory Authority: *MS s 120.17 subd 3*

3525.0900 EXCLUSION AND EXPULSION FROM SCHOOL.

If it is determined in a Pupil Fair Dismissal Act proceeding (Minnesota Statutes, section 127.26) that the child, by reason of an emotional disturbance or a special behavior problem needs special instruction and services as defined in Minnesota Statutes, section 120.03, subdivision 3, parts 3525.0200 to 3525.4700 shall apply.

Statutory Authority: *MS s 120.17 subd 3*

3525.1000 PHYSICAL FACILITIES.

Physical aspects and specification of schools, classrooms, and other facilities which will be used by handicapped children shall be designed to meet their special physical, educational, and emotional needs. To this end, responsible school districts constructing, renovating, or repairing facilities which are intended for or are likely to be used by handicapped children shall plan, locate, design, construct, equip, and maintain them with due regard for the special capabilities, handicaps, and requirements of the handicapped children to be accommodated therein.

Statutory Authority: *MS s 120.17 subd 3*

3525.1100 DISTRICT SPECIAL EDUCATION PLAN.

On or before September 1, 1977, each district shall submit to the commissioner the district's plan for providing special instruction and services for all handicapped pupils as required by Minnesota Statutes, section 120.17. The plan may represent the plan of a single district or a plan for all of the member districts of a formal special education cooperative. The plan shall be considered as part of the annual school district application for program review, but will not be required to be resubmitted annually. The plan shall include descriptions of:

- A. the district's study procedures for the identification and assessment of handicapped pupils;
- B. the district's method of providing the special instruction and services for the identified handicapped pupils;
- C. the district's administration and management plan to assure effective and efficient results of items A and B; and
- D. procedures to assure compliance with state statutes and rules relating to the education of handicapped pupils.

On or before January 1, 1978, the commissioner shall approve or implement appropriate procedures for modification of the district plan. The commissioner may grant the district a reasonable period of time to make necessary modifications of the plan provided that the commissioner has satisfactory assurances of compliance with standards for the education of handicapped pupils.

Statutory Authority: *MS s 120.17 subd 3*

3525.1200 ANNUAL APPLICATION FOR PROGRAMS AND BUDGET.

Subpart 1. **Regular school term.** On or before May 1 of each year school districts shall submit to the commissioner an annual application for program and budget approval necessary for determining the special education aids during the next school year. On or before July 1 the commissioner shall approve, disapprove, or modify each application and notify each applying district of his action and the estimated level of education aid to be paid.

Subp. 2. **Summer school term.** On or before March 15 districts shall submit separate applications for program and budget approval for summer school. The commissioner shall approve, disapprove, or modify each application and notify the district of his action and the estimated level of special education aid by May 1.

Subp. 3. **Amendment to applications.** School districts shall apply to amend applications as needed during the school term to reflect program and budget changes necessary to meet the changing needs of handicapped pupils in the district.

Statutory Authority: *MS s 120.17 subd 3*

3525.1300 VARIANCE.

A district may request a variance from the standards provided in parts 3525.1400 to 3525.2300 by submitting supportive rationale in the application. The commissioner shall review this request for variance from standards in accordance with recognized professional standards and shall inform the district of the decision.

Statutory Authority: *MS s 120.17 subd 3*

3525.1400 FACILITIES.

Subpart 1. **Housing space.** Housing space for each class shall be adequate.

Subp. 2. **Equipment and materials.** Each special class and group shall be supplied with the necessary special equipment and instructional materials.

Statutory Authority: *MS s 120.17 subd 3*

3525.1500 STAFF.

Subpart 1. **Teachers.** Every teacher who teaches a special class must hold a special class license appropriate to the type of handicapped children she or he is teaching.

Subp. 2. **Administrators and supervisors.** Every administrator and supervisor of any special education program shall hold appropriate licensure.

Subp. 3. **Other professional or essential personnel.** The qualifications of other professional or essential personnel who are not licensed teachers, administrators, or supervisors shall be based upon recognized professional standards and documented by the school district in their application as provided for in parts 3525.1100 to 3525.1300. The commissioner or his designee shall review requests for approval of such personnel assigned to programs for handicapped children.

Statutory Authority: *MS s 120.17 subd 3*

3525.1600 STAFF FOR SPECIAL AND VOCATIONAL EDUCATION.

Staff responsible for vocational training of handicapped students shall meet the following criteria if the program is to qualify for special education approval:

- A. **Coordinator of special needs:**
 - (1) Licensure in special education.
 - (2) Licensed as a coordinator of special needs in vocational education.
- B. **Support service manager:**

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- (1) Licensure in any special education disability area.
- (2) Licensed as a support service manager in vocational education.
- C. Vocational instructor of special needs students:
 - (1) Licensure in the appropriate disability area of special education or have a plan for working toward licensure.
 - (2) Licensed as a vocational instructor of special needs students in vocational education.
- D. Teacher/coordinator of work experience:
 - (1) A special education license appropriate for the type of handicapped students being taught.
 - (2) Licensed as an instructor/coordinator for work experience in vocational education.
- E. Teacher/coordinator of vocational education work experience:
 - (1) Must be coordinated with a special education director or coordinator/lead teacher licensed for the type of handicapped students being taught.
 - (2) Must be working cooperatively with a special education licensed teacher who is responsible for the nonvocational instruction.
 - (3) Licensed as an instructor/coordinator for work experience in vocational education.
- F. Vocational evaluator:
 - (1) Licensed as a vocational evaluator in vocational education.
 - (2) Working cooperatively with special education licensed personnel to insure that special consideration is related to the students handicapped condition are included in the evaluation and program plan.
- G. Vocational technical tutor:
 - (1) Licensed as a technical tutor in vocational education.
 - (2) Working cooperatively with a special education licensed teacher who is responsible for the nonvocational academic area of instruction.

Statutory Authority: *MS s 120.17 subd 3*

3525.1700 STAFF TO STUDENT RATIOS.

Subpart 1. Ratio in level 5 or 6 of the continuum of placement model. When persons are in need of special education services in level 5 or 6 of the "Continuum of Placement" model where the primary placement is in a special education program such as a full-time class, special station, special school, or residential school, the staff to student ratio shall not exceed:

A. one teacher for each eight handicapped persons for all categories except as provided in item B;

B. one teacher for six handicapped persons who are autistic or who are deaf/blind providing that two management aides are employed to assist the teacher.

Subp. 2. Ratio in level 4 of the continuum placement model. When persons are in need of special education services in level 4 of the "Continuum of Placement" model where the primary placement is in a special education program such as a resource room or part-time special class the staff to student ratio shall not exceed:

A. one teacher for every 15 handicapped persons for all categories except as provided in item B;

B. one teacher for every eight handicapped persons who are trainable mentally retarded or visually impaired.

Subp. 3. Ratio in level 3 of the continuum placement model. When persons are in need of special education services in level 3 of the "Continuum of Placement" model where the primary placement is in a regular education

program, such as a resource room or special class, the staff to student ratio shall not exceed:

A. One teacher for every 15 persons for all categories except as provided in item B.

Each person must receive special education service for a minimum of one hour per day. When the needs of the student warrants such action, persons may receive less than one hour per day during the initial or phase out stages.

B. One teacher for every 40 persons who are speech and/or language impaired.

Subp. 4. **Ratio in level 1 or 2 of the continuum of placement model.** When persons are in need of special education services in level 1 or 2 of the "Continuum of Placement" model where the student is full time in a regular education program and the special education teacher provides consultation and indirect service to the regular classroom teacher and/or assessment, monitoring or follow-up of the student, the staff to student ratio shall not exceed:

A. one teacher for every 30 persons who are handicapped except as provided in item B;

B. one teacher for every 60 persons who are speech impaired.

Subp. 5. **Providing more than one level of service.** Whenever a professional is serving children representing a range of severity of problems, is providing more than one level of service, or is providing service at more than one site, the staff to student ratios shall be adjusted accordingly.

Subp. 6. **Ratios for special and vocational programs.** When persons are receiving services from vocational staff involved in "special and vocational" programs except as provided in part 3525.1600, item D, the staff to student ratios of the "Continuum of Placement" model do not apply to that staff.

Statutory Authority: *MS s 120.17 subd 3*

3525.1800 SUPERVISION.

Supervision consistent with the commissioner's recommendations and meeting the following standards shall be provided for each type of special education program.

Statutory Authority: *MS s 120.17 subd 3*

3525.1900 OVERALL SUPERVISION.

Subpart 1. **Full-time supervision.** The school board in every district with an enrollment of 15,000 or more pupils, and in every district in which 20 or more full-time professional personnel are employed in the special education program, shall employ or designate a qualified person, under an appropriate title, to devote full time to directing the special education program.

Subp. 2. **Part-time supervision.** The school board shall employ or designate a qualified person to devote part time to directing the special education program when the enrollment in the school district is 7,500 or more pupils but less than 15,000 pupils; or the number of full-time personnel employed in the special education program is at least ten but less than 20.

This position shall be reimbursable when the person directing the program on a part-time basis spends the remainder of his time in some area of special education.

School authorities of districts that are required to meet the standard for part-time supervision shall consult periodically with the special education section in regard to full-time supervision.

Subp. 3. **Other supervision.** School boards of districts not required to have full-time or part-time supervision as outlined above shall study the feasibility of cooperative interdistrict sharing of special education supervisory personnel or some other approach aimed at providing direction to the program. See part

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Statutory Authority: *MS s 120.17 subd 3*

3525.2000 INDIVIDUAL PROGRAM SUPERVISION.

Subpart 1. For deaf, crippled, visually impaired, or emotionally disturbed. For the following disability categories or areas: deaf and hard of hearing, crippled, visually impaired, emotional disturbance, learning disability, or special behavior problems.

The board of every school district in which 15 or more full-time professional personnel are employed in any one of the above disability areas shall employ or designate a full-time person to supervise the program in that area. The board of every school district in which less than 15 but five or more professional personnel are employed in any one of the above disability areas shall consult with the special education section and make provisions for supervision of the program in that area.

Subp. 2. For the mentally retarded. The school board in every district in which 30 or more full-time professional personnel are employed in the above disability area shall employ or designate a full-time supervisor of the program in that area. The school board in every district in which less than 30 but ten or more professional personnel are employed in the above disability areas shall consult with the special education section and make provisions for supervision of the program.

Subp. 3. Speech therapists employed. The school board in every district in which speech therapists are employed in the special education program shall submit a plan which will describe and provide appropriate amounts of time for program development, program coordination, program evaluation, in-service training, and individual supervision.

Subp. 4. Social work, school psychology. For the following service areas: school social work, and school psychology:

A. The school board in every district in which level 1 personnel in either the social work or psychology program are employed for special education programs shall submit a plan which will describe and provide appropriate amounts of time for each level 1 person for individual observation, performance evaluation, consultation, and in-service training by a licensed level 2 person from the respective field.

B. The school board in every school district in which level 2 personnel in either the social work or psychology area are employed in the special education program shall submit a plan which will describe and provide appropriate amounts of time for program development, program coordination, program evaluation, in-service training, and individual supervision.

Subp. 5. Sharing supervisory personnel. The school boards of two or more districts may cooperatively employ and share supervisory personnel. See part 3525.2200.

Subp. 6. Supervision in both elementary and secondary schools. Supervision of programs in any of the aforementioned disability areas shall be provided at both the elementary and secondary level.

Statutory Authority: *MS s 120.17 subd 3*

3525.2100 COOPERATIVE INTER-DISTRICT AGREEMENTS.

Two or more school districts may enter into an agreement to provide supervision of programs for handicapped children, provided that none of the participating districts is required, as outlined in parts 3525.1900 and 3525.2000, to employ such supervisory personnel on a full-time basis.

When a group of districts enter into such cooperative agreement, one of the participating districts shall serve as the employing unit. Each participating district shall pay to the employing district a pro rata amount of the net cost of

providing such supervisory services. The net cost to be prorated shall be the actual cost less state reimbursement. State reimbursement for the cost of such services shall be paid to the employing district.

Statutory Authority: *MS s 120.17 subd 3*

3525.2200 INABILITY TO COMPLY.

The school board of any district unable to comply with parts 3525.1400 to 3525.2200 shall consult with the special education section.

Statutory Authority: *MS s 120.17 subd 3*

3525.2300 SCHOOL DAY.

Deviations from the normal school day for any type of handicapped children shall be approved by the commissioner of education.

Statutory Authority: *MS s 120.17 subd 3*

3525.2400 SURROGATE PARENTS.

When a child is the ward of the commissioner of public welfare, when the parent or guardian is unknown or unavailable, or when parental rights have been terminated, the district shall ensure that the rights of the child to a free and appropriate education are protected by contacting the local county welfare department and requesting that the public welfare system intervene on behalf of the child. The district shall suggest to the local county welfare system that a contact with the county attorney's office be made to determine whether a guardian ad litem should be appointed.

Statutory Authority: *MS s 120.17 subd 3*

3525.2500 IDENTIFICATION OF HANDICAPPED CHILDREN.

School districts shall develop systems for locating all children residing within their jurisdiction who may be handicapped. Those systems shall be designed to identify preschool age handicapped children, handicapped persons attending school, and handicapped persons of school age who are not attending any school.

The district's identification system shall be developed in accordance with the requirement of nondiscrimination.

Statutory Authority: *MS s 120.17 subd 3*

3525.2600 FORMAL EDUCATIONAL ASSESSMENT.

Subpart 1. Assessment. An assessment:

A. must be conducted when because of a person's performance in the present educational placement or presenting handicapping conditions, he or she is thought by the school district to be in need of possible initiation or change in the student's educational placement or program or special education services as set forth in part 3525.2900, subpart 5 which will provide an educational program, including special education services appropriately suited to the person's needs;

B. must be conducted at least every two years as required by part 3525.3100; and

C. may be conducted if the parent requests.

Subp. 2. Function of the assessment. The assessment must reflect the person's current level of performance and shall:

A. Be appropriate to the presenting problem and may include observation, evaluation, and testing of the persons intellectual, academic, verbal, emotional, adaptive behavior, sensory, physical, and social development.

B. Include a review of the person's learning environment and learning modes. When the team determines it to be necessary because of racial, cultural, or other differences presented by the person or due to the nature of the student's

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presenting handicapping condition they shall make reasonable efforts to obtain information from the parents relating to the student's functioning in his or her total environment.

C. Be provided and administered in the person's primary language or mode of communication unless it clearly is not feasible to do so.

D. Be performed in accordance with recognized professional standards which include recognition or accommodation for persons whose differences or conditions cause standardized instruments to be invalid and otherwise in accordance with the requirements of nondiscrimination.

Statutory Authority: *MS s 120.17 subd 3*

3525.2700 CONDUCT PRIOR TO THE ASSESSMENT.

Prior to conducting an assessment the district shall:

A. Review the screening, referral, or other data about the person and select licensed special education personnel and others as appropriate to conduct the assessment.

B. Include on the assessment team licensed special education personnel and others who may have the responsibility for implementing the educational program for the person.

C. Conduct the educational assessment preferably at the school which the person attends. When the district determines that the assessment or a portion of the assessment cannot be performed utilizing the personnel resources of the district, the district shall make arrangements elsewhere for that portion of the assessment and shall assume all costs for such assessment.

D. Conduct the assessment within a reasonable period of time not to exceed 30 days from the date the district receives parental permission to conduct the assessment or the expiration of the ten day parental response time in cases other than initial assessment, unless a conciliation conference or hearing is requested.

Statutory Authority: *MS s 120.17 subd 3*

3525.2800 NOTICE BEFORE ASSESSMENT.

Notice before assessment:

A. Must be provided in accordance with the provisions of parts 3525.3200 to 3525.3500 prior to conducting a formal educational assessment or reassessment or when the district receives a parent's written request to conduct a formal educational assessment or reassessment. In cases where a district receives a parent's written request to conduct a formal assessment or reassessment, the district shall serve notice of its decision within ten days of their receipt of the written request.

B. Is not required for actions which are components of the district's identification system including large group screening, individual student observation within the regular classroom, informal inventories, and consultation between regular and special education personnel.

Statutory Authority: *MS s 120.17 subd 3*

3525.2900 DEVELOPMENT AND CONTENT OF THE INDIVIDUAL EDUCATION PROGRAM PLAN.

Subpart 1. **Team and program needs determination.** Following the assessment, in order to determine if the person is in need of special education services, the district shall:

A. designate a team of persons responsible for determining the educational needs of the student which, at a minimum, shall include a school administrator or designee, the student's regular classroom teacher, appropriate special education personnel, other support personnel, the parent, and when appropriate, the student;

B. organize the assessment data and other relevant information and reports, including information supplied by the parents, review that data and determine the student's educational needs;

C. interpret the data consistent with the requirement of nondiscrimination;

D. upon request of the parent, determine whether it is appropriate to involve additional staff or other persons on the team including someone who is a member of the same minority or cultural background or who is knowledgeable concerning the racial, cultural, or handicapping differences of the student; and

E. schedule the student staffing at a time and place that is mutually acceptable to the school and parents; the district shall proceed if the parents do not respond to the request to participate.

Subp. 2. Development of individual education program plan. The development of the program plan must:

A. be prepared, in writing, by the providing district for each person in need of special education services; when the providing district is not the resident district, a copy of the program plan shall be sent to the resident district;

B. be developed in accordance with the requirement of nondiscrimination, the principle of the least restrictive alternative, and recognized professional standards;

C. be based on the assessment data and other relevant reports and information; and

D. be prepared, in writing, by the resident district when contracting for special education services from a public, private, or voluntary agency.

Subp. 3. Content of individual educational program plan. The program plan must be based on the assessment data and other information and be consistent with the requirement of nondiscrimination and the principle of least restrictive alternative and must include:

A. A description of the special education service needs of the student as determined by the staffing team and the names of the persons on the team.

B. A statement of annual goals and periodic review objectives for the special education services including the criteria for attainment.

C. The plan for, location of, and frequency of periodic review of the progress in reaching the prescribed educational goals and objectives.

D. The reasons for the type of education placement and program including type of special education services to be provided, the location, amount of time, starting date, anticipated special education service duration, names, and school telephone numbers of those personnel responsible for providing the special education services. In accordance with the principle of least restrictive alternatives, substantiate why the proposed action is the most appropriate in terms of the person's educational needs.

E. The changes in staffing, transportation, facilities, curriculum, methods, materials, and equipment and other educational services that will be made to permit successful accommodation and education of the student in the least restrictive alternative.

F. A description of the educational activities in which the student will participate in environments which include nonhandicapped students. This provision must be included in the plan only when the student's primary placement will be in a special education program.

Subp. 4. Individual conference scheduled to interpret assessment. At the request of the parent, the district shall schedule an individual conference with a knowledgeable school employee for the purpose of receiving interpretations of the assessment or reassessment data or procedures or for the purpose of explaining the individual educational plan or its development.

Subp. 5. **Notice to parents after completion of program plan and prior to placement.** Notice in accordance with the provisions of part 3525.3600 is required whenever the providing school district proposes to initiate or change or refuses to initiate or change the level of educational placement as defined in the "Continuum of Placement Model," or proposes to initiate or significantly change or refuses to initiate or significantly change the special education services for the child. For the purposes of this part the terms initiate or change shall be construed to include the proposals set forth in Minnesota Statutes, section 120.17, subdivision 3b, clauses (c) (2), (3), (4), and (5). The notice shall be served prior to the initiation or change or refusal to initiate or change the educational placement or special education services for the child. The notice shall be served within ten days after completion of the program plan and/or the refusal to initiate or change.

Statutory Authority: *MS s 120.17 subd 3*

3525.3000 PERIODIC REVIEWS.

The providing school district shall conduct periodic reviews of the program plan and shall determine:

- A. the degree to which the periodic review objectives as identified in the educational program plan are being achieved;
- B. the appropriateness of the educational program plan as it relates to the student's current needs;
- C. what modifications, if any, need to be made in the program plan.

The initial review shall be made at the time specified in the program plan, but at least twice a year following placement. These periodic reviews shall be made by those persons directly responsible for implementing the educational program and by other school district agents as may be needed to ensure an informed and adequate review.

The results of such periodic reviews shall be included in the student's school records and a copy sent to the parent and to the resident district if different from the providing district. This copy shall inform the parents or the resident district that they may request a conference to review the student's program plan at any time and the procedure to do so. The reviews shall be made in accordance with the requirements for nondiscrimination and recognized professional standards.

Statutory Authority: *MS s 120.17 subd 3*

3525.3100 REQUIREMENTS FOR REASSESSMENT AND FOLLOW-UP REVIEW.

When a student is continued in his or her primary placement in a special education program, the providing district shall conduct an educational reassessment according to the procedures specified in parts 3525.2600 to 3525.2800, at least once every two years.

The responsible school district shall conduct a follow-up review of the student's current performance no later than 12 calendar months after special education services are discontinued to determine if progress is satisfactory.

Statutory Authority: *MS s 120.17 subd 3*

3525.3200 FORMAL NOTICE TO PARENTS.

The notice shall be in writing and shall be served on the parent. Every effort shall be made by the providing school district to assure that no person's rights are denied for lack of a parent, or surrogate parent, or duly appointed guardian. The notice shall be written in the primary language of the home and in English, and the district shall make reasonable provisions for such notice to nonreaders and non-English-speaking persons necessary to ensure that the information contained in the notice is understood. For parents who are

handicapped persons because of a hearing, speech, or other communication disorder, or because of the inability to speak or comprehend the English language as provided in Minnesota Statutes, section 546.42 the school district shall cause all pertinent proceedings, including but not limited to the conciliation conference, the prehearing review, the hearing, and any appeal to be interpreted in a language the handicapped person understands by a qualified interpreter as provided in Minnesota Statutes, section 546.42.

Statutory Authority: *MS s 120.17 subd 3*

3525.3300 CONTENTS OF NOTICE.

All notices must be sufficiently detailed and precise to constitute adequate notice for hearing of the proposed action and contain a full explanation of all of the procedural safeguards available to parents under the provision of parts 3525.0200 to 3525.4700. All notices must:

A. Inform the parents of their right to review and receive copies of all records or other written information regarding their child in the school's possession.

B. Inform the parents of their right and the procedure and time for them to participate as a team member in developing and determining their child's educational program, including special education services and/or to provide information relative to his or her assessment and the development of the program plan.

C. Inform the parents of their right and the procedure and time to receive interpretations of assessment or reassessment procedures, instruments and data or results and of the program plan from a knowledgeable school employee and for that conference to be held in private.

D. Inform the parents of their right and the procedure and time to have included on the team that interprets the assessment data and/or develops the individual program plans, such person(s) described in part 3525.2900, subpart 1 including a person who is a member of the same minority or cultural background or who is knowledgeable concerning the racial, cultural, or handicapping differences of the student.

E. Inform the parents that they may:

(1) Obtain an independent assessment at their own expense.

(2) Request from the district information about where an independent assessment may be obtained.

(3) Obtain an independent assessment at public expense if the parent disagrees with an assessment obtained by the public agency. However, a district may initiate a due process hearing to show that its assessment is appropriate after at least one conciliation conference. If the final decision is that its assessment is appropriate, the parents still have the right to an independent assessment, but not at public expense. Whenever an independent 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 which the public agency uses when it initiates an evaluation.

F. Inform the parents that the district will not proceed with proposed actions defined in part 3525.0200, subparts 7 and 8 without prior written consent.

G. Inform the parents that if they object to the proposed action in writing a conciliation conference will be held at a mutually convenient time and place, but that if the parents refuse to attend the conference and the proposed action is not an initial action as defined in part 3525.0200, subparts 7 and 8, the school district will proceed with the proposed action.

H. Inform the parents that if they still object to the proposed action at anytime after the first conciliation conference is convened, they have a right to voice that objection at an impartial due process hearing.

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I. Inform the parents that they have the right to be represented by counsel or another person of their choosing at the conciliation conference or the impartial due process hearing.

J. A statement assuring that their child's educational program will not be changed as long as the parent objects to the proposed action, in the manner prescribed by parts 3525.0200 to 3525.4700.

K. Include a "response form" on which the parent may indicate their approval of or objection to the proposed action and identify the district employee to whom the "response form" should be mailed or given and to whom questions may be directed.

L. Inform the parents of their right to be represented in preparation of and at the hearing by legal counsel or other representative of their choice.

M. Inform the parents of their right, in accordance with laws relating to confidentiality, to examine and receive copies of the child's school records before the hearing, including tests, assessments, reports, or other information concerning the educational assessment or reassessment upon which the proposed action may be based.

N. Inform the parents of their right to call their own witnesses and to present evidence, including expert medical, psychological, and educational testimony and relevant records, tests, assessments, reports, or other information.

O. Inform the parents of their right to request the attendance of any official or employee of the providing or resident school district or any other person, who may have evidence relating to the proposed action and the manner and time in which to do so.

P. Inform the parents of their right to present evidence and cross examine any employee of the school district(s) or other persons who present evidence at the hearing.

Q. Inform the parents of any free or low cost legal services available in the area.

R. Inform the parents of their right to have the child who is the subject of the hearing present at the hearing.

S. Inform the parents that the hearing shall be closed unless the parents request an open hearing.

T. Inform the parents that they have a right to obtain a record of the hearing including the written findings of fact and decisions whether or not they appeal.

Statutory Authority: *MS s 120.17 subd 3*

3525.3400 NOTICE BY RESIDENT SCHOOL DISTRICT.

The resident school district, if different from the providing school district, shall receive notice of and may be a party to any hearings or appeals provided herein if the district notifies the parent and the providing school district of its intention to a party within seven days of receipt of notice of the hearing from the providing school district.

Statutory Authority: *MS s 120.17 subd 3*

3525.3500 NOTICE OF PERFORMANCE OR REFUSAL TO PERFORM ASSESSMENT.

Prior to the performance of or refusal to perform a formal educational assessment or reassessment as provided for in parts 3525.2600 to 3525.2800, the providing school district shall prepare and serve a notice which shall meet the requirements of parts 3525.3200 to 3525.3400. The portion of the notice which is specific to assessment or reassessment shall:

A. include the reasons for assessment or the refusal to assess and how the results may be used;

B. include a general description of the procedures to be used;
 C. state where and by whom the assessment will be conducted;
 D. inform the parents that the district will not proceed with the initial formal assessment as defined in part 3525.0200, without prior written consent of the child's parents; and

E. inform the parents that except for the initial formal assessment, the district shall proceed with the proposed assessment unless the parent objects on the enclosed "response form" or otherwise in writing within ten days after receipt of the notice.

Statutory Authority: *MS s 120.17 subd 3*

3525.3600 NOTICE OF CHANGE OR REFUSAL TO CHANGE EDUCATIONAL PLACEMENT.

Prior to the initiation or change or the refusal to initiate or change a child's educational placement or special education services, as set forth in part 3525.2900, subpart 5, the providing school district shall prepare and serve a notice which shall meet the requirements of parts 3525.3200 to 3525.3400. The portion of the notice which is specific to the educational placement and provision of services shall:

A. include a copy of the individual educational program plan as described in part 3525.2900, subpart 3;

B. inform the parents that the school district will not proceed with the initial placement and provision of service(s) as defined in part 3525.0200 without prior written consent of the child's parents; and

C. inform the parents that except for the initial placement and provision of service(s), the district will proceed with the proposed placement and provision of service(s) unless the parents object in writing on the enclosed "response form" or otherwise in writing within ten days after the receipt of the notice.

Statutory Authority: *MS s 120.17 subd 3*

3525.3700 CONCILIATION CONFERENCE.

Subpart 1. When a conference must occur. When a conciliation conference must occur: if the parent does not object in writing, to a proposed action as set forth in parts 3525.2600 to 3525.2800 or part 3525.2900, subpart 5, within 14 days after receipt of the notice, and the proposed action is not an initial action as defined in part 3525.0200, subparts 7 and 8, the proposed action shall take place. If such written objection is made, the providing school district shall arrange for a conference with the parent for the purpose of reviewing the reasons for the proposed action and conciliating the matter. The conference shall be held at a time and place mutually convenient to the parent and the school district representatives and shall be held within ten days after receipt of the written objection. There may be more than one such conference and the parent or district may request a hearing under part 3525.3800 at anytime after the first conciliation conference is convened.

If the parent refuses to provide prior written consent as set forth in parts 3525.3500, item D and 3525.3600, item B within ten days after the receipt of the notice and response form, the providing school district shall arrange for a conference with the parent for the purposes of reviewing the reasons for the proposed action, reviewing the parent's suggestions and concerns, and conciliating the matter. Each conference shall be held at a time and place mutually convenient to the parent and school district representatives and the initial conference shall be held within ten days after the expiration of the ten day period for parent response. In cases where the parent fails to attend the initial conciliation conference, the district may choose to schedule additional conciliation conferences.

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Subp. 2. **Memorandum.** Within seven days of the final conciliation conference the providing district shall serve the parent with a written memorandum which shall inform the parent:

A. Of the school districts proposed action following the conference.

B. That if they continue to object to the proposed action they have a right to object to the proposed action at an impartial due process hearing and the procedure and time in which to do so, including a "request form" on which the parent may request the hearing, and the identification of the district employee to whom the written request form or other written request for hearing should be mailed, and to whom questions and legal documents or requests relating to the hearing may be directed.

C. That if they do not request a hearing on the written "request form" or otherwise in writing pursuant to part 3525.3800 within seven days after receipt of the notice, the district will proceed with the proposed action; unless the proposed action is an initial action as defined in part 3525.0200, subparts 7 and 8. In cases of such proposed initial actions, when a parent continues to refuse to provide written permission, the district shall schedule a hearing within seven days after the expiration of the seven days allowed for parent response.

D. That if a hearing is scheduled the district shall send a notice describing the rights and procedures available to the parents relative to the hearing.

Statutory Authority: *MS s 120.17 subd 3*

3525.3800 WHEN A HEARING MUST BE HELD.

A hearing regarding a proposed action as set forth in parts 3525.2600 to 3525.2800 or part 3525.2900, subpart 5 shall be held whenever the providing district receives the parents' request for a hearing. This request must be in writing and must be made within seven days after the parents' receipt of the written memorandum pursuant to part 3525.3700, subpart 2. Provided, however, that no parent shall have a right to request a hearing unless at least one conciliation conference has been convened pursuant to part 3525.3700, subpart 1. A district shall conduct a hearing whenever a parent refuses to provide written permission for the initial formal assessment or the initial placement and provision of special education services, provided the district has made at least one attempt to obtain this written consent through at least one conciliation conference.

Statutory Authority: *MS s 120.17 subd 3*

3525.3900 NOTICE OF A HEARING.

Written notice of the time, date, and place of all hearings shall be given to all parties by the providing district at least ten days in advance of such hearings; and the hearing shall be held at a time, date, and place mutually convenient to all parties.

Within five days of receipt of the parent's written request for a hearing the providing school district shall serve the parent with a written notice of rights and procedures relative to the hearing which shall inform the parent:

A. That the hearing shall take place before an impartial hearing officer mutually agreed to by the school board and the parent. If the school board and parent are unable to agree on a hearing officer, the school board shall request the commissioner to appoint a hearing officer.

B. That they will receive notice of the time, date, and place of the hearing at least ten days in advance of the hearing which will be held within 30 days after the written request.

C. Inform the parents of the following rights and responsibilities:

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(1) of their right to receive a list of persons who will testify on behalf of the district concerning the proposed action within five days of the date the district receives their written request for the list of persons testifying;

(2) of their responsibility, within five days after written request by the school district(s), to provide to the district(s) a list of persons who will testify on the parent's behalf concerning the proposed action;

(3) of their right, at least five days prior to the hearing, to receive from the providing or resident school district, a brief resume of "additional material allegations" referring to conduct, situations, or conditions which are discovered to be relevant and which were not contained in the original notice or memorandum; and that if such material allegations are not so disclosed, it shall be left to the discretion of the person conducting the hearing to determine if those material allegations may be introduced or considered.

D. That at the hearing the burden of proof is on the school district to show that the proposed action is justified on the basis of the child's educational needs or his or her current educational performance, or presenting handicapping conditions taking into account the presumption that placement in a regular public school class with special education services is preferable to removal from the regular classroom.

E. That the hearing officer will make a written decision based only on evidence received and introduced into the record at the hearing not more than 45 days from the receipt of the request for the hearing and that the proposed action will be upheld only upon showing by the school district by a preponderance of the evidence. A proposed action that would result in the child being removed from regular education program may be sustained only when, and to the extent the nature or severity of the handicap is such that a regular education program would not be satisfactory and the child would be better served in an alternative program. Consideration of alternative educational programs must also be given.

F. That the decision of the hearing officer is binding on all parties unless appealed to the commissioner by the parent or the providing district.

G. That unless the district and parents agree otherwise, the student shall not be denied initial admission to school and that the student's education program shall not be changed, as long as the parents object to the proposed action in the manner prescribed by parts 3525.0200 to 3525.4700.

Statutory Authority: *MS s 120.17 subd 3*

3525.4000 HEARING OFFICERS.

The hearing shall take place before an impartial hearing officer mutually agreed to by the school board and the parents. If the school board and the parent are unable to agree on a hearing officer, the school board shall request the commissioner to appoint a hearing officer. The hearing officer shall not be a school board member or employee of the school district where the child resides or of the child's school district of residence, an employee of any other public agency involved in the education or care of the child, or any person with a personal or professional interest which would conflict with his objectivity at the hearing. A person who otherwise qualifies as a hearing officer is not an employee of the district solely because the person is paid by the district to serve as a hearing officer. If a hearing officer requests an independent educational assessment of a child, the cost of the assessment shall be at district expense. All expenses of the hearing, except for the parents' and resident school district's attorney's fees or other expenses incidental to the parent or resident school district participation in the hearing, shall be paid by the providing school district.

Statutory Authority: *MS s 120.17 subd 3*

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3525.4100 PREHEARING REVIEW BY THE HEARING OFFICER.

Subpart 1. **Information received prior to the hearing.** Five days prior to the hearing, the person(s) conducting the hearing shall receive copies of:

A. the providing school district's notice(s) and memorandum prepared pursuant to part 3525.3700, subpart 2 to the parents;

B. written information concerning the providing school district's educational assessment or reassessment and copies of any parties' tests, evaluations, or other admissible reports or written information relating to such assessment or reassessment, or the proposed action;

C. a copy of the student's current and proposed individual educational program plan; and

D. such other information from the school district(s) or parent as the hearing officer may have requested at a prior date provided that a copy of such information is provided to all parties, and further provided that such information is made a part of the hearing record.

The provisions of items B and C need not apply when the hearing concerns a proposed action as set forth in parts 3525.2600 to 3525.2800.

Subp. 2. **Duties of hearing officers after receipt of the information.** Upon receipt of the information set forth in subpart 1, the hearing officer:

A. shall review the same for compliance with parts 3525.0200 to 3525.4700;

B. may at his or her discretion meet with the parties together prior to the hearing;

C. may require the providing school district to perform an additional educational assessment or reassessment;

D. may require the providing school district to propose an alternative individual educational program plan;

E. may require the providing school district to send additional notice to the parents;

F. may do such additional things necessary to achieve compliance with parts 3525.0200 to 3525.4700;

G. may postpone the hearing for up to 15 days to achieve the purposes of this subpart; and

H. may grant specific extensions of time beyond the 45 day period established in part 3525.3900, item E at the request of either party.

Statutory Authority: *MS s 120.17 subd 3*

3525.4200 HEARING RIGHTS OF THE RESPECTIVE PARTIES.

The hearing shall be closed unless the parents request an open hearing. The parties shall have the right to representatives of their own choosing, including legal counsel.

At a reasonable time prior to the hearing, the parent or their representative(s), as the case may be, shall be given access to all of the providing and resident school districts' records and such other records pertaining to the child that are authorized by law to be disclosed, including but not limited to all tests, evaluations, assessments, reports, and other written information concerning the educational assessment or reassessment, conducted pursuant to parts 3525.2600 to 3525.2800 upon which the proposed action may be based.

At least five days prior to the hearing the parents shall receive from the school districts, who are parties of the hearing, a brief resume of "additional material allegations" referring to conduct, situations, or conditions which are discovered and found to be relevant to the issues to be contested at the hearing and which are not contained in the original notice or memorandum provided pursuant to parts 3525.3200 to 3525.3600 or part 3525.3700, subpart 2. If such material allegation or information relating thereto are not so disclosed, it shall be

left to the person conducting the hearing to determine if those material allegations may be introduced or considered. Within five days after the written request is received, any party shall receive from the other parties a list of witnesses who may be called to testify at the hearing. Such list must be filed with the person(s) conducting the hearing. Such lists may be modified at any time but each party should be notified immediately if possible. All parties or their representatives, as the case may be, shall have the right to request the attendance of any employee of the school district(s), or any other person who may have evidence relating to the proposed action, and to confront, and to cross examine any such witness. Any such request must be made to the appropriate school district or to the person whose attendance is requested at least five days in advance of the hearing. Such written requests shall also be filed with the person(s) conducting the hearing at the time of hearing.

If the person conducting the hearing determines at the conclusion of the hearing that there remain disputes of fact which, in the interest of fairness and the child's educational needs, require the testimony of additional witnesses, or if the hearing officer concludes that alternative educational programs and opportunities have not been sufficiently considered, he or she may continue the hearing for not more than ten days, for the purpose of obtaining the attendance of such witnesses or considering such alternative programs and opportunities. The parties' right to cross examination and confrontation and other applicable rights and procedures set forth herein shall continue and be given full force and effect.

Statutory Authority: *MS s 120.17 subd 3*

3525.4300 HEARING PROCEDURES.

The hearing officer shall preside over and conduct the hearing and shall rule on procedural and evidentiary matters, and his or her decision shall be based solely upon the evidence introduced and received into the record. The school district(s) shall bear the burden of proof as to all facts and as to grounds for the proposed action. One purpose of the hearing is to develop evidence of specific facts concerning the educational needs, current educational performance, or presenting handicapping conditions of the person as it relates to the need for the proposed action. Consistent with the rights and procedures set forth herein, nothing in these rules shall limit the right of the hearing officer to question witnesses or request information.

A tape recording, stenographic record, or other record of the hearing shall be made, and if an appeal is filed pursuant to parts 3525.4600 and 3525.4700, the hearing shall be transcribed by the providing school district and shall be accessible to the parties involved within five days of the filing of the appeal.

Statutory Authority: *MS s 120.17 subd 3*

3525.4400 THE DECISION OF THE HEARING OFFICER.

Subpart 1. Preparation of written decision. Not more than 45 days from the receipt of the request for a hearing, the hearing officer shall prepare a written decision based on evidence received and introduced into the record at the hearing. Such decision shall address itself to subparts 2 and 3.

Subp. 2. Decisions regarding assessment or reassessment. The hearing officer may sustain a proposed assessment or reassessment of the person as set forth in parts 3525.2600 to 3525.2800 upon a showing by the school district(s) by a preponderance of the evidence which demonstrates that there are facts, relating to the person's performance in his or her present education placement or presenting handicapping conditions, which indicate reasonable grounds to believe that the educational assessment or reassessment procedures are justified, as a step toward the possible initiation of or change in the person's educational placement or program, including special education services, which will provide an

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educational program, including special education services, appropriately suited to the person's needs.

Consistent with the standards, requirements, and principles set forth in statute and parts 3525.0200 to 3525.4700, the hearing officer shall have the authority, based on all the evidence received at the hearing, to modify the proposed assessment or reassessment instruments or procedures in order to ensure compliance with the requirement of nondiscrimination.

Subp. 3. Decisions regarding educational placement. Based on an application of the standards, requirements, and principles set forth in Minnesota Statutes, section 120.17, subdivision 3a, and in parts 3525.0200 to 3525.4700, the proposed action regarding the person's educational placement or special education services as set forth in part 3525.2900, subpart 3 shall be sustained in whole or in part by the hearing officer only upon a showing of need by the school district(s) by a preponderance of the evidence. In deciding if the proposed action is to be sustained, in whole or part, the educational needs of the child shall be determinative. However, there shall be a presumption that among alternative programs of education, that to the maximum extent appropriate, a primary placement in a regular public school class and program with appropriate special education services, is preferable to removal from the regular classroom.

The hearing officer may sustain a proposed action that would result in the child being removed from a regular education program only when, and to the extent that, the nature or severity of the handicap is such that education in the program with the use of special education services cannot be accomplished satisfactorily, and there is indication that the child will be better served with an alternative program or services. This decision shall be made in accordance with the principle of least restrictive alternatives. The hearing officer shall also determine whether the school district(s) sufficiently considered alternative educational programs including special education services and opportunities and at the hearing, may receive any additional evidence presented by any interested party or person as to the availability and suitability of reasonable and viable educational alternatives. If the hearing officer concludes that there are no reasonable or viable educational alternatives the findings shall so state.

Subp. 4. Local decisions. All local decisions shall:

A. contain written findings of fact, and conclusions of law, including a statement of the controlling facts upon which the decision is made in sufficient detail to appraise the parties and the commissioner of the basis and reason for the decision;

B. state whether the special education services appropriate to the child's needs can be reasonably provided within the resources available to the providing district;

C. state the amount and source of any additional district expenditures necessary to implement the decision; and

D. be based on the standards and principles set forth in Minnesota Statutes, section 120.17, subdivision 3a, and subparts 2 and 3.

Statutory Authority: *MS s 120.17 subd 3*

3525.4500 FILING AND MAILING THE DECISION.

All decisions shall be filed with the commissioner of education and shall be sent by mail to the parties. The decision(s) shall also include information detailing the right to appeal the decision, the procedure and time in which to do so, and an appeal form on which to indicate the desire to appeal as set forth in part 3525.4600.

Statutory Authority: *MS s 120.17 subd 3*

3525.4600 EFFECTIVE DATE OF THE ACTION AND APPEALS.

The decision of the hearing officer shall be binding on all parties unless appealed to the commissioner by the parent or the school board where the child resides; and shall become effective 15 days after service of the decision unless the decision is appealed. The hearing officer's decision issued pursuant to part 3525.4400, subpart 2, 3, or 4, may be appealed by the parent or the school board where the child resides to the commissioner of education within 15 days of receipt of that written decision(s) in the following manner: the appeal decision shall be based on a review of the local decision(s) and the entire record; all notices of appeal shall be on the appeal form or otherwise in writing and shall be sent by mail to all parties to the hearing at the time the appeal is filed.

The school board shall be a party to any appeal. The commissioner shall issue a final decision based on a review of the local decision(s) and the entire records within 30 calendar days after the filing of the appeal. A written transcript of the hearing shall be made by the district; the transcript and entire record shall be accessible to the parties and provided to the commissioner within five calendar days after the filing of the appeal. If the transcript and record are not provided to the commissioner within five days of the filing of the appeal, the district shall request an extension of the time beyond the 30-day period equal to the number of days which exceeded the five-day period for filing the transcript and entire record. The commissioner shall seek additional evidence if necessary and may afford the parties an opportunity for written or oral argument; provided any hearing held to seek additional evidence shall be impartial due process hearing but shall be deemed not to be a contested case hearing. The commissioner may grant specific extensions of time beyond the 30-day period at the request of any party.

Statutory Authority: *MS s 120.17 subd 3*

3525.4700 FINAL DECISION.

The commissioner's final decision shall be in writing, include findings and conclusions, and be based on the standards set forth in Minnesota Statutes, section 120.17, subdivision 3a and the standards, requirements, and principles set forth in part 3525.4400, subparts 2 and 3 and parts 3525.0200 to 3525.4700.

The decision of the commissioner shall be final unless appealed by the parent or the school board to the district court of the county in which the providing school districts, in whole or part, is located. The scope of judicial review shall be as provided in Minnesota Statutes, chapter 14.

If the providing school district fails to implement the hearing officer's decision, the parent shall have the right to bring such failure to the attention of the commissioner. In accordance with the provisions of Minnesota Statutes, section 124.15, the State Board of Education may impose such sanctions necessary to correct any such failure.

Statutory Authority: *MS s 120.17 subd 3*

**REQUIREMENTS AND PROCEDURES CONCERNING THE STATE
RESIDENTIAL SCHOOLS FOR DEAF, BLIND, AND MULTIPLE
HANDICAPPED SENSORY IMPAIRED STUDENTS**

3525.4800 DEFINITIONS.

Subpart 1. **Scope.** The following terms used throughout parts 3525.4800 to 3525.7500 shall have the following meanings ascribed to them.

Subp. 2. **Defined in part 3525.0200.** The definitions of these terms shall be as stated in part 3525.0200:

- A. special education services;
- B. handicapped persons;
- C. least restrictive alternatives;

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- D. recognized professional standards;
- E. proposed action;
- F. nondiscrimination;
- G. formal educational assessment; and
- H. individual educational program plan.

Subp. 3. **Additional terms.** In addition, these terms shall have the following meanings ascribed to them.

Subp. 4. **Admission and transfer team.** "Admission and transfer team" as referred to in parts 3525.4800 to 3525.7500 shall mean the individuals who are required to participate in a formal meeting to develop, review, or revise a handicapped student's individual education program and/or to determine whether to admit or transfer the student to or from the state residential schools.

Subp. 5. **Admit.** "Admit" shall mean the action taken by the state residential schools in accepting the placement of a student and agreeing to provide appropriate educational services to the student.

Subp. 6. **Annual review.** "Annual review" as used in parts 3525.4800 to 3525.7500 shall mean a review which shall be conducted by the state residential schools and reviewed at a formal meeting. The review shall be held at least once a year to examine a student's individual education program and if appropriate, revise its provisions. This may be counted as one of the required periodic reviews during the year in which it is conducted.

Subp. 7. **Days.** "Days" shall mean calendar days between the official beginning and ending dates of the school year at the state residential schools. All procedures relating to but not limited to assessments, reassessments, individual education program plans, periodic reviews, conciliation conferences, and hearings that are initiated for a student in placement at the state residential schools before the end of the school year, must be completed within the required time period, even if that time period extends beyond the end of the official school year. In addition, applications for admission shall be processed in accordance with parts 3525.4900 to 3525.5500 at any time during the year, even if these procedures extend beyond the end of the official school year.

Subp. 8. **Formal notice.** "Formal notice" as used in parts 3525.4800 to 3525.7500 shall mean a written statement served upon the student's parent or guardian so as to fulfill the requirements of procedural safeguards.

Subp. 9. **Parent.** "Parent" shall mean a parent, a guardian, a person acting as a parent of a child, or a legally appointed guardian. The term does not include the state if the child is a ward of the state.

Subp. 10. **Periodic review.** "Periodic review" as used in parts 3525.4800 to 3525.7500 shall mean a review which shall be conducted by the state residential schools, at least twice a year, to determine the appropriateness of a student's individual education plan and, if appropriate, revise its provisions.

Subp. 11. **Resident school district.** "Resident school district," also referred to as "district," shall mean the district where the handicapped student's parent or legal guardian resides or the district designated by the commissioner as provided in Minnesota Statutes, section 120.17, subdivisions 6, 7a, and 8a. The cost of transporting the student to and from the state residential school shall be borne by the student's resident district as provided in Minnesota Statutes, section 128A.07.

Subp. 12. **Residential schools administrator.** "Residential schools administrator" shall mean the administrator of the Minnesota state residential schools as defined in Minnesota Statutes, section 128A.02, subdivision 3, or his/her designee.

Subp. 13. **Serve or service.** "Serve" or "service" as used in parts 3525.4800 to 3525.7500 shall mean the in-hand delivery or the first class mailing to the last known address of a written notice. Service by mail is complete upon mailing.

Subp. 14. **State residential schools.** "State residential schools" as used in parts 3525.4800 to 3525.7500 shall mean either or both the Minnesota School for the Deaf and the Minnesota Braille and Sight-saving School, which are operated by the State Board of Education pursuant to Minnesota Statutes, chapter 128A.

Subp. 15. **Transfer.** "Transfer" shall mean the action taken by the state residential schools in dismissing a student from placement and the termination of the responsibility for providing the appropriate educational services to the student.

Statutory Authority: *MS s 128A.02 subds 2,6*

3525.4900 REFERRAL AND APPLICATION PROCEDURES.

Application for admission shall be made by the resident school district, hereinafter also referred to as the district, to the state residential schools' administrator on the appropriate forms provided by the commissioner and may be made at any time during the calendar year.

Prior to application for admission, the district shall have completed for each student for whom admission is sought, the following procedures as established by parts 3525.2500 to 3525.4700:

A. A formal educational assessment consistent with the provisions of parts 3525.2500 to 3525.2800 shall have been conducted and the special education needs of the pupil determined.

B. A student staffing consistent with the provisions of part 3525.2900 shall have been conducted.

C. A review of the student's current level of performance and the determination of the special education service needs shall have been made and the district shall have developed a statement of annual goals and objectives for the student. The district shall have reviewed the programs and services available to the district and shall have stated reasons why an appropriate education in the least restrictive alternative cannot be provided or reasonably made available by the district.

D. The parent and the district shall:

(1) have agreed that the district is unable to provide an appropriate program and that a referral for placement at the state residential schools is appropriate; or

(2) if the parent and district do not agree that a referral to the state residential schools is appropriate, a local due process hearing pursuant to parts 3525.3800 to 3525.4700 shall have been held. Before the state residential schools shall consider the student for admission, the decision resulting from the hearing process must be that the resident school district is unable to provide an appropriate program and that a referral for admission to the state residential schools is appropriate.

Statutory Authority: *MS s 128A.02 subds 2,6*

3525.5000 REFERRAL, REVIEW, AND ADMISSION MEETING.

Subpart 1. **Role of residential schools' administrator for admission.** Within seven days of receipt of a referral for admission, the residential schools' administrator shall review the referral information and determine whether additional assessment or other information is needed and request in writing from the district any additional information that is needed.

The residential schools' administrator shall schedule the team meeting which shall be conducted within 30 days of receipt of complete referral information pursuant to part 3525.4900 and at a time that is mutually acceptable to the state residential schools and the parent and serve a written notice of the team meeting to the parent and the district in accordance with the provisions of parts 3525.6000 to 3525.6500 prior to conducting the admission meeting.

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Subp. 2. Role of residential schools' administrator in development of program. To determine whether an appropriate individual educational program plan can be developed by the state residential schools to appropriately meet the educational needs of the student in the least restrictive alternative, the state residential schools' administrator shall:

A. Appoint participants from the state residential schools' staff to serve on the admission and transfer team. The team shall include at a minimum an administrator of the appropriate education program or his/her designee, an administrator of the appropriate residential program or his/her designee, one appropriate teaching staff person, and other related services staff persons as deemed appropriate by the state residential schools' administrator.

B. Schedule an admission and transfer team meeting which shall include the state residential schools' required participants, the parent, the student if appropriate, and other persons as deemed appropriate by the residential schools' administrator and may include a representative of the resident school district if the district chooses to participate.

C. Upon request of the parent, determine whether it is appropriate to involve additional state schools' staff on the admission and transfer team; and whether it is appropriate to include someone who is a member of the same minority, or cultural background or who is knowledgeable concerning the racial, cultural, or handicapping differences of the student. This statement shall not be read to limit the parent's right to include participants, other than the schools' employees, of his/her own choosing at the scheduled meeting.

Subp. 3. Parents unable to attend admission meeting. If the parent cannot attend the admission meeting, the state residential schools' administrator shall use and document other methods to ensure parent participation including individual or conference telephone calls; and an admission meeting shall be conducted without a parent in attendance if the residential schools' administrator is unable to convince the parent to attend.

Subp. 4. Meeting needs of student through least restrictive alternative. The admission and transfer team shall determine whether placement at the state residential schools will appropriately meet the educational needs of the student in the least restrictive alternative. This determination shall be based on:

A. the complete referral information;

B. any additional information supplied by the parent;

C. other relevant information and reports;

D. the record of the decision of the student's resident school district pursuant to Minnesota Statutes, sections 120.17, subdivision 3b and 128A.05, subdivisions 1 and 2;

E. interpretation of the data in accordance with the requirements of nondiscrimination pursuant to part 3525.0200, subpart 10 and recognized professional standards; and

F. the team's development of an appropriate individual educational program plan, or the team's determination that an appropriate individual educational program plan cannot be developed by the state residential schools.

Statutory Authority: *MS s 128A.02 subds 2,6*

3525.5100 ADMISSION PROCEDURES AND DEVELOPMENT OF PROGRAM.

The admission and transfer team shall recommend to the state residential schools' administrator that:

A. the state residential schools can appropriately meet the educational needs of the student in the least restrictive alternative and that the student be admitted pursuant to the parent's written approval of the team's proposed individual educational program plan; or

B. the state residential schools cannot appropriately meet the educational needs of the student as the least restrictive alternative and that the student not be admitted to the state residential schools, based upon the team's determination that an appropriate individual educational program for the student at the state residential schools cannot be developed.

Statutory Authority: *MS s 128A.02 subds 2,6*

3525.5200 DEVELOPMENT OF INDIVIDUAL PROGRAM.

If the student is recommended to be admitted to the state residential schools, the admission and transfer team shall develop a proposed individual education program plan listing the services that the student will receive at the state residential schools. The proposed individual educational program plan shall be prepared in writing; be based on the assessment data, the district's statement of goals and objectives, and other appropriate information; be consistent with the requirement of nondiscrimination and the principle of the least restrictive alternative; and shall include:

- A. The names of the persons on the team.
- B. A description of the education service needs of the student as determined by the team.
- C. A statement of annual goals and periodic review objectives for the education services to be provided including the criteria for attainment of the objectives.
- D. The plan for, location of, and frequency of periodic review of the progress in reaching the prescribed educational objectives.
- E. The reasons for the type of education program including type of services to be provided, the location, amount of time, starting date, anticipated duration of services, and the names and school telephone numbers of those personnel responsible for providing the services. In accordance with the principle of least restrictive alternatives, the proposed action shall be substantiated as the most appropriate in terms of the students' educational needs.
- F. The changes in staffing, transportation, facilities, curriculum, methods, materials and equipment, and other services that will be made to permit successful accommodation and education of the student in the least restrictive alternative.
- G. A description of any activities in which the student will participate in environments which include nonhandicapped students.

Statutory Authority: *MS s 128A.02 subds 2,6*

3525.5300 DECISION TO DENY OR ADMIT STUDENT.

Based upon the recommendations of the admission and transfer team admission meeting, the state residential schools' administrator shall:

- A. admit the student to the state residential schools pursuant to the parent's written approval of the individual educational program plan; or
- B. deny the student admission to the state residential schools; and
- C. provide formal notice to the parent and to the district of the determination to admit or to deny admission in accordance with the provisions of parts 3525.6000 to 3525.6500. The notice shall be served within 14 days of the admission and transfer team admission meeting.

Statutory Authority: *MS s 128A.02 subds 2,6*

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3525.5400 DECISION TO ADMIT.

If the determination is to admit the student pursuant to the parent's written approval of the individual educational program plan, the initial notice shall include the proposed individual educational program plan and shall state that the parent shall agree in writing to this individual educational program plan. If the parent does not give written approval to the individual educational program plan within 14 days after service of the notice, the state residential schools' administrator shall arrange for a conciliation conference pursuant to part 3525.6600. If the parent continues to object to the proposed individual educational program plan, the parent may initiate an impartial due process hearing in accordance with parts 3525.6800 to 3525.7500. If within 30 days after serving the formal notice which shall include the proposed individual educational program plan, no response or objection is obtained from the parent, or if agreement has not been reached in conciliation conference and no hearing is requested in accordance with parts 3525.6800 to 3525.7500, efforts to reach the parent shall be documented, and the state residential schools' administrator shall serve the parent and the resident school district written notice stating that effective the date of the notice the student shall not be admitted to the state residential schools under the current application for admission procedure. This action shall not be interpreted to mean that application for admission of the same student cannot be made at a future date if such application is deemed appropriate by the parent and the resident school district in accordance with procedures as established by parts 3525.2500 to 3525.4700.

Statutory Authority: *MS s 128A.02 subds 2,6*

3525.5500 DECISION TO DENY ADMISSION.

If the determination is to deny the student admission to the state residential schools, the residential schools' administrator shall send a formal notice to the parent and the resident district which shall inform them of the decision to deny admission based upon the schools' determination that an appropriate individual educational program plan cannot be developed by the state residential schools. If the parent objects to the action to deny admission, the state residential schools' administrator shall arrange for a conciliation conference pursuant to part 3525.6600. If the parent continues to object to the action to deny admission, the parent may initiate an impartial due process hearing in accordance with parts 3525.6800 to 3525.7500.

Statutory Authority: *MS s 128A.02 subds 2,6*

3525.5600 PERIODIC REVIEW AND ANNUAL REVIEW.

Subpart 1. Purpose. The state residential schools shall conduct periodic reviews of the individual education program plan and shall determine:

A. the degree to which the goals and objectives as identified in the educational program plan are being achieved;

B. the appropriateness of the educational program plan as it relates to the student's current needs; and

C. what modifications, if any, need to be made in the program plan.

Subp. 2. Frequency. There shall be at a minimum one periodic review and one annual review each year; the initial periodic review shall be made at the time specified in the program plan.

Subp. 3. Conduct. Periodic reviews shall be made by those persons directly responsible for implementing the educational program and by other designees of the state residential schools as may be needed to ensure an informed and adequate review.

The annual review shall be an admission and transfer team meeting held to review a student's individual educational program plan and if appropriate revise its provisions.

The reviews shall be conducted in accordance with the requirements for nondiscrimination pursuant to part 3525.0200 and recognized professional standards.

Subp. 4. **Report of results.** The results of periodic reviews and annual reviews shall be included in the student's school records and a copy sent to the parent and to the district. This copy shall inform the parent that he/she may request a conference to review the student's program plan at any time and the procedure to do so.

Statutory Authority: *MS s 128A.02 subds 2,6*

3525.5700 REASSESSMENT.

The state residential schools shall conduct an educational reassessment according to the procedures specified for formal educational assessments in parts 3525.2600 to 3525.2800 at least once every two years. In the year that the reassessment is conducted the meeting following the reassessment may meet the requirement for one of the two reviews required pursuant to part 3525.5600.

A reassessment shall be conducted before the state residential schools propose a transfer from the schools.

A reassessment may be conducted at parent request, unless the state residential schools determine that there has been a recent and adequate assessment or reassessment.

Statutory Authority: *MS s 128A.02 subds 2,6*

3525.5800 TRANSFER.

The admission and transfer team shall recommend to the state residential schools' administrator that a student be dismissed from placement at the state residential schools when it has been determined that the appropriate program for the student in the least restrictive alternative is no longer placement at the state residential schools. This determination shall be made based upon the results of an educational reassessment. Based upon the recommendations of the admission and transfer team staffing, the state residential schools' administrator shall:

A. Dismiss the student from placement at the state residential schools pursuant to the parent's written consent to this proposed action.

B. Provide written notice of the determination to transfer the student from placement at the state residential schools to the parent and the resident school district in accordance with the provisions of parts 3525.6000 to 3525.6500 within 14 days of the admission and transfer team staffing. The notice shall state that no such change shall be made without written parental consent.

C. If the parent does not give written consent to the transfer of the student from educational placement at the state residential schools within 14 days after service of the notice, the state residential schools' administrator shall arrange for a conciliation conference pursuant to part 3525.6600.

D. If the parent continues to object to the proposed action, the parent may initiate an impartial due process hearing in accordance with the provisions of parts 3525.6800 to 3525.7500.

E. If the parent continues to refuse to provide written consent to the transfer, but does not initiate a due process hearing, the state residential school shall schedule a due process hearing in accordance with parts 3525.6800 to 3525.7500.

Statutory Authority: *MS s 128A.02 subds 2,6*

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3525.5900 ADMISSION AND TRANSFER TEAM MEETING.

An admission and transfer team meeting shall include the required state residential schools participants, the parent, the student if appropriate, and may include a representative of the resident school district and other persons as deemed appropriate by the residential schools' administrator. This statement shall not be read to limit the parent's right to include participants, other than the schools' employees, of his/her own choosing at the scheduled meeting. An admission and transfer team meeting shall be conducted:

A. to develop a recommendation regarding a student's application for admission;

B. to develop a current individual educational program plan for each student in attendance;

C. to review the results of the required biennial reassessment or to review the results of reassessment that may be conducted in addition to the required biennial reassessment;

D. prior to the state residential schools proposing the transfer of a student from educational placement at the state residential schools based upon reassessment data and the determination that the appropriate program in the least restrictive alternative is not available at the state residential schools; and

E. to review the results of a reassessment within 30 days after the expiration of the period allowed for parental response, unless the parent objects to the reassessment through the procedures provided in parts 3525.2600 to 3525.2800 and part 3525.5700.

Formal notice in accordance with the provisions of parts 3525.6000 to 3525.6500 shall be provided to the parent and the district 14 days prior to conducting an admission and transfer team meeting. If the parent cannot attend the admission and transfer team meeting, the state residential schools' administrator shall use and document other methods to ensure parent participation including individual or conference telephone calls; and an admission and transfer team meeting shall be conducted without the parent in attendance if the residential schools' administrator is unable to convince the parent to attend.

Statutory Authority: *MS s 128A.02 subds 2,6*

3525.6000 FORMAL NOTICES TO PARENTS.

The provisions of parts 3525.3200 to 3525.3400 shall apply to formal notices served on parents of students enrolled at the state residential schools. Prior to the admission meeting, pursuant to part 3525.5000 the state residential schools shall prepare and serve a formal notice on the parent and the resident school district which shall:

A. include the reasons for the meeting and the persons who have been asked to be in attendance;

B. inform the parent of his/her right to request and receive copies of all records or other written information that is in the state residential schools' possession regarding his/her child;

C. inform the parent of his/her right and the procedure and time to participate in developing his/her child's education program, and/or to provide information relative to the child's assessment and the development of the program plan;

D. inform the parent of his/her right and the procedure and time to request and to receive interpretations of assessment or reassessment procedures, instruments, and data or results from a knowledgeable state residential schools' employee, and for that conference to be held in private;

E. inform the parent of his/her right and the procedure and time to include such person(s) described in part 3525.2900, subpart 1, including a person

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who is a member of the same minority, or cultural background or who is knowledgeable concerning the racial, cultural, or handicapping differences of the student, on the team that interprets the assessment data and/or develops the individual education program plan;

F. inform the parent that the state residential schools shall proceed with the admission and transfer team meeting in order to consider the student's application for admission unless the parent objects in writing on the response form within 14 days after service of the notice;

G. include a response form on which the parent may indicate his/her objection to the proposed admission and transfer team meeting and which identifies the designee of the state residential schools to whom the response form should be mailed or given and to whom questions may be directed;

H. state that if the parent objects in writing to the admission meeting, the state residential schools shall consider that the student's application for admission to the state residential schools has been withdrawn by the parent effective on the date of the signing of the objection response form; and

I. inform the parent that if the student's application is withdrawn, the decision regarding the placement of the student shall be determined by the parent and the resident school district in accordance with parts 3525.0200 to 3525.4700.

Statutory Authority: *MS s 128A.02 subds 2,6*

3525.6100 FORMAL NOTICE REQUIRED FOR ADMISSION.

When the state residential schools propose to admit a student pursuant to the parent's written approval of the proposed individual educational program plan, the state residential schools shall prepare and serve a formal notice which shall:

A. include a copy of the student's proposed individual educational program plan as described in part 3525.5200;

B. inform the parents of his/her right and time and procedure to request and to receive interpretation of the educational program plan from a knowledgeable school employee and for that conference to be held in private;

C. state that the parent's written consent shall be given to the individual educational program plan and the signed plan shall be returned to the state residential schools' administrator within 14 days of receipt of the notice if the student is to be admitted to the state residential schools;

D. state that the student shall be admitted to the state residential schools upon receipt by the state residential schools' administrator of the individual educational program plan with the parent's signature affixed;

E. inform the parent that the state residential schools shall not proceed to admit the student without the written consent of the parent to the proposed individual educational program plan;

F. inform the parent that if he/she objects to the proposed individual educational program plan that a conciliation conference pursuant to parts 3525.6600 and 3525.6700 shall be held at a mutually convenient time;

G. inform the parent that if he/she objects to the educational plan during or after the initial conciliation conference, he/she has a right to initiate an impartial due process hearing in accordance with procedures set forth in parts 3525.6800 to 3525.7500;

H. inform the parent that he/she has the right to be represented by counsel or another person of their choosing at the conciliation conference or the impartial due process hearing;

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I. inform the parent that he/she may obtain an independent educational assessment at his/her own expense and that at his/her request, the results of this independent assessment shall be considered in the development of an appropriate educational program for the student; and

J. include a response form on which the parent may indicate his/her objection to the proposed individual educational program plan and identify the designee of the state residential schools to whom the response form should be mailed or given and to whom questions should be directed.

Statutory Authority: *MS s 128A.02 subds 2,6*

3525.6200 FORMAL NOTICE REQUIRED FOR DENIAL OF ADMISSION.

When the state residential schools deny a student admission to placement at the state residential schools based on the school's determination that an appropriate individual educational program plan cannot be developed by the state residential schools, the state residential schools shall prepare and serve a formal notice which shall:

A. state that based on the admission and transfer team's review of the student's complete referral information, and the school's determination that an appropriate individual program plan cannot be developed by the state residential schools, the team's recommendation is that placement at the state residential schools cannot appropriately meet the educational needs of the student in the least restrictive alternative and the student is denied admission;

B. inform the parent that if he/she objects to the action of the state residential schools to deny admission, a conciliation conference pursuant to parts 3525.6600 and 3525.6700 shall be held; and

C. inform the parent that if he/she objects to the action to deny admission during or after the initial conciliation conference, he/she has the right to initiate an impartial due process hearing in accordance with the procedures set forth in parts 3525.6800 to 3525.7500.

Statutory Authority: *MS s 128A.02 subds 2,6*

3525.6300 NOTICE REQUIRED FOR ASSESSMENT, SIGNIFICANT CHANGE, OR REFUSAL TO ASSESS OR CHANGE THE PROGRAM.

Prior to conducting an assessment or reassessment, refusing to conduct an assessment or reassessment, initiating a significant change in or refusing to make a significant change in a state residential schools' student's individual educational program plan, the state residential schools shall prepare and serve a formal notice which shall:

A. if the proposed action pertains to assessment or reassessment, include the reasons for assessment or the refusal to assess, how the results may be used if the assessment is conducted, a general description of the procedures to be used, and where and by whom the assessment will be conducted;

B. include a copy of the student's current individual educational program plan;

C. inform the parent of his/her rights to review and receive copies of all records or other written information regarding his/her child in the state residential schools' possession;

D. inform the parent of his/her right and the procedure and time to request and to receive interpretations of assessment or reassessment procedures, instruments, and data or results from a knowledgeable state residential schools' employee and for that conference to be held in private;

E. inform the parent of his/her right and the procedure and time for him/her to participate as a team member in developing and determining the child's educational program and/or to provide information relative to his/her assessment and the development of the educational program plan;

F. inform the parent of his/her right, the procedures, and the time within which to have included on the team that interprets the assessment data and/or develops the individual educational program plan, such person(s) as described in parts 3525.2900, subpart 1 including a person who is a member of the same minority or cultural background or who is knowledgeable concerning the racial, cultural, or handicapping differences of the student;

G. inform the parent that he/she may obtain an independent assessment at his/her own expense and that at his/her request, the results of this independent assessment shall be considered in the development of an appropriate educational program for the student;

H. inform the parent that the state residential schools shall proceed with the proposed action unless the parent objects on the enclosed response form or otherwise in writing within 14 days after service of the notice;

I. inform the parent that if he/she objects to the proposed assessment or reassessment or proposed change in the educational program in writing, the state residential schools' administrator shall arrange for a conciliation conference pursuant to parts 3525.6600 and 3525.6700;

J. inform the parent that if the parent objects to the proposed action during or after the initial conciliation conference they may have an impartial due process hearing in accordance with parts 3525.6800 to 3525.7500;

K. inform the parent that he/she has the right to be represented by counsel or another person of his/her choosing at the conciliation conference or the impartial due process hearing;

L. include a statement assuring that the student's educational program will not be changed as long as the parent objects to the proposed action in the manner prescribed by these rules; and

M. include a response form on which the parent may indicate his/her approval of or objection to the proposed action and identify the state residential schools' employee to whom the response form should be sent and to whom questions may be directed.

Statutory Authority: *MS s 128A.02 subds 2,6*

3525.6400 FORMAL NOTICE REQUIRED UPON TRANSFER.

When the state residential schools propose the transfer of the student out of educational placement at the state residential schools pursuant to part 3525.5800, the state residential schools shall prepare and serve formal notice to the parent and the resident school district which shall:

A. state that based on reassessment of the student and the recommendations of an admission and transfer team meeting, the state residential schools propose to dismiss the student from placement at the state residential schools pursuant to the written consent of the parent to this proposed action;

B. inform the parent of his/her right to request and to receive copies of all records or other written information regarding his/her child in the state residential schools' possession;

C. inform the parent of his/her right and the procedure and time period within which to request and to receive interpretations of assessment or reassessment procedures, instruments, and data on results from a knowledgeable state residential schools' employee and for that conference to be held in private;

D. inform the parent that he/she may obtain an independent assessment at his/her own expense and that at his/her request, the results of this independent assessment shall be considered in the development of an appropriate educational program for the student;

E. include a response form on which the parent may indicate his/her approval of or objection to the proposed transfer from placement at the state

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residential schools and which states that the form shall be returned to the state residential schools' administrator within 14 days of receipt of the notice;

F. inform the parent that the state residential schools shall not proceed with the proposed transfer from placement of the student without prior written consent of the parent;

G. inform the parent that if he/she gives written consent the student shall be dismissed from placement at the state residential schools at the time specifically stated in the proposed transfer from placement;

H. inform the parent that if he/she objects to the proposed transfer from placement in writing, a conciliation conference pursuant to parts 3525.6600 and 3525.6700 shall be held;

I. inform the parent that if he/she objects to the proposed transfer from placement during or after the initial conciliation conference, he/she has the right to initiate an impartial due process hearing in accordance with the procedures set forth in parts 3525.6800 to 3525.7500;

J. inform the parent that if he/she continues to refuse to provide written permission to the transfer, the state residential schools shall schedule a hearing in accordance with parts 3525.6800 and 3525.7500; and

K. state that the child's educational placement will not be changed as long as the parent objects to the proposed transfer from placement in the manner prescribed in parts 3525.4800 to 3525.7500.

Statutory Authority: *MS s 128A.02 subds 2,6*

3525.6500 NOTICE SENT TO DISTRICT OF RESIDENCE.

The state residential schools' administrator shall notify the district of residence whenever:

A. the parent determines that the student's application to the state residential schools is withdrawn prior to the student being admitted;

B. the student is denied admission to the state residential schools' programs;

C. the parent has removed the student from the state residential schools' program after he/she has been admitted; and

D. a student is graduated from the state residential schools or will not continue attending the school because he/she has attained the age of 21 years prior to September 1 of the next official school year.

Statutory Authority: *MS s 128A.02 subds 2,6*

3525.6600 CONCILIATION CONFERENCE.

When a conciliation conference shall occur:

A. If the parent does not object in writing to a proposed action within 14 days after service of a notice pursuant to parts 3525.6000 to 3525.6500 and the proposed action is not admission to or transfer from the state residential schools, the proposed action shall take place. If such written objection is made, the state residential schools' administrator shall arrange for a conference with the parent for the purpose of reviewing the reasons for the proposed action and conciliating the matter. The conference shall be held at a time mutually convenient to the parent and the state residential schools' representatives and shall be held within 14 days after receipt of the written objection. There may be more than one such conference and the parent may request a hearing under parts 3525.6800 to 3525.7500 at any time after the first conciliation conference is held.

B. If the parent does not give written approval to the proposed individual educational program plan developed in accordance with part 3525.5200 within 14 days after the service of the notice, the residential schools' administrator shall arrange for a conference with the parent for the purpose of reviewing the plan and conciliating the matter. The conference shall be held at

a time mutually convenient to the parent and state residential schools' representatives and shall be held within 14 days after the expiration of the 14-day period for parent response.

C. If the parent does not give written consent to the proposed transfer of the student from placement at the state residential schools in accordance with part 3525.5800 within 14 days after service of the notice pursuant to part 3525.6400, the residential schools' administrator shall arrange for a conference with the parent for the purpose of conciliating the matter. The conference shall be held at a time mutually convenient to the parent and state residential schools' representatives and shall be held within 14 days after the expiration of the 14-day period for parent response.

Statutory Authority: *MS s 128A.02 subds 2,6*

3525.6700 MEMORANDUM OF THE CONCILIATION CONFERENCE.

Within seven days of the final conciliation conference the state residential schools shall serve the parent with a written memorandum which shall:

A. inform the parent of the state residential schools' proposed action following the conference;

B. inform the parent that if he/she continues to object to the proposed action he/she has a right to an impartial due process hearing in accordance with the provisions of parts 3525.6800 to 3525.7500 and state the procedure and time in which to request the hearing, including a request form on which the parent may request the hearing, and the identification of the state residential schools' employee to whom the written request form or other written request for hearing is to be mailed, and to whom questions and documents or requests relating to the hearing may be directed;

C. inform the parent that if he/she does not request a hearing on the written request form or otherwise in writing pursuant to parts 3525.6800 to 3525.7500, within seven days after receipt of the notice, the state residential schools shall proceed with the proposed action unless the proposed action is to admit the student to or to transfer the student from placement at the state residential schools;

D. inform the parent that if the proposed action is to admit the student pursuant to the parent's written consent of the proposed individual educational program plan, and agreement has not been reached in conciliation conference and no hearing is requested in accordance with parts 3525.6800 to 3525.7500 efforts to reach the parent shall be documented, and the state residential schools' administrator shall serve the parent and the resident school district written notice stating that effective the date of the notice the student shall not be admitted to the state residential schools under the current application for admission procedure; and

E. inform the parent that if the proposed action is transfer of the student from placement at the state residential schools, when the parent continues to refuse to provide written permission, the state residential schools shall schedule a hearing within seven days after the expiration of the seven days allowed for parent response.

Statutory Authority: *MS s 128A.02 subds 2,6*

3525.6800 INITIATION OF THE HEARING.

A parent or the state residential schools may initiate an impartial due process hearing when either party continues to object to a proposed action and conciliation has not been achieved through one or more conciliation conferences pursuant to parts 3525.6600 and 3525.6700. The resident school district may be party to the hearing. The decision of the hearing officer shall be rendered not more than 45 days from the date of the receipt of the request for the hearing. The hearing officer may grant specific extensions of time beyond the 45-day

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period at the written request of either party.

Statutory Authority: *MS s 128A.02 subds 2,6*

3525.6900 NOTICE OF THE HEARING.

Written notice of the time, date, and place of all hearings shall be given to all parties by the state residential schools at least 14 days in advance of such hearings; and the hearing shall be held at a time, date, and place mutually convenient to all parties.

Within seven days of receipt of the parent's written request for a hearing, the state residential schools shall serve the parties with a written notice of rights and procedures relative to the hearing which shall inform the parent:

A. That the hearing shall take place before an impartial hearing officer appointed by the commissioner.

B. That they will receive notice of time, date, and place of the hearing 14 days in advance of the hearing which will be held within 30 days after the written request.

C. Of the hearing rights of the respective parties including the following:

(1) The hearing shall be closed unless the parent requests an open hearing.

(2) The parties shall have the right to representatives of their own choosing, including legal counsel in preparation of and at the hearing. The state residential schools shall inform the parent of any free or low cost legal or relevant services available in the area.

(3) Not less than seven days prior to the hearing, the parent or his/her representative(s), as the case may be, shall be given access to all of the state residential schools' records and such other records pertaining to the child that are authorized to be disclosed, including but not limited to all tests, evaluations, assessments, reports, and other written information concerning the educational assessment or reassessment upon which the proposed action may be based.

(4) At least seven calendar days prior to the hearing the parent shall receive from the state residential schools a brief resume of additional material allegations referring to conduct, situations, or conditions which are discovered and found to be relevant to the issues to be contested at the hearing and which are not contained in the original notice or memorandum provided pursuant to parts 3525.6000 to 3525.6500 or part 3525.6700. If such material allegations or information relating thereto are not so disclosed, it shall be left to the person conducting the hearing to determine if those material allegations may be introduced or considered.

(5) Within seven days after written request any party shall receive from the other parties a list of witnesses who may be called to testify at the hearing. Such list shall be filed with the person(s) conducting the hearing. Such lists may be modified at any time but each party shall be notified if modification occurs.

(6) All parties or their representatives, as the case may be, shall have the right to request the attendance of any employee of the state residential schools, resident school district, or any other person who may have evidence relating to the proposed action, and to confront, and to cross-examine any such witness. Any such request shall be made to the state residential schools, and to the person whose attendance is requested at least seven days in advance of the hearing. Such written requests shall also be filed with the hearing officer at the time of hearing.

(7) The parent shall have the right to call his/her own witnesses and to present evidence, including expert medical, psychological, and educational testimony and relevant records, tests, assessments, reports, or other information.

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(8) All parties shall have the right to confront and cross-examine witnesses.

(9) If the person conducting the hearing determines at the conclusion of the hearing that there remain disputes of fact which, in the interest of fairness and the child's educational needs, require the testimony of additional witnesses, or if the hearing officer concludes that alternative educational programs and opportunities have not been sufficiently considered, he or she may continue the hearing for not more than 14 days, for the purpose of obtaining the attendance of such witnesses or considering such alternative programs and opportunities. The parties' right to cross-examination and confrontation and other applicable rights and procedures set forth herein shall continue and be given full force and effect.

D. That at the hearing the burden of proof is on the state residential schools to show that the proposed action is justified on the basis of the student's educational needs or his/her current educational performance, or presenting handicapping conditions taking into account the presumption that placement in a regular public school class with special education services is preferable to removal from the regular classroom.

E. That a record shall be kept of the hearing and a copy of the transcribed record shall be available to the parent, upon request, at the cost of the copy.

F. That the hearing officer shall make a written decision based only on evidence received and introduced into the record at the hearing. Such decisions shall be rendered not more than 45 days from the receipt of the request for the hearing. The proposed action will be upheld only upon showing by the state residential schools of a preponderance of the evidence. A proposed action that would result in the child being removed from a regular education program may be sustained only when and to the extent the nature or severity of the handicap is such that a regular education program would not be satisfactory and the child would be better served in an alternative program. Consideration of alternative regular educational programs shall also be given.

G. That the decision of the hearing officer is binding on all parties.

H. That pending the decision, the student's education program shall not be changed unless the parent and the parties agree otherwise.

I. That the parent has the right to have the child present at the hearing.

J. That the parent shall receive a copy of the hearing officer's written findings, conclusion, and decision.

Statutory Authority: *MS s 128A.02 subds 2,6*

3525.7000 HEARING OFFICERS.

The hearing shall take place before an impartial hearing officer appointed by the commissioner. The hearing officer shall not be a member of the State Board of Education, State Department of Education, an employee of either the student's resident school district or the state residential schools, or any person with a personal or professional interest which would conflict with his objectivity at the hearing. A person who otherwise qualifies as a hearing officer is not an employee of the state solely because the person is paid by the State Department of Education or the state residential schools to serve as a hearing officer.

If a hearing officer requests an independent educational assessment of a child, the cost of the assessment shall be at state residential schools' expense. All expenses of the hearing, except for the parent's and resident school district's attorney's fees; the cost of a copy of the record of the hearing if requested by the parent; or other expenses incidental to the parent's, child's, or resident school district's participation in the hearing, shall be paid by the state residential schools.

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The hearing officer shall be empowered to subpoena any persons or papers he/she deems necessary for an adequate review of the appropriateness of the proposed action which is the subject of the hearing.

Statutory Authority: *MS s 128A.02 subds 2,6*

3525.7100 PREHEARING REVIEW BY THE HEARING OFFICER.

Subpart 1. **Information received prior to hearing.** Not less than seven days prior to the hearing, the person conducting the hearing shall be mailed copies of:

A. notices and memoranda prepared by the state residential schools pursuant to parts 3525.6600 and 3525.6700 sent to the parent;

B. written information concerning the educational assessment or reassessment and copies of any parties' tests, evaluations, or other admissible reports or written information relating to such assessment or reassessment, or the proposed action;

C. a copy of the student's current and proposed individual educational program plan; and

D. other information from the state residential schools, or parent as the hearing officer may have requested at a prior date provided that a copy of such information is provided to all parties, and further provided that such information is made a part of the hearing record.

The provisions of items B and C do not apply when the hearing concerns a proposed action to assess or reassess.

Subp. 2. **Duties of hearing officer upon receipt of information.** Upon receipt of the information set forth in subpart 1, the hearing officer:

A. shall review the same for compliance with parts 3525.4800 to 3525.7500;

B. may meet with the parties together prior to the hearing;

C. may require the state residential schools to perform an additional educational assessment or reassessment;

D. may require an independent educational assessment of the student at the expense of the state residential schools;

E. may require the state residential schools to propose an alternative individual educational program plan;

F. may require the state residential schools to send additional notice to the parent;

G. may do such additional things necessary to achieve compliance with parts 3525.4800 to 3525.7500;

H. may extend the hearing date for up to 15 days to achieve the purposes of this subpart; and

I. may grant specific extension of time beyond the 45-day period at the request of either party.

Statutory Authority: *MS s 128A.02 subds 2,6*

3525.7200 HEARING PROCEDURES.

The hearing officer shall preside over and conduct the hearing and shall rule on procedural and evidentiary matters, and his or her decision shall be based solely upon the evidence introduced and received into the record. The state residential schools shall bear the burden of proof as to all facts and as to grounds for the proposed action.

One purpose of the hearing is to develop evidence of specific facts concerning the educational needs, current educational performance, or presenting handicapping conditions of the person as they relate to the need for the proposed action. Consistent with the rights and procedures set forth herein, nothing in the rules shall limit the right of the hearing officer to question witnesses or request information.

A tape recording, stenographic record, or other record of the hearing shall be made.

Statutory Authority: *MS s 128A.02 subds 2,6*

3525.7300 EVIDENCE AT THE HEARING.

As appropriate to the pending matter, the hearing officer shall consider evidence related to:

A. The state residential schools' decision to deny admission to the student for the purpose of providing an educational program. The state residential schools shall demonstrate by a preponderance of the evidence that based upon the schools' determination an appropriate individual educational program plan cannot be developed by the state residential schools.

B. The state residential schools' proposal to assess or reassess or refusal to assess or reassess as set forth in part 3525.5700. The state residential schools shall demonstrate by a preponderance of the evidence that the educational assessment or reassessment is justified as a step toward the possible initiation of or change in the student's educational placement or provision of services; or the state residential schools shall demonstrate by a preponderance of the evidence that refusal to assess or reassess is justified by the proximity in time, appropriateness, and adequacy of the most recent assessment or reassessment.

C. The state residential schools' proposal to initiate or refusal to initiate services as set out in the student's individual educational program plan. The state residential schools shall demonstrate by a preponderance of the evidence that the proposed action is consistent with the current educational needs of the student.

D. The state residential schools' proposal to transfer the student. The state residential schools shall demonstrate by a preponderance of the evidence that the proposed transfer is consistent with the current educational needs and presenting handicapping conditions of the student.

The hearing officer shall sustain, modify, or reject a proposed action based on consideration of all the evidence received at the hearing.

Statutory Authority: *MS s 128A.02 subds 2,6*

3525.7400 THE DECISION OF THE HEARING OFFICER.

Subpart 1. **Written decision within 45 days.** Not more than 45 days from the receipt of the request for a hearing, except where extensions of time have been granted and then at a time not to exceed 45 days plus the number of days added by the extensions, the hearing officer shall prepare a written decision based on evidence received and introduced into the record at the hearing. Such decision shall address itself to the following.

Subp. 2. **Decisions regarding admission.** The hearing officer shall sustain the decision to deny admission of the student to the state residential schools upon a showing by the state residential schools by a preponderance of evidence that an appropriate individual educational program plan cannot be developed by the state residential schools.

Subp. 3. **Decisions regarding assessment or reassessment.** Decisions regarding assessment or reassessment:

A. the hearing officer shall sustain a proposed assessment or reassessment of the student as set forth in part 3525.5700 upon showing by the state residential schools by a preponderance of the evidence which demonstrates that there are facts, relating to the student's performance in his/her present education placement or presenting handicapping conditions, which indicate reasonable grounds to believe that the educational assessment or reassessment procedures are justified as a step toward the possible initiation of or change in

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the student's educational placement or program, including special education services, which will provide an educational program appropriately suited to the student's needs;

B. the hearing officer shall sustain the refusal to assess or reassess upon a showing by the state residential schools by a preponderance of evidence which demonstrates that there are facts which indicate reasonable grounds to believe that there has been recent and adequate assessment or reassessment of the student by qualified professionals; and

C. consistent with the standards, requirements, and principles set forth in statute and parts 3525.4800 to 3525.7500, the hearing officer shall have the authority, based on all the evidence received at the hearing, to modify the proposed assessment or reassessment procedures in order to insure compliance with the requirement of nondiscrimination.

Subp. 4. Decisions regarding individual educational program. Decisions regarding individual educational program plan:

A. In deciding if the proposed action is to be sustained, in whole or part, the educational needs of the student shall be determinative. However, there shall be a presumption that among alternative programs of education, that to the maximum extent appropriate, a primary placement in a regular public school class and program with appropriate special education services, is preferable to removal from the regular classroom.

B. The hearing officer shall sustain the individual educational program plan of the state residential schools upon a showing by the state residential schools by a preponderance of evidence that the student's individual educational program plan represents educational services appropriate to the student's educational needs in the least restrictive alternative. This decision shall be made in accordance with the principle of least restrictive alternative.

Subp. 5. Decisions regarding transfer. The hearing officer shall sustain the decision to transfer the student from placement at the state residential schools upon a showing by the state residential schools by a preponderance of evidence that the appropriate program for the student in the least restrictive alternative is no longer placement at the state residential schools.

Subp. 6. Content of the decision. All hearing officer decisions shall:

A. contain written findings of fact, and conclusions of law, including a statement of the controlling facts upon which the decision is made in sufficient detail to appraise the parties on the basis and reason for the decision;

B. state the amount and source of any additional state expenditures necessary to implement the decision;

C. be based on the standards and principles set forth in Minnesota Statutes, section 120.17, subdivision 3a; and

D. be binding on all parties.

Subp. 7. Filing and mailing of decision. All decisions shall be filed with the commissioner of education and shall be sent by mail to the parties.

Statutory Authority: *MS s 128A.02 subds 2,6*

3525.7500 EFFECTIVE DATE OF THE ACTION AND APPEALS.

The decision of the hearing officer shall be binding on all parties and shall become effective 30 days after service of the decision unless the decision is appealed in a civil action.

The hearing officer may grant specific extensions of time beyond the 45-day period set out in parts 3525.4800 to 3525.7500 at the request of any party provided that no extension may be granted for the filing of a civil action.

Statutory Authority: *MS s 128A.02 subds 2,6*