

CHAPTER 120

DEFINITIONS; GENERAL PROVISIONS

120.03	Handicapped children, defined.	120.17	Handicapped children.
120.06	Admission to public school.	120.172	Legislative commitment to conciliation.
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120.03 HANDICAPPED CHILDREN, DEFINED.

*[For text of subs 1 to 4, see M.S.1980]*

Subd. 5. A child with a short-term or temporary physical or emotional illness or disability, as determined by the standards of the state board, is not a handicapped child.

**History:** 1981 c 358 art 3 s 1

120.06 ADMISSION TO PUBLIC SCHOOL.

*[For text of subd 1, see M.S.1980]*

Subd. 2. [Repealed, 1981 c 358 art 7 s 31]

120.0751 STATE BOARD OF EDUCATION; ENROLLMENT EXCEPTIONS.

*[For text of subs 1 to 4, see M.S.1980]*

Subd. 5. The department of education shall provide the forms required by subdivision 2. The state board of education shall adopt the procedures necessary to implement this section.

**History:** 1981 c 358 art 7 s 4

120.17 HANDICAPPED CHILDREN.

*[For text of subs 1 to 3a, see M.S.1980]*

Subd. 3b. **Procedures for decisions.** Every district shall utilize at least the following procedures for decisions involving identification, assessment and educational placement of handicapped children:

(a) Parents and guardians shall receive prior written notice of: (1) any proposed formal educational assessment or proposed denial of a formal educational assessment of their child; (2) a proposed placement of their child in, transfer from or to, or denial of placement in a special education program; or (3) the proposed provision, addition, denial or removal of special education services for their child;

(b) The district shall not proceed with the initial formal assessment of a child, the initial placement of a child in a special education program or the initial provision of special education services for a child without the prior written consent of the child's parent or guardian; provided the refusal of a parent or guardian to provide this consent may be overridden by the decision in a hearing held pursuant to clause (d) at the district's initiative after at least one attempt to obtain this consent through a conciliation conference held pursuant to clause (c);

(c) Parents and guardians shall have an opportunity to meet with appropriate district staff in at least one conciliation conference if they object to any proposal of which they are notified pursuant to clause (a);

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(d) Parents, guardians and the district shall have an opportunity to obtain an impartial due process hearing initiated and conducted in the school district where the child resides, if after at least one conciliation conference the parent or guardian continues to object to: (1) a proposed formal educational assessment or proposed denial of a formal educational assessment of their child; (2) the proposed placement of their child in, or transfer of their child to a special education program; (3) the proposed denial of placement of their child in a special education program or the transfer of their child from a special education program; (4) the proposed provision or addition of special education services for their child; or (5) the proposed denial or removal of special education services for their child. At least five calendar days before the hearing, the objecting party shall provide the other party with a brief written statement of the objection and the reasons for the objection.

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

(e) The decision of the hearing officer pursuant to clause (d) shall be rendered not more than 45 calendar days from the date of the receipt of the request for the hearing. A hearing officer may grant specific extensions of time beyond the 45 day period at the request of either party. The decision of the hearing officer shall be binding on all parties unless appealed to the commissioner by the parent, guardian, or the school board of the district where the child resides pursuant to clause (f).

The local decision shall:

(1) be in writing;

(2) state the controlling facts upon which the decision is made in sufficient detail to apprise the parties and the commissioner of the basis and reason for the decision;

(3) state whether the special education program or special education services appropriate to the child's needs can be reasonably provided within the resources available to the responsible district or districts;

(4) state the amount and source of any additional district expenditure necessary to implement the decision; and

(5) be based on the standards set forth in subdivision 3a and the rules of the state board.

(f) Any local decision issued pursuant to clauses (d) and (e) may be appealed to the commissioner within 15 calendar days of receipt of that written decision, by the parent, guardian, or the school board of the district where the child resides.

If the decision is appealed, a written transcript of the hearing shall be made by the school district and shall be accessible to the parties involved within five calendar days of the filing of the appeal. The commissioner shall issue a final decision based on an impartial review of the local decision and the entire record within 30 calendar days after the filing of the appeal. The commissioner shall seek additional evidence if necessary and may afford the parties an opportunity for written or oral argument; provided any hearing held to seek additional evidence shall be an impartial due process hearing but shall be deemed not to be a contested case hearing for purposes of chapter 15. The commissioner may grant specific extensions of time beyond the 30 day period at the request of any party.

The final decision shall:

- (1) be in writing;
- (2) include findings and conclusions; and
- (3) be based upon the standards set forth in subdivision 3a and in the rules of the state board.

(g) The decision of the commissioner shall be final unless appealed by the parent or guardian or school board to the district court of the county in which the school district in whole or in part is located. The scope of judicial review shall be as provided in chapter 15.

(h) Pending the completion of proceedings pursuant to this subdivision, unless the district and the parent or guardian of the child agree otherwise, the child shall remain in his current educational placement and shall not be denied initial admission to school.

(i) The child's school district of residence, if different from the district where the child actually resides, shall receive notice of and may be a party to any hearings or appeals pursuant to this subdivision.

Subd. 3c. [Repealed, 1981 c 358 art 3 s 20]

Subd. 4. **Special instructions for non-resident children.** When a school district provides instruction and services outside the district of residence, board and lodging, and any tuition to be paid, shall be paid by the district of residence. The tuition rate to be charged for any handicapped child shall be the actual cost of providing special instruction and services to the child including a proportionate amount for capital outlay and debt service but not including any amount for transportation, minus the amount of special aid for handicapped children received on behalf of that child. If the boards involved do not agree upon the tuition rate, either board may apply to the commissioner to fix the rate. The commissioner shall then set a date for a hearing, giving each board at least ten days' notice, and after the hearing the commissioner shall make his order fixing the tuition rate, which shall be binding on both school districts.

When a district provides instruction and services in a day program outside the district of residence, the district of residence shall be responsible for providing transportation. When a district provides instruction and services requiring board and lodging or placement in a residential program outside the district of residence, the nonresident district in which the child is placed shall be responsible for providing transportation. Transportation costs shall be paid by the district responsible for providing transportation and the state shall pay transportation aid to that district.

For the purposes of this section, any school district may enter into an agreement, upon terms and conditions which are mutually agreed upon, to provide special instruction and services for handicapped children. In that event, one of

the participating units may employ and contract with necessary qualified personnel to offer services in the several districts. Each participating unit shall reimburse the employing unit a proportionate amount of the actual cost of providing the special instruction and services, less the amount of state special education aid, which shall be claimed in full by the employing district.

*[For text of subs 4a and 5, see M.S.1980]*

**Subd. 5a. Summer programs.** A district may provide summer programs for handicapped children living within the district and nonresident children temporarily placed in the district pursuant to subdivisions 6 or 7. Prior to March 31 or 30 days after the handicapped child is placed in the district, whichever is later, the providing district shall give notice to the district of residence of any nonresident children temporarily placed in the district pursuant to subdivisions 6 or 7, of its intention to provide these programs. Notwithstanding any contrary provisions in subdivisions 6 and 7, the school district providing the special instruction and services shall apply for special education aid for the summer program. For the purposes of computing the summer school revenue allowance as provided in section 124.20, pupils enrolled in these programs shall be counted by the district of residence and not by the district providing the programs. The unreimbursed actual cost of providing the program for nonresident handicapped children, including the cost of board and lodging, may be billed to the district of the child's residence and shall be paid by the resident district. Transportation costs shall be paid by the district responsible for providing transportation pursuant to subdivision 6 or 7 and transportation aid shall be paid to that district.

**Subd. 6. Placement in another district; responsibility.** The responsibility for special instruction and services for a handicapped child temporarily placed in another district for care and treatment shall be determined in the following manner:

(a) The school district of residence of a child shall be the district in which his parent resides, if living, or his guardian, or the district designated by the commissioner of education if neither parent nor guardian is living within the state.

(b) When a child is temporarily placed for care and treatment in a day program located in another district and the child continues to live within the district of residence during the care and treatment, the district of residence is responsible for providing transportation and an appropriate educational program for the child. The district may provide the educational program at a school within the district of residence, at the child's residence, or in the district in which the day treatment center is located by paying tuition to that district.

(c) When a child is temporarily placed in a residential program for care and treatment, the nonresident district in which the child is placed is responsible for providing transportation and an appropriate educational program for the child and shall bill the district of the child's residence for the actual cost of providing the program, as outlined in subdivision 4, except that the board, lodging, and treatment costs incurred in behalf of a handicapped child placed outside of the school district of his residence by the commissioner of public welfare or the commissioner of corrections or their agents, for reasons other than for making provision for his special educational needs shall not become the responsibility of either the district providing the instruction or the district of the child's residence.

(d) The district of residence shall pay tuition and other program costs, not including transportation costs, to the district providing the instruction and services. The district of residence may claim foundation aid for the child as provided by

law. Transportation costs shall be paid by the district responsible for providing the transportation and the state shall pay transportation aid to that district.

Subd. 7. **Placement in state institution; responsibility.** Responsibility for special instruction and services for a handicapped child placed in a state institution on a temporary basis shall be determined in the following manner:

(a) The legal residence of such child shall be the school district in which his parent resides, if living, or his guardian;

(b) When the educational needs of such child can be met through the institutional program, the costs for such instruction shall be paid by the department to which the institution is assigned;

(c) When it is determined that such child can benefit from public school enrollment, provision for such instruction shall be made in the following manner:

(1) Determination of eligibility for special instruction and services shall be made by the commissioner of education and the commissioner of the department responsible for the institution;

(2) The school district where the institution is located shall be responsible for providing transportation and an appropriate educational program for the child and shall make a tuition charge to the child's district of residence for the actual cost of providing the program;

(3) The district of the child's residence shall pay the tuition and other program costs excluding transportation costs and may claim foundation aid for the child. Transportation costs shall be paid by the district where the institution is located and the state shall pay transportation aid to that district.

*[For text of subs 7a and 8a, see M.S.1980]*

Subd. 9. **Special instruction.** No resident of a district who is eligible for special instruction and services pursuant to this section shall be denied provision of this instruction and service on a shared time basis because of attendance at a nonpublic school defined in section 123.932, subdivision 3. If a resident handicapped pupil attends a nonpublic school located within his district of residence, the district shall provide necessary transportation for that pupil within the district between the nonpublic school and the educational facility where special instruction and services are provided on a shared time basis. If a resident handicapped pupil attends a nonpublic school located in a district contiguous to his district of residence and if no agreement exists pursuant to section 124.2127, subdivision 1, clause (c) or (d), for the provision of special instruction and services on a shared time basis to that pupil by the district of attendance, the district of residence shall provide necessary transportation for that pupil between the boundary of the district of residence and the educational facility where the special instruction and services are provided within the district of residence. The district of residence may provide necessary transportation for that pupil between its boundary and the nonpublic school attended, but the nonpublic school shall pay the cost of transportation provided outside the district boundary.

*[For text of subd 10, see M.S.1980]*

Subd. 11. **Transportation aid agreements.** Notwithstanding the provisions of subdivisions 4, 5a, and 6, when a child receives special instruction and services in a day program outside the resident district, the resident district and the nonresident district where the child is placed may enter into an agreement providing for the nonresident district to pay the cost of any particular transportation categories specified in section 124.225, subdivision 1, and claim transportation aid for those

categories. In this case, the nonresident district may not obtain any payment from the resident district for the categories covered by the agreement.

**History:** 1981 c 358 art 1 s 1; art 3 s 2-7

#### 120.172 LEGISLATIVE COMMITMENT TO CONCILIATION.

Subdivision 1. **Policy statement.** The legislature finds that conciliation conferences pursuant to section 120.17 serve better than formal hearings to promote communications between parents and school staff and to reach prompt, shared decisions about educational programs for handicapped children. Further, the legislature urges the United States department of education and the United States office of civil rights to acknowledge that the conciliation conference process violates no federal statute or regulation.

Subd. 2. **State plan.** The state board of education shall not adopt any provision in the state plan for special education which reduces the opportunities for parents and school districts to resolve their differences through conciliation.

Subd. 3. **Report.** The Minnesota commissioner of education shall report to the education committees of the legislature before January 1, 1983, on the effect of the procedures required in section 120.17, subdivision 3b, and on any changes in federal statutes or regulations which would contribute to greater flexibility in the procedures for decisions about educational programs for handicapped children.

**History:** 1981 c 358 art 3 s 8

#### 120.78 FUEL CONSUMPTION REPORTS.

Subdivision 1. By August 15 of each year each school district shall submit to the commissioner of education, in the manner and upon the forms the commissioner shall furnish, a comprehensive report of the energy consumed by the district during the previous school year ending June 30. The report shall include the amount of fuel used to transport students to and from school and between schools and any other information the commissioner requires related to the consumption of energy. The report shall be developed by the commissioner in consultation with the commissioner of energy, planning and development.

Subd. 2. [Repealed, 1981 c 358 art 7 s 31]

**History:** 1981 c 356 s 166; 1981 c 358 art 7 s 5