

CHAPTER 3525
DEPARTMENT OF EDUCATION
CHILDREN WITH A DISABILITY

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Statutory Authority: *L 2003 ISP9 art 3 s 19*

History: *28 SR 1292*

3525.0210 DEFINITIONS.

Subpart 1 **Scope.** As used in parts 3525 0210 to 3525 4770, the terms defined in this part have the meanings given them

Subp. 2. **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.

Subp 3 **Aids.** “Aids” means equipment, devices, and materials and curriculum adaptations which enable a pupil to achieve satisfactorily in the regular classroom.

Subp. 4 **Alternative dispute resolution (ADR).** “Alternative dispute resolution” (ADR) means any voluntary process used to resolve a special education dispute which is not a due process hearing or a state complaint.

Subp. 5 **Aversive procedure.** “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 2c

Subp. 6 **Aversive stimulus.** “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.

Subp. 7 **Community-based.** “Community-based” means a service, program, or environment located outside the district with nondistrict governance

Subp 8 **Conciliation conference.** “Conciliation conference” means a meeting held for the purpose of resolving a dispute between the parents and district over identification, evaluation, educational placement, manifestation determination, interim alternative educational placement, or the provision of a free appropriate public education (FAPE) to a child with a disability A conciliation conference must have in attendance, at a minimum, a parent and a district staff person with authority to resolve the dispute

Subp 9 **Conditional procedures.** “Conditional procedures” means interventions that meet the definitions of aversive and deprivation procedures which are not prohibited Conditional procedures include.

A. the use of manual restraint,

B the use of mechanical or locked restraints;

C time out procedures for seclusion; and

D. temporary delay or withdrawal of regularly scheduled meals or water not to exceed 30 minutes except as provided in subpart 2a.

Subp 10 **Cultural liaison.** “Cultural liaison” means a person who is of the same racial, cultural, socioeconomic, or linguistic background as the pupil, and who.

A provides information to the IEP team about the pupil’s race, cultural, socioeconomic, and linguistic background,

B assists the IEP team in understanding how racial, cultural, socioeconomic, and linguistic factors impact educational progress; and

C. facilitates the pupil’s parent’s understanding and involvement in the special education process.

If a person who is of the same racial, cultural, socioeconomic, or linguistic background as the pupil is not available, then a person who has knowledge of the

pupil's racial, cultural, socioeconomic, and linguistic background may act as a cultural liaison.

Subp 11. **Days.** "Days" means business day, calendar day, or school day as defined in Code of Federal Regulations, title 34, section 300.9

Subp 12 **Department.** "Department" means the Minnesota Department of Education.

Subp 13 **Deprivation procedure.** "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 2c

Subp. 14. **Direct services.** "Direct services" means special education services provided by a teacher or a related service professional when the services are related to instruction, including cooperative teaching

Subp. 15. **District.** "District" means any local education agency, charter school, or state agency that provides education services to pupils

Subp 16 **Due process hearing or hearing.** "Due process hearing" or "hearing" refers to a special education due process hearing or expedited due process hearing pursuant to Minnesota Statutes, section 125A 091, and Code of Federal Regulations, title 34, subpart E.

Subp 17 **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 subpart 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

Subp 18 **Evaluation or reevaluation.** "Evaluation" or "reevaluation" means an appropriate individual educational evaluation of a pupil's performance or development conducted by appropriately licensed personnel according to recognized professional standards, parts 3525 2550 and 3525 2710.

Subp 19 **Extended school year (ESY) services.** "Extended school year (ESY) services" means special education instruction and related services for pupils who demonstrate the need for continued service on days when school is not in session for all students as a necessary component of a free appropriate public education.

Subp. 20. **Facilitated IEP meeting.** "Facilitated IEP meeting" means an IEP/IFSP/IIIP meeting moderated by an impartial state-provided facilitator to promote effective communication, address conflicts as they arise, and assist a team in developing an IEP/IFSP/IIIP

Subp 21 **Filing or file.** "Filing" or "file" means transmission of a document to the department or hearing officer by mail, delivery, fax, or licensed overnight express mail service. Filing is complete upon actual receipt of the document. Any document received after 4:30 p.m. or on a weekend or holiday will be treated as received the following business day.

Subp. 22. **Functional behavioral assessment or FBA.** "Functional behavioral assessment" or "FBA" means a process for gathering information to maximize the efficiency of behavioral supports. An FBA includes a description of problem behaviors and the identification of events, times, and situations that predict the occurrence and nonoccurrence of the behavior. An FBA also identifies the antecedents, consequences, and reinforcers that maintain the behavior, the possible functions of the behavior, and possible positive alternative behaviors. An FBA includes a variety of data collection methods and sources that facilitate the development of hypotheses and summary statements regarding behavioral patterns

Subp 23 **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

- 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 24 **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 25 **Hearing officer.** "Hearing officer" means the person appointed by the department, pursuant to Minnesota Statutes, section 125A 091, to decide matters in a due process hearing

Subp 26 **Initial placement.** "Initial placement" means the first special education placement and provision of special education services by the district

Subp 27. **Indirect services.** "Indirect services" means special education services which include ongoing progress reviews, cooperative planning; consultation, demonstration teaching, modification and adaptation of the environment, curriculum, materials, or equipment, and direct contact with the pupil to monitor and observe. Indirect services may be provided by a teacher or related services professional to another regular education, special education teacher, related services professional, paraprofessional, support staff, parents, and public and nonpublic agencies to the extent that the services are written in the pupil's IEP and IFSP.

Subp. 28. **Individualized family service plan or IFSP.** "Individualized family service plan" or "IFSP" means a written plan for providing services to a pupil and the pupil's family through interagency agreements. Procedural and program requirements for the IEP also apply to the educational components of the IFSP

Subp. 29 **Manual restraint.** "Manual restraint" means physical intervention intended to hold a pupil immobile or limit a pupil's movement by using body contact as the only source of physical restraint.

Subp 30 **Mechanical restraint.** "Mechanical restraint" means the use of devices, for example, mittens, straps, or restraint chairs, to limit a pupil's movement or hold a pupil immobile as an intervention precipitated by the pupil's behavior. Mechanical restraint applies to uses intended to prevent injury with pupils who engage in behaviors, for example, head-banging, gouging, or other self-injurious actions that result in tissue damage and medical problems. Mechanical restraint does not apply to restraint used to treat a pupil's medical needs or to position a pupil with physical disabilities.

Subp 31 **Mediation.** "Mediation" means an ADR process in which a neutral person, provided by the state, assists parents and districts in resolving disputes over identification, evaluation, educational placement, manifestation determination, interim alternative educational placement, or the provision of a free appropriate public education (FAPE) to a child with a disability.

Subp 32. **Nondiscrimination.** "Nondiscrimination" means a requirement that districts shall comply with chapter 3535 and Minnesota Statutes, chapter 363.

Subp 33 **Paraprofessional.** "Paraprofessional" means a district employee who is primarily engaged in direct interaction with one or more pupils for instructional activities, physical or behavior management, or other purposes under the direction of a regular education or special education teacher or related services provider

Subp 34. **Parent.** "Parent" means

- A. a natural or adoptive parent of a child,
- B a guardian, but not the state if the child is a ward of the state,
- C a person acting in the place of a parent, such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare;

D a surrogate parent who has been appointed by the district; or

E a foster parent if

(1) the natural parents' authority to make educational decisions on the child's behalf has been extinguished under state law;

(2) the foster parent has an ongoing, long-term parental relationship with the child,

(3) the foster parent is willing to make the educational decisions required of parents under the Individuals with Disabilities Act; and

(4) the foster parent has no interest that would conflict with the interests of the child

Subp 35 **Providing district.** "Providing district" means a district with the responsibility of providing special education services to a pupil according to part 3525.0800:

Subp. 36 **Pupil.** "Pupil" means a student or other person who is eligible for special education according to Minnesota Statutes, sections 125A.02 and 125A.03 to 125A.24.

Subp 37. **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. 38. **Regular education program.** "Regular education program" means the program in which the pupil would be enrolled if the pupil did not have disabilities

Subp 39 **Resident district.** "Resident district" means the district in which the pupil's parent, as defined by part 3525.0800, subpart 9, and Code of Federal Regulations, title 34, section 300.20, 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, sections 125A.03 to 125A.24. 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. 40. **Service or serve.** "Service" or "serve" means personal service, service by electric facsimile, service by first class United States mail, or licensed overnight express mail service. Service is complete upon receipt, except for service by United States mail which is complete three days after the date mailed. When a dispute over service arises the serving party must demonstrate proof of service.

Subp. 41. **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;

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

D. the amount of time a pupil spends with nondisabled peers is changed;

E. the amount of special education to accomplish the goals or objectives needs to be increased or decreased; or

F. the team determines there is a need for a conditional intervention procedure.

Subp. 42. **Special education.** "Special education" means any specially designed instruction and related services to meet the unique cognitive, academic, communicative,

social and emotional, motor ability, vocational, sensory, physical, or behavioral and functional needs of a pupil as stated in the IEP.

Subp. 43. **Surrogate parent.** "Surrogate parent" means a person appointed by the providing district to intervene on behalf of a pupil, to help ensure 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.

Subp. 44. **Teacher.** "Teacher" means a person licensed under parts 8710.5100 to 8710.5800 by the Board of Teaching to instruct pupils with specific disabling conditions.

Subp. 45. **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.

Subp. 46. **Time out for exclusion.** "Time out for exclusion" involves procedures which remove a pupil from the regularly scheduled education program for brief periods not to exceed 30 minutes. Time out for exclusionary purposes is not regulated by this chapter.

Subp. 47. **Time out for seclusion.** "Time out for seclusion" involves procedures which place the pupil in a specially designated isolation room or similar space.

Subp. 48. **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 and 3525.2710.

Statutory Authority: *L 2003 ISP9 art 3 s 19*

History: 28 SR 1292

3525.3300 [Repealed, 28 SR 1292]

3525.3400 [Repealed, 28 SR 1292]

3525.3600 PRIOR WRITTEN NOTICE.

When a district proposes or refuses to initiate or change the identification, evaluation, or educational placement of a pupil, or the provision of FAPE to the pupil, the district must serve prior written notice on the parent. The district must serve the notice on the parent within a reasonable time, and in no case less than 14 calendar days before the proposed effective date of change or evaluation. If the notice only includes a refusal of a request, it must be served on the parent within 14 calendar days of the date the request was made.

The notice must meet the requirements of Minnesota Statutes, section 125A.091, subdivisions 3 and 4. The notice must also:

A. inform the parents that the school district will not proceed with the initial placement and provision of services as defined in part 3525.0210 without prior written consent of the pupil's parents,

B. 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 14 calendar days after the receipt of the notice, and

C. inform the parents that if they refuse to provide prior written consent for initial evaluation or initial placement or object in writing to any proposal, or if the district refuses to initiate or change the identification, evaluation, or educational placement or the provision of a free appropriate public education to the pupil, the parent may request a conciliation conference.

The district must provide the parents with a copy of the proposed individual educational program plan as described in part 3525.2810, subpart 1, item A, whenever the district proposes to initiate or change the content of the IEP.

Statutory Authority: *L 2003 ISP9 art 3 s 19*

History: *28 SR 1292*

3525.3700 CONCILIATION CONFERENCE.

Subpart 1 **When a conference must be offered.** Parents must have an opportunity to meet with appropriate district staff in at least one conciliation conference if the parents object to any proposal or refusal of which the parents are notified under Minnesota Statutes, section 125A.091, subdivision 2. If the parent refuses efforts by the district to conciliate the dispute with the district, the district is deemed to have satisfied its requirement to offer a conciliation conference

Subp 1a **When and where held; results.** A conciliation conference must be held in accordance with items A to E

A A conciliation conference must be held within ten calendar days from the district's receipt of the parent's agreement or request to participate in a conciliation conference and at a time and place mutually convenient to the parent and school district representatives

B A conciliation conference must not be used to unilaterally delay or deny a parent's right to a hearing

C. Statements made during a conciliation conference must remain confidential and may not be admitted in evidence in a due process hearing, except as provided in item D, and except to allow a party to establish at a due process hearing that a particular service or action was requested or offered

D Within five business days after the final conciliation conference, the district must serve the parent with a written memorandum that conforms with Minnesota Statutes, section 125A.091, subdivisions 3 and 4, and must provide the parent with any proposed IEP resulting from the conciliation conference. The memorandum and IEP are admissible evidence in a due process hearing

E. If the proposed action is an initial evaluation or initial placement, the district must not proceed until the parents give written informed consent. For all other proposed actions, the district must proceed ten business days after the memorandum is served on the parents, unless the parent objects in writing to the proposed action within that time period

Subp 3. **Refusal to conciliate; request for hearing.** 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 inform the parent of the procedure for requesting the hearing and all other procedural safeguards pursuant to part 3525.3900, subpart 3, item J, and Code of Federal Regulations, title 34, section 300.504

Statutory Authority: *L 2003 ISP9 art 3 s 19*

History: *28 SR 1292*

3525.3750 MEDIATION AND OTHER ALTERNATIVE DISPUTE RESOLUTION.

Pursuant to Minnesota Statutes, section 125A.091, and Code of Federal Regulations, title 34, section 300.506, districts must make mediation available. Districts must also inform parents of other forms of alternative dispute resolution to encourage resolution of disputes about any matter described in Minnesota Statutes, section 125A.091, subdivision 12. Mediations and other forms of alternative dispute resolution, except for conciliation, are voluntary for both parties. A district must not use a mediation or other form of alternative dispute resolution to unilaterally delay or deny a parent's right to a hearing. Mediation must be conducted in accordance with Code of

Federal Regulations, title 34, section 300.506. Other forms of alternative dispute resolution must be conducted pursuant to the agreement of the parties

Statutory Authority: *L 2003 ISP9 art 3 s 19*

History: 28 SR 1292

3525.3790 TIME COMPUTATION.

In computing any period of time prescribed by this chapter, the day of the event from which the designated period of time begins to run shall not be included. The last day of the time period shall be included, unless it is a Saturday, Sunday, or a legal holiday, in which case the time period ends on the next day which is not a Saturday, Sunday, or legal holiday.

Statutory Authority: *L 2003 ISP9 art 3 s 19*

History: 28 SR 1292

3525.3800 [Repealed, 28 SR 1292]

3525.3900 INITIATING A DUE PROCESS HEARING.

Subpart 1 Request to be filed with department. A parent or a district is entitled to an impartial due process hearing conducted by the state when a dispute arises over the identification, evaluation, educational placement, manifestation determination, interim alternative educational placement, or the provision of a free appropriate public education to a child with a disability. A request for a due process hearing must be in writing and filed with the department. A school district administrator receiving a request for a due process hearing must immediately file the request with the department and in no case more than two business days following receipt of the request. If the request for a due process hearing is filed directly with the department, the department must notify the district of the request immediately and in no case more than two business days following receipt of the request. The department must not deny a request for hearing if it is incomplete. When a district is notified of a due process hearing request it must serve notice on the parent, within two business days, which includes the federally required procedural safeguards notice and the information required under subpart 3, item J, if it has not already done so as part of the pending dispute.

Subp 2 Parent request for hearing. A parent request for hearing must include

- A a statement indicating the parents request a hearing,
- B the name and address of the child involved;
- C the name, address, and telephone number, if available, of the parent,
- D the name of the school the child is attending at the time of the request,
- E the name or number of the school district of the parent's residence;
- F a description of the nature of the problem about the provision of special education services to the student, including facts relating to the problem, and
- G a proposed resolution of the problem to the extent known and available to the parents at the time of the request.

Subp. 3. District request for hearing. A district must serve a written notice of hearing on the parents and file it with the department in order to initiate a hearing. The notice must include:

- A a statement that the district requests a hearing;
- B the name and address of the child involved,
- C the name, address, and telephone number, if available, of the parent,
- D the name of the school the child is attending at the time of the request,
- E the name or number of the school district of the parent's residence;
- F a description of the proposed initiation or change, including facts relating to the proposal or change;

- G a proposed resolution of the problem,
- H a copy of the current or proposed IEP, evaluation plan, and any relevant progress information;
- I a copy of the prior written notice, and
- J. a statement of the basic procedures and safeguards for due process hearings that includes the items in subpart 4

Subp 4 **Requirements of basic procedures and safeguards notice.** The statement of the basic procedures and safeguards in subpart 3, item J, must include:

A. the names and telephone numbers of any free or low-cost legal or other advocacy services available in the area and a statement that both parties have the right to be assisted by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;

B. a statement that the hearing will take place before an impartial hearing officer assigned by the department. If the department is the provider of services to the child, this statement must indicate that the department will request the Office of Administrative Hearings to appoint a qualified hearing officer;

C. a statement that the parent will receive notice of the time, date, and place of the evidentiary hearing from the hearing officer at least ten calendar days in advance of the evidentiary hearing. This statement must also state that, with the exception of an expedited hearing, the evidentiary hearing must be held within 30 calendar days from the date the hearing request was filed with the department, at a location within the district responsible for ensuring a free appropriate public education is provided to the student;

D a statement that both parties have the right to present evidence and confront, cross-examine, and compel the attendance of witnesses,

E a statement that the hearing officer will prohibit, at the request of either party, evidence not disclosed five business days before the evidentiary hearing, including evaluations completed by that date and recommendations based on those evaluations,

F a statement that the burden of proof at a due process hearing is on the district to demonstrate, by a preponderance of the evidence, that it is complying with the law and offered or provided a free appropriate public education to the child in the least restrictive environment. If the district has not offered or provided a free appropriate public education in the least restrictive environment and the parent wants the district to pay for a private placement, the burden of proof is on the parent to demonstrate, by a preponderance of the evidence, that the private placement is appropriate,

G. a statement that, with the exception of an expedited hearing for which a decision must be rendered within ten days, 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 calendar days from the date the hearing request was filed with the department and that the proposed action or refusal will be upheld only upon showing by the school district by a preponderance of the evidence,

H. a statement that the parent or district may appeal a decision of the hearing officer to the Minnesota Court of Appeals within 60 calendar days of receipt of the decision or to the United States District Court for the District of Minnesota,

I. a statement 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;

J a statement that the parents have the burden of proving, by a preponderance of the evidence, that services for which the parents are paying or have paid, and for which the parents are seeking public funds, are appropriate for the pupil. This statement must also indicate that in order for parents to prevail, the hearing officer must have found that the district has failed to provide a free appropriate public education in the least restrictive environment,

K. a statement that the parents may choose to have the pupil, who is the subject of the hearing, present and that they may open the evidentiary hearing to the public,

L. a statement that the department will provide the parents with a written verbatim record of the hearing, at no cost, as well as the findings of fact and decision,

M. a statement that parents prevailing at a hearing may be entitled to reasonable attorney fees at the discretion of the court, and

N. a statement that the hearing officer may apply a statute of limitations that may limit the complaints that will be heard

Subp 5. **Appointment.** The department must appoint a hearing officer within two business days of the date the hearing request was filed with the department.

Statutory Authority: *L 2003 ISP9 art 3 s 19*

History: *28 SR 1292*

3525.4000 [Repealed, 28 SR 1292]

3525.4010 HEARING OFFICERS.

Subpart 1. **Criteria for selection.** An individual must meet, at a minimum, the following criteria to be placed on the department's list of hearing officers

A. have at least five years of experience practicing law and hold a current license to practice law in the state of Minnesota, and

B. have litigation experience and an understanding of administrative law

Subp 2. **Standards of conduct.** Hearing officers are expected to follow the Professionalism Aspirations for Judges, Referees, and Administrative Law Judges to Lawyers and Parties, as promulgated by the Minnesota Supreme Court, January 2001

Subp 3. **Evaluation.** The department will collect and maintain data on the hearing system which must include, at a minimum, the number of hearing requests, the method of resolving hearings, and participant evaluation of the process and outcome

Statutory Authority: *L 2003 ISP9 art 3 s 19*

History: *28 SR 1292*

3525.4100 [Repealed, 28 SR 1292]

3525.4110 PREHEARING CONFERENCE.

Subpart 1 **Generally.** A prehearing conference must be held within five business days of the date the department appoints the hearing officer. The hearing officer will initiate the prehearing conference which may be conducted by telephone or in person at a location within the district. The hearing officer will have a written verbatim record of the prehearing conference created which must be made available to both parties if either party requests the record.

Subp 2. **Purpose.** The hearing officer has the following duties at a prehearing conference.

A. The hearing officer must establish the management, control, and location of the hearing to ensure its fair, efficient, and effective disposition including, but not limited to.

(1) informing the parties of their rights should the dispute proceed,

(2) ensuring parents have been provided access to or copies of all education records and ensuring all required notices, information on the pupil's educational progress, and any information requested by the hearing officer has been shared between the parties with copies provided to the hearing officer;

(3) determining the necessity for participation of appropriate districts, issuing orders to join agencies not already participating and consolidating cases pursuant to part 3525.4350,

(4) determining the amount of time parties will have to present their cases by balancing the due process rights of the parties with the need for administrative efficiency and limited public resources, and

(5) requiring and assisting the parties in establishing lists of written exhibits and witnesses necessary for each party to make its case, such as responding to requests to hearing officers to compel the attendance of witnesses, determining the necessity of telephone testimony, and stipulating to undisputed facts. A hearing officer may permit a witness to testify via telephone if such a procedure would not prejudice either party.

B The hearing officer must clearly identify the questions the hearing officer must answer to resolve the dispute and eliminate claims and complaints that are frivolous or beyond a statute of limitations period. If necessary, the hearing officer must assist the parties in identifying the issues for hearing.

C. The hearing officer must set a scheduling order for the hearing and for any additional prehearing activities including requests for extensions to the 45-day timeline in which to dispose of the matter. A hearing officer may only grant an extension for a period of up to 30 calendar days if the requesting party shows good cause on the record. Extensions may last longer than 30 calendar days if both parties agree and the hearing officer approves. All written orders granting or denying motions must be filed with the department. All orders granting or denying motions to extend the 45-day timeline must be in writing. The hearing officer may require an independent education evaluation be conducted at district expense.

D The hearing officer must determine if the hearing may be disposed of without an evidentiary hearing and set the schedule and procedure accordingly. The hearing officer may dispose of any issue without an evidentiary hearing if there are no material facts in dispute. The hearing officer may facilitate a settlement, if possible, including suggesting the parties participate in mediation or another alternative dispute resolution option.

Subp 3 **Hearing officer authority.** The hearing officer has the authority to take any actions necessary to ensure the compliance with all requirements of law and may dismiss the matter, with or without prejudice, if the party requesting the hearing fails to provide information required or ordered by the hearing officer.

Subp. 4 **Subpoenas.** Parties may request subpoenas for witnesses from the hearing officer. A subpoena must include a statement that federal law gives parties to a special education due process hearing the right to compel the attendance of witnesses. A hearing officer may refuse to issue a subpoena for a proposed witness who is to offer evidence the hearing officer determines will be incompetent, irrelevant, immaterial, or unduly repetitious.

Statutory Authority: *L 2003 ISP9 art 3 s 19*

History: 28 SR 1292

3525.4210 [Repealed, 28 SR 1292]

3525.4220 HEARING RIGHTS OF RESPECTIVE PARTIES.

Subpart 1 **Basic hearing rights.** Parties have the right at hearing to:

A be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities,

B present evidence and confront, cross-examine, and compel the attendance of witnesses,

C. prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing;

D obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing; and

E obtain written, or, at the option of the parents, electronic findings of fact and decisions

Subp 2. **Parental rights at hearings.** Parents involved in hearings have the right to.

- A. have the child who is the subject of the hearing present;
- B. open the hearing to the public, and
- C. receive a free copy of the hearing transcript or recording and the findings of fact and decisions

Statutory Authority: *L 2003 ISP9 art 3 s 19*

History: *28 SR 1292*

3525.4300 HEARING PROCEDURES.

Subpart 1 **Generally.** The hearing officer shall preside over and conduct the hearing and shall rule on procedural and evidentiary matters. The hearing officer must ensure that issues for hearing are appropriately identified and that evidence is limited to that which is relevant to the issues and not cumulative. The hearing officer must limit the hearing to the amount of time necessary for each party to present its case and must establish the means for doing so. The hearing officer has authority to question witnesses and request information.

A written record of the hearing shall be made

Subp 2. **Protective orders.** When a party is asked to reveal data that the opposing party is not privileged to see, the party from whom the data is requested may bring the matter to the attention of the hearing officer who will review the data in camera and make protective orders that are reasonable and necessary or as otherwise provided by law. The hearing officer may refer the in camera review to another hearing officer if requested to do so by a party

Subp 3 **Responding to orders.** If the hearing officer orders that parties do an act or not do an act, the parties must comply with the order. Objections to orders must be made as part of the record as promptly as possible

Subp 4. **Copies.** The hearing officer must send copies of all orders or decisions to all parties simultaneously. Any party sending a letter, exhibit, brief, memorandum, subpoena request, or other document to the hearing officer must simultaneously send a copy to all other parties.

Subp 5 **Representation by attorney.** A party need not be represented by an attorney. If a party is represented by an attorney and notifies the other parties of such representation, all communications pertaining to the hearing must be directed to that attorney

Subp. 6. **Communication with hearing officer.** No party or attorney may communicate with the hearing officer on the merits of the case unless all parties have the opportunity to participate.

Subp. 7 **Witnesses.** Any party may be a witness and may present witnesses on the party's behalf at the hearing. All oral testimony at the hearing must be under oath or affirmation. At the request of a party or upon the hearing officer's own motion, the hearing officer may exclude witnesses from the hearing room so that they cannot hear the testimony of other witnesses. The hearing officer has authority to question witnesses and request information

Statutory Authority: *L 2003 ISP9 art 3 s 19*

History: *28 SR 1292*

3525.4320 RULES OF EVIDENCE.

Subpart 1. **Admissible evidence.** The hearing officer may admit all evidence that possesses probative value, including hearsay, if it is the type of evidence on which reasonable, prudent persons are accustomed to rely in the conduct of their serious affairs. The hearing officer must give effect to the rules of privilege recognized by law. The hearing officer must exclude evidence that is incompetent, irrelevant, immaterial, or unduly repetitious. The testimony or records of mediators or state-provided IEP

meeting facilitators are not admissible. The hearing officer may admit evidence offered for the purpose of impeachment even if not disclosed five days prior to the hearing.

Subp 2 Evidence part of record. All evidence to be considered in the case must be offered and made a part of the record in the case. The hearing officer must not consider any other factual information or evidence in the determination of the case. This does not prohibit the hearing officer from questioning witnesses or seeking other evidence from the parties and directing them to provide it.

Subp 3 Documents. Documentary evidence in the form of copies or excerpts may be received or incorporated by reference in the discretion of the hearing officer or upon agreement of the parties. A hearing officer may receive copies of a document to the same extent as the original document.

Subp. 4. Official notice of facts. The hearing officer may take notice of judicially cognizable facts but must do so on the record and with the opportunity for any party to contest the facts so noticed.

Statutory Authority: *L 2003 ISP9 art 3 s 19*

History: *28 SR 1292*

3525.4350 CONSOLIDATION OF CASES.

Subpart 1 Standards for consolidation. The hearing officer may consolidate two or more separate cases for hearing if the cases present substantially the same issues of fact and law, if the consolidation would save time and costs, and if consolidation would not prejudice any party.

Subp. 2 Request for consolidation. A party requesting consolidation must serve a written request for consolidation on all parties to the cases to be consolidated and must file the originals with the hearing officers assigned to the cases, together with a proof of service showing service as required herein. Any party objecting to the request must serve and file their objections within five calendar days following service of the request for consolidation.

Subp 3 Determination. When more than one hearing officer is assigned to the cases that are the subject of the request for consolidation, the hearing officer assigned to the first case filed with the department will make the determination regarding consolidation.

Subp 4 Order. Upon determining whether cases should be consolidated, the hearing officer must serve a written order on all parties and on the department. The order must contain information such as a description of the cases for consolidation, the reasons for the decision, and a notification of a consolidated prehearing conference if one is being scheduled.

Statutory Authority: *L 2003 ISP9 art 3 s 19*

History: *28 SR 1292*

3525.4410 [Repealed, 28 SR 1292]

3525.4420 DECISIONS OF HEARING OFFICER.

The hearing officer must issue a written decision or order after the hearing and serve the decision or order on all parties. This order must include information detailing the right to appeal the decision and the time in which to do so. The hearing officer must maintain the hearing record until the date of the final decision or order and send it to the department within one week of the issuance of the final decision or order. The record must include all pleadings, motions and orders; evidence offered or considered; offers of proof, objections, and rulings thereon, the hearing officer's final decision or order, all memoranda or data submitted by any party in connection with the case, and the transcripts of all proceedings. The hearing officer's decision is final on the date the decision is issued.

A decision must

- A be in writing;
- B state the controlling and material facts to which the law is applied,
- C state the conclusions of law applied to the facts, and

D be based on local standards, state statute, the rules of the department, and federal law. A summary disposition based upon stipulation, settlement, or withdrawal of a hearing request need not contain extensive findings or conclusions. An order, to be treated as a consent decree approved by the hearing officer, must expressly state it is a consent order.

Statutory Authority: *L 2003 ISP9 art 3 s 19*

History: *28 SR 1292*

3525.4500 [Repealed, 28 SR 1292]

3525.4600 [Repealed, 28 SR 1292]

3525.4700 ENFORCEMENT AND APPEALS.

If the district fails to implement the hearing officer's decision, the parent has the right to bring the failure to the attention of the department through the special education complaint process. The department must monitor final orders and ensure they are enforced. In accordance with Minnesota Statutes, section 127A.42, the commissioner may impose sanctions necessary to correct any failure. Once the hearing officer has issued a final decision, the hearing officer lacks authority to amend the decision except for clerical or mathematical errors. The parent or district may seek review of the hearing officer's decision in the Minnesota Court of Appeals or in the federal District Court, consistent with federal law. A party must appeal to the Minnesota Court of Appeals within 60 calendar days of receiving the hearing officer's decision.

Statutory Authority: *L 2003 ISP9 art 3 s 19*

History: *28 SR 1292*

3525.4770 EXPEDITED HEARINGS, TIMELINES.

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

- A a statement indicating the parents request an expedited hearing;
- B the name and address of the child involved,
- C the name, address, and telephone number, if available, of the parent,
- D the name of the school the child is attending at the time of the request;
- E the name or number of the school district of the parent's residence;
- F a description of the nature of the problem of the child relating to the manifestation determination, interim placement, or proposed interim placement, including facts relating to the problem, and

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

The parent's right to an expedited hearing must not be denied or delayed for failure to provide the notice required here.

Immediately upon the district's receipt of the request for an expedited hearing or upon the initiation of an expedited hearing, the district shall serve the parents with a written notice of rights and procedures relative to the hearing, including the availability of free or low-cost legal services.

Subp. 2 **When district requests hearing.** When the district requests an expedited hearing it shall provide the parents and department 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

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

Subp 3 **Hearing officer appointment.** Within two business days of receipt of the notice, the commissioner shall appoint a hearing officer

Subp 4 [Repealed, 28 SR 1292]

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 business 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 relating to scheduling, jurisdiction, and listing witnesses, including expert witnesses. Issues not raised in an expedited due process hearing are not waived in subsequent proceedings. Any 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 ten calendar 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. The hearing officer may establish procedures necessary to ensure the timely and fair resolution of the dispute

Subp 7 [Repealed, 28 SR 1292]

Subp. 8 **Decision.** A written decision for an expedited hearing shall be rendered by the hearing officer in ten calendar days from the date the hearing was requested. An extension of up to five calendar 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. All regulations in this chapter apply to expedited due process hearings to the extent not modified by this part

Statutory Authority: *L 2003 ISP9 art 3 s 19*

History: *28 SR 1292*