

CHAPTER 3525
STATE BOARD OF EDUCATION
CHILDREN WITH A DISABILITY

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STANDARDS AND PROCEDURES

3525.0200 DEFINITIONS FOR SPECIAL EDUCATION.

Subpart 1. **Scope.** As used in parts 3525.0200 to 3525.4700, the terms defined in this part have the meanings given them.

Subp. 1a. **Administrator or administrative designee.** "Administrator" or "administrative designee" means a representative of the school district, other than the pupil's teacher, who is licensed to provide or supervise the provision of special education and who has the authority to make decisions about the appropriateness of the proposed program and who has the authority to commit the responsible district's resources. An administrator or an administrative designee must participate at each IEP meeting and must be identified at the meeting.

Subp. 1b. **Assessment or reassessment.** "Assessment" or "reassessment" means an appropriate individual educational evaluation of a pupil's performance or development conducted by appropriately licensed personnel according to recognized professional standards and parts 3525.2500 to 3525.2850.

Subp. 2. **Days.** "Days" means the days school is in session when used in parts 3525.1100 to 3525.3600. "Days" means calendar days when used in parts 3525.3700 to 3525.4700.

Subp. 3. [Repealed, 8 SR 596]

Subp. 3a. **Functional skills assessment.** "Functional skills assessment" means the use of test instruments and assessment procedures to determine current levels of skill development and factors relevant to:

- A. independence and self-sufficiency in school, home, and community settings;
- B. freedom to participate in leisure activities; and
- C. postsecondary and other life long learning opportunities.

Subp. 4. [Repealed, 8 SR 596]

Subp. 4a. **Functional skills.** "Functional skills" means skills to increase performance and independence at work, in school, in the home, in the community, for leisure time, and for postsecondary and other life long learning opportunities.

Subp. 5. [Repealed, 8 SR 596]

Subp. 6. [Repealed, 8 SR 596]

Subp. 6a. **Individual education program plan or IEP.** "Individual education program plan" or "IEP" means a written individualized educational plan annually developed for a pupil. It is based on an assessment of the pupil's performance, presenting problems and its effect on learning in appropriate settings. It shall include a description of:

- A. the pupil's current level of performance;
- B. the pupil's needs determined in a team process;
- C. an identification of appropriate goals and objectives;
- D. a description of special education services designed to help the pupil accomplish the goals and objectives;
- E. a description of the environment in which the services will be provided;
- F. a schedule for periodic review; and
- G. criteria for evaluating the pupil's performance.

Subp. 7. [Repealed, 8 SR 596]

Subp. 7a. **Initial formal assessment.** "Initial formal assessment" means the first formal assessment by the district that addresses the specific problems as outlined on the notice to assess in accordance with parts 3525.2650 and 3525.3500.

Subp. 8. [Repealed, 8 SR 596]

Subp. 8a. **Initial placement.** "Initial placement" means the first special education placement and provision of special education services by the district.

Subp. 8b. **Instruction.** "Instruction" means the action or practice of a teacher.

Subp. 9. [Repealed, 8 SR 596]

Subp. 9a. [Repealed, 14 SR 281]

Subp. 9b. **Program support assistant or pupil support assistant.** "Program support assistant" or "pupil support assistant" means a district employee who is engaged in direct interaction with one or more pupils for instructional activities, physical or behavior management, or integration purposes under the direction of a regular education or special education teacher. A program or pupil support assistant shall only provide services to a pupil under the direction of a regular education or special education teacher or related services provider. The services must be:

A. to enhance the instruction provided by the teacher or related services staff in the areas of academic instruction, physical or behavior management programs, transition, and other integration activities; and

B. to supplement instructional activities or to provide extended practice in instances in which the support assistant has had training from a special education teacher or

related services staff and continues to receive ongoing direction and support from a special education teacher.

The pupil's need for and the specific responsibilities of a pupil support assistant shall be described in writing on the pupil's IEP. A program support assistant is required in an early childhood special education center-based classroom as such classroom is described in part 3525.2335, subpart 2, and may be assigned to programs described in part 3525.2340, subpart 4, items A and B.

Subp. 10. Nondiscrimination. "Nondiscrimination" means a requirement that districts shall:

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

B. provide procedures that ensure that, in accordance with recognized professional standards, testing and evaluation materials and procedures used 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. The 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 that serve the individual pupil.

Subp. 11. [Repealed, 8 SR 596]

Subp. 11a. Parent or parents. "Parent" or "parents" means the mother, father, guardian, conservator, or surrogate parent who has been appointed in accordance with parts 3525.2430 to 3525.2455 for a pupil under age 18. For a pupil over age 18, it means the pupil unless a guardian or conservator has been appointed, in which case it means the guardian or conservator. When the parents are separated or divorced, it means the parent who has the legal right, by court decree or agreement, to determine the pupil's education, even though the pupil may be living with the other parent.

Parents whose legal rights have not been terminated but who have not been granted legal custody have the right of access to, and to receive copies of important school records and the right to be informed by school officials about the child's welfare, educational progress, and status, and to attend school and parent-teacher conferences unless otherwise ordered by a court. The school need not hold a separate conference for each parent.

Subp. 12. [Repealed, 8 SR 596]

Subp. 13. [Repealed, 8 SR 596]

Subp. 14. [Repealed, 8 SR 596]

Subp. 15. [Repealed, 8 SR 596]

Subp. 15a. Providing district. "Providing district" means a district with the responsibility of providing special education services to a pupil according to part 3525.0800.

Subp. 16. [Repealed, 8 SR 596]

Subp. 16a. Pupil. "Pupil" means a student or other person who is eligible for special education according to Minnesota Statutes, sections 120.03 and 120.17. Students or other persons who are pregnant or chemically dependent and do not have a disabling condition are not eligible for special education.

Subp. 17. [Repealed, 8 SR 596]

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

Subp. 18. [Repealed, 8 SR 596]

Subp. 18a. Regular education program. "Regular education program" means the normal early childhood, elementary, secondary, gifted, or vocational education offerings, including instruction, training, aids, and services in the classroom or other appropriate places.

Subp. 18b. **Related services.** The definition of "related services" in Code of Federal Regulations, title 34, section 300.13, as amended through November 1, 1991, is incorporated by reference into this part.

Subp. 19. [Repealed, 8 SR 596]

Subp. 19a. **Resident district.** "Resident district" means the district in which the pupil's parent, as defined by parts 3525.0200, subpart 11a, and 3525.0800, subpart 9, resides. It does not mean the district in which a surrogate parent resides. If the parents of the pupil are separated or divorced and both maintain legal rights to determine the pupil's education, but are living in different districts, the district of residence is the district in which the pupil primarily resides for the greater part of the school year.

In those situations when a pupil is placed for care and treatment or foster care by an agency other than the school district, the district of residence is the district in which the pupil's parent resides or the district designated by the commissioner as provided in Minnesota Statutes, section 120.17, subdivisions 6 and 8a. If the parents of the pupil are separated or divorced and both maintain legal rights to determine the pupil's education, but are living in different districts, the district of residence is the district last responsible for education services when the pupil resided with either parent.

Subp. 20. [Repealed, 8 SR 596]

Subp. 20a. **Special education.** "Special education" means any specially designated instruction and related services to meet the unique cognitive, communicative, affective, or psychomotor needs of a pupil as stated in the IEP.

Subp. 21. [Repealed, 8 SR 596]

Subp. 22. [Repealed, 8 SR 596]

Subp. 23. [Repealed, 16 SR 1543]

Subp. 24. **Teacher.** "Teacher" means a person licensed under parts 8700.5501 to 8700.5511 by the Board of Teaching to instruct pupils with specific disabling conditions.

Subp. 25. **Technically adequate instrument.** "Technically adequate instrument" means tests and assessment procedures for which recognized professional standards about construction, validity, reliability, and use have been met.

Subp. 26. **Vocational assessment.** "Vocational assessment" means an ongoing, comprehensive process used to assist the pupil and the team to determine the pupil's strengths, interests, abilities, and needed support to be successful in a vocational setting. A vocational assessment is one component of the ongoing special education multidisciplinary assessment described in parts 3525.2500 to 3525.2850.

Statutory Authority: *MS s 120.17*

History: *8 SR 596; 14 SR 281; 16 SR 1543; L 1991 c 265 art 3 s 38*

POLICIES

3525.0300 PROVISION OF FULL SERVICES.

Children and youth who are handicapped and who are eligible for special education services based on an appropriate individual assessment shall have access to free appropriate public education, as that term is defined by applicable law. The special education shall be suited to the pupil's individual needs including the special education based on an appropriate assessment and according to the IEP. School districts shall provide education suitable to pupils' individual needs regardless of the severity of the pupil'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 located within the district.

Statutory Authority: *MS s 120.17*

History: *14 SR 281*

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 han-

dicapped 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 [Repealed, 8 SR 596]

3525.0550 PUPIL IEP MANAGER.

The district shall assign a teacher or licensed related service staff who is a member of the pupil's IEP team as the pupil's IEP manager to coordinate the instruction and related services for the pupil. The IEP manager's responsibility shall be to coordinate the delivery of special education services in the pupil's IEP and to serve as the primary contact for the parent. A district may assign the following responsibilities to the pupil's IEP manager: assuring compliance with procedural requirements; communicating and coordinating among home, school, and other agencies; regular and special education programs; facilitating placement; and scheduling team meetings.

Statutory Authority: *MS s 120.17*

History: *14 SR 281; 16 SR 1543*

3525.0600 [Repealed, 8 SR 596]

3525.0650 INTERAGENCY COMMITTEES.

Subpart 1. **Local participation.** A district shall establish or participate in a local interagency early intervention committee and a local community transition interagency committee according to Minnesota Statutes, section 120.17, subdivisions 12 and 16. The local committees shall:

A. meet at least quarterly to fulfill the duties prescribed in statute; and

B. report annually when directed to the Department of Education summarizing progress and recommendations.

Operating procedures fulfilling the requirements in each statute must be included in the district's total special education system plan.

Statutory Authority: *MS s 120.17*

History: *14 SR 281*

3525.0700 PARENTAL INVOLVEMENT.

Parents of children with disabilities have a right to be involved by the school district in the education decision-making process by participating or being afforded the opportunity to participate at each IEP meeting to develop, review, or revise the IEP. School district staff members shall document efforts to contact and involve parents in developing a pupil's IEP including scheduling IEP meetings at a mutually agreed upon time and location. At the time of contact, the district shall inform the parents of their right to bring anyone of their choosing to accompany them to the meeting. The district shall inform the pupil's parents about the alternatives and methods of instruction as described in Minnesota Statutes, section 120.17, subdivision 2.

Statutory Authority: *MS s 120.17*

History: *14 SR 281; L 1991 c 265 art 3 s 38*

3525.0800 ENSURING PROVISION OF INSTRUCTION AND SERVICES.

Subpart 1. **Pupil's district of residence.** As provided in Minnesota Statutes, section 120.17, subdivision 2, a pupil's district of residence is responsible for assuring that an appropriate program is provided for all eligible pupils placed by the district's team within the district or in an out-of-district placement regardless of the method or location of instruction used.

Subp. 2. **Purchased services.** 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 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.

Subp. 3. Initial activities. The resident district is responsible for the pupil's initial assessment, initial IEP, due process procedures, and initial placement regardless of whether the placement is within the district or outside the district, unless the pupil is placed for care and treatment or through one of the education choice options.

If the team determines that it may be appropriate to consider placement options outside of the resident district, representatives from the outside district, agency, or academy must be invited to attend a team meeting as a participant to complete an appropriate IEP for the pupil including the needs, goals, objectives, services, and placement of the pupil.

Subp. 4. Resident district responsibilities; district initiated out-of-district placement. If the resident district places a pupil in an out-of-district placement, the resident district is still responsible to assure that an appropriate IEP is developed, that the pupil is placed in the least restrictive environment, and that due process procedures associated with these responsibilities are followed.

It is the responsibility of the providing district, agency, or academy to implement the IEP, conduct periodic and annual reviews, convene and facilitate the IEP team meeting, and assure that due process procedures associated with these responsibilities are followed.

The annual IEP must be developed jointly by the providing district, agency, or academy and resident district. The resident district must, at a minimum, involve a district administrator or an administrative designee according to part 3525.0200, subpart 1a, to assure that the pupil's educational needs and rights are met. The resident district may appoint a member of the providing district as its administrative designee.

Subp. 5. Responsibility for disagreements. The resident district is responsible for resolving disagreements between the pupil's parents and district, including conciliation and due process hearings when the placement has been made by the resident district. If the providing district, agency, or academy receives a request for a conciliation conference or due process hearing from the parent, the providing district, agency, or academy must notify the resident district of the parent's request within one school day.

Subp. 6. Tuition rate appeal. 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.

Subp. 7. Pupils placed for care and treatment. The educational and financial responsibilities of the resident and providing districts for pupils placed for care and treatment under Minnesota Statutes, section 120.17, subdivisions 6 and 7, are as follow:

A. District placements: If the resident district places a pupil for care and treatment, the resident district shall be responsible for providing and paying for an appropriate education program in accordance with part 3525.2320 and this part, either directly or through tuition agreement, and shall also be responsible for the costs associated with care and treatment.

B. Nondistrict placement:

(1) When the pupil is placed in a residential facility or foster care by someone other than the resident district, the district in which the facility is located is responsible for providing an appropriate education program as set forth in statutes and parts 3525.0200 to 3525.4700 including the notice and hearing provisions. The resident district is responsible for assuming the cost of the educational program when notified in accordance with Minnesota Statutes, sections 120.17, subdivision 6, and 124A.036. The district is not responsible for the cost of care and treatment.

(2) When the pupil is placed in a day treatment program by an agency other than the resident district, the resident district is responsible for determining the location of the special education services in accordance with the options outlined in Minnesota Statutes, section 120.17, subdivision 6. The resident district shall be responsible for ensuring that an

appropriate program is provided in accordance with subparts 4 to 6, including all costs for the education program and any due process proceedings regardless of the method or locations of services selected.

Subp. 8. Pupils placed through education choice options. When a pupil is placed outside of the district residence by the parent or pupil for the purpose of education and in accordance with a statutory education choice enrollment act, the resident district shall be responsible for assuming the cost of the education program when notified in accordance with Minnesota Statutes, section 124A.036, subdivision 3. The providing district shall be responsible for assuring that an appropriate program is available for the pupil including the notice and hearing provisions. Responsibility for transportation costs between the pupil's home and the providing school district shall be determined in accordance with Minnesota Statutes.

Subp. 9. Financial and legal responsibility for pupils 18–20. For a pupil who is age 18 through 20 years of age and is receiving special education, the district where the pupil's parents, legal guardian, or conservator lives shall be financially responsible for the cost of the special education program even in those cases where the pupil serves as the parent according to part 3525.0200, subpart 11a, for due process purposes.

Statutory Authority: *MS s 120.17*

History: *14 SR 281*

3525.0900 [Repealed, 8 SR 596]

3525.1000 [Repealed, 8 SR 596]

APPLICATIONS

3525.1100 RESPONSIBILITY; TOTAL SPECIAL EDUCATION SYSTEM (TSES).

Subpart 1. State responsibility for all educational programs for pupils. The State Department of Education is responsible for ensuring that all requirements in Code of Federal Regulations, title 34, chapter III, and this part are carried out by the local education agencies. Each special education program within the state, including programs administered by any other public agency is under the general supervision of the persons responsible for special education in the State Department of Education.

This shall be done, in part, by reviewing each district's and program's TSES for compliance. Districts and programs will also be monitored periodically by the Department of Education for their implementation of the TSES and all requirements in Code of Federal Regulations, title 34, chapter III, Minnesota Statutes, and this part.

Subp. 2. District responsibility. A district shall submit to the commissioner the district's plan for providing instruction and related services upon request for all pupils as required by Minnesota Statutes, section 120.17. The plan may represent the plan of a single district or a plan for 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. If a cooperative changes administrative organization, it shall submit a revised plan. The new plan must be submitted before the beginning of the next school year. The plan shall include descriptions of the district's:

A. Child study procedures for the identification and assessment of students or other persons suspected of having a disability beginning at birth that include a plan for receiving referrals from parents, physicians, private and public programs, and health and human services agencies.

B. Method of providing the special education services for the identified pupils. The district shall have, as part of the district's TSES plan, a description of the full range of available educational service alternatives. The district's TSES plan shall include:

(1) a description of the sites available in which services may occur. Sites describe the building or other location where special education occurs; and

(2) a description of the available instruction and related services.

C. Administration and management plan to assure effective and efficient results of items A and B, including due process procedure assurances available to parents.

D. Operating procedures of interagency committees required in statute.

E. Interagency agreements the district has entered.

The commissioner shall approve or implement appropriate procedures for modification of the district plan. The commissioner shall grant the district a reasonable time to make necessary modifications when the commissioner receives a satisfactory corrective action plan that complies with standards for the education of pupils.

Statutory Authority: *MS s 120.17*

History: *8 SR 596; 14 SR 281; 16 SR 1543*

3525.1150 PROVIDING SPECIAL EDUCATION TO SHARED-TIME PUPILS.

Districts shall identify and make available special education to all students who are disabled regardless of whether they attend a nonpublic school. For those students who attend a nonpublic school according to Minnesota Statutes, section 124A.034, and who are referred for special education services, the district shall inform parents of their right to special education services for eligible students. In the assessment or provision of special education to eligible pupils, the district may:

A. assess the student at the nonpublic school, including observing the student in the classroom as part of the formal assessment;

B. meet periodically with the nonpublic school staff to review progress of the pupil in the pupil's special education program;

C. periodically observe the pupil in the nonpublic school classroom to evaluate the result of the special education provided; and

D. hold IEP or IFSP meetings at the nonpublic school.

Special education services provided indirectly or directly to the pupil must be provided at a neutral site that is consistent with Minnesota Statutes, section 123.932, subdivision 9. The district may provide indirect or consultative special education services to the pupil's nonpublic school on the specific skills identified in the pupil's IEP by phone or at a meeting in a neutral site.

The district shall ensure that equipment or individualized instructional materials placed in a nonpublic school are used only to implement a pupil's IEP for the period needed for that plan. Public school staff shall not become involved with the pupil's day-to-day curriculum in the nonpublic school program. Program funds must not be used to support instruction in a nonpublic school or otherwise benefit the nonpublic school, but rather to meet the specific needs of pupils enrolled in the nonpublic school.

The district shall, in addition, provide necessary transportation for a pupil to receive special education from the nonpublic school to the neutral site where special education is provided on a shared-time basis. If the resident pupil attends a nonpublic school located in a district contiguous to the resident district and no agreement exists under Minnesota Statutes, section 124A.034, the district of residence shall provide necessary transportation for that pupil between the boundary of the district of residence and the educational facility where special education is to occur. The district of residence may provide necessary transportation for that pupil between its boundary and the nonpublic school attended, but the nonpublic school shall pay the costs of the transportation provided outside the district boundary.

Statutory Authority: *MS s 120.17*

History: *16 SR 1543*

3525.1200 ANNUAL APPLICATION FOR PROGRAMS AND BUDGET.

Subpart 1. Regular school term. Districts shall submit to the commissioner an annual application for the regular school term for program and budget approval necessary to determine the special education aids during the next school year. The commissioner shall approve, disapprove, or modify each application and notify each applying district of the action and the estimated level of education aid to be paid when the first aid payment is made.

Subp. 2. Summer school term. 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 the action and the estimated level of special education aid within 45 days.

Subp. 3. **Amended budget application.** Districts which desire to apply for additional state aid because program and budget modifications are necessary to meet changing needs of pupils shall make an amended application.

Subp. 4. **District compliance.** Districts shall assure that they are in compliance with state and federal statutes and rules relating to the education of pupils.

Statutory Authority: *MS s 120.17 subd 3*

History: 8 SR 596

3525.1300 [Repealed, 8 SR 596]

3525.1310 STATE AID FOR SPECIAL EDUCATION PERSONNEL.

Salaries for essential personnel who are teachers, related services and support services staff members, directors, and supervisors are reimbursable for the following activities:

- A. child find and pupil identification;
- B. necessary short-term indirect or consultative services that are provided in conjunction with regular education prereferral activities to an individual suspected of having a disabling condition to determine whether referrals for assessments shall be made;
- C. assessment and IEP planning for individual pupils;
- D. instruction or related and support services to pupils who have an IEP;
- E. necessary follow-up activities after termination from special education;
- F. parental involvement and due process;
- G. personnel development;
- H. special education curriculum development;
- I. special education program evaluation;
- J. supervision and administration of the total special education system;
- K. school psychological services and school social worker services provided alone for pupils identified as emotional or behavioral disordered according to parts 3525.1329 and 3525.2900 or in conjunction with the instructional program outlined in any pupil's IEP; and
- L. other related services provided in conjunction with the instructional program as outlined in the pupil's IEP.

Ongoing services for at-risk students such as truancy, suicide prevention, child abuse, or protection are not reimbursable.

Statutory Authority: *MS s 120.17*

History: 8 SR 596; 14 SR 281; 16 SR 1543

3525.1320 EXPERIMENTAL PROPOSAL.

Subpart 1. **General requirements.** The State Board of Education shall approve or disapprove a district's experimental proposal for exemption from its rules. No exemption shall be given from federal regulations, Minnesota Statutes, part 3525.1500, subpart 1, and part 3525.2350, subpart 2. A proposal shall be designed to accomplish at least one of the following:

- A. improved instructional quality;
- B. increase cost effectiveness;
- C. make better use of community resources or available technology; or
- D. an alternative eligibility criteria intended to identify persons as disabled.

Subp. 2. **Proposal requirements.** A district must apply for exemption before implementing an experimental program by submitting a proposal which sets forth:

- A. the proposal's goals and objectives;
- B. the method by which the proposal will improve effectiveness and efficiency;
- C. annual review procedures for up to three years;
- D. rules from which it seeks exemption;
- E. evidence that the district staff and parents, who would be affected, participated in the development and will participate in the annual review of the proposal, and that the has the approval of the district school board;

F. evidence that the parents whose children would be involved will be fully informed at the team meeting and will have the opportunity to approve or disapprove placement in the experimental program;

G. the annual evaluation procedures to be used to demonstrate attainment of the proposal goals and objectives, and the effectiveness of the proposal; and

H. standards that are consistent with state and federal standards and recognized professional standards.

Subp. 3. **Three-year review.** The state board shall approve, disapprove, or modify continuation of the experimental proposal after three years.

Statutory Authority: *MS s 120.17*

History: 8 SR 596; 16 SR 1543

ENTRANCE AND EXIT CRITERIA

3525.1325 AUTISM.

Subpart 1. Definition. "Autism" is a lifelong developmental disability with onset usually in the first three years of life. It is a behaviorally defined syndrome characterized by an uneven developmental profile and disturbances in interaction, communication, and perceptual organization. Autism occurs on a continuum from mild to severe. It occurs by itself or in association with other disorders such as mental retardation or fragile X syndrome. It may include the diagnosis of pervasive developmental disorder. Because of the low incidence and complexity of this disability, professionals with experience and expertise in the area of autism need to be included on the team determining the disability and educational program.

Subp. 2. Criteria. The team shall determine that a pupil meets criteria for autism according to the *Diagnostic and Statistical Manual, Third Revision (DSM-III-R)* of the American Psychiatric Association, the current accepted standard in the field. The criteria for autism in (DSM-III-R) are incorporated by reference, DSM-III-R is subject to frequent change and is available through the Minitex interlibrary loan system. Consider a criterion to be met only if the behavior is abnormal for the person's developmental level. DSM-III-R states that a pupil meets criteria when at least eight of the following 16 items are present, these to include at least two items from item A, one from item B, and one from item C:

A. qualitative impairment in reciprocal social interaction (the examples within parentheses are arranged so that those first listed are more likely to apply to younger or more disabled, and the later ones, to older or less disabled) as manifested by the following:

(1) marked lack of awareness of the existence or feelings of others (for example, treats a person as if that person were a piece of furniture; does not notice another person's distress; apparently has no concept of the need of others for privacy);

(2) no or abnormal seeking of comfort at times of distress (for example, does not come for comfort even when ill, hurt, or tired; seeks comfort in a stereotyped way, for example, says "cheese, cheese, cheese" whenever hurt);

(3) no or impaired imitation (for example, does not wave bye-bye; does not copy parent's domestic activities; mechanical imitation of others' actions out of context);

(4) no or abnormal social play (for example, does not actively participate in simple games; prefers solitary play activities; involves other children in play only as mechanical aids); and

(5) gross impairment in ability to make peer friendships (for example, no interest in making peer friendships; despite interest in making friends, demonstrates lack of understanding of conventions of social interaction, for example, reads phone book to uninterested peer);

B. qualitative impairment in verbal and nonverbal communication and in imaginative activity, (the numbered items are arranged so that those first listed as more likely to apply to younger or more disabled, and the later ones, to older or less disabled) as manifested by the following:

(1) no mode of communication, such as communicative babbling, facial expression, gesture, mime, or spoken language;

(2) markedly abnormal nonverbal communication, as in the use of eye-to-eye gaze, facial expression, body posture, or gestures to initiate or modulate social interaction (for example, does not anticipate being held, stiffens when held, does not look at the person or smile when making a social approach, does not greet parents or visitors, has a fixed stare in social situations);

(3) absence of imaginative activity, such as play-acting of adult roles, fantasy characters, or animals; lack of interest in stories about imaginary events;

(4) marked abnormalities in the production of speech, including volume, pitch, stress, rate, rhythm, and intonation (for example, monotonous tone, question-like melody, or high pitch);

(5) marked abnormalities in the form or content of speech, including stereotyped and repetitive use of speech (for example, immediate echolalia or mechanical repetition of a television commercial); use of "you" when "I" is meant (for example, using "You want cookie?" to mean "I want a cookie"); idiosyncratic use of words or phrases (for example, "Go on green riding" to mean "I want to go on the swing"); or frequent irrelevant remarks (for example, starts talking about train schedules during a conversation about sports); and

(6) marked impairment in the ability to initiate or sustain a conversation with others, despite adequate speech (for example, indulging in lengthy monologues on one subject regardless of interjections from others);

C. markedly restricted repertoire of activities and interests, as manifested by the following:

(1) stereotyped body movements (for example, handflapping or twisting, spinning, head-banging, complex whole-body movements);

(2) persistent preoccupation with parts of objects (for example, sniffing or smelling objects, repetitive feeling of texture of materials, spinning wheels of toy cars) or attachment to unusual objects (for example, insists on carrying around a piece of string);

(3) marked distress over changes in trivial aspects of environment (for example, when a vase is moved from usual position);

(4) unreasonable insistence on following routines in precise detail (for example, insisting that exactly the same route always be followed when shopping);

(5) markedly restricted range of interests and a preoccupation with one narrow interest (for example, interested only in lining up objects, in amassing facts about meteorology, or in pretending to be a fantasy character);

D. onset during infancy or early childhood;

E. other symptoms that may occur with the syndrome:

(1) sensory disturbances as evidenced by atypical responses to stimuli (for example, touch, sound, light, movement, smell, taste). Responses may include overreaction, indifference, or withdrawal; and

(2) uneven acquisition of skills, and/or difficulty in integrating and generalizing acquired skills; and

F. the pupil's need for instruction and services must be supported by at least one documented systematic observation in the pupil's daily routine setting by an appropriate professional and verify the criteria categories in items A to D. In addition, corroboration of developmental or medical information with a developmental history and at least one other assessment procedure that is conducted on a different day must be included. Other documentation should include parent reports, functional skills assessments, adaptive behavior scales, intelligence tests, criterion-referenced instruments, language concepts, developmental checklists, or an autism checklist.

Statutory Authority: *MS s 120.17*

History: *16 SR 1543*

3525.1327 DEAF-BLINDNESS.

Subpart 1. **Definition and criteria.** "Deaf-blindness" means medically verified visual impairment coupled with medically verified hearing impairment that, together, interfere with acquiring information or interacting in the environment. Both conditions need to be present simultaneously and must meet the criteria for both vision and hearing impairments.

Subp. 2. **Pupils at risk.** Pupils at risk for deaf-blindness include, but are not limited to:

A. those that are already identified as hearing or vision impaired and have not yet had medical or functional assessment of the other sense (vision or hearing);

B. have an identified syndrome, such as Usher Syndrome or Rubella Syndrome, that includes a potential deterioration of vision or hearing in the future;

C. those that have a medically or functionally identified hearing impairment and a verified deficit in vision determined by a functional assessment in the learning environment; and

D. those that have a medically or functionally identified vision impairment and verified deficit in hearing determined by a functional assessment in the learning environment.

Statutory Authority: *MS s 120.17*

History: *16 SR 1543*

3525.1329 EMOTIONAL OR BEHAVIORAL DISORDERS.

Subpart 1. **Definition.** "Emotional or behavioral disorder" means an established pattern characterized by one or more of the following behavior clusters:

A. severely aggressive or impulsive behaviors;

B. severely withdrawn or anxious behaviors, general pervasive unhappiness, depression, or wide mood swings; or

C. severely disordered thought processes manifested by unusual behavior patterns, atypical communication styles, and distorted interpersonal relationships.

This category may include children or youth with schizophrenic disorders, affective disorders, anxiety disorders, or other sustained disorders of conduct or adjustment when they adversely affect educational performance. The established pattern adversely affects educational performance and results in either an inability to build or maintain satisfactory interpersonal relations necessary to the learning process with peers, teachers, and others, or failure to attain or maintain a satisfactory rate of educational or developmental progress that cannot be improved or explained by addressing intellectual, sensory, health, cultural, or linguistic factors.

Subp. 2. **Criteria.** The team shall determine that a pupil is eligible as having an emotional or behavioral disorder and in need of special education and related services when the pupil meets the criteria in items A to D.

A. An established pattern must exist that is characterized by one or more of the following clusters:

(1) severely aggressive or impulsive behaviors that are developmentally inappropriate; physically or verbally abusive; impulsive or violent, destructive, or intimidating; threatening to others or excessively antagonistic;

(2) severely withdrawn or anxious behaviors, pervasive unhappiness, depression, or wide mood swings that include behaviors as: isolating self from peers; displaying intense fears or school phobia; overly perfectionistic; failing to express emotion, displaying a pervasive sad disposition; developing physical symptoms related to stress or eating problems; or

(3) severely disordered thought processes manifested by unusual behavior patterns, atypical communication styles, or distorted interpersonal relationships such as: reality distortion beyond normal developmental fantasy and play or talk; situationally inappropriate laughter, crying, sounds and language; self-mutilation or self-stimulation; rigid, ritualistic patterning; perseveration or obsession with specific objects; overly affectionate behavior towards unfamiliar persons; or hallucinating or delusions of grandeur.

The condition involves behavioral or emotional responses in school that differ significantly from normative standards, taking into consideration ethnic or cultural variables, as supported by multiple data sources using two or more of the following: behavior checklists, personality or projective measures, interviews with the child or knowledgeable adults, case history, or an appropriate DSM-III-R diagnosis.

The team, when determining the existence of an emotional or behavioral disorder, must give due consideration to a diagnosis of an emotional disorder made by an appropriately licensed mental health professional.

B. The condition adversely affects educational performance to the degree it results in:

(1) a pattern of inability to build or maintain satisfactory interpersonal relations with peers, parents, teachers, and other significant adults necessary to the learning process; or

(2) a pattern of failure to attain or maintain a satisfactory rate of educational progress that cannot be improved or explained by addressing intellectual, sensory, health, cultural, linguistic factors, or a mismatch between the student, the teacher or the curriculum or classroom, or learning environment.

C. The combined results of prior documented interventions and the assessment data must establish significant impairments in one or more of the following areas: personal, social, academic, or vocational skills. This finding must be supported by data from two or more of the following procedures: adaptive behavior scales, sociometric or social skill measures, achievement or cognitive tests; grades, systematic behavioral checklists or observations, vocational skill inventories, or reports. The data must document that the impairment:

(1) severely interferes with the pupil's or other students' educational performance;

(2) is pervasive as evidenced by occurrences across educational settings, the home, or in community settings;

(3) has been in evidence for six months; or

(4) occurs suddenly as a crisis of such intensity it results in imminent danger or harm to the pupil or others.

D. The team verifies that:

(1) the established pattern may occur with, but is not primarily the result of, intellectual, sensory, health, cultural, linguistic factors, or stressors such as transient medical or psychosocial events, chemical use, abuse or addiction, or a history of an inconsistent educational program; and

(2) identification is not based solely on a conflict between the individual and a political entity, a governmental entity, or for purposes of disciplinary action.

E. Children not yet enrolled in kindergarten are eligible for special education and related services if they meet the criteria listed in items A; B; C, subitem (2), (3), or (4); and D. The behaviors of concern must be determined by the team to be significantly inappropriate for the age of the child being assessed. To establish item C, subitem (2), (3), or (4), data from the assessment process must find developmentally significant impairments in self-care, social relations, or social or emotional growth. The findings must be supported by data from two or more of the following procedures: adaptive behavior scales, sociometric or social skill measures, systematic behavioral checklists, systematic documented observations, interventions, or written reports.

Statutory Authority: *MS s 120.17*

History: *16 SR 1543; 17 SR 3361*

3525.1331 HEARING IMPAIRMENT.

Subpart 1. **Definition.** "Hearing impairment" means a diminished sensitivity to sound that is expressed in terms of standard audiological measures.

Hearing impairment has the potential to affect educational, communicative, or social functioning that may result in the need for special education instruction and related services.

Subp. 2. **Criteria.** The team shall determine that a pupil who has a hearing impairment is eligible for special education instruction and related services if the pupil meets one of the criteria in item A and one of the criteria in item B, C, or D.

A. There is audiological documentation provided by a certified audiologist that verifies one of the following:

(1) a sensorineural hearing loss with an unaided pure tone average, speech threshold, or auditory brain stem response threshold of 20 decibels hearing level (HL) or greater in the better ear;

(2) a conductive hearing loss with an unaided pure tone average or speech threshold of 20 decibels hearing level (HL) or greater in the better ear persisting over three months or occurring at least three times during the previous 12 months as verified by audiograms with at least one measure provided by a certified audiologist;

(3) a unilateral sensorineural or persistent conductive loss with an unaided pure tone average or speech threshold of 45 decibels hearing level (HL) or greater in the affected ear; or

(4) a sensorineural hearing loss with unaided pure tone thresholds at 35 decibels hearing level (HL) or greater at two or more adjacent frequencies (500 hertz, 1000 hertz, 2000 hertz, or 4000 hertz) in the better ear.

B. The pupil's hearing impairment affects educational performance as demonstrated by:

(1) a need to consistently use amplification appropriately in educational settings as determined by audiological measures and systematic observation; or

(2) an achievement deficit in one or more of the following that is at the 15th percentile or 1.0 standard deviations or more below the mean on a technically adequate norm-referenced achievement test that is individually administered by a licensed professional:

- (a) basic reading skills;
- (b) reading comprehension; or
- (c) written language.

C. The pupil's hearing impairment affects the use and understanding of spoken English as documented by one or both of the following:

(1) under the pupil's typical classroom condition, the pupil's classroom interaction is limited as measured by systematic observation of communication behaviors; or

(2) the pupil uses American sign language or one or more alternative or augmentative systems of communication alone or in combination with spoken English as documented by parent or teacher reports and language sampling conducted by a knowledgeable professional.

D. The pupil's hearing impairment affects the adaptive behavior required for age-appropriate social functioning as supported by:

(1) documented systematic observation within the pupil's primary learning environments by a licensed professional and the pupil, when appropriate; and

(2) scores on a standardized scale of social skill development are below the average scores expected of same-age peers.

Statutory Authority: *MS s 120.17*

History: *16 SR 1543*

3525.1333 MENTALLY IMPAIRED: MILD-MODERATE/MODERATE-SEVERE.

Subpart 1. **Definition.** "Mentally impaired" refers to pupils with significantly subaverage general intellectual functioning resulting in or associated with concurrent deficits in adaptive behavior that may require special education instruction and related services.

Subp. 2. **Criteria for mild-moderate.** The team shall determine that a pupil is eligible as having a mild-moderate mental impairment and is in need of special education instruction and service if the pupil meets the criteria of both items A and B.

A. Performance that falls at or below the 15th percentile in the following adaptive behavior domains measured in both school and home or community on nationally-normed, technically adequate measures of adaptive behavior:

(1) personal or independent functioning includes competencies associated with looking after one's self. It identifies all the essential behaviors a person must exhibit in order to be regarded as at least minimally competent in a typical environment;

(2) personal or social functioning includes all those behaviors involving the individual with other people that must be exhibited at minimally competent levels in order for the individual to be considered acceptable and successful in interpersonal relations;

(3) functional academic competencies address basic fundamental literacy skills and knowledge of the basic concept of time and money. Functional academics refers to very basic reading and writing skills and to practical every day demands for knowledge of numerical and temporal relationships; or

(4) vocational or occupational competencies associated with this domain are not expected to develop until early school-age years. They become increasingly important at progressively higher grade levels. The vocational or occupational domain includes three subdomains: knowledge about careers and work; appropriate attitudes and values concerning careers and work; and specific skills associated with job or career.

This data is supported by written evidence drawn from two or more of the following sources:

- (a) documented, systematic observation;
- (b) checklist;
- (c) classroom or work samples;
- (d) interviews;
- (e) sociometric measures;
- (f) criterion-referenced measures;
- (g) educational history; or
- (h) medical history.

B. Significantly subaverage intellectual functioning as indicated by an intelligence quotient below 70 plus or minus 1 Standard Error of Measurement (using instruments with a reliability coefficient of .90 or greater) on an intelligence test that is standardized, nationally-normed, technically adequate, and individually administered.

Subp. 3. **Criteria for moderate-severe.** The team shall determine that a pupil is eligible as having a moderate-severe mental impairment and is in need of special education instruction and service if the pupil meets the criteria of both items A and B.

A. Performance that falls below the 10th percentile in the following adaptive behavior domains measured in both school and home or community on nationally-normed, technically adequate measures of adaptive behavior:

(1) personal or independent functioning, personal or social functioning, functional academic competencies, or vocational or occupational competencies; and

(2) the data is supported by written evidence drawn from two or more of the following sources:

- (a) documented, systematic observation;
- (b) checklist;
- (c) classroom or work samples;
- (d) interviews;
- (e) sociometric measures;
- (f) criterion-referenced measures;
- (g) educational history; or
- (h) medical history.

B. Significantly subaverage intellectual functioning as indicated by an intelligence quotient below 50 plus or minus 1 Standard Error of Measurement (using instruments with a reliability coefficient of .90 or greater) on an intelligence test that is standardized, nationally-normed, technically adequate, and individually administered.

Statutory Authority: *MS s 120.17*

History: *16 SR 1543; 17 SR 3361*

3525.1335 OTHER HEALTH IMPAIRED.

Subpart 1. **Definition.** "Other health impaired" means a broad range of medically diagnosed chronic or acute health condition that may adversely affect academic functioning and

result in the need for special education instruction and related services. The decision that a specific health condition qualifies as other health impaired will be determined by the impact of the condition on academic functioning rather than by the diagnostic label given the condition.

Subp. 2. Criteria. The team shall determine that a pupil is eligible and in need of special education instruction and services if the pupil meets the criterion in item A and one of the criteria in item B.

A. There is documentation of a medically diagnosed health impairment.

B. The pupil's:

(1) need for special education instruction and service is supported by evidence of inadequate academic progress attributable to excessive absenteeism as verified by attendance records, or impaired organizational and independent work skills as assessed by functional and other appropriate assessment procedures due to limited strength, endurance, alertness, or intrusive health procedures as verified by a minimum of two or more documented, systematic observations or structured interviews in daily routine settings, one of which is to be completed by a special education teacher; or

(2) need for special education instruction and service is supported by evidence of an inability to manage or complete classroom tasks within routine timelines due to excessive absenteeism as verified by attendance records, or limited strength, endurance, alertness, intrusive health procedures, or medications that affect cognitive functioning as verified by a minimum of two or more documented, systematic observations or structured interviews in daily routine settings, one of which is completed by a special education teacher; or

(3) health impairment interferes with educational performance as shown by an achievement deficit of 1.5 standard deviations or more below the mean on an individually administered reliable, valid, and adequately normed achievement test.

Statutory Authority: *MS s 120.17*

History: *16 SR 1543*

3525.1337 PHYSICALLY IMPAIRED.

Subpart 1. Definition. "Physically impaired" means a medically diagnosed chronic, physical impairment, either congenital or acquired, that may adversely affect physical or academic functioning and result in the need for special education and related services.

Subp. 2. Criteria. The team shall determine that a pupil is eligible and in need of special education instruction and services if the pupil meets the criterion in item A and one of the criteria in item B.

A. There is documentation of a medically diagnosed physical impairment.

B. The pupil's:

(1) need for special education instruction and service is supported by a functional level of organizational or independent work skills as verified by a minimum of two or more documented, systematic observations in daily routine settings, one of which is completed by a special education teacher;

(2) need for special education instruction and service is supported by an inability to manage or complete motoric portions of classroom tasks within time constraints as verified by a minimum of two or more documented, systematic observations in daily routine settings, one of which is completed by a special education teacher; or

(3) physical impairment interferes with educational performance as shown by an achievement deficit of 1.0 standard deviations or more below the mean on an individually administered reliable, valid, and adequately normed achievement test.

Statutory Authority: *MS s 120.17*

History: *16 SR 1543*

3525.1339 SEVERELY MULTIPLY IMPAIRED.

Subpart 1. Definition. "Severely multiply impaired" means a pupil who has severe learning and developmental problems resulting from two or more disability conditions determined by assessment under part 3525.2500.

Subp. 2. **Criteria.** The team shall determine that a pupil is eligible as being severely multiply impaired if the pupil meets the entrance criteria for two or more of the following disabilities:

- A. hearing impaired, part 3525.1331;
- B. physically impaired, part 3525.1337;
- C. moderate-severe mentally impaired, part 3525.1333, subparts 1 and 3;
- D. visually impaired, part 3525.1345;
- E. emotional or behavioral disorders, part 3525.1329; or
- F. autism, part 3525.1325.

Statutory Authority: *MS s 120.17*

History: *16 SR 1543*

3525.1341 SPECIFIC LEARNING DISABILITY.

Subpart 1. **Definition.** "Specific learning disability" means a condition within the individual affecting learning, relative to potential.

A specific learning disability is manifested by interference with the acquisition, organization, storage, retrieval, manipulation, or expression of information so that the individual does not learn at an adequate rate when provided with the usual developmental opportunities and instruction from a regular school environment.

A specific learning disability is demonstrated by a significant discrepancy between a pupil's general intellectual ability and academic achievement in one or more of the following areas: oral expression, listening comprehension, mathematical calculation or mathematics reasoning, basic reading skills, reading comprehension, and written expression.

A specific learning disability is demonstrated primarily in academic functioning, but may also affect self-esteem, career development, and life adjustment skills. A specific learning disability may occur with, but cannot be primarily the result of: visual, hearing, or motor impairment; mental impairment; emotional disorders; or environmental, cultural, economic influences, or a history of an inconsistent education program.

Subp. 2. **Criteria.** The team shall determine that a pupil has a specific learning disability and is in need of special education and related services when the pupil meets the criteria described in items A through C. Information about each item must be sought from the parent and included as part of the assessment data. The assessment data must confirm that the disabling effects of the pupil's disability occur in a variety of settings.

A. The pupil must demonstrate severe underachievement in response to usual classroom instruction. The performance measures used to verify this finding must be both representative of the pupil's curriculum and useful for developing instructional goals and objectives. The following assessment procedures are required at a minimum to verify this finding:

(1) evidence of low achievement from sources such as cumulative record reviews, classwork samples, anecdotal teacher records, formal and informal tests, curriculum based assessment results, and results from instructional support programs such as Chapter 1 and Assurance of Mastery; and

(2) at least one team member other than the pupil's regular teacher shall observe the pupil's academic performance in the regular classroom setting. In the case of a child served through an Early Childhood Special Education program or who is out of school, a team member shall observe the child in an environment appropriate for a child of that age.

B. The pupil must demonstrate a severe discrepancy between general intellectual ability and achievement in one or more of the following areas: oral expression, listening comprehension, written expression, basic reading skills, reading comprehension, mathematical calculation, or mathematical reasoning. The demonstration of a severe discrepancy shall not be based solely on the use of standardized tests. The team shall consider these standardized test results as only one component of the eligibility criteria.

(1) The instruments used to assess the pupil's general intellectual ability and achievement must be individually administered and interpreted by an appropriately licensed person using standardized procedures.

(2) For initial placement, the severe discrepancy must be equal to or greater than 1.75 standard deviations below the mean of the distribution of difference scores for the general population of individuals at the pupil's chronological age level.

C. The team must agree that it has sufficient assessment data that verify the following conclusions:

(1) the pupil has an information processing condition that is manifested by behaviors such as: inadequate or lack of expected acquisition of information, lack of organizational skills (such as in following directions, written and oral; spatial arrangements; correct use of developmental order in relating events; transfer of information onto paper), memory (visual and auditory), expression (verbal and nonverbal), and motor control for written tasks such as pencil and paper assignments, drawing, and copying;

(2) the disabling effects of the pupil's information processing condition occur in a variety of settings; and

(3) the pupil's underachievement is not primarily the result of: visual, hearing, or motor impairment; mental impairment; emotional or behavioral disorders; or environmental, cultural, economic influences, or a history of an inconsistent education program.

Statutory Authority: *MS s 120.17*

History: *16 SR 1543; 17 SR 3361*

3525.1343 SPEECH OR LANGUAGE IMPAIRMENTS.

Subpart 1. Fluency disorder; definition and criteria. "Fluency disorder" means the intrusion or repetition of sounds, syllables, and words; prolongations of sounds; avoidance of words; silent blocks; or inappropriate inhalation, exhalation, or phonation patterns. These patterns may also be accompanied by facial and body movements associated with the effort to speak. Fluency patterns that can be attributed only to dialectical, cultural, or ethnic differences or to the influence of a foreign language should not be identified as a disorder.

The team shall determine that a pupil has a fluency disorder and is eligible for speech or language special education when the pupil meets the criteria in both items A and B:

A. the behavior interferes with communication as judged by a teacher of communication disorders and either another adult or the child; and

B. dysfluent behaviors occur during at least five percent of the words spoken on two or more speech samples.

Subp. 2. Voice disorder; definition and criteria. "Voice disorder" means the absence of voice or presence of abnormal quality, pitch, resonance, loudness, or duration. Voice patterns that can be attributed only to dialectical, cultural, or ethnic differences or to the influence of a foreign language should not be identified as a disorder.

The team shall determine that a pupil has a voice disorder and is eligible for speech or language special education when the pupil meets the criteria in both items A and B:

A. the behavior interferes with communication as judged by a teacher of communication disorders and either another adult or the child; and

B. achievement of a moderate to severe vocal severity rating is demonstrated on a voice assessment profile administered on two separate occasions, two weeks apart, at different times of the day.

Subp. 3. Articulation disorder; definition and criteria. "Articulation disorder" means the absence of or incorrect production of speech sounds that are developmentally appropriate. Articulation patterns that can be attributed only to dialectical, cultural, or ethnic differences or to the influence of a foreign language should not be identified as a disorder.

The team shall determine that a pupil has an articulation disorder and is eligible for speech or language special education when the pupil meets the criteria in item A and either item B, C, or D:

A. the behavior interferes with communication as judged by a teacher of communication disorders and either another adult or the child; and

B. test performance falls 2.0 standard deviations below the mean on a technically adequate, norm-referenced articulation test; or

C. performance on a pressure consonant test indicates problems in nasal resonance; or

D. a pupil is nine years of age or older and a sound is consistently in error as documented by two three-minute conversational speech samples.

Subp. 4. Language disorder; definition and criteria. "Language disorder" means a breakdown in communication as characterized by problems in expressing needs, ideas, or information that may be accompanied by problems in understanding. Language patterns that can be attributed only to dialectical, cultural, or ethnic differences or to the influence of a foreign language should not be identified as a disorder.

The team shall determine that a pupil has a language disorder and is eligible for speech or language special education services when the pupil meets the criteria in items A and B and either C or D:

A. the behavior interferes with communication as judged by a teacher of communication disorders and either another adult or the child; and

B. an analysis of a language sample or documented observation of communicative interaction indicates the pupil's language behavior falls below or is different from what would be expected given consideration to chronological age, developmental level, or cognitive level; and

C. the pupil scores 2.0 standard deviations below the mean on at least two technically adequate, norm-referenced language tests if available; or

D. if technically adequate, norm-referenced language tests are not available to provide evidence of a deficit of 2.0 standard deviations below the mean in the area of language, two documented measurement procedures indicate a substantial difference from what would be expected given consideration to chronological age, developmental level, or cognitive level. These procedures may include additional language samples, criterion-referenced instruments, observations in natural environments, and parent reports.

Statutory Authority: *MS s 120.17*

History: *16 SR 1543; 17 SR 3361*

3525.1345 VISUALLY IMPAIRED.

Subpart 1. Definition. "Visually impaired" means a medically verified visual impairment accompanied by limitations in sight that interfere with acquiring information or interaction with the environment to the extent that special education instruction and related services may be needed.

Subp. 2. Criteria. The team shall determine that a pupil is eligible as having a visual disability and in need of special education if the pupil meets one of the criteria in item A and one of the criteria in item B.

A. There is medical documentation of a diagnosed visual impairment by a licensed eye specialist establishing one or more of the following conditions:

(1) visual acuity of 20/60 or less in the better eye with the best conventional correction; estimation of acuity is acceptable for difficult-to-test learners;

(2) visual field of 20 degrees or less, or bilateral scotomas; or

(3) a congenital or degenerating eye condition including, but not limited to, progressive cataract, glaucoma, retinitis pigmentosa, albinism, or nystagmus.

B. A functional assessment of visual abilities conducted by a licensed teacher of the visually disabled determines that:

(1) the pupil has limited ability in visually accessing program-appropriate educational media including, but not limited to, textbooks, photocopies, ditto copies, chalkboards, computers, or environmental signs, without modification;

(2) the pupil has limited ability to visually access the full range of program-appropriate educational materials and media without accommodating actions including, but not limited to, changes in posture, body movement, focal distance, or squinting;

(3) the pupil demonstrates variable visual ability due to environmental factors including, but not limited to, lighting, contrast, weather, color, or movement, that cannot be controlled; and

(4) the pupil experiences reduced ability due to visual fatigue.

Statutory Authority: *MS s 120.17*

History: *16 SR 1543*

3525.1347 TEAM OVERRIDE ON ELIGIBILITY DECISIONS.

Subpart 1. Documentation required. If the team determines that a pupil is eligible for special instruction and related services because the pupil has a disability and needs special instruction even though the pupil does not meet the specific requirement in parts 3525.1325 to 3525.1345 and 3525.2335, the team must include the documentation in the pupil's special education record listed in items A to D.

A. The pupil's record must contain documents that explain why the standards and procedures, that are used with the majority of pupils, resulted in invalid findings for this pupil.

B. The record must indicate what objective data were used to conclude that the pupil has a disability and is in need of specialized instruction. These data may include test scores, work products, self-reports, teacher comments, previous testings, observational data, ecological assessments, and other developmental data.

C. Since the eligibility decision is based on a synthesis of multiple data and not all data are equally valid, the team must indicate which data had the greatest relative importance for the eligibility decision.

D. The team override decision must include a sign-off by the team members agreeing to the override decision. For those team members who disagree with the override decision, a statement of why they disagree and their signature must be included.

Subp. 2. Record of team overrides. The district director of special education shall keep sufficient records regarding the extent of the team override provision to assist the state in evaluating the adequacy of the various entrance criteria.

Statutory Authority: *MS s 120.17*

History: *16 SR 1543*

3525.1349 EXIT PROCEDURES.

The team shall discontinue special education instruction and services when:

A. the pupil has achieved IEP goals and objectives such that the pupil demonstrates the ability to succeed in the regular education program or an appropriate community-based environment without special instruction and services;

B. the medical disease or condition originally diagnosed has been corrected and the pupil no longer needs special instruction and services;

C. the pupil's physical or other health impairment no longer adversely affects educational performance;

D. the pupil graduates having successfully completed graduation requirements as prescribed by the board of education or the pupil's IEP;

E. the pupil exceeds school age of 21 years; or

F. the pupil has been officially withdrawn from the district.

For any pupil discontinuing special education and services, the IEP manager shall summarize: (a) the pupil's last IEP goal or objectives attainment status; (b) the most recent assessment data; and (c) any recommendations about future anticipated service needs for post-secondary education, training, and any other relevant areas.

Statutory Authority: *MS s 120.17*

History: *16 SR 1543*

FACILITIES AND STAFF

3525.1400 FACILITIES.

Classrooms and other facilities in which pupils receive instruction, related services, and support services shall: be accessible as defined in Code of Federal Regulations, title 34, sec-

tion 104; be essentially equivalent to the regular education program; provide an atmosphere that is conducive to learning; and meet the pupils' special physical, sensory, and emotional needs.

The necessary special equipment and instructional materials shall be supplied to provide instruction, related services, and support services.

Statutory Authority: *MS s 120.17 subd 3*

History: 8 SR 596

3525.1500 STAFF.

Subpart 1. **Teachers.** Every teacher shall hold a license appropriate to the disabling condition of the pupil taught except as designated in part 3525.2350.

Subp. 2. **Directors.** Every director and assistant director shall hold a license as a director of special education.

Subp. 3. **Other supervisory personnel.** Every supervisor shall hold either an appropriate supervisory license for one or more program areas coordinated or supervised, or as a director of special education.

Subp. 4. **Related services staff.** Every related services staff member shall hold an appropriate license issued by the Board of Teaching or the State Board of Education. When such license is not available, related services staff shall meet recognized professional standards which shall be documented by the district.

Statutory Authority: *MS s 120.17*

History: 8 SR 596; 16 SR 1543; L 1991 c 265 art 3 s 38

3525.1510 PERSONNEL VARIANCES.

A district may apply to the commissioner of education for and the commissioner shall grant a variance from part 3525.1500, subparts 1 to 3 with regard to its employees for one year or less when:

A. the district has made documented attempts to employ an appropriately licensed person and none are available; and

B. the person who will be employed holds any license issued by the Board of Teaching or the State Board of Education.

Statutory Authority: *MS s 120.17 subd 3*

History: 8 SR 596

3525.1550 CONTRACTED SERVICES.

When contracting for assessments or special education services, a district shall contract with personnel who hold appropriate licenses issued by the Board of Teaching or State Board of Education. If either board does not issue a license for a necessary service, the district shall contract with personnel who are members in good standing of professional organizations that regulate the conduct of its members and set standards for that profession.

Statutory Authority: *MS s 120.17*

History: 8 SR 596; 14 SR 281

3525.1600 [Repealed, 14 SR 281]

3525.1700 [Repealed, 8 SR 596]

3525.1800 [Repealed, 8 SR 596]

3525.1900 [Repealed, 8 SR 596]

3525.2000 [Repealed, 8 SR 596]

3525.2100 [Repealed, 8 SR 596]

3525.2200 [Repealed, 8 SR 596]

3525.2300 SCHOOL DAY.

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

Statutory Authority: *MS s 120.17*

History: L 1991 c 265 art 3 s 38

3525.2320 [Repealed, 14 SR 281]

TREATMENT PROGRAMS AND LEVELS OF SERVICE

3525.2325 EDUCATION FOR STUDENTS IN CENTERS FOR CARE AND TREATMENT.

Subpart 1. **When education is required.** The district in which the facility is located must provide regular education, special education, or both, to a pupil or regular education student in kindergarten through grade 12 placed in a facility, or in the student's home for care and treatment. Education services must be provided to a pupil or regular education student who is:

A. prevented from attending the pupil's or student's normal school site for 15 consecutive days; or

B. predicted to be absent from the normal school site for 15 consecutive days according to the placing authority, such as a medical doctor, psychologist, psychiatrist, judge, or other court-appointed authority; or

C. health-impaired and in need of special education and predicted by the team to be absent from the normal school site for 15 intermittent days.

A pupil or regular education student shall begin receiving instruction as soon as practicable under treatment conditions.

Special education services must be provided as required by a pupil's IEP, and to the extent that treatment considerations allow the pupil to participate. Number of school days for determining due process procedures shall begin upon enrollment in an education program. Placement for care and treatment does not of itself require special education placement.

D. For those education programs run by the Department of Corrections, the district shall be the Department of Corrections for the purpose of this part. The district is responsible for ensuring that a cooperative agreement is reached with the care and treatment center facility which addresses all the requirements of Department of Human Services Rules, parts 9545.0900 to 9545.1090 and 9545.1400 to 9545.1500 which pertain to the provision of education services for students placed in centers for care and treatment. Provision of special education services requires implementation of all due process safeguards defined in state and federal law. Some procedures are modified to assure the pupil's access to education.

For purposes of this part, pupils and regular education students placed in the following facilities by someone other than the district are considered to be placed for care and treatment:

- (1) chemical dependency and other substance abuse treatment centers;
- (2) shelter care facilities;
- (3) home, due to accident or illness;
- (4) hospitals;
- (5) day treatment centers;
- (6) correctional facilities;
- (7) residential treatment centers; and
- (8) mental health programs.

Subp. 2. **Education programs for students and pupils and regular education students placed in short-term programs for care and treatment.** A placement for care and treatment is a short-term placement if the anticipated duration of the placement is less than 31 school days. The school district must begin to provide instruction to the pupil or regular education student immediately after the pupil or student is enrolled in the education program. If the student is enrolled in the educational program without an educational record or IEP, the district's procedures must include immediate phone contact with the home school to see if the regular education student has been identified as disabled.

A. If a regular education student has been identified as handicapped and has a current IEP:

Initial due process procedures for previously identified pupils placed for care and treatment in a short-term facility may be accomplished by telephone; however, the required writ-

ten documentation, including notices, consent forms, and IEP's, must follow immediately. If the pupil has a current IEP in the home school, the home school must give the providing agency an oral review of the IEP goals and objectives and services provided. The providing agency must contact the parents and together an agreement must be reached about continuing or modifying special education services in accordance with the current IEP goals and objectives. If agreement is not reached over the phone, the providing district shall hold a team meeting as soon as possible. At least the following people shall receive written notice to attend: the person or agency placing the pupil, the resident district, the appropriate teachers and related services staff from the providing district, the parents, and, when appropriate, the pupil. This meeting may be held in conjunction with a meeting called by a placing agency. A copy of the documentation, including the modified IEP, must be provided to the parents with a copy of their rights, including a response form.

B. If a regular education student has not been identified as disabled or if the providing district cannot determine if a student has been identified as disabled:

(1) Regular education instruction must begin immediately upon enrollment in the education program.

(2) A screening must be conducted by education staff to determine the student's academic, social, and behavioral needs.

(3) Based on the documented results of the screening, a decision must be made about the need for prereferral interventions or an appropriate special education assessment according to parts 3525.2500 to 3525.2850. It is not required that an appropriate assessment be started unless it appears that it can be completed.

(4) During the student's placement, regular education instruction must be provided.

Subp. 3. Education programs for pupils and regular education students placed in long-term programs for care and treatment. A placement made for care and treatment is long term if it is anticipated to extend beyond 30 school days. The pupil or regular education student must receive educational services immediately upon enrollment in the education program:

A. If the student has been identified as disabled and has a current IEP.

If the education staff of the providing district decides that the pupil's current IEP can be implemented while the pupil is placed for care and treatment, the education staff must contact the parents to secure an agreement to continue to provide special education services according to the IEP. If the parents do not agree with the providing district's proposal, the district shall hold a team meeting as soon as possible.

If the education staff needs additional assessment information or the pupil's current IEP cannot be fully implemented while the pupil is placed for care and treatment, the education staff must:

(1) contact the parents to secure an agreement to provide special education on an interim basis while an assessment is being completed; or

(2) call a team meeting to revise the current IEP or develop an interim IEP while the pupil is undergoing additional assessment to determine an appropriate program.

B. If the student has not been identified as disabled or if the providing district cannot determine if the student has been identified as disabled, the student entering a residential facility for a long-term placement must be screened to determine if there is a need for an appropriate educational assessment. An assessment must begin with a review of screening and other information such as the parent or student interview, available educational and social history, and the purpose of the treatment placement. The assessment must be conducted according to parts 3525.2500 to 3525.2850.

If the student meets entrance criteria for special education, an IEP must be developed. Special education services must be provided by appropriately licensed staff in accordance with the IEP. If the student was not assessed or was assessed and does not meet entrance criteria for special education, regular education services must be provided in accordance with the student's education plan.

Subp. 4. When a student or pupil leaves the facility. If a student or pupil has received an assessment or special education services for 15 or more days, the providing district must

prepare an exit report summarizing the regular education or special education assessment or service information and must send the report to the home school, the receiving facility, the parent, and any appropriate social service agency. For a pupil, this report must include a summary of current levels of performance, progress, and any modifications made in the pupil's IEP or services. Record transfers between anyone other than educational agencies and the parent require prior approval of the parents in accordance with data privacy laws.

Subp. 5. Minimum service required. The team must predict how long the pupil or regular education student must be placed for care and treatment. If the prediction is for a restricted period of more than 170 days or its equivalent, exclusive of summer school, the district shall make available:

(1) the instruction necessary for the student or pupil to make progress in the appropriate grade level for the successful completion of the courses, programs, or classes the student or pupil would have been enrolled in if the student or pupil were not placed for care and treatment;

(2) preferably a normal school day in accordance with part 3525.2300;

(3) an average of at least two hours a day of one-to-one instruction; or

(4) a minimum of individualized instruction for one-half of the normal school day if it is justified in the pupil's IEP or student's education plan that none of these options are appropriate. The district shall apply for a variance from length of a normal school day in accordance with part 3525.2300.

If the predicted restricted period is fewer than 171 days, exclusive of summer school, the district shall make available at a minimum either small group instruction for one-half of the normal school day or at least an average of one hour a day of one-to-one instruction.

Provision of special educational services for pupils outside of the providing school district's regular calendar is optional unless the pupil has an extended year IEP.

Subp. 6. Placement, services, and due process requirements for pupils.

A. The IEP developed by the team must include the provisions of part 3525.2900, the location of the special education services, the projected duration of the special education services, and provisions for coordinating the care and treatment and the special education services.

B. The nature of and the restrictiveness of some long-term facilities require the pupils to remain on site. When a pupil's treatment and educational needs allow, integration shall be provided in a regular educational setting. The determination of the amount and site of integrated services must be a joint decision between parents, the treatment and education staff, and when possible final educational placement decisions must be made by the IEP team of the providing educational agency. If the IEP team concludes a pupil can benefit from an average of more than three hours of educational services, it must, in conjunction with care and treatment center staff, consider the feasibility and appropriateness of an education placement at a regular school site.

C. If a pupil is placed in a residential facility outside the resident district, the providing district must provide appropriate special education services. The placement of the pupil in a residential center for care and treatment outside the resident district is not an initial placement in the receiving district. The providing district shall make every effort to implement the resident district's IEP, making the modifications necessary due to the restrictive care and treatment setting and based on agreements reached with the parent. The providing district shall comply with the due process procedures of parts 3525.2500 to 3525.4700. Districts shall develop alternative procedures for implementing the legal requirements for observing the student in a regular classroom and document previous interventions that have been tried before the student placed for care and treatment is identified as having a specific learning disability or an emotional or behavioral disorder. These alternative procedures must be included in the district's entrance criteria. The district and facility shall cooperatively develop procedures to be used in emergency situations that comply with the Pupil Fair Dismissal Act according to Minnesota Statutes, sections 127.26 to 127.39, and the district's discipline policy.

Subp. 7. Student's and pupil's and regular education student's placement; aid for special education. Special education services provided to pupils and regular education stu-

dents who have been placed for care and treatment are reimbursable in accordance with parts 3525.0800 and 3525.1310.

A. When regular education and special education services are provided, only the special education portion shall be reimbursed with special education aid.

B. The special education services provided to pupils in accordance with an IEP are reimbursable.

C. The indirect or consultative services provided in conjunction with regular education prereferral interventions and assessment provided to regular education students suspected of being handicapped who have demonstrated learning or behavioral problems in a screening are reimbursable.

D. Regular education, including screening, provided to students, pupils, and regular education students are not reimbursable with special education categorical aids.

Statutory Authority: *MS s 120.17*

History: *14 SR 281; 16 SR 1543*

3525.2330 REQUIREMENT FOR EARLY CHILDHOOD SERVICES.

Subpart 1. **Special education services required.** A district shall provide special education instruction and related services to pupils beginning at birth. Pupils who are handicapped and younger than seven years old on September 1 of any year shall be provided special education services in one or more early childhood program alternatives as determined by the team and written on the IEP.

Subp. 2. [Repealed, 14 SR 281]

Subp. 3. [Repealed, 14 SR 281]

Subp. 4. [Repealed, 14 SR 281]

Statutory Authority: *MS s 120.17*

History: *8 SR 596; 14 SR 281*

3525.2335 EARLY CHILDHOOD; ELIGIBILITY AND PROGRAM ALTERNATIVES.

Subpart 1. **Definition and criteria for eligibility.**

A. Early childhood special education must be available to pupils from birth to seven years of age who have a substantial delay or disorder in development or have an identifiable sensory, physical, mental, or social/emotional condition or impairment known to hinder normal development and need special education.

B. The team shall determine that a child from birth to the age of two years and 11 months is eligible for early childhood special education if:

(1) the child meets the criteria of one of the disability categories; or

(2) the child meets one of the criteria in unit (a) in addition to criteria in units

(b) and (c):

(a) The child:

(i) has a medically diagnosed syndrome or condition that is known to hinder normal development including but not limited to cerebral palsy, chromosome abnormalities, fetal alcohol syndrome, maternal drug use, neural tube defects, neural muscular disorders, cytomegalovirus, grades III and IV intracranial hemorrhage, and bronchopulmonary dysplasia (BPD);

(ii) has a delay in overall development demonstrated by a composite score of 1.5 standard deviations or more below the mean on an assessment using at least one technically adequate, norm-referenced instrument that has been individually administered by an appropriately trained professional; or

(iii) is less than 18 months of age and has a delay in motor development demonstrated by a composite score of 2.0 standard deviations or more below the mean on an assessment using a technically adequate, norm-referenced instruments. These instruments must be individually administered by an appropriately trained professional.

(b) The child's need for instruction and services is supported by at least one documented, systematic observation in the child's daily routine setting by an appropriate

professional. If observation in the daily routine setting is not possible, the alternative setting must be justified.

(c) Corroboration of the developmental or medical assessment with a developmental history and at least one other assessment procedure that is conducted on a different day than the medical or norm-referenced assessment. Other procedures may include parent report, language sample, criterion-referenced instruments, or developmental checklists.

C. The team shall determine that a child from the age of three years to the age of six years and 11 months is eligible for early childhood special education when:

- (1) the child meets the criteria of one of the disability categories; or
- (2) the child meets one of the criteria in unit (a) in addition to criteria in units

(b) and (c).

(a) The child:

(i) has a medically diagnosed syndrome or condition that is known to hinder normal development including cerebral palsy, chromosome abnormalities, fetal alcohol syndrome, maternal drug use, neural tube defects, neural muscular disorders, cytomegalovirus, grades III and IV intracranial hemorrhage, and bronchopulmonary dysplasia (BPD); or

(ii) has a delay in each of two or more areas of development that is verified by an assessment using technically adequate, norm-referenced instruments. Subtests of instruments are not acceptable. The instruments must be individually administered by appropriately trained professionals and the scores must be at least 1.5 standard deviations below the mean in each area.

(b) The child's need for special education is supported by at least one documented, systematic observation in the child's daily routine setting by an appropriate professional. If observation in the daily routine setting is not possible, the alternative setting must be justified.

(c) Corroboration of the developmental or medical assessment with a developmental history and at least one other assessment procedure in each area that is conducted on a different day than the medical or norm-referenced assessment. Other procedures may include parent report, language sample, criterion-referenced instruments, or developmental checklists.

Subp. 2. Program alternatives. Appropriate program alternatives to meet the special education needs, goals, and objectives of the pupil must be determined on an individual basis. Choice of specific program alternatives must be based on the pupil's current levels of performance, pupil special education needs, goals, and objectives, and written in the IEP. Program alternatives are comprised of type of services, setting in which services occur, and amount of time and frequency in which special education services occur. A pupil may receive special education services in more than one alternative based on the IEP.

A. There are two types of special education services: services provided directly and services provided indirectly.

(1) Direct special education services are provided by a teacher or a related services professional when the services are related to instruction. Direct services occur when a teacher provides instruction directly to the pupil, or to the pupil, parent, or caregiver together in a center-based, home-based, or community-based setting. Direct services occur when a related services professional provides services related to instruction directly to the pupil, or to the pupil, parent, or caregiver together in a center-based, home-based, or community-based setting.

(2) Indirect special education services include ongoing progress review; cooperative planning; consultation; demonstration teaching; modification and adaptation of the environment, curriculum, materials, or equipment; and direct contact with the pupil to monitor, observe, and follow up. Indirect services may be provided by a teacher or related services professional to another teacher, related services professional, support staff, parents, and public and nonpublic agencies to the extent that the services are written in the pupil's IEP.

B. There are three types of settings: home, district early childhood special education (ECSE) classroom, and community-based programs.

(1) Home includes the home of the pupil and parent or relative, or legal family day care setting in which the pupil is placed by the parent. Home is the preferred setting for pupils under age three to receive special education.

(2) District ECSE classroom includes classrooms that are located in one of the district's schools or community center buildings housing elementary students or pre-school-aged children without a disability. District ECSE classes must have at least one program support assistant employed while pupils are in attendance. The maximum number of pupils in an ECSE classroom at any one time with a teacher and a program support assistant is eight. The maximum number of pupils in an ECSE classroom at any one time with an early childhood team according to part 3525.2335, subpart 5, is 16. Class size must be adjusted downward based on age, severity of disabilities or delays, and amount of services necessary to meet the IEP goals and objectives.

(3) Community-based programs are any early childhood programs other than an ECSE classroom or district elementary school or community center including early childhood family education, licensed public or private nonsectarian child care programs other than a family day care setting, licensed public or private nonsectarian early education programs, community cultural centers, Head Start programs, and hospitals.

C. Amount of time and frequency of special education services must be determined individually and written in the pupil's IEP for pupils who are not yet five years old on September 1. For pupils who are five years old as of September 1, requirements for amount of time and frequency of special education services must be determined individually, written on the pupil's IEP, and be consistent with part 3525.2300. Direct or indirect special education services must be provided a minimum of an average of one hour every week unless the parents request or the team recommends an alternative.

Subp. 3. Provision of special education in a community-based setting. A school district may provide direct or indirect special education services by district special education staff to a pupil attending a community-based program. A school district may contract for special education services with a community-based program if the program meets State Board of Education rules.

Subp. 4. Case loads for early childhood program alternatives. A teacher case load must be adjusted downward based on age, severity of disability or delay, travel time necessary to serve pupils in more than one program alternative, and if the pupils on the teacher's case loads are receiving services in more than one program alternative or the pupil is involved with a number of other agencies. The district shall reduce the teacher-to-pupil case load to the extent necessary to ensure the provision of services delineated in the pupil's IEP. The maximum number of pupils that can be assigned to a teacher in any early childhood program alternative is:

- A. birth through two years: 12 pupils per teacher;
- B. three through six years: 16 pupils per teacher; and
- C. birth through six years: 14 pupils per teacher.

Subp. 5. Early childhood teams.

A. A center-based team consists of an ECSE teacher, a program support assistant, and no more than two related services professionals whose combined assignment is equal to that of the teacher. A minimum of one teacher, the program support assistant, and one related services professional must be in a center-based class at all times. The maximum number of pupils that can be assigned to a full-time center-based team is 32. The team's caseload must be adjusted downward based on pupil's age, severity of disability or delay, and amount of services necessary to meet the IEP goals and objectives. Other appropriate related or support services must be provided.

B. A home- or community-based team consists of an ECSE teacher and no more than two related services professionals whose combined assignment is equal to that of the teacher. The ECSE teacher and assigned related services professionals shall function as a team to provide special education services through consultation, cooperative planning, and implementation of the IEP by consulting a minimum of once every two weeks to plan for the pupil. Direct or indirect special education services must be provided a minimum of an average of one hour every week with instruction by the teacher occurring a minimum of an aver-

age of once every two weeks unless the parents request or the team recommends an alternative. The maximum number of pupils that can be assigned to a full-time home- or community-based team is 24. The teams' caseloads must be adjusted downward based on pupil's age, severity of disability or delay, travel time necessary to serve pupils, and amount of services necessary to meet the IEP goals and objectives. Additional related or support services shall be provided as appropriate.

Statutory Authority: *MS s 120.17*

History: *14 SR 281; 16 SR 1543; L 1991 c 265 art 3 s 38*

3525.2340 EDUCATIONAL SERVICE ALTERNATIVES.

Subpart 1. Instruction and related services required. If a pupil is school-age and is not provided instruction and related services in an early childhood program alternative, the pupil shall be provided instruction and related services in one or more school-age educational service alternatives. The educational service alternative must be developed by the team as appropriate to meet the pupil's IEP plan and documented on the pupil's IEP plan.

Subp. 2. Types of service. The following are types of special education instruction and related services:

A. Indirect services for a pupil in the general education classrooms or settings. Instruction and related services are provided indirectly through the general education teachers, parents, or other persons who have direct contact with the pupil. The consultation and indirect services include ongoing progress review, cooperative planning, demonstration and team teaching, modification and adaptation of the environment and curriculum, supportive and adapted materials and equipment, and direct contact with the pupil for monitoring and observation purposes.

B. Direct services for a pupil in the special or general education classrooms or settings. Instruction and related services are provided directly to the pupil. Consultation and indirect services are also provided.

Subp. 3. IEP documentation. After the team has determined the pupil's goals, objectives, and services necessary to achieve the pupil's goals and objectives, under part 3525.2900, the team shall document the following on the pupil's IEP plan: the site in which services will occur; the setting in which services will occur; whether the service will be provided directly or indirectly; and the amount and frequency of special education and related services.

Subp. 4. Case loads for school-age educational service alternatives. Items A and B set the maximum number of school-age pupils that may be assigned to a teacher. Item C deals with caseloads of pupils who receive special education less than 50 percent of the instructional day.

A. For pupils who receive direct instruction from a teacher 50 percent or more of the instructional day, but less than a full day:

- (1) deaf/blind, autistic, or severely multiply impaired, three pupils;
- (2) deaf/blind, autistic, or severely multiply impaired with one program support assistant, six pupils;
- (3) mild-moderate mentally impaired or specific learning disabled, 12 pupils;
- (4) mild-moderate mentally impaired or specific learning disabled with one program support assistant, 15 pupils;
- (5) all other disabilities with one program support assistant, ten pupils; and
- (6) all other disabilities with two program support assistants, 12 pupils.

B. For pupils who receive special education for a full day:

- (1) deaf/blind, autistic, or severely multiply impaired with one program support assistant, four pupils;
- (2) deaf/blind, autistic, or severely multiply impaired with two program support assistants, six pupils; and
- (3) all other disabilities with one program support assistant, eight pupils.

C. For pupils who receive special education less than 50 percent of the instructional day, caseloads are to be determined by the local district's policy based on the amount of time and services required by pupils' IEP plans.

Statutory Authority: *MS s 120.17*

History: *8 SR 596; 16 SR 1543*

3525.2345 DEVELOPMENTAL ADAPTED PHYSICAL EDUCATION.

Subpart 1. **Definition.** "Developmental adapted physical education: special education" means specially designed physical education instruction and services for pupils with disabilities who have a substantial delay or disorder in physical development. Developmental adapted physical education: special education instruction for pupils age three to 21 may include development of physical fitness, motor fitness, fundamental motor skills and patterns, skills in aquatics, dance, individual and group games, and sports.

Students with conditions such as obesity, temporary injuries, and short-term or temporary illness or disabilities are termed special needs students. Special needs students are not eligible for developmental adapted physical education: special education. Provisions for these students must be made within regular physical education as described in Minnesota Statutes, section 126.02.

Subp. 2. **Criteria.** A pupil is eligible for developmental adapted physical education: special education when the team determines the pupil has met the criteria in items A and B.

A. The pupil has one of the following disabilities in each respective criteria in parts 3525.1325 to 3525.1341, 3525.1345, and 3525.1347: autism, deaf/blind, emotional or behavioral disorders, hearing impaired, specific learning disabilities, mentally impaired, severely multiply impaired, other health impaired, physically impaired, visually impaired, or part 3525.2335, subpart 1, item C.

B. The pupil is determined by the team to need specially designed physical education instruction because:

(1) The pupil's performance on an appropriately selected, technically adequate, norm-referenced psychomotor or physical fitness instrument is 1.5 standard deviations or more below the mean. The instrument must be individually administered by appropriately licensed teachers; or

(2) The pupil's development or achievement and independence in school, home, and community settings is inadequate to allow the pupil to succeed in the regular physical education program as supported by written documentation from two or more of the following: motor and skill checklists; informal tests; criterion-referenced measures; deficits in achievement related to the defined curriculum; medical history or reports; parent and staff interviews; systematic observations; and social, emotional, and behavioral assessments.

Statutory Authority: *MS s 120.17*

History: *16 SR 1543*

3525.2350 MULTIDISABILITY TEAM TEACHING MODELS.

Subpart 1. **Team staff.** A district may assign more than one teacher licensed in different areas or one or more teachers and related services staff as a team to provide instruction and related services to pupils in a school-age educational service alternative.

Subp. 2. **License requirement.** There must be a teacher on the team who is licensed in the disability area of each pupil served by the team.

Subp. 3. **Team member responsibility.** The team member licensed in a pupil's disability shall be responsible for conducting the pupil's assessment and participating at team meetings when an IEP is developed, reviewed, or revised. At least weekly, consultation and indirect services as defined in part 3525.2340, subpart 2, items A and B, must be provided to the general or special education teacher providing instruction if not licensed in the disability. The frequency and amount of time specific consultation and indirect services shall be included in the pupil's IEP.

Subp. 4. **Implementation.** Pupils may receive instruction and related services from any or all of the team members with appropriate skills. The special education provided by each team member shall be included in the IEP.

Subp. 5. **Case loads.** If the team consists of one or more teachers and a related services professional whose assignment is equal to that of the teachers who work together in a program in the same location, the teachers' caseloads may be increased. A pupil or program support assistant may be a part of the team but must not be counted when determining caseloads for the multidisciplinary team.

Statutory Authority: *MS s 120.17*

History: 8 SR 596; 14 SR 281; 16 SR 1543

3525.2360 [Repealed, 14 SR 281]

3525.2370 [Repealed, 16 SR 1543]

3525.2380 CONSIDERATIONS WHEN DETERMINING RATIOS.

Subpart 1. **Variations.** The district may apply to the State Board of Education or its designee for a variance from the case loads in parts 3525.2335 and 3525.2340. The state board or its designee shall grant a variance for less than 90 days when it is demonstrated that unanticipated special education enrollment increases have occurred.

Subp. 2. [Repealed, 16 SR 1543]

Subp. 3. **Reduction of ratios.** The district shall reduce the teacher to pupil case loads to the extent necessary, to ensure the provision of services delineated in each pupil's IEP, if a teacher:

- A. is assigned to more than one early childhood program alternative;
- B. is assigned to pupils in more than one educational service alternative;
- C. is serving pupils representing a significant range of severity of problems; or
- D. is providing instruction at more than one building.

Statutory Authority: *MS s 120.17*

History: 8 SR 596; 16 SR 1543

3525.2400 [Repealed, 8 SR 596]

SUPERVISION

3525.2405 DIRECTORS.

Subpart 1. **Director requirement.** The school board in every district shall employ, either singly or cooperatively, a director of special education to be responsible for program development, coordination, and evaluation; in-service training; and general special education supervision and administration in the district's total special education system. Cooperative employment of a director may be through a host district, joint powers agreement, or an educational cooperative service unit.

Subp. 2. **Reimbursement for full-time director.** Conditions for special education reimbursement of one full-time director of special education include:

- A. enrollment of 5,000 or more in public and nonpublic schools within one district;
- B. enrollment of 4,000 or more in public and nonpublic schools in a group of two or more districts cooperating to provide special education;
- C. eight or more districts cooperating to provide special education through a host district, joint powers agreement, or educational cooperative service unit; or
- D. districts numbered 287, 916, 917, or other similarly legislated multidistricts.

Subp. 3. **Reimbursement for part-time director.** Conditions for special education reimbursement of a part-time director of special education include an enrollment of 2,000 in public and nonpublic schools within a district or group of districts cooperating to provide special education or any cooperative having between five and seven districts cooperating to provide special education through a host district, joint powers agreement, or educational cooperative service unit. The maximum reimbursement shall equal the ratio of the actual enrollment to 5,000 within a district or 4,000 in a group of cooperating districts, as applicable, but not less than one-half. A part-time director must be assigned duties other than direct instruction for unreimbursed time.

Subp. 4. **Base years for reimbursement.** Reimbursement for the 1984–1985 through 1986–1987 school years shall be based on the 1982–1983 enrollment as reported to the State Department of Education. The enrollment year, as the basis for reimbursement, shall be changed every fourth year. When a district or cooperative has an increase or decrease in enrollment of ten percent or more, the district or cooperative shall have its reimbursement recalculated based on the actual enrollment for that year. The district must notify the State Department of Education of the increase by July 1 prior to the school year for which the adjustment is sought.

Statutory Authority: *MS s 120.17 subd 3*

History: *8 SR 596*

3525.2410 ASSISTANT DIRECTORS.

Districts which employ full-time directors may employ and receive reimbursement for assistant directors of special education to assist in program supervision, development, coordination, and evaluation; and in-service training in the district's total special education system.

Statutory Authority: *MS s 120.17 subd 3*

History: *8 SR 596*

3525.2415 OTHER SUPERVISORY PERSONNEL.

Districts may employ and receive reimbursement for supervisors to coordinate or supervise program development, evaluation, and implementation; and in-service training.

Statutory Authority: *MS s 120.17 subd 3*

History: *8 SR 596*

3525.2420 VARIANCE.

A district may apply to the commissioner of education for a variance from the mandatory employment of a director and conditions for reimbursements. The commissioner shall grant a variance from part 3525.2405 when:

- A. the growth patterns of a district or cooperative demonstrate that the public and nonpublic school enrollment will increase over the minimum in the next two years;
- B. when districts cannot efficiently cooperate due to geographical isolation; or
- C. the variance will result in a decrease in combined state and local costs and better delivery of instruction and related services to pupils.

Statutory Authority: *MS s 120.17 subd 3*

History: *8 SR 596*

SURROGATE PARENTS

3525.2430 DEFINITION.

A surrogate parent is a person appointed by the providing district to ensure, by intervening on behalf of a pupil, that the rights of the pupil to a free and appropriate education are protected. The surrogate parent shall not be a person who receives public funds to educate or care for the child. However, a foster parent may serve as a surrogate parent if appointed and if no conflict of interest exists.

Statutory Authority: *MS s 120.17*

History: *8 SR 596; 14 SR 281*

3525.2435 EFFORT TO LOCATE PARENT.

Reasonable efforts shall be made to locate the parent. These may be made through documented phone calls, letters, certified letters with return receipts, and visits to the parent's last known address.

Statutory Authority: *MS s 120.17 subd 3*

History: *8 SR 596*

3525.2440 SURROGATE PARENT APPOINTMENT.

The district shall appoint the surrogate parent when:

- A. the parent, guardian, or conservator is unknown or unavailable;
- B. the pupil is a ward of the commissioner of human services; or
- C. the parent requests in writing the appointment of a surrogate parent. The request may be revoked in writing at any time.

Statutory Authority: *MS s 120.17*

History: 8 SR 596; 14 SR 281

3525.2445 CONSULTATION WITH COUNTY SOCIAL SERVICES.

The district shall consult the county social services office before appointing the surrogate parent when a pupil is the ward of the commissioner of human services.

Statutory Authority: *MS s 120.17*

History: 8 SR 596; L 1984 c 654 art 5 s 58; 14 SR 281

3525.2450 REMOVAL OF SURROGATE PARENT.

A surrogate parent may be removed by majority vote of the school board. The surrogate parent must be notified of the time and place of the meeting at which a vote is to be taken and of the reasons for the proposed removal. The surrogate parent shall be given the opportunity to be heard. Removal may be for any of the following reasons:

- A. failure to perform the duties required in the team meeting and IEP process and those cited in Code of Federal Regulations, title 34, section 300, a federal regulation to implement part B of the Education of the Handicapped Act;
- B. conflict of interest as referenced in Code of Federal Regulations, title 34, section 300.514 (c)(2);
- C. actions that threaten the well-being of the assigned pupil;
- D. failure to appear to represent the pupil; or
- E. the pupil no longer needs special education.

Statutory Authority: *MS s 120.17*

History: 8 SR 596; 14 SR 281

3525.2455 SURROGATE PARENT KNOWLEDGE AND SKILLS.

The district shall either make the information and training available to the surrogate parent or appoint a surrogate parent who has all of the following knowledge and skills:

- A. state and federal requirements;
- B. district structure and procedures;
- C. nature of the pupil's disability and needs; and
- D. an ability to effectively advocate an appropriate educational program for the pupil.

Statutory Authority: *MS s 120.17 subd 3*

History: 8 SR 596

STUDENT DISCIPLINARY PROCEEDINGS**3525.2470 SUSPENSION, EXCLUSION, AND EXPULSION.**

Subpart 1. Pupil Fair Dismissal Act. The Pupil Fair Dismissal Act, Minnesota Statutes, sections 127.26 to 127.39, applies to all pupils. For the purpose of this part, the definitions in Minnesota Statutes, section 127.27, apply.

Subp. 2. Team meeting required. A team meeting shall be held before exclusion or expulsion of a pupil. Within five school days of a suspension, a team meeting shall occur. If a pupil is placed on in-school suspension status according to the district policy established for all students for all or part of the day for two or more consecutive days or three times in one month, a team meeting must be held. The team shall:

- A. determine whether the misconduct is related to the disabling condition;
- B. review any assessments and determine the need for further assessment; and
- C. review the IEP and amend the goals and objectives or develop an alternative IEP

program.

Subp. 3. **Exclusion and expulsion.** A pupil shall not be excluded or expelled when the misconduct is related to the pupil's disabling condition. When it is determined in a team meeting or a Pupil Fair Dismissal Act proceeding that a pupil's misconduct is related to the pupil's disabling condition, then the assessment, IEP, and least restrictive alternative shall be reviewed according to parts 3525.0200 to 3525.4700.

Statutory Authority: *MS s 120.17*

History: *8 SR 596; 14 SR 281; L 1991 c 265 art 3 s 38*

ASSESSMENT, NOTICE, AND HEARING

3525.2500 IDENTIFICATION OF CHILDREN WITH A DISABILITY.

School districts shall develop systems designed to identify persons with a disability beginning at birth, students with disabilities attending school, and persons who are disabled and are of school age who are not attending any school.

The district's identification system shall be developed in accordance with the requirement of nondiscrimination and included in the district's total special education system plan.

Statutory Authority: *MS s 120.17*

History: *14 SR 281; L 1991 c 265 art 3 s 38*

3525.2550 CONDUCT BEFORE ASSESSMENT.

Subpart 1. **Student performance review.** After a referral is submitted and before conducting an assessment, the team shall conduct a review of the person's performance in the following areas: intellectual functioning, academic performance, communicative status, motor ability, vocational potential, sensory status, physical status, emotional and social development, and behavior and functional skills. The referral review must be documented and used as the basis to plan the assessment to ensure that the person is assessed in areas of the presenting problems. The referral review shall:

A. Include a review of any additional screening, referral, or other data about the person and select licensed special education personnel and others as appropriate to conduct the assessment including licensed special education personnel and others who may have the responsibility for implementing the educational program for the person.

B. Include a review of the regular education-based prereferral interventions conducted before referral for an assessment. Prereferral interventions are planned, systematic efforts by regular education staff to resolve apparent learning or behavioral problems. The design and outcome of these interventions must be documented.

Subp. 2. **Team duties after review.** Based on the referral review, the team shall:

A. Plan to conduct the educational assessment preferably at the home, school, or community setting 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.

B. Give due consideration to assessment results provided by outside sources but need not implement recommendations unless agreed to by the team.

C. Conduct the assessment within a reasonable 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*

History: *14 SR 281*

3525.2600 [Renumbered 3525.2750]

3525.2650 NOTICE BEFORE ASSESSMENT.

Subpart 1. **When required.** Notice before assessment must be provided in accordance with parts 3525.3200 to 3525.3500 before conducting an educational assessment or reassessment or when the district receives a parent's written request to conduct an educational assessment or reassessment. When 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.

Subp. 2. **When not required.** Notice before assessment 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*

History: *14 SR 281*

3525.2700 [Renumbered 3525.2550]**3525.2750 EDUCATIONAL ASSESSMENT.**

Subpart 1. **Assessment.** An assessment:

- A. must be conducted when a person's academic or functional skill acquisition in the present educational placement indicates a disability and a need for a special educational placement, program, or service;
- B. must be conducted at least every three years;
- C. may be conducted if the student or other agency requests; and
- D. must 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 be the basis for later educational planning. The assessment must:

A. Be conducted by a multidisciplinary team in accordance with the assessment plan developed as part of the referral review. The team shall conduct a comprehensive assessment in those areas of suspected disability using technically adequate instruments and procedures.

B. Include a review of the person's functioning in current and anticipated environments. The environmental review must address classroom performance based on the specific instructional strategies used in the classroom, performance in other daily routine environments, and information reported by parents, classroom teachers, and others involved regularly with the person. Specific instructional strategies include curriculum and curriculum modifications, classroom grouping patterns, and supports such as adaptive devices, materials and equipment available, and staff members.

C. Make reasonable efforts to obtain information from the parents and others with knowledge of the person and about the person's functioning in current and anticipated environments when the team determines it to be necessary because of cultural or other differences presented by the person or due to the nature of the person's presenting disabling condition.

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

E. 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 non-discrimination.

Subp. 3. **Assessment summary report.** For the person assessed, results of any or all assessments shall be summarized in a report. The summary report shall include the reason for referral, summary of instruments and procedures used, results and interpretation of the assessment including the review of the person's functioning in current and anticipated environments, and, the person's current level of performance, and the team's judgments and recom-

mendations. The assessment summary report shall contain the team's signature, title, and date of report.

Statutory Authority: *MS s 120.17*

History: *14 SR 281; 16 SR 1543; L 1991 c 265 art 3 s 38*

3525.2800 [Renumbered 3525.2650]

3525.2850 [Repealed, L 1993 c 224 art 12 s 39]

3525.2900 INDIVIDUAL EDUCATION PROGRAM PLAN.

Subpart 1. **General requirement to develop an IEP for pupils who are disabled.** Following an initial assessment, and annually thereafter, an IEP must be developed and implemented for each pupil determined to be disabled under parts 3525.1325 to 3525.1347. The responsible district shall:

A. Designate a team of persons responsible for determining the IEP of pupils kindergarten to age 21, which, at a minimum, shall include the parent, the pupil, when appropriate, a school administrator or designee, the student's regular classroom teacher when the pupil is enrolled in regular education classes or an appropriate regular classroom teacher when one is not presently providing instruction or the pupil has no regular education placement, and the special education teacher.

For pupils below kindergarten age, the team shall include, at a minimum, the parent, a school administrator or designee, and the special education teacher. The plan must indicate which team members attended the IEP meeting.

B. Consider including other appropriate special education staff as members of the team. According to part 3525.0700, parents may bring anyone of their choosing to accompany them to the meeting.

C. Upon request of the parent, have the team 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 disabling differences of the student.

D. Schedule the IEP team meeting at a time and place that is mutually acceptable to the school and parents according to part 3525.0700. The district shall proceed if the parents do not respond to the district's efforts for the parent to participate.

E. Prepare an IEP in writing for each person determined to be disabled according to parts 3525.1325 to 3525.1347. If the responsible district is not the resident district, a copy of the IEP must be sent to the resident district.

F. Provide notice according to parts 3525.3200 to 3525.3600, whenever the responsible school district proposes to initiate or change or refuse to initiate or change the educational placement. For the purposes of this part, the terms "initiate" or "change" must be construed to include the proposals in Minnesota Statutes, section 120.17, subdivision 3b, paragraph (d), clauses (2) to (5); "significant change" is defined in part 3525.3600.

G. Implement the IEP for a regular school year unless otherwise specified on the IEP, except that the duration cannot exceed 12 calendar months. For a team to determine the appropriateness of the placement or to resolve questions regarding the content of the IEP including instructional goals and objectives, an interim IEP may be written for a period of no more than 60 school days.

H. Consider an extended school year for those pupils when it is determined:

(1) that the pupil will experience "significant regression" in the absence of an educational program;

(2) the time required to relearn the skills lost is excessive; or

(3) the effects of the breaks in programming are such to prevent the student from attaining the state of self-sufficiency that the student would otherwise reasonably be expected to reach.

The amount of service, including a reduction of services, or type of service for summer, must be appropriate to maintain performance on IEP goals.

I. Meet all the IEP requirements of this part for pupils who are eligible for special education and who are provided special education based upon an individual family services plan (IFSP).

J. Base the IEP on the assessment data and other relevant reports and information.

K. Prepare an IEP when contracting for special education services from a public, private, or voluntary agency.

Subp. 2. [Repealed, 16 SR 1543]

Subp. 3. **Content and sequence of individual educational program plan.** In preparing the IEP, the district shall follow this sequence and shall include the following:

A. The pupil's current levels of functioning in all performance areas included in part 3525.2550. This information is based on assessment and progress review data. If a more extensive assessment is not necessary, as in part 3525.3000 or 3525.3100, parent or teacher reports or screening data can be used to summarize a pupil's level of performance.

B. A description of the pupil-based special education instructional needs identified through assessment.

The team shall document on the IEP the pupil's instructional needs to function and participate in the activities and environments relevant to the pupil. Instructional needs refer to pupil-based skills, functions, or outcomes that affect performance and adjustment and do not refer to special education services, categories, teaching strategies, prescriptions for specific therapy, or broad curricular goals.

C. A statement of annual instructional goals based on the identified instructional needs.

The goals are a component of the IEP that set the academic and functional behaviors the pupil is expected to master within 12 months. Annual goals must be broad statements of academic and functional behavior to be demonstrated by the student and be based on the pupil's identified instructional needs.

Goal statements shall consist of the behavior to be changed and the expected annual ending level of performance.

D. Instructional objectives including the criteria for attainment.

Each annual goal will have more than one short-term objective and each objective must be a subtask or otherwise address a component of the goal. Objectives must be pupil-based and attainable within a year, with most target dates within a shorter time span.

E. A description of the special education and related services needed to accomplish the goals and objectives, including the type of service, amount of time and frequency of each service, starting date and anticipated duration of each service, the site and setting for the services, and the names and school telephone numbers of the personnel responsible for providing the services. For each related service, an explanation must be included why that service is necessary for the pupil to benefit from the educational program.

F. According to the principle of least restrictive alternatives, substantiate why the proposed educational placement is the most appropriate in terms of the person's educational needs. The IEP shall include:

(1) the changes in staffing, transportation, facilities, curriculum, methods, materials, equipment, and regular education that will be made to permit successful accommodation and education of the pupil in the least restrictive environment, including any modifications to the district's standardized testing program, district graduation requirements, or district discipline policy; and

(2) a description of the educational activities, frequency, and amount of time in which the pupil will participate in environments which include nondisabled peers. This provision must be included in the plan only when the pupil will be placed in a segregated special education program more than 50 percent of the school day.

Subp. 4. [Repealed, 16 SR 1543]

Subp. 5. [Repealed, 16 SR 1543]

Statutory Authority: *MS s 120.17*

History: *16 SR 1543*

3525.2925 USE OF BEHAVIORAL INTERVENTIONS WITH PUPILS.

Subpart 1. **Purpose.** This part is intended to encourage the use of positive approaches to behavioral interventions. The objective of any behavioral intervention must be that pupils

acquire appropriate behaviors and skills. It is critical that behavioral intervention programs focus on skills acquisition rather than merely behavior reduction or elimination. Behavioral intervention policies, programs, or procedures must be designed to enable a pupil to benefit from an appropriate, individualized educational program as well as develop skills to enable them to function as independently as possible in their communities.

Subp. 2. Application. This part applies to the planned application or emergency use of aversive or deprivation behavioral intervention techniques and procedures. For the purpose of this part, there are three types of behavioral interventions: exempted procedures, regulated procedures, and prohibited procedures.

A. Exempted procedures are the use of planned instructional techniques and intervention procedures that are common practices in regular education settings or that are consistent with the district's discipline policy if it has been determined to be appropriate for the pupil according to part 3525.2900, subpart 1, are not subject to the restrictions established by subparts 4 to 10. The discipline policy of the school district must be given to the parent at the time any behavioral interventions are considered.

The procedures in subitems (1) to (7) are examples of intervention that are exempted from the restriction established by subparts 4 to 10. They include, but are not limited to:

(1) the use of corrective feedback or prompts to assist a pupil in performing a task or exhibiting a response;

(2) the use of physical assistance to facilitate a pupil's completion of a response in a situation where the pupil offers no physical resistance to the assistance;

(3) the use of positive reinforcement alone or in combination with procedures described in items A and B to develop new behaviors or increase the frequency of existing behaviors;

(4) temporary interruptions in instruction or ongoing activity in which a pupil is directed to leave an activity for a brief period of time to a location where the pupil can observe the ongoing activity and see others receiving positive reinforcement for appropriate behavior. This procedure is often referred to as contingent observation;

(5) temporary interruptions in instruction or ongoing activity in which a pupil is directed to leave an activity for a brief period of time to another location under the supervision of a licensed staff member such as a counselor, mental health practitioner, principal, or assistant principal;

(6) temporary delay or withdrawal of goods, services, or activities to which a pupil would otherwise have access as a natural consequence of the pupil's inappropriate use of the good, service, or activity. Examples of situations in which the exemption applies are delaying the return of a pupil's beverage at mealtime after the person has thrown the beverage across the kitchen or the temporary removal of an object the person is using to hit another individual; and

(7) the use of restraints prescribed medically to position, maintain posture, or aid in the acquisition of self-help or other functional skill.

B. Regulated procedures are interventions used in a planned manner that meet the definitions of aversive or deprivation procedures in subpart 3 and are not exempted in item A or prohibited in item C. Regulated procedures may only be used when:

(1) written on a pupil's IEP as part of a behavioral intervention plan that warrants the severity of a regulated procedure; or

(2) in an emergency situation according to subpart 10.

Regulated procedures must be specified and governed by the district's behavioral intervention policy. Regulated procedures include:

(a) the use of manual restraint;

(b) the use of mechanical or locked restraints;

(c) the planned use of suspension or dismissal from school;

(d) time-out procedures consistent with subpart 8; and

(e) temporary delay or withdrawal of regularly scheduled meals or water not to exceed 30 minutes except as provided in subpart 10.

Before implementing any regulated behavioral intervention as a part of the IEP, two conditions must be met: (1) documentation that positive approaches have been tried and have been unsuccessful; and (2) the stated purpose for the use of any behavioral intervention must be to enable a pupil to benefit from educational services in order to develop appropriate skills and behaviors.

C. Prohibited procedures are interventions that are prohibited from use in schools by school district employees, contracted personnel, and volunteers. The procedures or actions listed in subitems (1) to (9) are prohibited:

- (1) corporal punishment as defined in Minnesota Statutes, section 127.45;
- (2) requiring a pupil to assume and maintain a specified physical position or posture that induces physical pain as an aversive procedure;
- (3) presentation of intense sounds, lights, or other sensory stimuli as an aversive stimulus;
- (4) use of noxious smell, taste, substance, or spray as an aversive stimulus;
- (5) denying or restricting a pupil's access to equipment and devices such as hearing aids and communication boards that facilitate the person's functioning except temporarily when the pupil is perceived to be destroying or damaging equipment or devices;
- (6) faradic skin shock;
- (7) totally or partially restricting a pupil's auditory or visual sense not to include study carrels when used as an academic intervention;
- (8) withholding regularly scheduled meals or water; and
- (9) denying a pupil access to toilet facilities.

Subp. 3. **Definitions.** There is a continuum of procedures that are considered aversive or deprivation procedures, some of which are more intrusive than others. For the purpose of this part, the definitions in items A to C apply.

A. "Aversive procedure" means the planned application of an aversive stimulus: (1) contingent upon the occurrence of a behavior identified for reduction or elimination in the IEP; or (2) in an emergency situation governed by subpart 10.

B. "Aversive stimulus" means an object that is used, or an event or situation that occurs immediately after a specified behavior in order to suppress that behavior.

C. "Deprivation procedure" means the planned delay or withdrawal of goods, services, or activities that the pupil would otherwise receive: (1) contingent upon the occurrence of a behavior identified for reduction or elimination on the IEP; or (2) in an emergency situation governed by subpart 10.

Subp. 4. **District policy.** Each district shall have a specific policy describing the district's procedures for implementing this part on the use of regulated procedures as a part of a behavioral intervention plan with pupils. The policy shall promote the use of positive approaches for behavioral interventions. The policy must be included in the district's TSES and be available upon request. Policies must be reviewed regularly and shall include, at a minimum, the following procedural components:

A. personnel development activities for all staff, contracted personnel, and volunteers who work with pupils who are disabled and have IEPs that (a) promote the use of positive approaches, (b) provide an awareness of how to limit the use of aversive and deprivation procedures, (c) how to avoid abuse of such procedures, and (d) specific cautions for the use of regulated procedures with specific populations of pupils or for the use of certain procedures;

B. staff training requirements for the design and use of behavioral interventions;

C. documentation procedures of the use of such interventions and the maintenance and retention of records of use;

D. district procedures for complaints and appeals from parents;

E. description of the district's procedures and membership for an independent review committee including their standards for identifying persons who are knowledgeable to serve on this committee; and

F. description of the district's procedure for reviewing emergency situations where regulated procedures are used.

Subp. 5. Assessment. An assessment must be performed consistent with the requirements in parts 3525.2500 to 3525.2750 before recommending or initiating a behavioral intervention using a regulated procedure. The assessment shall include an analysis of purpose and the effect of the behavior and the seriousness of the behavior to warrant the use of a regulated procedure. A minimum of two positive behavioral interventions must be attempted and documented as part of an assessment. The assessment summary report shall include:

- A. a description of the pupils target behavior for which a regulated procedure is being considered;
- B. baseline measurement of the target behavior;
- C. documentation of the two positive behavioral interventions and any other behavioral intervention attempted including exempted procedures and the effectiveness of each;
- D. review of frequent use of exempted procedures;
- E. documentation that the assessment team has ruled out any other treatable cause such as a medical or health condition for the interfering behavior;
- F. a description of the alternative procedures that have been considered and an explanation for why these are not expected to work; and
- G. the proposed regulated procedures for the behavioral intervention planning.

If the use of a regulated procedure is being considered, a professional whose background and expertise in the use of positive approaches to behavioral intervention and the use of aversive and deprivation intervention must be on the pupil's team.

If a pupil's behavior is such that positive behavioral intervention has not been effective in achieving the goals of the IEP and the team recommends that a regulated procedure be used, an IEP team meeting must be scheduled to review the student's IEP. The team must specify what assessment data exists and if additional assessment is needed to determine which, if any, regulated procedure would be appropriate.

Subp. 6. IEP process and required documentation. If, after completing the initial parts of the IEP including present levels of performance, pupil needs, and goals according to part 3525.2900, the IEP team determines that a behavioral intervention plan that outlines the use of a regulated procedure is necessary to achieve the goal, the procedure must be addressed in the IEP in a behavioral intervention plan that includes the following components as part of the IEP:

- A. a description of the target behavior;
- B. baseline measurement of the target behavior;
- C. a detailed description of the proposed procedure, including data collection procedures and monitoring schedule;
- D. conditions under which the aversive or deprivation intervention will be used;
- E. an explanation of why the proposed procedure is selected;
- F. a statement of the expected change in the target behavior that will occur;
- G. a description of any discomforts, risks, or side effects that it is reasonable to expect to occur;
- H. conditions or circumstances when the intervention can or must be discontinued prior to team review;
- I. the anticipated effects on the pupil if the procedure is not implemented;
- J. person or persons responsible for implementing the program;
- K. team review and evaluation dates, not to exceed two months;
- L. coordination with home or care facility; and
- M. parent's informed consent consistent with subpart 9.

The use of a regulated procedure for behavior reduction must be a part of a comprehensive educational program that includes goals and objectives on the pupil's IEP that specifically address the corresponding appropriate behaviors that the pupil needs to acquire or demonstrate.

The individuals who conduct the periodic review shall review the behavioral intervention plan according to the schedule agreed to and written on the IEP. This team may review

and amend procedures on the behavioral intervention plan as necessary throughout the year without reviewing all of the IEP unless the team determines a more thorough review is necessary and a change in the IEP is required. Any change in the behavioral intervention plan is subject to informed consent as provided in subpart 9.

Subp. 7. An independent committee review. The parent or the district staff may request a review of a behavioral intervention plan that includes a regulated procedure by the independent committee as established under subpart 4, item E. The district shall inform the parents they may appoint one member of the independent review committee if the parent so desires. Before implementing a behavioral intervention plan as part of the pupil's IEP or in any review or amendment of the behavior intervention plan, the parent must be informed of the right to request an independent committee review. The independent committee would review the assessment summary report, the behavioral intervention plan, and all pertinent information and provide recommendations to the district and the parents from that review. The independent committee must be comprised of at least two persons who are independent of the pupil's IEP and are not employees of or under contract with the district except a contract to serve on this committee. The independent review committee shall include at least one person who is independent of the pupil's IEP and is knowledgeable about behavioral interventions. One person on the committee shall also be knowledgeable about ethnic and cultural issues relevant to the pupil's behavior and education. The recommendation of the independent review committee is advisory and must not be used to overrule a pupil's IEP team decision. The district is responsible for costs associated with the independent committee review including reasonable fees consistent with district policy for appropriate experts.

Subp. 8. Time-out procedures and isolation room specifications.

A. For the purpose of this part, "time-out" means exclusion procedures in which the pupil is completely removed from the regularly scheduled educational program and seclusion procedures in which the pupil is placed in a specially designated isolation room or similar space.

B. The pupil's IEP that includes the use of time-out must include the following in addition to subpart 6:

- (1) provision for the pupil to be continuously monitored by trained staff;
- (2) criteria for returning pupil to the routine activities and regular education environment;
- (3) adequate access to drinking water and to a bathroom for a time-out that exceeds 15 minutes; and
- (4) documentation of the length of time spent in each time-out procedure and the number of occurrences each day.

C. When a room is used specifically for time-out where seclusion is in a specially designated isolation room, the room shall:

- (1) provide a safe environment for the pupil where all fixtures are tamper proof, walls and floors are properly covered, and control switches are located immediately outside the room;
- (2) have an observation window or other device to permit continuous monitoring of the pupil;
- (3) measure at least five feet by six feet or be substantially equivalent to these dimensions and be large enough to allow the pupil to stand, to stretch the pupil's arms, and to lie down;
- (4) be well-lighted, well-ventilated, adequately heated, and clean; and
- (5) have smoke and fire monitoring devices that are acceptable to the state fire marshal.

Subp. 9. Informed consent assurances. The pupil's parents must be informed of any proposed behavioral intervention plan. The behavioral intervention plan must be implemented consistent with parts 3525.3200 to 3525.3600 and any modifications to that plan. Consistent with parts 3525.3200 to 3525.3600, parents must be informed of assessment results and the information comprising the behavioral intervention plan, and must be given a demonstration and answers to any questions about the proposed regulated procedure. A statement of

parents' rights must be included. Parents, upon being given proper notice and being informed of their due process rights, may give their consent to an IEP which includes a behavioral intervention plan according to subpart 6.

If parents have joint custody, the district must notify both parents and consent is required from both in order to implement the behavioral intervention plan except as noted below. After appropriate notice is sent, if only one parent participates in the IEP conference including the development of a behavioral intervention plan or a meeting to amend the behavioral intervention plan, consent from the participating parent shall serve as informed consent.

A parent has the right to withdraw consent for a behavioral intervention plan at any time by notifying the program administrator or designee and districts will stop the procedure immediately. After parental consent is withdrawn and the procedure stopped, the school must send written acknowledgment to the parent and request a parental signature. If a parent's signature to withdraw consent cannot be obtained, the district must document its efforts to communicate and obtain the signature. Parents must be contacted within three school days to determine the need to review and amend the behavioral intervention plan and the need to convene the IEP team for a change in placement or program.

Subp. 10. Emergency. "Emergency" means a situation in which immediate intervention is necessary to protect a pupil or other individual from physical injury, emotional abuse due to verbal and nonverbal threats and gestures, or to prevent severe property damage. The emergency intervention must be the least intrusive intervention possible to reasonably react to the emergency situation. This part does not prohibit staff persons from using reasonable force to protect themselves or other pupils or students as provided in Minnesota Statutes, section 609.379. If an emergency intervention is used twice in a month or a pupil's pattern of behavior is emerging that interferes with the achievement of the pupil's educational goals and objectives, a team meeting must be called to determine if the pupil's IEP is adequate, if additional assessment is needed, and, if necessary, to amend the IEP including the behavioral intervention plan. Districts may use regulated procedures in emergencies until the IEP team meets, provided the emergency measures are deemed necessary by the district to protect the individual pupil or others from harm. The IEP team shall meet as soon as possible but no later than three school days after emergency procedures have commenced. The further use of regulated procedures is governed by the standard process for implementing a behavioral intervention plan as provided in this part. Districts must document their efforts to involve parents.

District administration and parents must be notified immediately when a regulated procedure is used in an emergency situation. Procedures for reviewing any use of a regulated procedure in an emergency situation must be addressed in the district's policy.

Statutory Authority: *MS s 120.17*

History: *16 SR 1543; 17 SR 3361*

3525.2950 SECONDARY TRANSITION PLANNING.

By grade nine or age 14, the IEP plan shall address the pupil's needs for transition from secondary services to postsecondary education and training, employment, and community living.

A. For each pupil, the district shall conduct a multidisciplinary assessment of secondary transition needs and plan appropriate services to meet the pupil's transition needs. Areas of assessment and planning must be relevant to the pupil's needs and may include work, recreation and leisure, home living, community participation, and postsecondary training and learning opportunities. To appropriately assess and plan for a pupil's secondary transition, additional IEP team members may be necessary and may include vocational education staff members and other community agency representatives as appropriate.

B. Secondary transition assessment results must be documented as part of an assessment summary according to part 3525.2750. Current and secondary transition needs, goals, and instructional and related services to meet the pupil's secondary transition needs

must be considered by the team with annual needs, goals, objectives, and services documented on the pupil's IEP.

Statutory Authority: *MS s 120.17*

History: *14 SR 281*

3525.3000 PERIODIC REVIEWS.

The providing school district shall determine the effectiveness of the pupil's IEP by conducting periodic reviews of the pupil's program plan. The IEP team shall address the plan for, location of, and frequency of at least one periodic review and one annual review of the pupil's progress in achieving the prescribed educational goals and objectives and the appropriateness of the program and placement, and if only one periodic review is done, it must not be done at the same time as the annual review. The periodic review 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 pupil's current needs;

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

The initial review shall be made when specified in the program plan, but at least once 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 periodic reviews shall be included in the pupil'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 and the resident district that they may request a conference to review the pupil'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*

History: *8 SR 596; 14 SR 281; 16 SR 1543*

3525.3100 FOLLOW-UP REVIEW REQUIREMENTS.

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, except if the pupil has graduated or been discontinued at age 21.

Statutory Authority: *MS s 120.17*

History: *8 SR 596; 14 SR 281; 16 SR 1543*

3525.3150 REQUIREMENTS FOR A HIGH SCHOOL DIPLOMA.

Beginning at grade nine or age 14 and annually thereafter, the IEP team shall address the graduation requirements for a high school diploma for a pupil.

A. The team must determine those courses, programs, or classes that must be successfully completed by regular education students in the regular education program which are needed to attain a high school diploma and are appropriate and attainable by the pupil.

B. The team must determine those courses, programs, or classes which are needed to attain a high school diploma that cannot be successfully attained by the pupil without special education or are not appropriate for the pupil. These requirements must be modified on the IEP or waived by the team.

C. The standard for a pupil's attainment of a high school diploma shall be:

(1) those courses, programs, or classes identified in item A;

(2) those modified and waived courses, programs, or classes determined in item B; and

(3) the pupil's goals and objectives on the IEP.

D. The IEP team shall determine the criteria for satisfactory achievement of the IEP goals and objectives including modified courses, programs, or classes.

A pupil shall receive an identical high school diploma granted to all regular education students upon graduation or termination of special education services at age 21, with satisfactory attainment of the program plan objectives.

Statutory Authority: *MS s 120.17*

History: *14 SR 281*

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.

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

A. 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 to provide information relative to the child's assessment and the development of the program plan.

B. Inform the parents of their right and the procedure 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.

C. Inform the parents of their right and the procedure to have included on the team that interprets the assessment data and develops the individual program plans, the persons 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.

D. 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 district. The district shall initiate conciliation and a due process hearing if necessary when refusing a parent's request for an independent assessment at public expense. If the hearing officer determines that the district's assessment is appropriate, the parents still have the right to an independent assessment, but not at public expense. When 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 the district uses when it initiates an evaluation.

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

F. Inform the parents that if they notify the district in writing that they do not agree with the proposed assessment or placement, they will be requested to attend a conciliation conference at a mutually convenient time and place. If this is not an initial assessment or an

initial placement being proposed by the district, the district must proceed with its proposal after ten school days of the parent's receipt of the notice and response form unless the parent objects in writing.

G. Inform the parents that if they do not wish to participate in a conciliation conference they have a right to proceed directly to an impartial due process hearing and bypass the informal conciliation conference. Even if they do attend a conciliation conference, if they do not agree with action proposed by the district, they have a right to proceed to a due process hearing. The conciliation process cannot be used to delay or deny the parents' rights to a due process hearing.

H. 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.

I. Include 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.

J. 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.

K. 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.

L. 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.

M. Inform the parents of their right to compel 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.

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

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

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

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

R. 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.

S. Inform the parents that if a due process hearing is held and the parents' position is upheld, the parents may be awarded attorney's fees by the courts in certain situations.

T. Inform the parents that their consent for their child's program and placement including the use of aversive and deprivation procedures is voluntary and that they may revoke it at any time.

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

V. Inform parents of a pupil's entitlement to special education until age 21 unless the team agrees the pupil no longer needs special education or the pupil is eligible for a high school diploma according to part 3525.3150.

Statutory Authority: *MS s 120.17*

History: 8 SR 596; 14 SR 281; 16 SR 1543

3525.3400 NOTICE TO RESIDENT SCHOOL DISTRICT.

The resident school district, if different from the providing school district, shall receive notice of and will be responsible for any hearings or appeals provided under parts 3525.0200

to 3525.4700 for pupils placed by the resident district if the providing district notifies the school district according to part 3525.0800, subpart 5.

Statutory Authority: *MS s 120.17*

History: *14 SR 281*

3525.3500 NOTICE OF PERFORMANCE OR REFUSAL TO PERFORM ASSESSMENT.

Before the performance of or refusal to perform an educational assessment or reassessment as provided in parts 3525.2550 to 3525.2850, the providing school district shall prepare and serve a notice that meets 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 description of areas to be assessed and 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;

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; and

F. inform the parents that if the district refuses to perform the requested reassessment, the district shall initiate a hearing according to parts 3525.3800 to 3525.4700.

Statutory Authority: *MS's 120.17*

History: *14 SR 281; 16 SR 1543*

3525.3600 NOTICE OF CHANGE OR REFUSAL TO CHANGE PLACEMENT.

Before the initiation or significant change or the refusal to initiate or significantly change a pupil's educational placement or special education services, as set forth in part 3525.2900, subpart 1, item F, the school district shall prepare and serve a notice that meets the requirements of parts 3525.3200 to 3525.3400.

A. The portion of the notice which is specific to the educational placement and provision of services shall:

(1) include a copy of the individual educational program plan as described in part 3525.2900, subpart 3;

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

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

B. For purposes of this part, a significant change in program or placement requiring a notice to parent and revision of the IEP shall occur when:

(1) the IEP goals have been completed or require modification based on a periodic review;

(2) there is a need to add or delete a service based on a periodic review or assessment;

(3) there is a change in the type of site or setting in which the pupil receives special education;

(4) the amount of time a pupil spends with peers without a disability is changed; and

(5) the amount of special education to accomplish the goals or objectives needs to be increased or decreased.

Statutory Authority: *MS s 120.17*

History: *14 SR 281; 16 SR 1543; L 1991 c 265 art 3 s 38*

3525.3700 CONCILIATION CONFERENCE.

Subpart 1. When a conference must be offered. If the parent does not object in writing, to a proposed action as set forth in parts 3525.2550 to 3525.2850 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 7a and 8a, the proposed action shall take place. If a written objection is made, the resident school district shall offer the parent an opportunity to conciliate the matter. If the parent is willing to enter conciliation, the district shall arrange for a conference with the parent to review 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 conference and the parent or district may request a hearing under part 3525.3800 at any time.

If the parent refuses to provide prior written consent for initial assessment and initial placement under parts 3525.3500, item D, and 3525.3600, item A, subitem (2), within ten days after the receipt of the notice and response form, the district shall offer the parent an opportunity to conciliate the matter. If the parent is willing to enter conciliation, the district shall arrange for a conference with the parent to review the parent's suggestions and concerns, and to conciliate the matter. The conference shall be held at a time and place mutually convenient to the parent and school district representatives. If no response is received in cases of initial assessment or placement, the school district shall offer a conciliation conference to 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 offer to schedule additional conciliation conferences.

Subp. 2. Memorandum. Within seven days of the final conciliation conference, the district shall serve the parent with a written memorandum that informs the parent:

A. Of the school district's 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 7a and 8a. In cases of 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.

Subp. 3. Right to a hearing without conciliation. The conciliation process must not be used to deny or delay a parent's right to a due process hearing. If the parent refuses efforts by the district to conciliate the dispute with the school district, the district's obligation to offer an opportunity for conciliation is satisfied.

When the parent refuses efforts by the district to conciliate the dispute and notifies the district of the intent to go to an impartial due process hearing, the district must provide the parent with the procedure and time in which to request the hearing, and the identification of the district employee to whom the written request form or other written request for a hearing must be mailed, and to whom questions and legal documents or requests about the hearing may be directed.

Statutory Authority: *MS s 120.17*

History: *14 SR 281*

3525.3800 WHEN A HEARING MUST BE HELD.

A hearing regarding a proposed action under parts 3525.2550 to 3525.2850 or 3525.2900 shall be held whenever: (a) the district receives the parents' request for a hearing;

(b) a parent refuses to provide written permission for the initial formal assessment or the initial placement and provision of special education services, within ten days after the receipt of the notice and response form, provided the district has made at least one offer to enter into conciliation in an attempt to obtain this written consent; and (c) when the district refuses to conduct a reassessment requested by a parent.

Statutory Authority: *MS s 120.17*

History: *14 SR 281; 16 SR 1543*

3525.3900 NOTICE OF A HEARING.

Written notice of the time, date, and place of hearings shall be given to all parties by the district at least ten days in advance of the 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 district shall serve the parent with a written notice of rights and procedures relative to the hearing that informs 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 cannot 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:

(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, to provide to the district a list of persons who will testify on the parent's behalf concerning the proposed action;

(3) of their right, at least five days before the hearing, to receive from the 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; any party to a hearing has the right to prohibit evidence not disclosed five days before a hearing.

D. That at the hearing the burden of proof is on the district to show that the proposed action is justified on the basis of the person's educational needs or the person's current educational performance, or presenting disabling 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 pupil 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 pupil 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 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*

History: *14 SR 281; L 1991 c 265 art 3 s 38*

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 parents cannot 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 student or 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 regular education student, or any person with a personal or professional interest which would conflict with the person's 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 or regular education student, the cost of the assessment shall be at district expense.

Statutory Authority: *MS s 120.17*

History: *14 SR 281*

3525.4100 PREHEARING REVIEW BY THE HEARING OFFICER.

Subpart 1. **Information received before the hearing.** Five days before the hearing, the person conducting the hearing shall receive copies of:

A. the district's notices and memorandum prepared pursuant to part 3525.3700, subpart 2, to the parents;

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

C. a copy of the pupil's current and proposed IEP; and

D. other information from the district or parent as the hearing officer may have requested at a prior date provided that a copy of the information is provided to all parties, and further provided that the 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 under parts 3525.2550 to 3525.2850.

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

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

B. may subpoena any person or paper considered necessary for an adequate review of the appropriateness of the proposed action that is the subject of the hearing;

C. may meet with the parties together before the hearing;

D. may require the district to perform an additional educational assessment or reassessment;

E. may require the district to propose an alternative IEP;

F. may require the district to send additional notice to the parents;

G. may do the additional things necessary to comply with parts 3525.0200 to 3525.4700;

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

I. 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*

History: *14 SR 281; 16 SR 1543*

3525.4200 HEARING RIGHTS OF 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 before the hearing, the parties or their representatives shall be given access to 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 3525.2550 to 3525.2850 upon which the proposed action may be based.

At least five days before 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 3525.3700, subpart 2. Any party to the hearing may prohibit the introduction of any evidence that has not been disclosed to that party at least five days before the hearing. 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. The list must be filed with the person conducting the hearing. The lists may be modified at any time but each party should be notified immediately if possible. The parties or their representatives have the right to compel the attendance of any employee of the school district, or any other person who may have evidence relating to the proposed action, and to confront, and to cross examine any witness. Any request must be made to the appropriate school district or to the person whose attendance is compelled at least five days in advance of the hearing. The written requests shall also be filed with the person 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, the hearing officer may continue the hearing for not more than ten days, for the purpose of obtaining the attendance of witnesses or considering alternative programs and opportunities. The parties' right to cross examination and confrontation and other applicable rights and procedures shall continue and be given full force and effect.

Statutory Authority: *MS s 120.17*

History: *14 SR 281; 16 SR 1543*

3525.4300 HEARING PROCEDURES.

The hearing officer shall preside over and conduct the hearing and shall rule on procedural and evidentiary matters, and the hearing officer's decision shall be based solely upon the evidence introduced and received into the record. The district 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 disabling conditions of the person as it relates to the need for the proposed action. Consistent with the rights and procedures in parts 3525.3300 to 3525.4700, nothing in parts 3525.0200 to 3525.4700 limits 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 under parts 3525.4600 and 3525.4700, the hearing must be transcribed by the district and must be accessible to the parties involved within five days of the filing of the appeal.

Statutory Authority: *MS s 120.17*

History: *14 SR 281; L 1991 c 265 art 3 s 38*

3525.4400 DECISIONS OF 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. The decision must 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 3525.2550 to 3525.2750 upon a showing by the district by a preponderance of the evidence that demonstrates that there are facts, relating to the person's performance in the present education placement or presenting disabling 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 educational program, including special education services, appropriately suited to the person's needs.

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

Subp. 3. Decisions regarding educational placement. Based on an application of the standards, requirements, and principles 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 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 district by a preponderance of the evidence. In deciding if the proposed action is to be sustained, in whole or in 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 district 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 about 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. A local decision must:

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 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 in Minnesota Statutes, section 120.17, subdivision 3a, and subparts 2 and 3.

Statutory Authority: *MS s 120.17*

History: *14 SR 281; L 1991 c 265 art 3 s 38*

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 ACTION AND APPEALS.

The decision of the hearing officer is binding on all parties unless appealed to the hearing review officer by the parent or the district, and shall become effective 15 days after service of the decision unless the decision is appealed. The hearing officer's decision issued under part 3525.4400, subpart 2, 3, or 4, may be appealed by the parent or the district to the hearing review officer within 30 days of receipt of that written decision in the following manner: the appeal decision shall be based on a review of the local decision and the entire record; 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 when the appeal is filed.

The school board shall be a party to any appeal. The hearing review officer shall issue a final decision based on a review of the local decision and the entire records within 30 calen-

dar 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 hearing review officer within five calendar days after the filing of the appeal. If the transcript and record are not provided to the hearing review officer 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 hearing review officer shall seek additional evidence if necessary and may afford the parties an opportunity for written or oral argument. A hearing held to seek additional evidence must be an impartial due process hearing but is not a contested case hearing. The hearing review officer may grant specific extensions of time beyond the 30-day period at the request of any party.

Statutory Authority: *MS s 120.17*

History: *14 SR 281*

3525.4700 FINAL DECISION.

The hearing review officer's final decision must be in writing, include findings and conclusions, and be based on the standards in Minnesota Statutes, section 120.17, subdivision 3a, and the standards, requirements, and principles in parts 3525.4400, subparts 2 and 3, and 3525.0200 to 3525.4700.

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

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

Statutory Authority: *MS s 120.17*

History: *14 SR 281*

3525.4800 [Repealed, 14 SR 281]

3525.4900 [Repealed, 14 SR 281]

3525.5000 [Repealed, 14 SR 281]

3525.5100 [Repealed, 14 SR 281]

3525.5200 [Repealed, 14 SR 281]

3525.5300 [Repealed, 14 SR 281]

3525.5400 [Repealed, 14 SR 281]

3525.5500 [Repealed, 14 SR 281]

3525.5600 [Repealed, 14 SR 281]

3525.5700 [Repealed, 14 SR 281]

3525.5800 [Repealed, 14 SR 281]

3525.5900 [Repealed, 14 SR 281]

3525.6000 [Repealed, 14 SR 281]

3525.6100 [Repealed, 14 SR 281]

3525.6200 [Repealed, 14 SR 281]

3525.6300 [Repealed, 14 SR 281]

3525.6400 [Repealed, 14 SR 281]

3525.6500 [Repealed, 14 SR 281]

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3525.6600 [Repealed, 14 SR 281]

3525.6700 [Repealed, 14 SR 281]

3525.6800 [Repealed, 14 SR 281]

3525.6900 [Repealed, 14 SR 281]

3525.7000 [Repealed, 14 SR 281]

3525.7100 [Repealed, 14 SR 281]

3525.7200 [Repealed, 14 SR 281]

3525.7300 [Repealed, 14 SR 281]

3525.7400 [Repealed, 14 SR 281]

3525.7500 [Repealed, 14 SR 281]