

CHAPTER 3525
DEPARTMENT OF CHILDREN, FAMILIES,
AND LEARNING
CHILDREN WITH A DISABILITY

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3525.0200 DEFINITIONS FOR SPECIAL EDUCATION.

[For text of subps 1 to 1b, see MR]

Subp 1c. **Evaluation or re-evaluation.** "Evaluation" or "re-evaluation", 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 2550 to 3525 2750

[For text of subps 1d to 2c, see MR]

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

[For text of items A to C, see MR]

[For text of subp 4a, see M.R.]

Subp 6a [Repealed, 24 SR 1799]

Subp 7a **Initial formal evaluation.** "Initial formal evaluation" means the first formal evaluation by the district that addresses the specific problems as outlined on the notice to evaluate in accordance with parts 3525 2650 and 3525 3500

[For text of subps 8a to 10a, see MR]

Subp 11a. [Repealed, 24 SR 1799]

[For text of subps 15a to 19a, see MR]

Subp. 19b **Significant change in program or placement.** "Significant change in program or placement" means:

A the IEP goals have been completed or require modification based on a progress report,

B there is a need to add or delete a service based on a progress report or evaluation,

[For text of items C to F, see MR]

[For text of subps 20a to 24, see MR]

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

[For text of subps 25a and 25b, see MR.]

Subp 26 **Vocational evaluation.** "Vocational evaluation" 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 evaluation is one component of the ongoing special education multidisciplinary evaluation described in parts 3525.2550 to 3525.2750.

Statutory Authority: *MS s 14 389, L 1999 c 123 s 19*

History: *24 SR 1799*

3525.0750 IDENTIFICATION OF CHILDREN WITH DISABILITIES.

School districts shall develop systems designed to identify persons with disabilities beginning at birth, pupils with disabilities attending public and nonpublic school, and persons with disabilities who are of school age and 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 14 389, L 1999 c 123 s 19*

History: *24 SR 1799*

3525.1150 [Repealed, 24 SR 1799]

3525.1310 STATE AID FOR SPECIAL EDUCATION PERSONNEL.

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

[For text of items A and B, see MR]

C. evaluation, progress reporting, and IEP planning for individual pupils,

[For text of items D to F, see MR]

G other related services provided in conjunction with the instructional program as outlined in the pupil's IEP,

H paraprofessional services provided under the direction of a regular or special education teacher or a related services provider. The services must be

(1) to enhance the instruction provided by the teacher or related services staff, and

(2) to supplement instructional activities or to provide extended practice in instances in which the paraprofessional has had training and ongoing support from a special education teacher or related services staff,

I program coordination; and

J due process facilitation, not including attorney costs for suit preparation.

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

Statutory Authority: *MS s 14 389, L 1999 c 123 s 19*

History: *24 SR 1799*

3525.1325 AUTISM SPECTRUM DISORDERS (ASD).

Subpart 1 **Definition.** "Autism spectrum disorders (ASD)" means a range of pervasive developmental disorders that adversely affect a pupil's functioning and result in the need for special education instruction and related services. ASD is a disability category characterized by an uneven developmental profile and a pattern of qualitative impairments in several areas of development: social interaction, communication, or restricted repetitive and stereotyped patterns of behavior, interests, and activities, with onset in childhood. Characteristics can present themselves in a wide variety of combinations from mild to severe, as well as in the number of symptoms present, for example Autistic Disorder, Childhood Autism, Atypical Autism, Pervasive Developmental Disorder-Not Otherwise Specified, Asperger's Disorder, or other related pervasive developmental disorders.

Subp. 2 [Repealed, 24 SR 1799]

Subp 3 **Criteria.** The multidisciplinary team shall determine that a pupil is eligible and in need of special education instruction and related services if the pupil demonstrates patterns of behavior consistent with those in item A and fulfills the requirements in item B.

A. An educational evaluation must address all three core features in subitems (1) to (3). For eligibility purposes, there must be documented evidence the student demonstrates the specific patterns of behavior described in at least two of these subitems, one of which must be subitem (1). The eligibility determination must be supported by information collected from multiple settings and sources.

Behavioral indicators of these core features must be atypical for the pupil's developmental level. Documentation of behavioral indicators must include the use of at least two of these methods: structured interviews with parents, autism checklists, communication and developmental rating scales, functional behavior assessments, application of diagnostic criteria from the current Diagnostic and Statistical Manual (DSM), informal and standardized evaluation instruments, or intellectual testing.

(1) Qualitative impairment in social interaction, as documented by two or more behavioral indicators, such as limited joint attention and limited use of facial expressions directed toward others, does not show or bring things to others to indicate an interest in the activity, demonstrates difficulties in relating to people, objects, and events, a gross impairment in ability to make and keep friends, significant vulnerability and safety issues due to social naivete, may appear to prefer isolated or solitary activities, misinterprets others' behaviors and social cues.

(2) Qualitative impairment in communication, as documented by one or more behavioral indicators, such as not using finger to point or request, using others' hand or body as a tool, showing lack of spontaneous imitations or lack of varied imaginative play; absence or delay of spoken language, limited understanding and use of nonverbal communication skills such as gestures, facial expressions, or voice tone, odd production of speech including intonation, volume, rhythm, or rate, repetitive or idiosyncratic language or inability to initiate or maintain a conversation when speech is present.

(3) Restricted, repetitive, or stereotyped patterns of behavior, interest, and activities, as documented by one or more behavioral indicators, such as insistence on following routines or rituals, demonstrating distress or resistance to changes in activity, repetitive hand or finger mannerism, lack of true imaginative play versus reenactment, overreaction or under-reaction to sensory stimuli, rigid or rule-bound thinking, an intense, focused preoccupation with a limited range of play, interests, or conversation topics.

B. The team shall verify that an ASD adversely affects a pupil's present level of performance and that the pupil is in need of special education instruction and related services. This verification is completed through the multidisciplinary team evaluation and summarized in the pupil's evaluation report. Documentation must be supported by data from each of the following components:

(1) The evaluation must identify the pupil's present levels of performance and educational needs in each of the core features identified by the team in item A. In addition, the evaluation process must give consideration to all other areas of educational concern consistent with the IEP process.

(2) The pupil's need for instruction and services must be documented and supported by evaluation and observations in two different settings, on two different days.

(3) A developmental history which summarizes developmental information and behavior patterns.

Subp 4 **Team membership.** At least one professional with experience and expertise in the area of ASD must be included on the team determining eligibility and educational programming, due to the complexity of this disability and the specialized

intervention methods. The team must include a school professional knowledgeable of the range of possible special education eligibility criteria.

Subp 5 Implementation. Pupils with various educational profiles and related clinical diagnoses may be included as eligible if they meet the criteria of ASD. However, a clinical or medical diagnosis is not required to be eligible for special education services. Due to the wide variation in characteristics and needs, pupils with different educational profiles or a specific clinical diagnosis must also be determined as eligible following the criteria in subpart 3. Following this eligibility determination process is essential to identify and document individual strengths and weaknesses and the pupil's unique educational needs so that an effective individual educational program may be planned and implemented.

Statutory Authority: *MS s 14 389, L 1999 c 123 s 19*

History: *24 SR 1799*

3525.1327 DEAF-BLIND.

Subpart 1 Definition and criteria. "Deaf-blind" means medically verified visual loss coupled with medically verified hearing loss 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 visually impaired and deaf and hard of hearing.

Subp 2 Pupils at risk. Pupils at risk of being deaf-blind include pupils who

A are already identified as deaf or hard of hearing or visually impaired but have not yet had medical or functional evaluation of the other sense (vision or hearing),

B have an identified condition, such as Usher Syndrome or Optic Atrophy, that includes a potential deterioration of vision or hearing in the future,

C have a medically or functionally identified hearing loss and a verified deficit in vision determined by a functional evaluation in the learning environment,

D have a medically or functionally identified vision impairment and verified hearing loss determined by a functional evaluation in the learning environment, or

E have an identified syndrome or condition such as CHARGE Syndrome that includes hearing and vision loss in combination with multiple disabilities.

Statutory Authority: *MS s 14 389, L 1999 c 123 s 19*

History: *24 SR 1799*

3525.1331 DEAF AND HARD OF HEARING.

Subpart 1 Definition. "Deaf and hard of hearing" means a diminished sensitivity to sound, or hearing loss, that is expressed in terms of standard audiological measures.

Hearing loss 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. A pupil who is deaf or hard of hearing 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 a pupil has one of the following

[For text of subitems (1) to (4), see MR]

B The pupil's hearing loss affects educational performance as demonstrated by

[For text of subitem (1), see MR]

(2) an achievement deficit in basic reading skills, reading comprehension, written language, or general knowledge that is at the 15th percentile or 10 standard

deviation or more below the mean on a technically adequate norm-referenced achievement test that is individually administered by a licensed professional

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

[For text of subitem (1), see MR]

(2) the pupil uses American Sign Language or one or more alternative or augmentative systems of communication alone or in combination with oral language as documented by parent or teacher reports and language sampling conducted by a professional with knowledge in the area of communication with persons who are deaf or hard of hearing

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

[For text of subitems (1) and (2), see MR]

Statutory Authority: *MS s 14 389, L 1999 c 123 s 19*

History: *24 SR 1799*

3525.1337 PHYSICALLY IMPAIRED.

[For text of subpart 1, see MR]

Subp. 2 **Criteria.** 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 must be documentation of a medically diagnosed physical impairment

B The pupil's

(1) need for special education instruction and service is supported by a lack of functional level in 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 physical and health disabilities 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 systematic observations in daily routine settings, one of which is completed by a physical and health disabilities teacher; or

(3) physical impairment interferes with educational performance as shown by an achievement deficit of 10 standard deviation or more below the mean on an individually administered reliable, valid, and adequately normed achievement test

Statutory Authority: *MS s 14 389, L 1999 c 123 s 19*

History: *24 SR 1799*

3525.1341 SPECIFIC LEARNING DISABILITY.

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

A. 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,

B 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, and

C 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, cognitive impairment, emotional disorders, or environmental, cultural, economic influences, or a history of an inconsistent education program

Subp 2 **Criteria:** A pupil has a specific learning disability and is in need of special education and related services when the pupil meets the criteria in items A, B, and C. Information about each item must be sought from the parent and included as part of the evaluation data. The evaluation 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 evaluation 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 evaluation results, and results from instructional support programs such as Chapter 1 and Assurance of Mastery, and

[For text of subitem (2), see MR]

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. 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. 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 evaluation 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 written and oral directions, spatial arrangements, correct use of developmental order in relating events, transfer of information onto paper, visual and auditory memory, verbal and nonverbal expression, and motor control for written tasks such as pencil and paper assignments, drawing, and copying,

[For text of subitem (2), see MR]

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

Statutory Authority: *MS s 14 389, L 1999 c 123 s 19*

History: *24 SR 1799*

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 are attributed only to dialectical, cultural, or ethnic differences or to the influence of a foreign language must not be identified as a disorder.

A pupil has a fluency disorder and is eligible for speech or language special education when

A the pattern interferes with communication as determined by an educational speech language pathologist 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 must not be identified as a disorder.

A pupil has a voice disorder and is eligible for speech or language special education when

A. the pattern interferes with communication as determined by an educational speech language pathologist and either another adult or the child, and

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

Subp 3. **Articulation disorder; definition and criteria.**

A. "Articulation disorder" means the absence of or incorrect production of speech sounds or phonological processes that are developmentally appropriate. For the purposes of this subpart, phonological process means a regularly occurring simplification or deviation in an individual's speech as compared to the adult standard, usually one that simplifies the adult phonological pattern. Articulation patterns that are attributed only to dialectical, cultural, or ethnic differences or to the influence of a foreign language must not be identified as a disorder.

B. A pupil has an articulation disorder and is eligible for speech or language special education when the pupil meets the criteria in subitem (1) and either subitems (2) or (3).

(1) the pattern interferes with communication as determined by an educational speech language pathologist and either another adult or the child, and

(2) test performance falls 2.0 standard deviations below the mean on a technically adequate, norm-referenced articulation test, or

(3) 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.**

A. "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 are attributed only to dialectical, cultural, or ethnic differences or to the influence of a foreign language must not be identified as a disorder.

B. A pupil has a language disorder and is eligible for speech or language special education services when

(1) the pattern interferes with communication as determined by an educational speech language pathologist and either another adult or the child, and

(2) 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

(3) the pupil scores 2.0 standard deviations below the mean on at least two technically adequate, norm-referenced language tests if available, or

(4) 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. The documented procedures may include

additional language samples, criterion-referenced instruments, observations in natural environments, and parent reports

Statutory Authority: *MS s 14 389, L 1999 c 123 s 19*

History: *24 SR 1799*

3525.1345 VISUALLY IMPAIRED.

[For text of subpart 1, see MR.]

Subp 2 **Criteria.** A pupil is eligible as having a visual disability and in need of special education when the pupil meets one of the criteria in item A and one of the criteria in item B

A 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,

(a) estimation of acuity is acceptable for difficult-to-test pupils, and

(b) for pupils not yet enrolled in kindergarten, measured acuity must be significantly deviant from what is developmentally age-appropriate,

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

(3) a congenital or degenerating eye condition including, for example, progressive cataract, glaucoma, or retinitis pigmentosa, and

B functional evaluation of visual abilities conducted by a licensed teacher of the visually impaired that determines that the pupil

(1) has limited ability in visually accessing program-appropriate educational media and materials including, for example, textbooks, photocopies, ditto copies, chalkboards, computers, or environmental signs, without modification,

(2) has limited ability to visually access the full range of program-appropriate educational materials and media without accommodating actions including, for example, changes in posture, body movement, focal distance, or squinting,

(3) demonstrates variable visual ability due to environmental factors including, for example, contrast, weather, color, or movement, that cannot be controlled, or

(4) experiences reduced or variable visual ability due to visual fatigue or factors common to the eye condition

Statutory Authority: *MS s 14 389, L 1999 c 123 s 19*

History: *24 SR 1799*

3525.1350 EARLY CHILDHOOD: SPECIAL EDUCATION.

[For text of subpart 1, see MR.]

Subp 2 **Criteria for birth through two years of age.** The team shall determine that a child from birth through the age of two years and 11 months is eligible for early childhood special education if:

A the child meets the criteria of one of the disability categories, or

B the child meets one of the criteria for developmental delay in subitem (1) and the criteria in subitems (2) and (3)

(1) the child

[For text of unit (a), see MR.]

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

(c) 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 evaluation using technically adequate, norm-referenced instru-

ments. These instruments must be individually administered by an appropriately trained professional,

[For text of subitem (2), see MR]

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

Subp 3 Criteria for three through six years of age. The team shall determine that a child from the age of three years through the age of six years and 11 months is eligible for early childhood special education when:

A the child meets the criteria of one of the categorical disabilities, or

B the child meets one of the criteria for developmental delay in subitem (1) and the criteria in subitems (2) and (3). Local school districts have the option of implementing these criteria for developmental delay. If a district chooses to implement these criteria, it may not modify them:

(1) the child

[For text of unit (a), see MR]

(b) has a delay in each of two or more areas of development that is verified by an evaluation 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,

[For text of subitem (2), see MR]

(3) corroboration of the developmental evaluation or the medical diagnosis with a developmental history and at least one other evaluation procedure in each area that is conducted on a different day than the medical or norm-referenced evaluation.

Other procedures which may be used here include parent report, language sample, criterion-referenced instruments, or developmental checklists.

Statutory Authority: *MS s 14 389, L 1999 c 123 s 19*

History: *24 SR 1799*

3525.1354 TEAM OVERRIDE ON ELIGIBILITY DECISIONS.

Subpart 1. Documentation required. The team may determine 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 in accordance with items A, B, C, and D.

A The pupil's record must contain documents that explain why the standards and procedures 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 include, for example, test scores, work products, self-reports, teacher comments, medical data, previous testings, observational data, ecological assessments, and other developmental data.

[For text of item C, see MR]

D The team override decision must be signed 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 [Repealed, 24 SR 1799]

Statutory Authority: *MS s 14 389, L 1999 c 123 s 19*

History: *24 SR 1799*

3525.1356 [Repealed, 24 SR 1799]

3525.2335 EARLY CHILDHOOD PROGRAM SERVICES, ALTERNATIVES, AND SETTINGS.

Subp 2 **Program services, alternatives, and settings.** 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 or IFSP.

[For text of item A, see MR]

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 licensed family child care setting in which the pupil is placed by the parent.

[For text of subitem (2), see MR]

(3) Community-based programs include licensed public or private nonsectarian child care programs other than a family child care setting, licensed public or private nonsectarian early education programs, community cultural centers, Head Start programs, and hospitals. A school district must provide direct or indirect special education services by district special education staff to a pupil attending a community-based program.

Statutory Authority: *MS s 14 389, L 1999 c 123 s 19*

History: *24 SR 1799*

3525.2340 CASE LOADS.

Subp 4 **Case loads for school-age educational service alternatives.**

A The maximum number of school-age pupils that may be assigned to a teacher

(1) for pupils who receive direct instruction from a teacher 50 percent or more of the instructional day, but less than a full day:

(a) deaf-blind, autistic, or severely multiply impaired, three pupils,

(b) deaf-blind, autistic, or severely multiply impaired with one program support assistant, six pupils,

(c) mild-moderate mentally impaired or specific learning disabled, 12 pupils,

(d) mild-moderate mentally impaired or specific learning disabled with one program support assistant, 15 pupils,

(e) all other disabilities with one program support assistant, ten pupils, and

(f) all other disabilities with two program support assistants, 12 pupils, and

(2) for pupils who receive special education for a full day

(a) deaf-blind, autistic, or severely multiply impaired with one program support assistant, four pupils,

(b) deaf-blind, autistic, or severely multiply impaired with two program support assistants, six pupils, and

(c) all other disabilities with one program support assistant, eight pupils

B 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.

[For text of subp 5, see MR]

Statutory Authority: *MS s 14 389, L 1999 c 123 s 19*

History: *24 SR 1799*

3525.2405 DIRECTORS.

[For text of subpart 1, see MR]

Subp 2 [Repealed, 24 SR 1799]

Subp 3 [Repealed, 24 SR 1799]

Statutory Authority: *MS s 14 389, L 1999 c 123 s 19*

History: *24 SR 1799*

3525.2420 [Repealed, 24 SR 1799]

3525.2650 [Repealed, 24 SR 1799]

3525.3000 [Repealed, 24 SR 1799]

3525.3150 [Repealed, 24 SR 1799]

3525.3200 [Repealed, 24 SR 1799]

3525.3500 [Repealed, 24 SR 1799]

3525.3800 WHEN A HEARING MUST BE HELD.

A hearing pursuant to Minnesota Statutes, section 125A 09 or United States Code, title 20, section 1415(b)(6) and (k) shall be held whenever a parent, as defined in Code of Federal Regulations, title 34, section 300 20, or district requests a hearing

Statutory Authority: *MS s 14 389, L 1999 c 123 s 19*

History: *24 SR 1799*

3525.3900 NOTICE OF A HEARING.

Written notice of the time, date, and place of hearings shall be given to all parties by the hearing officer at least ten days in advance of the hearings, and the hearing shall be held at a time, date, and place determined by the hearing officer in the district responsible for assuring that an appropriate program is provided and that is reasonably convenient to the parents and child involved

Upon 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 parties have not agreed upon a hearing officer, and the board has not requested that a hearing officer be appointed by the commissioner within four business days after the receipt of the request, the commissioner shall appoint a hearing officer upon the request of either party

[For text of item B, see MR]

C 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

D 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

E Consistent with Code of Federal Regulations, title 34, section 300.509, the hearing officer may prohibit evidence not disclosed five business days before a hearing

F 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, current educational performance, or presenting disabilities, 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

G 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 a regular education program may be sustained only when, and to the extent the nature or severity of the disability 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

H That the decision of the hearing officer is binding on all parties unless appealed to the commissioner by the parent or the district, except as provided in Code of Federal Regulations, title 34, section 300.514

I That unless the district and parents agree otherwise, the pupil shall not be denied initial admission to school and the pupil's education program shall not be changed in conformance with United State Code, title 20, section 1415(j)

Statutory Authority: *MS s 14 389, L 1999 c 123 s 19*

History: *24 SR 1799*

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 parties have not agreed upon a hearing officer, and the board has not requested that a hearing officer be appointed by the commissioner within four business days after the receipt of the request, the commissioner shall appoint a hearing officer upon the request of either party. The hearing officer shall not be a school board member or employee of the school district where the pupil 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 pupil, 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 evaluation of a child or regular education pupil, the cost of the evaluation shall be at district expense.

Statutory Authority: *MS s 14 389, L 1999 c 123 s 19*

History: *24 SR 1799*

3525.4100 PREHEARING REVIEW BY THE HEARING OFFICER.

Subpart 1 **Information received before the hearing.** Five business 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 evaluation or re-evaluation and copies of any parties' tests, evaluations, or other admissible reports or written information relating to the evaluation or re-evaluation, or the proposed action,

[For text of items C and D, see MR]

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

[For text of items A to C, see MR]

D may require the district to perform an additional educational evaluation or re-evaluation,

[For text of items E to H, see MR]

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 for good cause shown on the record

Statutory Authority: *MS s 14 389, L 1999 c 123 s 19*

History: *24 SR 1799*

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 least five business days 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 evaluation or re-evaluation, upon which the proposed action may be based.

At least five business 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 business 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 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 14 389, L 1999 c 123 s 19*

History: *24 SR 1799*

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 apparent disabilities 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 4770, nothing in parts 3525 0200 to 3525 4770 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 14.389, L 1999 c 123 s 19*

History: *24 SR 1799*

3525.4600 EFFECTIVE DATE OF ACTION AND APPEALS.

The decision of the hearing officer is binding on all parties unless appealed to the commissioner by the parent or the district, except as provided in Code of Federal Regulations, title 34, section 300.514(c). 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 commissioner within 30 days of that written decision in the following manner: 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 notice of appeal must identify the specific parts of the hearing decision being appealed.

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 calendar days after the filing of the appeal. A written transcript of the hearing shall be made by the district, the transcript and entire record shall be accessible to the parties and provided to the 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 14 389, L 1999 c 123 s 19*

History: *24 SR 1799*

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 125A 08, 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 and effective upon issuance. Any party aggrieved by the findings and decisions made by a hearing review officer shall have the right to bring a civil action regarding the complaint and decision in any state court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.

If the district fails to implement the hearing officer's or hearing review 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 127A.42, the commissioner of Children, Families, and Learning shall impose sanctions necessary to correct any failure

Statutory Authority: *MS s 14 389, L 1999 c 123 s 19*

History: *24 SR 1799*

3525.4750 EXPEDITED HEARINGS, WHO MAY REQUEST.

Subpart 1 **Parent request for a hearing.** A parent of a pupil with a disability may request an expedited due process hearing if the pupil's parent disagrees

A with the determination that the pupil's behavior subject to disciplinary action was not a manifestation of the pupil's disability,

B with any decision regarding a change of the pupil's placement to an interim alternative educational setting for a weapon, controlled substance, or drug violation, or

C with any decision regarding a change of the pupil's placement under Code of Federal Regulations, title 34, sections 300.520 to 300.528, that is based upon a district contention that the move is for disciplinary or safety reasons

Subp 2 **Local education agency request for a hearing.** The local education agency may request an expedited hearing if school personnel maintain that the current placement of the pupil is substantially likely to result in injury to the pupil or to others

Subp 3 **Continued placement.** When a district proposes that an interim alternative placement should continue beyond 45 days, it must provide parents with a written statement of the reasons for this proposal

Statutory Authority: *MS s 14 389, L 1999 c 123 s 19*

History: *24 SR 1799*

3525.4770 EXPEDITED HEARINGS, TIMELINES.

Subpart 1 **When parents request hearing.** When requesting an expedited hearing the parents shall provide the district with

A the address of the residence of the pupil,

B the name of the school the pupil is attending,

C a description of the nature of the problem of the pupil relating to the manifestation determination, interim placement, or proposed interim placement, and

D a proposed resolution of the problem to the extent known and available to the parents at the time

The district may not deny or delay a parent's right to an expedited hearing for failure to provide the notice required here

Immediately upon receipt of the request for an expedited hearing by the district superintendent, or upon initiating an expedited hearing, the district shall serve the parents with a written notice of right and procedures relative to the hearing, including the availability of free or low-cost legal and other relevant legal services

Subp 2 **When district requests hearing.** When the district requests an expedited hearing it shall provide the parents with a written notice of

A a description of the nature of the problem including the behavior for which the change of placement is requested,

B a description of the interim placement or proposed interim placement, and

C a proposed resolution of the problem to the extent known at the time.

Subp 3 **Hearing officer appointment.** The district shall send a copy of the hearing request to the commissioner by facsimile by the end of the business day following receipt of the parent's notice to the district superintendent or initiation of an expedited hearing. Upon receipt of the notice, the commissioner shall appoint a hearing officer from the roster maintained by the department for that purpose. The parties may agree to a hearing officer other than the one appointed by the commissioner in which case the district shall send, by facsimile, notice of the hearing officer requested. If the

agreed upon hearing officer is from the roster maintained by the department, the department shall appoint the hearing officer, if available, and assign a hearing case number. If the hearing officer is unavailable, the department shall inform both parties of that fact and the parties may mutually agree to another hearing officer by the end of the following business day. If the parties are unable to reach agreement, either party may inform the department of that fact and request the immediate appointment of the next available hearing officer. If the agreed upon hearing officer is not from the department's roster, the department shall inform the parties of the case number so that it can maintain a record of all hearing proceedings.

Subp. 4 Strikes. In an expedited hearing, a party may not strike the appointment of a hearing officer as of right, but a party may remove a hearing officer on an affirmative showing of prejudice under Minnesota Statutes, section 125A.09. A hearing officer must meet the qualifications under Minnesota Statutes, section 125A.09, subdivision 11.

Subp. 5 Disclosure of data. At least three business days prior to an expedited hearing, or longer, if ordered by the hearing officer, each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing. A hearing officer may bar any party who fails to comply with this subpart from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

Subp. 6 Prehearing conference. Within two days of appointment, the hearing officer shall hold a prehearing conference, which may be by telephone. At that conference, or later, the hearing officer may take any appropriate action a court may take under Rule 16 of Minnesota Rules of Civil Procedure including, but not limited to, scheduling, jurisdiction, and listing witnesses, including expert witnesses. Specific pleadings including statements of objection under Minnesota Statutes, section 125A.09, subdivision 6, clause (5), and the statement of material allegations under part 3525.4200 shall be required, however the timelines for their exchange shall be established by the hearing officer. Issues not pled with specificity in an expedited due process hearing are not waived in subsequent proceedings. The exchange of witness lists, evidence, and any other information deemed necessary by the hearing officer shall be exchanged based on the timeline ordered by the hearing officer as required to allow the hearing officer to render a written decision within 20 business days of the request for the hearing. At the prehearing conference, and subsequently, the hearing officer may order either party to submit educational records, evaluations, and any other information to the hearing officer for prehearing review.

Subp. 7 Appeal. The final decision of a hearing officer in an expedited hearing may be appealed to a hearing review officer in the same manner as set forth in United States Code, title 20, section 1415, and Minnesota Rules except that the appeal must be made within five business days of the hearing officer's final decision. The hearing review officer's decision must be issued within ten business days of appointment and receipt of the hearing records. A time extension of up to five days may be granted for good cause shown on the record.

Subp. 8 Decision. A written decision for an expedited hearing shall be rendered by the hearing officer in 20 business days. An extension of up to five days may be granted by the hearing officer for good cause shown on the record. The decision is effective upon issuance consistent with Code of Federal Regulations, title 34, section 300.514.

Statutory Authority: *MS s 14.389, L 1999 c 123 s 19*

History: *24 SR 1799*