

CHAPTER 3525
DEPARTMENT OF EDUCATION
CHILDREN WITH A DISABILITY

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Subp. 23. [Repealed, 16 SR 1543]

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Subp. 26. [Renumbered 3525.0210, subp. 48]

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. [Repealed, L 2009 c 96 art 3 s 22]

Subp. 6. [Repealed, L 2009 c 96 art 3 s 22]

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. [Repealed, L 2009 c 96 art 3 s 22]

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.

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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. [Repealed, L 2009 c 96 art 3 s 22]

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. [Repealed, L 2009 c 96 art 3 s 22]

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. [Repealed, L 2009 c 96 art 3 s 22]

Subp. 30. [Repealed, L 2009 c 96 art 3 s 22]

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. [Repealed, L 2009 c 96 art 3 s 22]

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

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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. [Repealed, L 2009 c 96 art 3 s 22]

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. [Repealed, L 2009 c 96 art 3 s 22]

Subp. 47. [Repealed, L 2009 c 96 art 3 s 22]

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: *MS s 14.389; 120.17; 121.11; L 1994 c 647 art 3 s 23; L 1999 c 123 s 19,20; L 2003 1Sp9 art 3 s 19*

History: *8 SR 596; 14 SR 281; 16 SR 1543; L 1991 c 265 art 3 s 38; 19 SR 974; 19 SR 2432; L 1998 c 397 art 11 s 3; 24 SR 1799; 26 SR 657; 28 SR 1292; L 2009 c 96 art 3 s 22*

POLICIES

3525.0300 PROVISION OF FULL SERVICES.

Pupils with disabilities who are eligible for special education services based on an appropriate individual evaluation shall have access to free appropriate public education, as that term is defined by applicable law.

Statutory Authority: *MS s 120.17; 121.11; L 1994 c 647 art 3 s 23; L 1999 c 123 s 19,20*

History: *14 SR 281; 19 SR 2432; L 1998 c 397 art 11 s 3; 26 SR 657*

3525.0400 [Repealed, L 2009 c 96 art 3 s 22]

3525.0500 [Repealed, 8 SR 596]

3525.0550 PUPIL IEP MANAGER.

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

Statutory Authority: *MS s 120.17; L 1999 c 123 s 19,20*

History: *14 SR 281; 16 SR 1543; L 1998 c 397 art 11 s 3; 26 SR 657*

3525.0600 [Repealed, 8 SR 596]

3525.0650 [Repealed, 19 SR 2432]

3525.0700 PARENTAL INVOLVEMENT.

Parents of pupils with disabilities have a right to be involved by the school district in the education decision-making process by participating or being afforded the opportunity to participate at each IEP meeting to develop, review, or revise the IEP. At the time of contact, the district shall inform the parents of their right to bring anyone of their choosing to accompany them to the meeting. The district shall inform the pupil's parents about the alternatives and methods of instruction as described in Minnesota Statutes, section 125A.05.

Statutory Authority: *MS s 120.17; 121.11; L 1994 c 647 art 3 s 23; L 1999 c 123 s 19,20*

History: *14 SR 281; L 1991 c 265 art 3 s 38; 19 SR 2432; L 1998 c 397 art 11 s 3; 26 SR 657*

3525.0750 IDENTIFICATION OF PUPILS WITH DISABILITIES.

School districts shall develop systems designed to identify pupils with disabilities beginning at birth, pupils with disabilities attending public and nonpublic school, and pupils with disabilities who are of school age and are not attending any school.

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

Statutory Authority: *MS s 14.389; 121.11; L 1994 c 647 art 3 s 23; L 1999 c 123 s 19,20*

History: *19 SR 2432; L 1998 c 397 art 11 s 3; 24 SR 1799; 26 SR 657*

3525.0755 EXTENDED SCHOOL YEAR SERVICES.

Subpart 1. **Scope.** School districts are required to provide extended school year (ESY) services to a pupil if the IEP team determines the services are necessary during a break in instruction in order to provide a free appropriate public education.

Subp. 2. **Definitions.** For the purposes of ESY, the terms in this subpart have the meanings given them.

A. "Level of performance" means a pupil's progress toward annual IEP goals immediately prior to a break in instruction as seen in the progress measurements required by part 3525.2810, subpart 1, item A, subitem (9).

B. "Recoupment" means a pupil's ability to regain the performance of a skill or acquired knowledge to approximately the same level of performance just prior to the break in instruction.

C. "Regression" means a significant decline in the performance of a skill or acquired knowledge, specified in the annual goals as stated in the pupil's IEP, that occurs during a break in instruction.

D. "Self-sufficiency" means the functional skills necessary for a pupil to achieve a reasonable degree of personal independence as typically identified in the annual IEP goals for a pupil requiring a functional curriculum. To attain self-sufficiency, a pupil must maintain skills consistent with the pupil's IEP goals in any of these skill areas:

- (1) basic self-help, including toileting, eating, feeding, and dressing;
- (2) muscular control;
- (3) physical mobility;
- (4) impulse control;
- (5) personal hygiene;
- (6) development of stable relationships with peers and adults;
- (7) basic communication; or
- (8) functional academic competency, including basic reading and writing skills, concepts of time and money, and numerical or temporal relationships.

Subp. 3. **Determination of ESY entitlement.** At least annually, the IEP team must determine a pupil is in need of ESY services if the pupil meets the conditions of item A, B, or C.

A. there will be significant regression of a skill or acquired knowledge from the pupil's level of performance on an annual goal that requires more than the length of the break in instruction to recoup unless the IEP team determines a shorter time for recoupment is more appropriate;

B. services are necessary for the pupil to attain and maintain self-sufficiency because of the critical nature of the skill addressed by an annual goal, the pupil's age and level of development, and the timeliness for teaching the skill; or

C. the IEP team otherwise determines, given the pupil's unique needs, that ESY services are necessary to ensure the pupil receives a free appropriate public education.

Subp. 4. **Sources of information for IEP team determination.** The IEP team must decide the basis for determining whether a pupil is eligible for ESY services using information including:

- A. prior observation of the pupil's regression and recoupment over the summer;
- B. observation of the pupil's tendency to regress over extended breaks in instruction during the school year; and
- C. experience with other pupils with similar instructional needs.

Subp. 5. **Other factors to be considered.** In making its determination of ESY needs under subpart 3, item A, B, or C, the IEP team must consider the following factors, where relevant:

- A. the pupil's progress and maintenance of skills during the regular school year;
- B. the pupil's degree of impairment;
- C. the pupil's rate of progress;
- D. the pupil's behavioral or physical problems;
- E. the availability of alternative resources;
- F. the pupil's ability and need to interact with nondisabled peers;
- G. the areas of the pupil's curriculum which need continuous attention; or
- H. the pupil's vocational needs.

Statutory Authority: *L 1999 c 123 s 19,20*

History: *26 SR 657*

3525.0800 RESPONSIBILITY FOR ENSURING PROVISION OF INSTRUCTION AND SERVICES.

Subpart 1. **Pupil's district of residence.** As provided in Minnesota Statutes, section 125A.05, a pupil's district of residence is responsible for assuring that an appropriate program is provided for all eligible pupils placed by the district's team within the district or in an out-of-district placement regardless of the method or location of instruction used.

Subp. 2. **Purchased services.** The district shall not purchase special educational services for a pupil from a public or private agency when the service is available or can be made available and can be more appropriately provided as the least restrictive alternative within the district. Whenever it is appropriate for a district to purchase special education service for pupils with disabilities who reside in the district, it continues to be the responsibility of the school district, consistent with Minnesota Statutes and parts 3525.0210 to 3525.4770, to assure and ascertain that such pupils and youth receive the education and related services and rights to which they are entitled.

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

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

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

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

The annual IEP must be developed jointly by the providing district, agency, or academy and resident district. The resident district may appoint a member of the providing district as its representative.

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

Subp. 6. **Tuition rate appeal.** If the districts do not agree on the tuition rate, either district may appeal to the commissioner as provided in Minnesota Statutes, section 125A.11.

Subp. 7. **Pupils placed for care and treatment.** The educational and financial responsibilities of the resident and providing districts for pupils placed for care and treatment under Minnesota Statutes, sections 125A.15 and 125A.16, are as follows:

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

B. Nondistrict placement:

(1) When the pupil is placed in a residential facility or foster care by someone other than the resident district, the district in which the facility is located is responsible for providing an appropriate education program as set forth in statutes and parts 3525.0210 to

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3525.4770 including the notice and hearing provisions. The resident district is responsible for assuming the cost of the educational program when notified according to Minnesota Statutes, sections 125A.15 and 127A.47. The district is not responsible for the cost of care and treatment.

(2) When the pupil is placed in a day treatment program by an agency other than the resident district, the resident district is responsible for determining the location of the special education services in accordance with the options outlined in Minnesota Statutes, section 125A.15. The resident district shall be responsible for ensuring that an appropriate program is provided in accordance with subparts 4 to 6, including all costs for the education program and any due process proceedings regardless of the method or locations of services selected.

Subp. 8. Pupils placed through education choice options. When a pupil is placed outside of the district residence by the parent or pupil for the purpose of education and in accordance with a statutory education choice enrollment act, the resident district shall be responsible for assuming the cost of the education program when notified in accordance with Minnesota Statutes, section 127A.47, subdivision 5. The providing district shall be responsible for assuring that an appropriate program is available for the pupil including the notice and hearing provisions. Responsibility for transportation costs between the pupil's home and the providing school district shall be determined in accordance with Minnesota Statutes.

Subp. 9. Financial and legal responsibility for pupils 18 through 21. For a pupil who is age 18 through 21 years of age and is receiving special education, the district where the pupil's parents, legal guardian, or conservator lives shall be financially responsible for the cost of the special education program even in those cases where the pupil serves as the parent according to Code of Federal Regulations, title 34, section 300.20, for due process purposes.

Statutory Authority: *MS s 120.17; 121.11; L 1994 c 647 art 3 s 23; L 1999 c 123 s 19,20*

History: *14 SR 281; 19 SR 2432; L 1998 c 397 art 11 s 3; 26 SR 657; 28 SR 1292*

3525.0850 BEHAVIOR INTERVENTIONS.

This policy is intended to encourage the use of positive approaches to behavioral interventions. The objective of any behavioral intervention must be that pupils acquire appropriate behaviors and skills. It is critical that behavioral intervention programs focus on skills acquisition rather than merely behavior reduction or elimination. Behavioral intervention policies, programs, or procedures must be designed to enable a pupil to benefit from an appropriate, individualized educational program as well as develop skills to enable them to function as independently as possible in their communities.

Statutory Authority: *MS s 121.11; L 1994 c 647 art 3 s 23*

History: *19 SR 2432; L 1998 c 397 art 11 s 3*

3525.0900 [Repealed, 8 SR 596]

3525.1000 [Repealed, 8 SR 596]

APPLICATIONS**3525.1100 STATE AND DISTRICT RESPONSIBILITY FOR TOTAL SPECIAL EDUCATION SYSTEM.**

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

This shall be done, in part, by reviewing each district's and program's total special education system (TSES) for compliance. Districts and programs shall also be monitored periodically by the Department of Education for their implementation of the TSES and all requirements in United States Code, title 20, chapter 33, sections 1400 et seq., Code of Federal Regulations, title 34, part 300, Minnesota Statutes, and this part.

Subp. 2. **District responsibility.** A district shall submit to the commissioner the district's plan for providing instruction and related services upon request for all pupils as required by Minnesota Statutes, sections 125A.03 to 125A.24. The plan may be for a single district or for the member districts of a formal special education cooperative. The plan shall be considered as part of the annual school district application for program review, but will not be required to be resubmitted annually. If a cooperative changes administrative organization, it shall submit a revised plan. The new plan must be submitted before the beginning of the next school year. The plan shall include descriptions of the district's:

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

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

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

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

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

D. Operating procedures of interagency committees required in statute.

E. Interagency agreements the district has entered.

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

F. [Repealed, L 2009 c 96 art 3 s 22]

Statutory Authority: *MS s 120.17; 121.11; L 1994 c 647 art 3 s 23; L 1999 c 123 s 19,20*

History: *8 SR 596; 14 SR 281; 16 SR 1543; 19 SR 2432; L 1995 1Sp3 art 16 s 13; L 1998 c 397 art 11 s 3; 26 SR 657; L 2003 c 130 s 12; L 2009 c 96 art 3 s 22*

3525.1150 [Repealed, 24 SR 1799]

3525.1200 [Repealed, 19 SR 2432]

3525.1300 [Repealed, 8 SR 596]

3525.1310 STATE AID FOR SPECIAL EDUCATION PERSONNEL.

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

A. child find and pupil identification;

B. necessary short-term indirect or consultative services that are provided in conjunction with regular education prereferral activities to an individual suspected of having a disabling condition to determine whether referrals for evaluation shall be made;

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

D. instruction or related and support services to pupils who have an IEP;

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E. parental involvement and due process;

F. school psychological services and school social worker services provided for pupils identified as emotional or behavioral disordered according to part 3525.1329 alone or in conjunction with the instructional program outlined in any pupil's IEP;

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

H. paraprofessional services provided under the direction of a regular or special education teacher or a related services provider that:

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

(2) supplement instructional activities or 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, except for attorney costs for suit preparation.

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

Statutory Authority: *MS s 14.389; 120.17; 121.11; L 1994 c 647 art 3 s 23; L 1999 c 123 s 19,20*

History: *8 SR 596; 14 SR 281; 16 SR 1543; 19 SR 2432; L 1998 c 397 art 11 s 3; 24 SR 1799; 26 SR 657*

3525.1320 [Repealed, 19 SR 2432]

ENTRANCE AND EXIT CRITERIA

3525.1325 AUTISM SPECTRUM DISORDERS (ASD).

Subpart 1. **Definition.** "Autism spectrum disorders (ASD)" means a range of pervasive developmental disorders, with onset in childhood, 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, including social interaction, communication, or the presence of restricted, repetitive, and stereotyped patterns of behavior, interests, and activities. These core features may present themselves in a wide variety of combinations that range from mild to severe, and the number of behavioral indicators present may vary. ASD may include 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.** A multidisciplinary team shall determine that pupil is eligible and in need of special education instruction and related services if the pupil meets the criteria in items A and B. A determination of eligibility must be supported by information collected from multiple settings and sources.

A. An educational evaluation must address all three core features in subitems (1) to (3). The team must document that the pupil demonstrates patterns of behavior described in at least two of these subitems, one of which must be subitem (1).

The behavioral indicators demonstrated must be atypical for the pupil's developmental level. The team shall document behavioral indicators through 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, for example: 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, for example: 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, for example: 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 document and summarize in an evaluation report that ASD adversely affects a pupil's performance and that the pupil is in need of special education instruction and related services. Documentation must include:

(1) an evaluation of 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 team must consider all other areas of educational concern related to the suspected disability;

(2) observations of the pupil in two different settings, on two different days; and

(3) a summary of the pupil's developmental history and behavior patterns.

Subp. 4. **Team membership.** The team determining eligibility and educational programming must include at least one professional with experience and expertise in the area of ASD 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 meet the criteria of ASD under subpart 3. However, a clinical or medical diagnosis is not required for a pupil to be eligible for special education services, and even with a clinical or medical diagnosis, a pupil must meet the criteria in subpart 3 to be eligible.

Statutory Authority: *MS s 14.389; 120.17; L 1999 c 123 s 19,20*

History: *16 SR 1543; L 1998 c 397 art 11 s 3; 24 SR 1799; 26 SR 657*

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 the pupil must meet the criteria for both visually impaired and deaf and hard of hearing to be eligible for special education and services under this category.

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 a medical or functional evaluation of the other sense (vision or hearing);

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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 that includes hearing and vision loss in combination with multiple disabilities, for example, CHARGE Syndrome.

Statutory Authority: *MS s 14.389; 120.17; L 1999 c 123 s 19,20*

History: *16 SR 1543; L 1998 c 397 art 11 s 3; 24 SR 1799; 26 SR 657*

3525.1329 EMOTIONAL OR BEHAVIORAL DISORDERS.

Subpart 1. **Definition.** "Emotional or behavioral disorders" means an established pattern of one or more of the following emotional or behavioral responses:

A. withdrawal or anxiety, depression, problems with mood, or feelings of self-worth;

B. disordered thought processes with unusual behavior patterns and atypical communication styles; or

C. aggression, hyperactivity, or impulsivity.

The established pattern of emotional or behavioral responses must adversely affect educational or developmental performance, including intrapersonal, academic, vocational, or social skills; be significantly different from appropriate age, cultural, or ethnic norms; and be more than temporary, expected responses to stressful events in the environment. The emotional or behavioral responses must be consistently exhibited in at least three different settings, two of which must be educational settings, and one other setting in either the home, child care, or community. The responses must not be primarily the result of intellectual, sensory, or acute or chronic physical health conditions.

Subp. 2. [Repealed, 26 SR 657]

Subp. 2a. **Criteria.** A pupil is eligible and in need of special education and related services for an emotional or behavioral disorder when the pupil meets the criteria in items A to C.

A. A pupil must demonstrate an established pattern of emotional or behavioral responses that is described in at least one of the following subitems and which represents a significant difference from peers:

(1) withdrawn or anxious behaviors, pervasive unhappiness, depression, or severe problems with mood or feelings of self-worth defined by behaviors, for example: isolating self from peers; displaying intense fears or school refusal; overly perfectionistic; failing to express emotion; displaying a pervasive sad disposition; developing physical symptoms related to worry or stress; or changes in eating or sleeping patterns;

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

(3) aggressive, hyperactive, or impulsive behaviors that are developmentally inappropriate, for example: physically or verbally abusive behaviors; impulsive or violent, destructive, or intimidating behaviors; or behaviors that are threatening to others or excessively antagonistic.

The pattern must not be the result of cultural factors, and must be based on evaluation data which may include a diagnosis of mental disorder by a licensed mental health professional.

B. The pupil's pattern of emotional or behavioral responses adversely affects educational performance and results in:

(1) an inability to demonstrate satisfactory social competence that is significantly different from appropriate age, cultural, or ethnic norms; or

(2) a pattern of unsatisfactory educational progress that is not primarily a result of intellectual, sensory, physical health, cultural, or linguistic factors; illegal chemical use; autism spectrum disorders under part 3525.1325; or inconsistent educational programming.

C. The combined results of prior documented interventions and the evaluation data for the pupil must establish significant impairments in one or more of the following areas: intrapersonal, academic, vocational, or social skills. The data must document that the impairment:

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

(2) is consistently exhibited by occurrences in at least three different settings: two educational settings, one of which is the classroom, and one other setting in either the home, child care, or community; or for children not yet enrolled in kindergarten, the emotional or behavioral responses must be consistently exhibited in at least one setting in the home, child care, or community; and

(3) has been occurring throughout a minimum of six months, or results from the well-documented, sudden onset of a serious mental health disorder diagnosed by a licensed mental health professional.

Subp. 3. Evaluation.

A. The evaluation findings in subpart 2a must be supported by current or existing data from:

(1) clinically significant scores on standardized, nationally normed behavior rating scales;

(2) individually administered, standardized, nationally normed tests of intellectual ability and academic achievement;

(3) three systematic observations in the classroom or other learning environment;

(4) record review;

(5) interviews with parent, pupil, and teacher;

(6) health history review procedures;

(7) a mental health screening; and

(8) functional behavioral assessment.

The evaluation may include data from vocational skills measures; personality measures; self-report scales; adaptive behavior rating scales; communication measures; diagnostic assessment and mental health evaluation reviews; environmental, socio-cultural, and ethnic information reviews; gross and fine motor and sensory motor measures; or chemical health assessments.

B. Children not yet enrolled in kindergarten are eligible for special education and related services if they meet the criteria listed in subpart 2a, items A, B, and C, subitems (2) and (3). The evaluation process must show developmentally significant impairments in self-care, social relations, or social or emotional growth, and must include data from each of the following areas: two or more systematic observations, including one in the home; a case history, including medical, cultural, and developmental information; information on

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the pupil's cognitive ability, social skills, and communication abilities; standardized and informal interviews, including teacher, parent, caregiver, and child care provider; and standardized adaptive behavior scales.

Statutory Authority: *MS s 120.17; L 1999 c 123 s 19,20*

History: *16 SR 1543; 17 SR 3361; 26 SR 657*

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:

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

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

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

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

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

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

(2) an achievement deficit in basic reading skills, reading comprehension, written language, or general knowledge that is at the 15th percentile or 1.0 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:

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

(2) the pupil uses American Sign Language or one or more alternative or augmentative systems of communication alone or in combination with 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:

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

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

Statutory Authority: *MS s 14.389; 120.17; L 1999 c 123 s 19*

History: *16 SR 1543; L 1998 c 397 art 11 s 3; 24 SR 1799*

3525.1333 DEVELOPMENTAL COGNITIVE DISABILITY.

Subpart 1. **Definition.** "Developmental cognitive disability (DCD)" means a condition resulting in significantly below average intellectual functioning and concurrent deficits in adaptive behavior that adversely affects educational performance and requires special education and related services. DCD does not include conditions primarily due to a sensory or physical impairment, traumatic brain injury, autism spectrum disorders, severe multiple impairments, cultural influences, or inconsistent educational programming.

Subp. 2. **Criteria.** The team shall determine that a pupil is eligible as having a DCD and is in need of special education instruction and related services if the pupil meets the criteria in items A and B.

A. The pupil demonstrates below average adaptive behavior in school and home, and, if appropriate, community environments. For the purposes of this item, "below average" means:

(1) a composite score at or below the 15th percentile on a nationally normed, technically adequate measure of adaptive behavior; and

(2) documentation of needs and the level of support required in at least four of the seven adaptive behavior domains across multiple environments. Systematic observation and parent input must be included as sources to document need and level of support. All of the following adaptive behavior domains must be considered:

- (a) daily living and independent living skills;
- (b) social and interpersonal skills;
- (c) communication skills;
- (d) academic skills;
- (e) recreation and leisure skills;
- (f) community participation skills; and
- (g) work and work-related skills.

Other sources of documentation may include checklists; classroom or work samples; interviews; criterion-referenced measures; educational history; medical history; or pupil self-report.

B. The pupil demonstrates significantly below average general intellectual functioning that is measured by an individually administered, nationally normed test of intellectual ability. For the purposes of this subitem, "significantly below average general intellectual functioning" means:

(1) mild-moderate range: two standard deviations below the mean, plus or minus one standard error of measurement; and

(2) severe-profound range: three standard deviations below the mean, plus or minus one standard error of measurement.

Significantly below average general intellectual functioning must be verified through a written summary of results from at least two systematic observations with consideration for culturally relevant information, medical and educational histories, and one or more of the following: supplemental tests of specific abilities, criterion-referenced tests, alternative methods of intellectual assessment, clinical interviews with parents, including family members, if appropriate, or observation and analysis of behavior across multiple environments.

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Subp. 3. [Repealed, 26 SR 657]

Statutory Authority: *MS s 120.17; L 1999 c 123 s 19,20*

History: *16 SR 1543; 17 SR 3361; L 1998 c 397 art 11 s 3; 26 SR 657*

3525.1335 OTHER HEALTH DISABILITIES.

Subpart 1. **Definition.** "Other health disability" means having limited strength, endurance, vitality, or alertness, including a heightened or diminished alertness to environmental stimuli, with respect to the educational environment that is due to a broad range of medically diagnosed chronic or acute health conditions that adversely affect a pupil's educational performance.

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

A. There is:

(1) written and signed documentation by a licensed physician of a medically diagnosed chronic or acute health condition; or

(2) in the case of a diagnosis of Attention Deficit Disorder or Attention Deficit Hyperactivity Disorder (ADD or ADHD), there is written and signed documentation of a medical diagnosis by a licensed physician. The diagnosis of ADD or ADHD must include documentation that DSM-IV criteria in items A to E have been met. DSM-IV criteria documentation must be provided by either a licensed physician or a mental health or medical professional licensed to diagnose the condition.

For initial evaluation, all documentation must be dated within the previous 12 months.

B. In comparison with peers, the health condition adversely affects the pupil's ability to complete educational tasks within routine timelines as documented by three or more of the following:

(1) excessive absenteeism linked to the health condition, for example, hospitalizations, medical treatments, surgeries, or illnesses;

(2) specialized health care procedures that are necessary during the school day;

(3) medications that adversely affect learning and functioning in terms of comprehension, memory, attention, or fatigue;

(4) limited physical strength resulting in decreased capacity to perform school activities;

(5) limited endurance resulting in decreased stamina and decreased ability to maintain performance;

(6) heightened or diminished alertness resulting in impaired abilities, for example, prioritizing environmental stimuli; maintaining focus; or sustaining effort or accuracy;

(7) impaired ability to manage and organize materials and complete classroom assignments within routine timelines; or

(8) impaired ability to follow directions or initiate and complete a task.

Subp. 3. **Evaluation.** The health condition results in a pattern of unsatisfactory educational progress as determined by a comprehensive evaluation documenting the required components of subpart 2, items A and B. The eligibility findings must be supported by current or existing data from items A to E:

A. an individually administered, nationally normed standardized evaluation of the pupil's academic performance;

B. documented, systematic interviews conducted by a licensed special education teacher with classroom teachers and the pupil's parent or guardian;

C. one or more documented, systematic observations in the classroom or other learning environment by a licensed special education teacher;

D. a review of the pupil's health history, including the verification of a medical diagnosis of a health condition; and

E. records review.

The evaluation findings may include data from: an individually administered, nationally normed test of intellectual ability; an interview with the pupil; information from the school nurse or other individuals knowledgeable about the health condition of the pupil; standardized, nationally normed behavior rating scales; gross and fine motor and sensory motor measures; communication measures; functional skills checklists; and environmental, socio-cultural, and ethnic information reviews.

Statutory Authority: *MS s 120.17; L 1999 c 123 s 19,20*

History: *16 SR 1543; L 1998 c 397 art 11 s 3; 26 SR 657*

3525.1337 PHYSICALLY IMPAIRED.

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

Subp. 2. **Criteria.** 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 documented 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 1.0 standard deviation or more below the mean on an individually administered, nationally normed standardized evaluation of the pupil's academic achievement.

Statutory Authority: *MS s 14.389; 120.17; L 1999 c 123 s 19,20*

History: *16 SR 1543; L 1998 c 397 art 11 s 3; 24 SR 1799; 26 SR 657*

3525.1339 SEVERELY MULTIPLY IMPAIRED.

Subpart 1. **Definition.** "Severely multiply impaired" means a pupil who has severe learning and developmental problems resulting from two or more disability conditions determined by an evaluation as defined by part 3525.2710.

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

A. deaf or hard of hearing, part 3525.1331;

B. physically impaired, part 3525.1337;

C. developmental cognitive disability: severe-profound range, part 3525.1333;

D. visually impaired, part 3525.1345;

E. emotional or behavioral disorders, part 3525.1329; or

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F. autism spectrum disorders, part 3525.1325.

Statutory Authority: *MS s 120.17; L 1999 c 123 s 19,20*

History: *16 SR 1543; L 1998 c 397 art 11 s 3; 26 SR 657*

3525.1341 SPECIFIC LEARNING DISABILITY.

Subpart 1. **Definition.** "Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

The disorder is:

A. manifested by interference with the acquisition, organization, storage, retrieval, manipulation, or expression of information so that the child does not learn at an adequate rate for the child's age or to meet state-approved grade-level standards when provided with the usual developmental opportunities and instruction from a regular school environment; and

B. demonstrated primarily in academic functioning, but may also affect other developmental, functional, and life adjustment skill areas; and may occur with, but cannot be primarily the result of: visual, hearing, or motor impairment; cognitive impairment; emotional disorders; or environmental, cultural, economic influences, limited English proficiency or a lack of appropriate instruction in reading or math.

Subp. 2. **Criteria.** A child is eligible and in need of special education and related services for a specific learning disability when the child meets the criteria in items A, B, and C or in items A, B, and D. Information about each item must be sought from the parent and must be included as part of the evaluation data. The evaluation data must confirm that the effects of the child's disability occur in a variety of settings. The child must receive two interventions, as defined in Minnesota Statutes, section 125A.56, prior to evaluation, unless the parent requests an evaluation or the IEP team waives this requirement because it determines the child's need for an evaluation is urgent.

A. The child does not achieve adequately in one or more of the following areas: oral expression, listening comprehension, written expression, basic reading skills, reading comprehension, reading fluency, mathematics calculation, or mathematical problem solving, in response to appropriate classroom instruction, and either:

(1) the child does not make adequate progress to meet age or state-approved grade-level standards in one or more of the areas listed above when using a process based on the child's response to scientific, research-based intervention (SRBI); or

(2) the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, state-approved grade-level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability.

The performance measures used to verify this finding must be representative of the child's curriculum or useful for developing instructional goals and objectives. Documentation is required to verify this finding. Such documentation includes evidence of low achievement from the following sources, when available: cumulative record reviews; classwork samples; anecdotal teacher records; statewide and districtwide assessments; formal, diagnostic, and informal tests; curriculum-based evaluation results; and results from targeted support programs in general education.

B. The child has a disorder in one or more of the basic psychological processes which includes an information processing condition that is manifested in a variety of settings by behaviors such as inadequate: acquisition of information; organization; planning and sequencing; working memory, including verbal, visual, or spatial; visual and auditory

processing; speed of processing; verbal and nonverbal expression; transfer of information; and motor control for written tasks.

C. The child demonstrates 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, reading fluency, mathematics calculation, or mathematical problem solving. The demonstration of a severe discrepancy shall not be based solely on the use of standardized tests. The group shall consider these standardized test results as only one component of the eligibility criteria. The instruments used to assess the child'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 child's chronological age level.

D. The child demonstrates an inadequate rate of progress. Rate of progress is measured over time through progress monitoring while using intensive SRBI, which may be used prior to a referral, or as part of an evaluation for special education. A minimum of 12 data points are required from a consistent intervention implemented over at least seven school weeks in order to establish the rate of progress. Rate of progress is inadequate when the child's:

- (1) rate of improvement is minimal and continued intervention will not likely result in reaching age or state-approved grade-level standards;
- (2) progress will likely not be maintained when instructional supports are removed;
- (3) level of performance in repeated assessments of achievement falls below the child's age or state-approved grade-level standards; and
- (4) level of achievement is at or below the fifth percentile on one or more valid and reliable achievement tests using either state or national comparisons. Local comparison data that is valid and reliable may be used in addition to either state or national data. If local comparison data is used and differs from either state or national data, the group must provide a rationale to explain the difference.

Subp. 3. **Determination of specific learning disability.** In order to determine that the criteria for eligibility in subpart 2 are met, documentation must include:

A. an observation of the child in the child's learning environment, including the regular classroom setting, that documents the child's academic performance and behavior in the areas of difficulty. For a child of less than school age or out of school, a group member must observe the child in an environment appropriate to the child's age. In determining whether a child has a specific learning disability, the parents and the group of qualified professionals, as provided by Code of Federal Regulations, title 34, section 300.308, must:

- (1) use information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for a special education evaluation; or
- (2) conduct an observation of academic performance in the regular classroom after the child has been referred for a special education evaluation and appropriate parental consent has been obtained; and
- (3) document the relevant behavior, if any, noted during the observation and the relationship of that behavior to the child's academic functioning;

B. a statement of whether the child has a specific learning disability;

C. the group's basis for making the determination, including that:

- (1) the child has a disorder, across multiple settings, that impacts one or more of the basic psychological processes described in subpart 1 documented by information from a variety of sources, including aptitude and achievement tests, parent input,

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and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and

(2) the child's underachievement is not primarily the result of visual, hearing, or motor impairment; developmental cognitive disabilities; emotional or behavioral disorders; environmental, cultural, or economic influences; limited English proficiency; or a lack of appropriate instruction in reading or math, verified by:

(a) data that demonstrate that prior to, or as part of, the referral process, the child was provided appropriate instruction in regular education settings delivered by qualified personnel; and

(b) data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of the child's progress during instruction, which was provided to the child's parents;

D. educationally relevant medical findings, if any;

E. whether the child meets the criteria in subpart 2, either items A, B, and C or items A, B, and D; and

F. if the child has participated in a process that assesses the child's response to SRBI, the instructional strategies used and the child-centered data collected, the documentation that the parents were notified about the state's policies regarding the amount and nature of child performance data that would be collected and the general education services that would be provided, strategies for increasing the child's rate of learning, and the parent's right to request a special education evaluation.

Subp. 4. **Verification.** Each group member must certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the member must submit a separate statement presenting the member's conclusions.

The district's plan for identifying a child with a specific learning disability consistent with this part must be included with its total special education system (TSES) plan. The district must implement its interventions consistent with that plan. The plan should detail the specific SRBI approach, including timelines for progression through the model; any SRBI that is used, by content area; the parent notification and consent policies for participation in SRBI; procedures for ensuring fidelity of implementation; and a district staff training plan.

Statutory Authority: *MS s 14.389; 120.17; 121A.515; 121A.67; 125A.07; L 1999 c 123 s 19,20*

History: *16 SR 1543; 17 SR 3361; L 1998 c 397 art 11 s 3; 24 SR 1799; 26 SR 657; 33 SR 477*

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 pupil; 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 pupil; 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 subitem (2) or (3):

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

(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; 120.17; L 1999 c 123 s 19,20*

History: *16 SR 1543; 17 SR 3361; L 1998 c 397 art 11 s 3; 24 SR 1799; 26 SR 657*

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3525.1345 VISUALLY IMPAIRED.

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

Subp. 2. **Criteria.** 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; 120.17; L 1999 c 123 s 19*

History: *16 SR 1543; L 1998 c 397 art 11 s 3; 24 SR 1799*

3525.1347 [Renumbered 3525.1354]

3525.1348 TRAUMATIC BRAIN INJURY (TBI).

Subpart 1. **Definition.** "Traumatic brain injury" means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that may adversely affect a pupil's educational performance and may result in the need for special education and related services. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as: cognition, speech/language, memory, attention, reasoning, abstract thinking, judgment, problem-solving, sensory, perceptual and motor abilities, psychosocial behavior, physical functions, and information processing. The term does not apply to brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma.

Subp. 2. **Criteria.** The team shall determine that a pupil is eligible and in need of special education and related services if the pupil meets the criterion in item A and the criteria in items B and C as documented by the information gathered according to item D:

A. There is documentation by a physician of a medically verified traumatic brain injury.

B. There is a functional impairment attributable to the traumatic brain injury that adversely affects educational performance in one or more of the following areas: intellectual-cognitive, academic, communication, motor, sensory, social-emotional-behavioral, and functional skills-adaptive behavior. Examples of functional impairments which may adversely affect educational performance are:

- (1) intellectual-cognitive, for example, impaired:
 - (a) attention or concentration;
 - (b) ability to initiate, organize, or complete tasks;
 - (c) ability to sequence, generalize, or plan;
 - (d) insight/consequential thinking;
 - (e) flexibility in thinking, reasoning, or problem-solving;
 - (f) abstract thinking;
 - (g) judgment or perception;
 - (h) long-term or short-term memory;
 - (i) ability to acquire or retain new information;
 - (j) ability to process information;
- (2) academic, for example:
 - (a) marked decline in achievement from preinjury levels;
 - (b) impaired ability to acquire basic skills (reading, written language, mathematics);
 - (c) normal sequence of skill acquisition which has been interrupted by the trauma as related to chronological and developmental age;
- (3) communication, for example:
 - (a) impaired ability to initiate, maintain, restructure, or terminate conversation;
 - (b) impaired ability to respond to verbal communication in a timely, accurate or efficient manner;
 - (c) impaired ability to communicate in distracting or stressful environments;
 - (d) impaired ability to use language appropriately (requesting information, predicting, analyzing, or using humor);
 - (e) impaired ability to use appropriate syntax;
 - (f) impaired abstract or figurative language;
 - (g) perseverative speech (repetition of words, phrases, or topics);
 - (h) impaired ability to understand verbal information;
 - (i) impaired ability to discriminate relevant from irrelevant information;
 - (j) impaired voice production/articulation (intensity, pitch, quality, apraxia, or dysarthria);
- (4) motor, for example, impaired:
 - (a) mobility (balance, strength, muscle tone, or equilibrium);
 - (b) fine or gross motor skills;
 - (c) speed of processing or motor response time;
 - (d) sensory, for example, impaired;
- (5) sensory, for example, impaired:
 - (a) vision (tracking, blind spots, visual field cuts, blurred vision, or double vision);

- (b) hearing (tinnitus, noise sensitivity, or hearing loss);
- (6) social-emotional-behavioral, for example:
 - (a) impaired ability to initiate or sustain appropriate peer or adult relationships;
 - (b) impaired ability to perceive, evaluate, or use social cues or context appropriately;
 - (c) impaired ability to cope with over-stimulating environments, low frustration tolerance;
 - (d) mood swings or emotional ability;
 - (e) impaired ability to establish or maintain self-esteem;
 - (f) denial of deficits affecting performance;
 - (g) poor emotional adjustment to injury (depression, anger, withdrawal, or dependence);
 - (h) impaired ability to demonstrate age-appropriate behavior;
 - (i) impaired self-control (verbal or physical aggression, impulsivity, or disinhibition);
 - (j) intensification of preexistent maladaptive behaviors or disabilities;
- (7) functional skills-adaptive behavior, for example, impaired:
 - (a) ability to perform developmentally appropriate daily living skills in school, home, leisure, or community setting (hygiene, toileting, dressing, eating);
 - (b) ability to transfer skills from one setting to another;
 - (c) orientation (places, time, situations);
 - (d) ability to find rooms, buildings, or locations in a familiar environment;
 - (e) ability to respond to environmental cues (bells, signs);
 - (f) ability to follow a routine;
 - (g) ability to accept change in an established routine;
 - (h) stamina that results in chronic fatigue.
- C. The functional impairments are not primarily the result of previously existing:
 - (1) visual, hearing, or motor impairments;
 - (2) emotional or behavioral disorders;
 - (3) developmental disabilities;
 - (4) language or specific learning disabilities;
 - (5) environmental or economic disadvantage;
 - (6) cultural differences.
- D. Information/data to document a functional impairment in one or more of the areas in item B must, at a minimum, include one source from Group One and one source from Group Two:
 - (1) GROUP ONE:
 - (a) checklists;
 - (b) classroom or work samples;
 - (c) educational/medical history;
 - (d) documented, systematic behavioral observations;
 - (e) interviews with parents, student, and other knowledgeable individuals;

(2) GROUP TWO:

- (a) criterion-referenced measures;
- (b) personality or projective measures;
- (c) sociometric measures;
- (d) standardized assessment measures; (academic, cognitive, communication, neuropsychological, or motor).

Statutory Authority: *MS s 121.11; L 1994 c 647 art 3 s 23; L 1999 c 123 s 19,20*

History: *19 SR 2432; L 1998 c 397 art 11 s 3; 26 SR 657; L 2005 c 56 s 2*

3525.1349 [Renumbered 3525.1356]

3525.1350 INFANT AND TODDLER INTERVENTION SERVICES.

Subpart 1. **Services required.** Infant and toddler intervention services under United States Code, title 20, chapter 33, sections 1431, et seq., and Code of Federal Regulations, title 34, part 303, must be available to children from birth through two years of age who meet the criteria described in subpart 2.

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 is eligible for infant and toddler intervention services if:

A. the child meets the criteria of one of the disability categories in United States Code, title 20, chapter 33, sections 1400, et seq., as defined in Minnesota Rules; or

B. the child meets one of the criteria for developmental delay in subitem (1) or the criteria in subitem (2):

(1) the child has a diagnosed physical or mental condition or disorder that has a high probability of resulting in developmental delay regardless of whether the child has a demonstrated need or delay; or

(2) the child is experiencing a developmental delay that is demonstrated by a score of 1.5 standard deviations or more below the mean, as measured by the appropriate diagnostic measures and procedures, in one or more of the following areas:

- (a) cognitive development;
- (b) physical development, including vision and hearing;
- (c) communication development;
- (d) social or emotional development; and
- (e) adaptive development.

Subp. 3. [Renumbered 3525.1351]

Subp. 4. **Evaluation.** The evaluation used to determine whether a child is eligible for infant and toddler intervention services must be conducted within the timelines established in Code of Federal Regulations, title 34, part 303. It must be based on informed clinical opinion; must be multidisciplinary in nature, involving two or more disciplines or professions; and must be conducted by personnel trained to utilize appropriate methods and procedures. The evaluation must include:

A. a review of the child's current records related to health status and medical history;

B. an evaluation of the child's levels of cognitive, physical, communication, social or emotional, and adaptive developmental functioning;

C. an assessment of the unique needs of the child in terms of each of the developmental areas in item B; and

D. at least one documented, systematic observation in the child's daily routine setting by an appropriate professional or, if observation in the daily setting is not possible, the alternative setting must be justified.

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Subp. 5. **Transition.** The service coordinator provided for in Minnesota Statutes, section 125A.33, must facilitate transition from infant and toddler intervention services before the child's third birthday. The IFSP must include steps to determine and document eligibility for special education, and steps to support the transition of the child to special education under United States Code, title 20, chapter 33, sections 1411 et seq., and Code of Federal Regulations, title 34, part 300, or to other appropriate community-based services that may be available.

A. For a child who may be eligible for special education services under United States Code, title 20, chapter 33, sections 1411 et seq., and Code of Federal Regulations, title 34, part 300, the service coordinator must, with the approval of the family of the child, convene a conference between the family, the local educational agency, and community-based service providers to discuss services that the child may receive under United States Code, title 20, chapter 33, sections 1411 et seq., and Code of Federal Regulations, title 34, part 300. The conference must be held not less than 90 days, and, at the discretion of all the parties, not more than nine months, before the child is eligible for the preschool services.

B. For a child who may not be eligible for special education services under United States Code, title 20, chapter 33, sections 1411 et seq., and Code of Federal Regulations, title 34, part 300, the service coordinator must, with the approval of the family, take reasonable steps, to convene a conference between the family, the lead agency, and community-based service providers to discuss appropriate services that the child may receive after exiting infant and toddler intervention services.

Statutory Authority: *MS s 14.389; 121.11; 125A.07; L 1994 c 647 art 3 s 23; L 1999 c 123 s 19,20*

History: *19 SR 2432; L 1998 c 397 art 11 s 3; 24 SR 1799; 26 SR 657; 32 SR 653*

3525.1351 INTERVENTION SERVICES: AGES THREE THROUGH SIX YEARS.

The team shall determine that a child from the age of three years through the age of six years is eligible for special education when:

A. the child meets the criteria of one of the categorical disabilities in United States Code, title 20, chapter 33, sections 1400 et seq., as defined in Minnesota Rules; or

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

(a) has a diagnosed physical or mental condition or disorder that has a high probability of resulting in developmental delay; or

(b) has a delay in each of two or more of the areas of cognitive development; physical development, including vision and hearing; communication development; social or emotional development; and adaptive development, that is verified by an evaluation using one or more technically adequate, norm-referenced instruments. 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.

(2) The child's need for special education is supported by:

(a) at least one documented, systematic observation in the child's daily routine setting by an appropriate professional or, if observation in the daily routine setting is not possible, the alternative setting must be justified;

(b) a developmental history; and

(c) at least one other evaluation procedure in each area of identified delay that is conducted on a different day than the medical or norm-referenced evaluation; which may include criterion-referenced instruments, language samples, or curriculum-based measures.

Statutory Authority: *MS s 125A.07*

History: *32 SR 653*

3525.1352 DEVELOPMENTAL ADAPTED PHYSICAL EDUCATION: SPECIAL EDUCATION.

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

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

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

A. The pupil has one of the following disabilities in each respective criteria in parts 3525.1325 to 3525.1341, 3525.1345, and 3525.1354: autism spectrum disorders, deaf-blind, emotional or behavioral disorders, deaf or hard of hearing, specific learning disability, developmental cognitive disability, severely multiply impaired, other health disability, physically impaired, visually impaired, traumatic brain injury or part 3525.1351.

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

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

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

Statutory Authority: *MS s 121.11; L 1994 c 647 art 3 s 23; L 1999 c 123 s 19,20*

History: *19 SR 2432; L 1998 c 397 art 11 s 3; 26 SR 657; 32 SR 653*

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 according to 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 special instruction and related services. 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.

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

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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; 120.17; 121.11; L 1994 c 647 art 3 s 23; L 1999 c 123 s 19,20*

History: *16 SR 1543; 19 SR 2432; L 1998 c 397 art 11 s 3; 24 SR 1799; 26 SR 657*

3525.1356 [Repealed, 24 SR 1799]

FACILITIES AND STAFF**3525.1400 FACILITIES, EQUIPMENT AND MATERIALS.**

Classrooms and other facilities in which pupils receive instruction, related services, and supplementary aids and services shall: be essentially equivalent to the regular education program; provide an atmosphere that is conducive to learning; and meet the pupils' special physical, sensory, and emotional needs.

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

Statutory Authority: *MS s 120.17; 121.11; L 1994 c 647 art 3 s 23*

History: *8 SR 596; 19 SR 2432; L 1998 c 397 art 11 s 3*

3525.1500 [Repealed, 19 SR 2432]

3525.1510 [Repealed, 26 SR 657]

3525.1550 CONTRACTED SERVICES.

Subpart 1. **Licensure.** When contracting for evaluations or special education services, a district shall contract with personnel who hold appropriate licenses issued by the Board of Teaching or commissioner of education. If either the board or commissioner does not issue a license for a necessary service, the district shall contract with personnel who are members in good standing of professional organizations that regulate the conduct of its members and set standards for that profession.

Subp. 2. **Community-based services.** A school district may provide direct or indirect special education services by district special education staff to a pupil attending a community-based program. A school district may contract for special education services with a community-based program if the program meets Department of Education rules.

Statutory Authority: *MS s 120.17; 121.11; L 1994 c 647 art 3 s 23; L 1999 c 123 s 19,20*

History: *8 SR 596; 14 SR 281; 19 SR 2432; L 1998 c 398 art 5 s 55; 26 SR 657; L 2003 c 130 s 12*

3525.1600 [Repealed, 14 SR 281]

3525.1700 [Repealed, 8 SR 596]

3525.1800 [Repealed, 8 SR 596]

3525.1900 [Repealed, 8 SR 596]

3525.2000 [Repealed, 8 SR 596]

3525.2100 [Repealed, 8 SR 596]

3525.2200 [Repealed, 8 SR 596]

3525.2300 [Repealed, 19 SR 2432]

3525.2320 [Repealed, 14 SR 281]

TREATMENT PROGRAMS AND LEVELS OF SERVICE

3525.2325 EDUCATION PROGRAMS FOR K-12 PUPILS AND REGULAR STUDENTS PLACED IN CENTERS FOR CARE AND TREATMENT.

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

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

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

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

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

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

D. For those education programs run by the Department of Corrections, the district shall be the Department of Corrections for the purpose of this part. The district is responsible for ensuring that a cooperative agreement is reached with the care and treatment center facility which addresses all the requirements of Department of Human Services Rules, parts 9545.0900 to 9545.1090 and 9545.1400 to 9545.1480 which pertain to the provision of education services for students placed in centers for care and treatment. Provision of special education services requires implementation of all due process safeguards defined in state and federal law. Some procedures are modified to assure the pupil's access to education.

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

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

Subp. 2. **Education programs for students and pupils and regular education students placed in short-term programs for care and treatment.** A placement for care and treatment is a short-term placement if the anticipated duration of the placement is less than 31 school days. The school district must begin to provide instruction to the pupil or regular education student immediately after the pupil or student is enrolled in the education program. If the student is enrolled in the educational program without an educational record or

IEP, the district's procedures must include immediate phone contact with the home school to see if the regular education student has been identified as disabled.

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

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

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

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

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

(3) Based on the documented results of the screening, a decision must be made about the need for prereferral interventions or an appropriate special education evaluation according to parts 3525.2550 and 3525.2710. It is not required that an appropriate evaluation be started unless it appears that it can be completed.

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

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

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

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

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

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

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

B. If the student has not been identified as disabled or if the providing district cannot determine if the student has been identified as disabled, the student entering a residential facility for a long-term placement must be screened to determine if there is a need for an

appropriate educational evaluation. An evaluation must begin with a review of screening and other information such as the parent or student interview, available educational and social history, and the purpose of the treatment placement. The evaluation must be conducted according to parts 3525.2550 and 3525.2710.

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

Subp. 4. When a student or pupil leaves the facility. If a student or pupil has received an evaluation or special education services for 15 or more school days, the providing district must prepare an exit report summarizing the regular education or special education evaluation or service information and must send the report to the home school, the receiving facility, the parent, and any appropriate social service agency. For a pupil, this report must include a summary of current levels of performance, progress, and any modifications made in the pupil's IEP or services. Record transfers between anyone other than educational agencies and the parent require prior approval of the parents in accordance with data privacy laws.

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

- A. the instruction necessary for the student or pupil to make progress in the appropriate grade level for the successful completion of the courses, programs, or classes the student or pupil would have been enrolled in if the student or pupil were not placed for care and treatment;
- B. preferably a normal school day in accordance with the pupil's IEP, as defined in part 3525.2810, subpart 1, item A;
- C. an average of at least two hours a day of one-to-one instruction; or
- D. a minimum of individualized instruction for one-half of the normal school day if it is justified in the pupil's IEP or student's education plan that none of these options are appropriate.

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

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

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

A. The IEP developed by the team must include the provisions of parts 3525.2900 and 3525.2810, the location of the special education services, the projected duration of the special education services, and provisions for coordinating the care and treatment and the special education services.

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

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C. If a pupil is placed in a residential facility outside the resident district, the providing district must provide appropriate special education services. The placement of the pupil in a residential center for care and treatment outside the resident district is not an initial placement in the receiving district. The providing district shall make every effort to implement the resident district's IEP, making the modifications necessary due to the restrictive care and treatment setting and based on agreements reached with the parent. The providing district shall comply with the due process procedures of parts 3525.2550 to 3525.4770. Districts shall develop alternative procedures for implementing the legal requirements for observing the student in a regular classroom and document previous interventions that have been tried before the student placed for care and treatment is identified as having a specific learning disability or an emotional or behavioral disorder. These alternative procedures must be included in the district's entrance criteria. The district and facility shall cooperatively develop procedures to be used in emergency situations that comply with the Pupil Fair Dismissal Act according to Minnesota Statutes, sections 121A.40 to 121A.56, and the district's discipline policy.

Subp. 7. **Student's and pupil's and regular education student's placement; aid for special education.** Special education services provided to pupils and regular education students who have been placed for care and treatment are reimbursable in accordance with parts 3525.0800 and 3525.1310.

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

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

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

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

Statutory Authority: *MS s 120.17; 121.11; L 1994 c 647 art 3 s 23; L 1999 c 123 s 19,20*

History: *14 SR 281; 16 SR 1543; 19 SR 2432; L 1998 c 397 art 11 s 3; 26 SR 657*

3525.2330 [Repealed, 19 SR 2432]

3525.2335 EARLY CHILDHOOD PROGRAM SERVICES, ALTERNATIVES, AND SETTINGS.

Subpart 1. [Repealed, 19 SR 2432]

Subp. 2. **Program services, alternatives, and settings.** Appropriate program alternatives to meet the special education needs, goals, and objectives of a 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 must be written in the IEP. Program alternatives are comprised of the type of services provided, the setting in which services occur, and the 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.

A. There are two types of special education services: direct and indirect.

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

(2) District ECSE classroom includes classrooms that are located in district schools or community center buildings housing elementary students or preschool-aged children who do not have disabilities.

(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.

Subp. 3. [Repealed, 19 SR 2432]

Subp. 4. [Repealed, 19 SR 2432]

Subp. 5. [Repealed, 19 SR 2432]

Statutory Authority: *MS s 14.389; 120.17; 121.11; L 1994 c 647 art 3 s 23; L 1999 c 123 s 19,20*

History: *14 SR 281; 16 SR 1543; L 1991 c 265 art 3 s 38; 19 SR 2432; L 1998 c 397 art 11 s 3; 24 SR 1799; 26 SR 657*

3525.2340 CASE LOADS.

Subpart 1. [Repealed, 19 SR 2432]

Subp. 2. [Repealed, 19 SR 2432]

Subp. 3. [Repealed, 19 SR 2432]

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 special instruction from a teacher 50 percent or more of the instructional day, but less than a full school day:

(a) deaf-blind, autism spectrum disorders, developmental cognitive disability: severe-profound range, or severely multiply impaired, three pupils;

(b) deaf-blind, autism spectrum disorders, developmental cognitive disability: severe-profound range, or severely multiply impaired with one program support assistant, six pupils;

(c) developmental cognitive disability: mild-moderate range or specific learning disabled, 12 pupils;

(d) developmental cognitive disability: mild-moderate range 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 direct special education for a full day:

(a) deaf-blind, autism spectrum disorders, developmental cognitive disability: severe-profound range, or severely multiply impaired with one program support assistant, four pupils;

(b) deaf-blind, autism spectrum disorders, developmental cognitive disability: severe-profound range, 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 direct 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.

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Subp. 5. **Case loads for early childhood program alternatives.** A teacher's case load must be adjusted downward based on pupils' severity of disability or delay, travel time necessary to serve pupils in more than one program alternative, and if the pupils on the teacher's case loads are receiving services in more than one program alternative or the pupils are involved with other agencies. The maximum number of pupils that can be assigned to a teacher in any early childhood program alternative is:

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

District early childhood special education (ECSE) classes must have at least one paraprofessional employed while pupils are in attendance. The maximum number of pupils in an ECSE classroom at any one time with a teacher and a program support assistant is eight. The maximum number of pupils in an ECSE classroom at any one time with an early childhood team is 16.

Statutory Authority: *MS s 14.389; 120.17; 121.11; L 1994 c 647 art 3 s 23; L 1999 c 213 s 19,20*

History: *8 SR 596; 16 SR 1543; 19 SR 2432; L 1998 c 397 art 11 s 3; 24 SR 1799; 26 SR 657*

3525.2345 [Repealed, 19 SR 2432]

3525.2350 MULTIDISABILITY TEAM TEACHING MODELS.

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

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

Subp. 3. **Team member responsibility.** The team member licensed in a pupil's disability shall be responsible for conducting the pupil's evaluation and participating at team meetings when an IEP is developed, reviewed, or revised. Consultation and indirect services as defined in part 3525.0210 must be provided to the general or special education teacher providing instruction if not licensed in the disability. The frequency and amount of time for specific consultation and indirect services shall be determined by the IEP team.

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

Subp. 5. [Repealed, 19 SR 2432]

Statutory Authority: *MS s 120.17; 121.11; L 1994 c 647 art 3 s 23; L 1999 c 123 s 19,20*

History: *8 SR 596; 14 SR 281; 16 SR 1543; 19 SR 2432; L 1998 c 397 art 11 s 3; 26 SR 657; 28 SR 1292*

3525.2360 [Repealed, 14 SR 281]

3525.2370 [Repealed, 16 SR 1543]

3525.2380 VARIANCES FROM RATIOS.

Subpart 1. **Variations.** The district may apply to the commissioner of education or the commissioner's designee for a variance from the case loads in part 3525.2340. The commissioner or the commissioner's designee shall grant a variance for less than 90 days when it is demonstrated that unanticipated special education enrollment increases have occurred for students with severe disabilities.

Subp. 2. [Repealed, 16 SR 1543]

Subp. 3. [Repealed, 19 SR 2432]

Statutory Authority: *MS s 120.17; 121.11; L 1994 c 647 art 3 s 23*

History: *8 SR 596; 16 SR 1543; 19 SR 2432; L 1998 c 397 art 11 s 3; L 1998 c 398 art 5 s 55; L 2003 c 130 s 12*

INTERPRETER/TRANSLITERATORS

3525.2385 STATE INTERPRETER/TRANSLITERATOR STANDARDS FOR THE DEAF AND HARD OF HEARING.

Subpart 1. **Definitions.** The terms used in this part have the following meanings:

A. "Cued speech" means a system that visually presents traditionally spoken languages. Handshapes representing groups of consonant phonemes and hand placements denoting groups of vowel phonemes are utilized in combination with nonmanual signals to present a visually distinct model of a traditionally spoken language. Whether through the visual channel via cued speech, it is the choice, assembly, and arrangement of linguistic units called phonemes, that comprises and conveys the words and grammatical structure of languages that are spoken and languages that are cued.

B. "Interpreter/transliterator" means a person who is able to interpret or transliterate the spoken word into sign language and interpret sign language into the spoken word by American Sign Language (ASL), Pidgin Signed English (PSE), Manually Coded English (MCE), cued speech, voice, oral, or tactile modalities.

Subp. 2. **Special education reimbursement.** To be eligible for special education reimbursement for the employment of American Sign Language (ASL)/English interpreter/transliterator or cued speech transliterator of the Deaf and Hard of Hearing, the school board in each district shall employ persons who meet the requirements in subpart 3 or 4.

Subp. 3. **Interpreter/transliterator.** To qualify as a sign language interpreter/transliterator, a person shall have completed a training program affiliated with a state accredited educational institution and hold:

A. an interpreter and transliterator certificate awarded by the Registry of Interpreters for the Deaf (RID); or

B. a general level proficiency certificate at level 3 awarded by the National Association of the Deaf (NAD).

Subp. 4. **Cued speech transliterator.** To qualify as a cued speech transliterator, a person shall hold a current applicable transliterator certificate awarded by Testing, Evaluation and Certification Unit, Inc. (TECUnit).

Statutory Authority: *MS s 121.11; L 1999 c 123 s 19,20*

History: *21 SR 1855; L 1998 c 397 art 11 s 3; 26 SR 657*

3525.2400 [Repealed, 8 SR 596]

SUPERVISION

3525.2405 DIRECTORS.

Subpart 1. **Director requirement.** The school board in every district shall employ, either singly or cooperatively, a director of special education to be responsible for program development, coordination, and evaluation; in-service training; and general special education supervision and administration in the district's total special education system. Cooperative employment of a director may be through a host district, joint powers agreement, or a service cooperative. A director may not be assigned direct instructional duties.

Subp. 2. [Repealed, 24 SR 1799]

Subp. 3. [Repealed, 24 SR 1799]

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Subp. 4. [Repealed, 19 SR 2432]

Statutory Authority: *MS s 14.389; 120.17; 121.11; L 1994 c 647 art 3 s 23; L 1999 c 123 s 19,20*

History: *8 SR 596; 19 SR 2432; L 1996 c 305 art 1 s 138; L 1998 c 397 art 11 s 3; 24 SR 1799; 26 SR 657*

3525.2410 [Repealed, 19 SR 2432]

3525.2415 [Repealed, 19 SR 2432]

3525.2420 [Repealed, 24 SR 1799]

3525.2430 [Repealed, 19 SR 2432]

SURROGATE PARENTS**3525.2435 EFFORT TO LOCATE PARENT.**

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

Statutory Authority: *MS s 120.17*

History: *8 SR 596; L 1998 c 397 art 11 s 3*

3525.2440 SURROGATE PARENT APPOINTMENT.

The district shall appoint the surrogate parent when:

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

Statutory Authority: *MS s 120.17*

History: *8 SR 596; 14 SR 281; L 1998 c 397 art 11 s 3*

3525.2445 [Repealed, L 2009 c 96 art 3 s 22]

3525.2450 REMOVAL OF SURROGATE PARENT.

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

- A. failure to perform the duties required in the team meeting and IEP process and those cited in Code of Federal Regulations, title 34, part 300 and United States Code, title 20, chapter 22, sections 1400 et seq.;
- B. conflict of interest as referenced in Code of Federal Regulations, title 34, section 300.515(c)(2);
- C. actions that threaten the well-being of the assigned pupil;
- D. failure to appear to represent the pupil; or
- E. the pupil no longer needs special education and related services.

Statutory Authority: *MS s 120.17; L 1999 c 123 s 19,20*

History: *8 SR 596; 14 SR 281; L 1998 c 397 art 11 s 3; 26 SR 657*

3525.2455 SURROGATE PARENT KNOWLEDGE AND SKILLS.

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

- A. a knowledge of state and federal requirements;

- B. a knowledge of district structure and procedures;
- C. an understanding of the nature of the pupil's disability and needs; and
- D. an ability to effectively advocate for an appropriate educational program for the pupil.

Statutory Authority: *MS s 120.17; L 1999 c 123 s 19,20*

History: *8 SR 596; L 1998 c 397 art 11 s 3; 26 SR 657*

3525.2470 [Repealed, L 1999 c 123 s 21]

3525.2500 [Repealed, 19 SR 2432]

EVALUATION, NOTICE, AND HEARING

3525.2550 CONDUCT BEFORE EVALUATION.

Subpart 1. [Repealed, 26 SR 657]

Subp. 2. **Team duties.** The team shall conduct an evaluation for special education purposes within a reasonable time not to exceed 30 school days from the date the district receives parental permission to conduct the evaluation or the expiration of the 14-calendar day parental response time in cases other than initial evaluation, unless a conciliation conference or hearing is requested.

Statutory Authority: *MS s 120.17; 121.11; L 1994 c 647 art 3 s 23; L 1999 c 123 s 19,20*

History: *14 SR 281; 19 SR 2432; L 1998 c 397 art 11 s 3; 26 SR 657*

3525.2600 [Renumbered 3525.2750]

3525.2650 [Repealed, 24 SR 1799]

3525.2700 [Renumbered 3525.2550]

3525.2710 EVALUATIONS AND REEVALUATIONS.

Subpart 1. **Initial evaluations.** A school district shall conduct a full and individual initial evaluation according to this part before the initial provision of special education and related services to a pupil under this chapter. The initial evaluation shall consist of procedures to determine whether a child is a pupil with a disability that adversely affects the child's educational performance as defined in Minnesota Statutes, section 125A.02, who by reason thereof needs special education and related services, and to determine the educational needs of the pupil. The district proposing to conduct an initial evaluation to determine if the child qualifies as a pupil with a disability shall obtain an informed consent from the parent of the child before the evaluation is conducted. Parental consent for evaluation shall not be construed as consent for placement for receipt of special education and related services. If the parents of the child refuse consent for the evaluation, the district may continue to pursue an evaluation by utilizing mediation and due process procedures.

Subp. 2. **Reevaluations.** A district shall ensure that a reevaluation of each pupil is conducted if conditions warrant a reevaluation or if the pupil's parent or teacher requests a reevaluation, but at least once every three years and in accordance with subparts 3 and 4.

Subp. 3. **Evaluation procedures.** Evaluations and reevaluations shall be conducted according to the following procedures:

A. The district shall provide notice to the parents of a pupil, according to Code of Federal Regulations, title 34, sections 300.500 to 300.505, that describes any evaluation procedures the district proposes to conduct.

B. In conducting the evaluation, the district shall:

(1) use a variety of evaluation tools and strategies to gather relevant functional and developmental information, including information provided by the parent, that are designed to assist in determining whether the child is a pupil with a disability and the

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content of the pupil's individualized education program, including information related to enabling the pupil to be involved in and progress in the general curriculum or, for preschool pupils, to participate in appropriate activities;

(2) not use any single procedure as the sole criterion for determining whether a child is a pupil with a disability or determining an appropriate education program for the pupil; and

(3) use technically sound instruments that are designed to assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

C. Each district shall ensure that:

(1) tests and other evaluation materials used to evaluate a child under this part are selected and administered so as not to be discriminatory on a racial or cultural basis, and are provided and administered in the pupil's native language or other mode of communication, unless it is clearly not feasible to do so;

(2) materials and procedures used to evaluate an English learner are selected and administered to ensure that they measure the extent to which the child has a disability and needs special education and related services, rather than measure the child's English language skills;

(3) any standardized tests that are given to the child have been validated for the specific purpose for which they are used, are administered by trained and knowledgeable personnel, and are administered in accordance with any instructions provided by the producer of such tests;

(4) the child is evaluated in all areas of suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;

(5) evaluation tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the pupil are provided;

(6) if an evaluation is not conducted under standard conditions, a description of the extent to which it varied from standard conditions must be included in the evaluation report;

(7) tests and other evaluation materials include those tailored to evaluate specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient;

(8) tests are selected and administered so as best to ensure that if a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills, unless those skills are the factors that the test purports to measure; and

(9) in evaluating each pupil with a disability, the evaluation is sufficiently comprehensive to identify all of the pupil's special education and related services needs, whether or not commonly linked to the disability category in which the pupil has been classified.

D. Upon completion of administration of tests and other evaluation materials, the determination of whether the child is a pupil with a disability as defined in Minnesota Statutes, section 125A.02, shall be made by a team of qualified professionals and the parent of the pupil in accordance with item E, and a copy of the evaluation report and the documentation of determination of eligibility will be given to the parent.

E. In making a determination of eligibility under item D, a child shall not be determined to be a pupil with a disability if the determinant factor for such determination is lack of instruction in reading or math or limited English proficiency, and the child does not otherwise meet eligibility criteria under parts 3525.1325 to 3525.1351.

Subp. 4. Additional requirements for evaluations and reevaluations.

A. As part of an initial evaluation, if appropriate, and as part of any reevaluation under this part, or a reinstatement under part 3525.3100, the IEP team and other qualified professionals, as appropriate, shall:

(1) review existing evaluation data on the pupil, including evaluations and information provided by the parents of the pupil, current classroom-based assessments and observations, and teacher and related services providers observation; and

(2) on the basis of the review, and input from the pupil's parents, identify what additional data, if any, are needed to determine whether the pupil has a particular category of disability, as described in Minnesota Statutes, section 125A.02, or, in case of a reevaluation of a pupil, whether the pupil continues to have such a disability, the present levels of performance and educational needs of the pupil, whether the pupil needs special education and related services, or in the case of a reevaluation of a pupil, whether the pupil continues to need special education and related services, and whether any additions or modifications to the special education and related services are needed to enable the pupil to meet the measurable annual goals set out in the individualized education program of the pupil and to participate, as appropriate, in the general curriculum.

B. The district shall administer such tests and other evaluation materials as may be needed to produce the data identified by the IEP team under item A, subitem (2).

C. Each district shall obtain informed parental consent, in accordance with subpart 1, prior to conducting any reevaluation of a pupil, except that such informed parental consent need not be obtained if the district can demonstrate that it had taken reasonable measures to obtain such consent and the pupil's parent has failed to respond.

D. If the IEP team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the pupil continues to be a pupil with a disability, the district shall notify the pupil's parents of that determination and the reasons for it, and the right of such parents to request an evaluation to determine whether the pupil continues to be a pupil with a disability, and shall not be required to conduct such an evaluation unless requested to by the pupil's parents.

E. A district shall evaluate a pupil in accordance with this part before determining that the pupil is no longer a pupil with a disability.

F. Prior to using any conditional procedure, the IEP team must conduct a functional behavioral assessment (FBA) as defined in part 3525.0210, subpart 22. The team must also document that it has ruled out any other treatable cause for the behavior, for example, a medical or health condition, for the interfering behavior.

Subp. 5. Procedures for determining eligibility and placement.

A. In interpreting the evaluation data for the purpose of determining if a child is a pupil with a disability under parts 3525.1325 to 3525.1351 and the educational needs of the child, the school district shall:

(1) draw upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; and

(2) ensure that the information obtained from all of the sources is documented and carefully considered.

B. If a determination is made that a child is a pupil with a disability who needs special education and related services, an IEP must be developed for the pupil according to part 3525.2810.

Subp. 6. Evaluation report. An evaluation report must be completed and delivered to the pupil's parents within the specified evaluation timeline. At a minimum, the evaluation report must include:

A. a summary of all evaluation results;

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B. documentation of whether the pupil has a particular category of disability or, in the case of a reevaluation, whether the pupil continues to have such a disability;

C. the pupil's present levels of performance and educational needs that derive from the disability;

D. whether the child needs special education and related services or, in the case of a reevaluation, whether the pupil continues to need special education and related services; and

E. whether any additions or modifications to the special education and related services are needed to enable the pupil to meet the measurable annual goals set out in the pupil's IEP and to participate, as appropriate, in the general curriculum.

Statutory Authority: *L 1999 c 123 s 19,20*

History: *26 SR 657; 28 SR 1292; 32 SR 653; L 2012 c 239 art 1 s 33*

3525.2750 Subpart 1. [Repealed, 26 SR 657; item B Repealed, L 1998 c 398 art 2 s 63]

Subp. 2. [Repealed, 19 SR 2432; 26 SR 657]

Subp. 3. [Repealed, 26 SR 657]

3525.2800 [Renumbered 3525.2650]

3525.2810 DEVELOPMENT OF INDIVIDUALIZED EDUCATION PROGRAM PLAN.

Subpart 1. **Definitions.** As used in parts 3525.0210 to 3525.4770, the terms defined in this part have the meanings given them.

A. "Individualized education program" or "IEP" means a written statement for each pupil that is developed, reviewed, and revised in a meeting in accordance with this part and that includes:

(1) a statement of the pupil's present levels of educational performance, including how the pupil's disability affects the pupil's involvement and progress in the general curriculum, or for preschool pupils, as appropriate, how the disability affects the pupil's participation in appropriate activities;

(2) a statement of measurable annual goals, including benchmarks or short-term objectives, related to meeting the pupil's needs that result from the pupil's disability to enable the pupil to be involved in and progress in the general curriculum, and meeting each of the pupil's other educational needs that result from the pupil's disability;

(3) a statement of the special education and related services and supplementary aids and services to be provided to the pupil, or on behalf of the pupil, and a statement of the program modifications or supports for school personnel that will be provided for the pupil to advance appropriately toward attaining the annual goals, to be involved and progress in the general curriculum in accordance with subitem (1) and to participate in extracurricular and other nonacademic activities, and to be educated and participate with other pupils and students in the activities described in this paragraph;

(4) an explanation of the extent, if any, to which the pupil will not participate with students in the regular class and in the activities described in subitem (3);

(5) a statement of any individual modifications in the administration of state or districtwide assessments of student achievement that are needed in order for the pupil to participate in such assessment. If the IEP team determines that the pupil will not participate in a particular state or districtwide assessment of student achievement or part of such an assessment, a statement of why that assessment is not appropriate for the pupil; and how the pupil will be assessed;

(6) the projected date for the beginning of the services and modifications described in subitem (3), and the anticipated frequency, location, and duration of those services and modifications;

(7) beginning at age 14, and updated annually, a statement of the transition service needs of the pupil in accordance with part 3525.2900, subpart 4;

(8) when a pupil reaches the age of 18, unless a guardian or conservator has been appointed for the pupil by a court of competent jurisdiction, the following shall occur and be documented in the pupil's IEP:

(a) the district shall provide any notice required under this chapter to the pupil and the pupil's parents; and

(b) all other rights accorded to the parents under this chapter and Part B of IDEA 1997, Code of Federal Regulations, title 34, chapter 300, transfer to the pupil, even if the pupil is incarcerated in an adult or juvenile state or local correctional institution.

Beginning at least one year before the pupil reaches the age of 18, the pupil and the pupil's parents must be informed of those rights under this chapter that will transfer to the pupil at age 18;

(9) a statement of how the pupil's progress toward the annual goals described in subitem (2) will be measured, how the pupil's parents will be regularly informed by such means as periodic report cards, at least as often as parents are informed of their nondisabled student's progress, of the pupil's progress toward the annual goals described in subitem (2), and the extent to which that progress is sufficient to enable the pupil to achieve the goals by the end of the year;

(10) a statement of the pupil's need for and the specific responsibilities of a paraprofessional; and

(11) any documentation required in Minnesota Statutes, section 125A.0942.

B. "Individualized education program team" or "IEP team" means a group of individuals that must include:

(1) the parents of the pupil;

(2) at least one regular education teacher of the pupil, if the pupil is, or may be, participating in the regular education environment;

(3) at least one special education teacher or, where appropriate, at least one special education provider of the pupil;

(4) an administrative designee, as defined in part 3525.0210, subpart 2, who is qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of pupils with disabilities, is knowledgeable about the general curriculum, and is knowledgeable about the availability of resources of the district;

(5) an individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in subitems (2) to (6);

(6) at the discretion of the parent or the district, other individuals who have knowledge or special expertise regarding the pupil, according to Code of Federal Regulations, title 34, section 300.344(c), including related services personnel, as appropriate; and

(7) whenever appropriate, the pupil.

Subp. 2. Development of IEP.

A. In developing each pupil's IEP, the IEP team shall consider the strengths of the pupil and the concerns of the parents for enhancing the education of the pupil, the results of the initial evaluation or most recent evaluation of the pupil, and, as appropriate, the results of the pupil's performance on any general state or districtwide assessment program.

B. The IEP team shall:

(1) in the case of a pupil whose behavior impedes his or her learning or that of others, consider, when appropriate, strategies, including positive behavioral interventions and supports to address that behavior;

(2) in the case of an English learner, consider the language needs of the pupil as such needs relate to the pupil's IEP;

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(3) in the case of a pupil who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP team determines, after an evaluation of the pupil's reading and writing skills, needs, and appropriate reading and writing media, including an evaluation of the pupil's future needs for instruction in Braille or the use of Braille, that instruction in Braille or the use of Braille is not appropriate for the pupil;

(4) consider the communication needs of the pupil, and in the case of a pupil who is deaf or hard of hearing, consider the pupil's language and communication needs, opportunities for direct communications with peers and professional personnel in the pupil's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the pupil's language and communication mode; and

(5) consider whether the pupil requires assistive technology devices and services.

C. If, in considering the special factors described in items A and B, the IEP team determines the pupil needs a particular device or service, including an intervention, accommodation, or other program modification, in order for the pupil to receive FAPE, the IEP team must include a statement to that effect in the pupil's IEP.

D. The regular education teacher of the pupil, as a member of the IEP team, shall, to the extent appropriate, participate in the development of the IEP of the pupil, including the determination of appropriate positive behavioral interventions and strategies and the determination of supplementary aids and services, program modifications, and support for school personnel consistent with subpart 1, item A, subitem (3).

Subp. 3. Review and revision of IEP.

A. The district shall ensure that the IEP team reviews the pupil's IEP periodically, but not less than annually to determine whether the annual goals for the pupil are being achieved, and revises the IEP as appropriate to address:

- (1) any lack of expected progress toward the annual goals and in the general curriculum, where appropriate;
- (2) the results of any reevaluation conducted under part 3525.2710;
- (3) information about the pupil provided to, or by, the parents; or
- (4) the pupil's anticipated needs and other matters.

B. The regular education teacher of the pupil, as a member of the IEP team, shall, to the extent appropriate, participate in the review and revision of the IEP of the pupil.

Subp. 4. Failure to meet transition objectives. If a participating agency, other than the local school district, fails to provide the transition services described in the IEP in accordance with subpart 1, item A, subitem (7), the district shall reconvene the IEP team to identify alternative strategies to meet the transition objectives for the pupil set out in that program.

Subp. 5. Construction. Nothing in this part shall be construed to require the IEP team to include information under one component of a pupil's IEP that is already contained under another component of such IEP.

Statutory Authority: *L 1999 c 123 s 19,20*

History: *26 SR 657; 28 SR 1292; L 2009 c 96 art 3 s 22; L 2012 c 239 art 1 s 33*

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

3525.2900 TRANSITION AND BEHAVIORAL INTERVENTION PLANNING.

Subpart 1. [Repealed, 26 SR 657]

Subp. 2. [Repealed, 16 SR 1543]

Subp. 3. [Repealed, 26 SR 657]

Subp. 4. [Repealed, 16 SR 1543]

Subp. 4. **Transition planning.** By grade nine or age 14, whichever comes first, the IEP plan shall address the pupil's needs for transition from secondary services to postsecondary education and training, employment, and community living.

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

B. Secondary transition evaluation results must be documented as part of an evaluation report. Current and secondary transition needs, goals, and instructional and related services to meet the pupil's secondary transition needs must be considered by the team with annual needs, goals, objectives, and services documented on the pupil's IEP.

Subp. 5. [Repealed, 16 SR 1543]

Subp. 5. MR 2011 [Repealed, L 2009 c 96 art 3 s 22]

Statutory Authority: *MS s 120.17; 121.11; L 1994 c 647 art 3 s 23; L 1999 c 123 s 19,20*

History: *16 SR 1543; 19 SR 974; 19 SR 2432; L 1998 c 397 art 11 s 3; 26 SR 657; 28 SR 1292; L 2009 c 96 art 3 s 22*

3525.2925 [Repealed, 19 SR 2432]

3525.2950 [Repealed, 19 SR 2432]

3525.3000 [Repealed, 24 SR 1799]

3525.3010 EDUCATIONAL PLACEMENT.

Subpart 1. **Continuum of alternative placements.** Each district must ensure that a continuum of alternative placements is available to meet the needs of pupils for special education and related services. The continuum must:

A. include instruction in regular classes, special classes, special schools, home instruction, and instruction in schools and hospitals; and

B. make provision for supplementary services, including resource room or itinerant instruction, to be provided in conjunction with regular class placement.

Subp. 2. **General least restrictive environment requirements.** Each district must ensure that pupils are placed in the least restrictive environment according to part 3525.0400 and Code of Federal Regulations, title 34, section 300.552.

Subp. 3. **Nonacademic settings.** In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in Code of Federal Regulations, title 34, section 300.306, each district must ensure that each pupil participates with nondisabled students in those services and activities to the maximum extent appropriate to the needs of that pupil.

Subp. 4. **Educational placement.** Each district shall ensure that the parents of each pupil are members of any group that makes decisions on the educational placement of the pupil.

Statutory Authority: *L 1999 c 123 s 19,20*

History: *26 SR 657*

3525.3100 FOLLOW-UP REVIEW REQUIREMENTS.

Pupils who are discontinued from all special education services may be reinstated within 12 months. If data on the pupil's present levels of performance are available and

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an evaluation had been conducted within three years pursuant to part 3525.2710, the district is not required to document two prereferral interventions or conduct a new evaluation.

Statutory Authority: *MS s 120.17; 121.11; L 1994 c 647 art 3 s 23; L 1999 c 123 s 19,20*

History: *8 SR 596; 14 SR 281; 16 SR 1543; 19 SR 2432; L 1998 c 397 art 11 s 3; 26 SR 657*

3525.3150 [Repealed, 24 SR 1799]

3525.3200 [Repealed, 24 SR 1799]

3525.3300 [Repealed, 28 SR 1292]

3525.3400 [Repealed, 28 SR 1292]

3525.3500 [Repealed, 24 SR 1799]

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: *MS s 120.17; 121.11; L 1994 c 647 art 3 s 23; L 1999 c 123 s 19,20; L 2003 1Sp9 art 3 s 19*

History: *14 SR 281; 16 SR 1543; L 1991 c 265 art 3 s 38; 19 SR 2432; L 1998 c 397 art 11 s 3; 26 SR 657; 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. 2. [Repealed, 26 SR 657]

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: *MS s 120.17; 121.11; L 1994 c 647 art 3 s 23; L 1999 c 123 s 19,20; L 2003 1Sp9 art 3 s 19*

History: *14 SR 281; 19 SR 2432; L 1998 c 397 art 11 s 3; 26 SR 657; 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 1999 c 123 s 19,20; L 2003 1Sp9 art 3 s 19*

History: *26 SR 657; 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 1Sp9 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;

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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.

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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: *MS s 14.389; 120.17; 121.11; L 1994 c 647 art 3 s 23; L 1999 c 123 s 19,20; L 2003 1Sp9 art 3 s 19*

History: *14 SR 281; L 1991 c 265 art 3 s 38; 19 SR 2432; L 1998 c 397 art 11 s 3; 24 SR 1799; 26 SR 657; 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 1Sp9 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 1Sp9 art 3 s 19*

History: *28 SR 1292*

3525.4200 [Repealed, 26 SR 657]

3525.4210 [Repealed, 28 SR 1292]

3525.4220 [Repealed, L 2009 c 96 art 3 s 22]

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.

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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: *MS s 14.389; 120.17; 121.11; L 1994 c 647 art 3 s 23; L 1999 c 123 s 19,20; L 2003 1Sp9 art 3 s 19*

History: *14 SR 281; L 1991 c 265 art 3 s 38; 19 SR 2432; L 1998 c 397 art 11 s 3; 24 SR 1799; 26 SR 657; 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 1Sp9 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 1Sp9 art 3 s 19*

History: *28 SR 1292*

3525.4400 [Repealed, 26 SR 657]

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 1Sp9 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

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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: *MS s 14.389; 120.17; L 1999 c 123 s 19,20; L 2003 1Sp9 art 3 s 19*

History: *14 SR 281; L 1998 c 397 art 11 s 3; L 1998 c 398 art 5 s 55; 24 SR 1799; 26 SR 657; L 2003 c 130 s 12; 28 SR 1292*

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 calendar 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 19,20*

History: *24 SR 1799; 26 SR 657*

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

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: *MS s 14.389; L 1999 c 123 s 19,20; L 2003 1Sp9 art 3 s 19*

History: *24 SR 1799; 26 SR 657; 28 SR 1292*

3525.4800 [Repealed, 14 SR 281]

3525.4900 [Repealed, 14 SR 281]

3525.5000 [Repealed, 14 SR 281]

3525.5100 [Repealed, 14 SR 281]

3525.5200 [Repealed, 14 SR 281]

3525.5300 [Repealed, 14 SR 281]

3525.5400 [Repealed, 14 SR 281]

3525.5500 [Repealed, 14 SR 281]

3525.5600 [Repealed, 14 SR 281]

3525.5700 [Repealed, 14 SR 281]

3525.5800 [Repealed, 14 SR 281]

3525.5900 [Repealed, 14 SR 281]

3525.6000 [Repealed, 14 SR 281]

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3525.6100 [Repealed, 14 SR 281]

3525.6200 [Repealed, 14 SR 281]

3525.6300 [Repealed, 14 SR 281]

3525.6400 [Repealed, 14 SR 281]

3525.6500 [Repealed, 14 SR 281]

3525.6600 [Repealed, 14 SR 281]

3525.6700 [Repealed, 14 SR 281]

3525.6800 [Repealed, 14 SR 281]

3525.6900 [Repealed, 14 SR 281]

3525.7000 [Repealed, 14 SR 281]

3525.7100 [Repealed, 14 SR 281]

3525.7200 [Repealed, 14 SR 281]

3525.7300 [Repealed, 14 SR 281]

3525.7400 [Repealed, 14 SR 281]

3525.7500 [Repealed, 14 SR 281]