

Education Code: Prekindergarten – Grade 12**CHAPTER 120****DEFINITIONS; ATTENDANCE; SPECIAL
EDUCATION; FEES; CQE**

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120.01 MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

120.01 CITATION, EDUCATION CODE.

Chapters 120 to 129 may be cited as the education code.

History: Ex1959 c 71 art 1 s 1; 1975 c 162 s 1

120.011 [Repealed, 1991 c 265 art 7 s 43]

MISSION, DEFINITIONS**120.0111 MISSION STATEMENT.**

The mission of public education in Minnesota, a system for lifelong learning, is to ensure individual academic achievement, an informed citizenry, and a highly productive work force. This system focuses on the learner, promotes and values diversity, provides participatory decision-making, ensures accountability, models democratic principles, creates and

sustains a climate for change, provides personalized learning environments, encourages learners to reach their maximum potential, and integrates and coordinates human services for learners. It is part of the department's mission that within the department's resources the commissioner shall endeavor to:

- (1) prevent the waste or unnecessary spending of public money;
- (2) use innovative fiscal and human resource practices to manage the state's resources and operate the department as efficiently as possible;
- (3) coordinate the department's activities wherever appropriate with the activities of other governmental agencies;
- (4) use technology where appropriate to increase agency productivity, improve customer service, increase public access to information about government, and increase public participation in the business of government;
- (5) utilize constructive and cooperative labor-management practices to the extent otherwise required by chapters 43A and 179A;
- (6) include specific objectives in the performance report required under section 15.91 to increase the efficiency of agency operations, when appropriate; and
- (7) recommend to the legislature, in the performance report of the department required under section 15.91, appropriate changes in law necessary to carry out the mission of the department.

History: 1991 c 265 art 7 s 1; 1995 c 248 art 11 s 9

120.0112 STATE GOALS FOR SYSTEMIC CHANGE USING TECHNOLOGICAL ADVANCES.

The general framework outcomes for technology use in education are:

- (1) all Minnesota educational institutions, libraries, and communities will have access to local, state, and worldwide instructional resources databases;
- (2) development of policies and procedures that assure instructional resource availability to help students successfully achieve education excellence and state standards;
- (3) databases are accessible within each district and on the Internet; and
- (4) development of policies, procedures, and systems that stimulate and promote teacher and student curriculum and learning collaboration.

History: 1Sp1995 c 3 art 12 s 2

120.02 MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

120.02 DEFINITIONS.

Subdivision 1. For the purposes of this chapter the words, phrases and terms defined in this section shall have the meanings respectively ascribed to them.

Subd. 2. "Commissioner" means the commissioner of children, families, and learning.

Subd. 3. "District" means a school district.

Subd. 4. "Board" means a school board.

Subd. 5. "County board" means a board of county commissioners.

Subd. 6. "Superintendent" means superintendent of the school district involved.

Subd. 7. [Repealed, 1975 c 162 s 42]

Subd. 8. "Department" means the department of children, families, and learning.

Subd. 9. "Auditor" means county auditor.

Subd. 10. [Repealed, 1975 c 162 s 42]

Subd. 11. [Repealed, 1978 c 706 s 69]

Subd. 12. "State board" means state board of education.

Subd. 13. A common district is any school district validly created and existing as a common school district or joint common school district as of July 1, 1957, or pursuant to the terms of the education code.

Subd. 14. An independent district is any school district validly created and existing as an independent, consolidated, joint independent, county or a ten or more township district as of July 1, 1957, or pursuant to the education code.

Subd. 15. A special district is a district established by a charter granted by the legislature or by a home rule charter including any district which is designated a special independent school district by the legislature.

Subd. 16. [Repealed, 1971 c 25 s 30]

Subd. 17. [Repealed, 1975 c 162 s 42]

Subd. 18. School district tax is the tax levied and collected to provide the amount of money voted or levied by the district or the board for school purposes.

History: *Ex1959 c 71 art 1 s 2; 1Sp1995 c 3 art 16 s 13*

120.021 MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

120.023 MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

120.03 MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

120.03 CHILDREN WITH A DISABILITY, DEFINED.

Subdivision 1. Every child who has a hearing impairment, visual disability, speech or language impairment, physical handicap, other health impairment, mental handicap, emotional/behavioral disorder, specific learning disability, or deaf/blind disability and needs special instruction and services, as determined by the standards of the state board, is a child with a disability. In addition, every child under age five who needs special instruction and services, as determined by the standards of the state board, because the child has a substantial delay or has an identifiable physical or mental condition known to hinder normal development is a child with a disability.

Subd. 2. [Repealed, 1Sp1985 c 12 art 3 s 30]

Subd. 3. [Repealed, 1Sp1985 c 12 art 3 s 30]

Subd. 4. [Repealed, 1Sp1985 c 12 art 3 s 30]

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 child with a disability.

History: *Ex1959 c 71 art 1 s 3; 1969 c 981 s 1; 1975 c 432 s 7; 1981 c 358 art 3 s 1; 1Sp1985 c 12 art 3 s 1; 1987 c 398 art 3 s 1; 1991 c 265 art 3 s 38*

120.04 MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

120.04 MS 1967 [Repealed, 1969 c 981 s 7]

120.05 MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

120.05 PUBLIC SCHOOLS.

Subdivision 1. [Repealed, 1989 c 329 art 9 s 34]

Subd. 2. **Definitions.** (1) Elementary school means any school with building, equipment, courses of study, class schedules, enrollment of pupils ordinarily in grades 1 through 6 or any portion thereof and staff meeting the standards established by the state board of education.

The state board of education shall not close a school or deny any state aids to a district for its elementary schools because of enrollment limitations classified in accordance with the provisions of subdivision 2, clause (1).

(2) Middle school means any school other than a secondary school giving an approved course of study in a minimum of three consecutive grades above 4th but below 10th with building, equipment, courses of study, class schedules, enrollment, and staff meeting the standards established by the state board of education.

(3) Secondary school means any school with building, equipment, courses of study, class schedules, enrollment of pupils ordinarily in grades 7 through 12 or any portion thereof, and staff meeting the standards established by the state board of education.

(4) A vocational center school is one serving a group of secondary schools with approved areas of secondary vocational training and offering vocational secondary and adult programs necessary to meet local needs and meeting standards established by the state board of education.

History: *Ex1959 c 71 art 1 s 5; 1961 c 562 s 7; 1971 c 25 s 31; 1971 c 118 s 1; 1978 c 616 s 1; 1984 c 463 art 5 s 1; 1987 c 258 s 1*

SCHOOL ATTENDANCE

120.06 MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

120.06 ADMISSION TO PUBLIC SCHOOL.

Subdivision 1. Age limitations; pupils. All schools supported in whole or in part by state funds are public schools. Admission to a public school is free to any person who resides within the district which operates the school, who is under 21 years of age, and who satisfies the minimum age requirements imposed by this section. Notwithstanding the provisions of any law to the contrary, the conduct of all students under 21 years of age attending a public secondary school shall be governed by a single set of reasonable rules and regulations promulgated by the school board. No person shall be admitted to any public school (1) as a kindergarten pupil, unless the pupil is at least five years of age on September 1 of the calendar year in which the school year for which the pupil seeks admission commences; or (2) as a 1st grade student, unless the pupil is at least six years of age on September 1 of the calendar year in which the school year for which the pupil seeks admission commences or has completed kindergarten; except that any school board may establish a policy for admission of selected pupils at an earlier age.

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

Subd. 2a. Education of homeless. Notwithstanding subdivision 1, a school district must not deny free admission to a homeless person of school age solely because the school district cannot determine that the person is a resident of the school district.

Subd. 3. Pupils, at least 21 years of age. In addition to those admitted under subdivision 1, admission to a public secondary school is free to a person who is eligible under this subdivision. In order to be eligible, a person must be:

- (1) at least 21 years of age;
- (2) a resident of the district where the secondary school is located; and
- (3) eligible under section 126.22, subdivision 2.

Free admission is limited to two school years or the equivalent, or until the pupil completes the courses required to graduate, whichever is less. A district that admits a person to school under this section must have a reasonable expectation that the person can obtain a diploma within two years.

History: *Ex1959 c 71 art 1 s 6; 1967 c 173 s 1; 1974 c 529 s 1; 1984 c 463 art 5 s 2; 1Sp1985 c 12 art 7 s 2; 1987 c 258 s 12; 1988 c 718 art 6 s 1; 1989 c 246 s 2; 1989 c 329 art 7 s 1; 1993 c 224 art 4 s 7; 1996 c 412 art 13 s 3*

120.062 ENROLLMENT OPTIONS PROGRAM.

Subdivision 1. [Repealed, 1988 c 718 art 7 s 65]

Subd. 2. Establishment. An enrollment options program is established to enable any pupil to attend a school or program in a district in which the pupil does not reside, subject to the limitations in this section.

Subd. 3. Closed districts. A school board may, by resolution, determine that nonresident pupils may not attend any of its schools or programs according to this section.

Subd. 4. Pupil application procedures. In order that a pupil may attend a school or program in a nonresident district, the pupil's parent or guardian must submit an application to the nonresident district. Before submitting an application, the pupil and the pupil's parent or guardian must explore with a school guidance counselor, or other appropriate staff member employed by the district the pupil is currently attending, the pupil's academic or other reason for applying to enroll in a nonresident district. The pupil's application must identify the reason for enrolling in the nonresident district. The parent or guardian of a pupil must submit an application by January 15 for initial enrollment beginning the following school year. The application shall be on a form provided by the department of children, families, and learning. A particular school or program may be requested by the parent. Once enrolled in a nonresident district, the pupil may remain enrolled and is not required to submit annual or periodic applications. To return to the resident district or to transfer to a different nonresident district, the

parent or guardian of the pupil must provide notice to the resident district or apply to a different nonresident district by January 15 for enrollment beginning the following school year.

Subd. 5. Desegregation district transfers. (a) This subdivision applies to a transfer into or out of a district that has a desegregation plan approved by the commissioner of children, families, and learning.

(b) An application to transfer may be submitted at any time for enrollment beginning at any time.

(c) The parent or guardian of a pupil who is a resident of a district that has a desegregation plan must submit an application to the resident district. If the district accepts the application, it must forward the application to the nonresident district.

(d) The parent or guardian of a pupil who applies for enrollment in a nonresident district that has a desegregation plan must submit an application to the nonresident district.

(e) Each district must accept or reject an application it receives and notify the parent or guardian in writing within 30 calendar days of receiving the application. A notification of acceptance must include the date enrollment can begin.

(f) If an application is rejected, the district must state the reason for rejection in the notification. If a district that has a desegregation plan rejects an application for a reason related to the desegregation plan, the district must state with specificity how acceptance of the application would result in noncompliance with state board rules with respect to the school or program for which application was made.

(g) If an application is accepted, the parent or guardian must notify the nonresident district in writing within 15 calendar days of receiving the acceptance whether the pupil intends to enroll in the nonresident district. Notice of intention to enroll obligates the pupil to enroll in the nonresident district, unless the school boards of the resident and nonresident districts agree otherwise. If a parent or guardian does not notify the nonresident district, the pupil may not enroll in that nonresident district at that time, unless the school boards of the resident and nonresident district agree otherwise.

(h) Within 15 calendar days of receiving the notice from the parent or guardian, the nonresident district shall notify the resident district in writing of the pupil's intention to enroll in the nonresident district.

(i) A pupil enrolled in a nonresident district under this subdivision is not required to make annual or periodic application for enrollment but may remain enrolled in the same district. A pupil may transfer to the resident district at any time.

(j) A pupil enrolled in a nonresident district and applying to transfer into or out of a district that has a desegregation plan must follow the procedures of this subdivision. For the purposes of this type of transfer, "resident district" means the nonresident district in which the pupil is enrolled at the time of application.

(k) A district that has a desegregation plan approved by the state board of education must accept or reject each individual application in a manner that will enable compliance with its desegregation plan.

Subd. 6. Nonresident district procedures. A district that does not exclude nonresident pupils, according to subdivision 3, shall notify the parent or guardian in writing by February 15 whether the application has been accepted or rejected. If an application is rejected, the district must state in the notification the reason for rejection. The parent or guardian shall notify the nonresident district by March 1 whether the pupil intends to enroll in the nonresident district. Notice of intent to enroll in the nonresident district obligates the pupil to attend the nonresident district during the following school year, unless the school boards of the resident and the nonresident districts agree in writing to allow the pupil to transfer back to the resident district, or the pupil's parents or guardians change residence to another district. If a parent or guardian does not notify the nonresident district, the pupil may not enroll in that nonresident district during the following school year, unless the school boards of the resident and nonresident district agree otherwise. The nonresident district shall notify the resident district by March 15 of the pupil's intent to enroll in the nonresident district. The same procedures apply to a pupil who applies to transfer from one participating nonresident district to another participating nonresident district.

Subd. 7. Basis for decisions. The school board must adopt, by resolution, specific standards for acceptance and rejection of applications. Standards may include the capacity of a program, class, grade level, or school building. Standards may not include previous academic achievement, athletic or other extracurricular ability, disabling conditions, proficiency in the English language, or previous disciplinary proceedings.

Subd. 8. [Repealed, 1989 c 329 art 9 s 33]

Subd. 8a. Exceptions to deadlines. Notwithstanding subdivision 4, the following pupil application procedures apply:

(a) Upon agreement of the resident and nonresident school districts, a pupil may submit an application to a nonresident district after January 15 for enrollment beginning the following school year.

(b) If, as a result of entering into, modifying, or terminating an agreement between school boards, a pupil is assigned after December 1 to a different school for enrollment beginning at any time, the pupil, the pupil's siblings, or any other pupil residing in the pupil's residence may submit an application to a nonresident district at any time before July 1 for enrollment beginning the following school year.

(c) A pupil who becomes a resident of a school district after December 1 may submit an application to a nonresident district on January 15 or any time after that date for enrollment beginning any time before the following December 1.

(d) If the commissioner of children, families, and learning and the commissioner of human rights determine that the policies, procedures, or practices of a school district are in violation of Title VI of the Civil Rights Act of 1964 (Public Law Number 88-352) or chapter 363, any pupil in the district may submit an application to a nonresident district at any time for enrollment beginning at any time.

For exceptions under this subdivision, the applicant, the applicant's parent or guardian, the district of residence, and the district of attendance must observe, in a prompt and efficient manner, the application and notice procedures in subdivisions 4 and 6, except that the application and notice deadlines do not apply.

Subd. 9. Transportation. (a) If requested by the parent of a pupil, the nonresident district shall provide transportation within the district. The state shall pay transportation aid to the district according to section 124.225.

The resident district is not required to provide or pay for transportation between the pupil's residence and the border of the nonresident district. A parent may be reimbursed by the nonresident district for the costs of transportation from the pupil's residence to the border of the nonresident district if the pupil is from a family whose income is at or below the poverty level, as determined by the federal government. The reimbursement may not exceed the pupil's actual cost of transportation or 15 cents per mile traveled, whichever is less. Reimbursement may not be paid for more than 250 miles per week.

At the time a nonresident district notifies a parent or guardian that an application has been accepted under subdivision 5 or 6, the nonresident district must provide the parent or guardian with the following information regarding the transportation of nonresident pupils under this section:

(1) a nonresident district may transport a pupil within the pupil's resident district under this section only with the approval of the resident district; and

(2) a parent or guardian of a pupil attending a nonresident district under this section may appeal under section 123.39, subdivision 6, the refusal of the resident district to allow the nonresident district to transport the pupil within the resident district.

(b) Notwithstanding paragraph (a) and section 124.225, subdivision 8l, transportation provided by a nonresident district between home and school for a pupil attending school under this section is authorized for nonregular transportation revenue under section 124.225, if the following criteria are met:

(1) the school that the pupil was attending prior to enrolling in the nonresident district under this section was closed;

(2) the distance from the closed school to the next nearest school in the district that the student could attend is at least 20 miles;

(3) the pupil's residence is at least 20 miles from any school that the pupil could attend in the resident district; and

(4) the pupil's residence is closer to the school of attendance in the nonresident district than to any school the pupil could attend in the resident district.

Subd. 10. Credits toward graduation. A nonresident district shall accept credits toward graduation that were awarded by another district. The nonresident district shall award a diploma to a nonresident pupil if the pupil meets its graduation requirements.

Subd. 11. Information. A district that does not exclude nonresident pupils according to subdivision 3 shall make information about the district, schools, programs, policies, and procedures available to all interested people.

Subd. 12. General education aid. Adjustments to general education aid, capital expenditure facilities aid, and equipment aid for the resident and nonresident districts shall be made according to sections 124A.036, subdivision 5, and 124.245, subdivision 6, respectively.

History: 1988 c 718 art 7 s 8; 1989 c 222 s 1,2; 1989 c 329 art 9 s 1-3; 1990 c 562 art 6 s 1,2; 1991 c 130 s 1,2; 1991 c 265 art 2 s 1; art 3 s 38; art 9 s 1; 1992 c 499 art 9 s 1; 1993 c 224 art 2 s 1; art 13 s 1; 1Sp1995 c 3 art 16 s 13

120.0621 ENROLLMENT OPTIONS PROGRAMS IN BORDER STATES.

Subdivision 1. Options for enrollment in adjoining states. Minnesota pupils and pupils residing in adjoining states may enroll in school districts in the other state according to:

- (1) section 120.08, subdivision 2; or
- (2) this section.

Subd. 2. Pupils in Minnesota. A Minnesota resident pupil may enroll in a school district in an adjoining state if the district to be attended borders Minnesota.

Subd. 3. Pupils in bordering states. A non-Minnesota pupil who resides in an adjoining state in a school district that borders Minnesota may enroll in a Minnesota school district if either the school board of the district in which the pupil resides or state in which the pupil resides pays tuition to the school district in which the pupil is enrolled.

Subd. 3a. Canadian pupils. A pupil who resides in Canada may enroll in a Minnesota school district if the province in which the pupil resides pays tuition to the school district in which the pupil is enrolled. A pupil may enroll either full time or part time for all instructional programs and shall be considered eligible for all other purposes for all other programs offered by the district. The tuition must be an amount that is at least comparable to the tuition specified in section 120.08, subdivision 1. A school district may accept funds from any international agency for these programs.

Subd. 4. Procedural requirements. Except as otherwise provided in this section, the rights and duties set forth in section 120.062 apply to Minnesota pupils, parents, and school districts if a pupil enrolls in a nonresident district according to this section.

Subd. 5. [Repealed, 1993 c 224 art 9 s 54]

Subd. 5a. Tuition payments. In each odd-numbered year, before March 1, the state board of education shall agree to rates of tuition for Minnesota elementary and secondary pupils attending in other states for the next two fiscal years. The board shall negotiate equal, reciprocal rates with the designated authority in each state for pupils who reside in an adjoining state and enroll in a Minnesota school district. The rates must be at least equal to the tuition specified in section 120.08, subdivision 1. The tuition rate for a pupil with a disability must be equal to the actual cost of instruction and services provided. The resident district of a Minnesota pupil attending in another state under this section must pay the amount of tuition agreed upon in this section to the district of attendance, prorated on the basis of the proportion of the school year attended.

Subd. 5b. Transportation of students. (a) The agreement under subdivision 5a with each state must specify that the attending district in each state transport a pupil from the district boundary to the school of attendance.

(b) Notwithstanding paragraph (a), the districts of residence and attendance may agree that either district may provide transportation from a pupil's home or agreed upon location to school. Transportation aid for Minnesota students eligible for aid shall be paid only for transportation within the resident district.

Subd. 6. **Effective if reciprocal.** This section is effective with respect to South Dakota upon enactment of provisions by South Dakota that are essentially similar to the provisions for Minnesota pupils in this section. After July 1, 1993, this section is effective with respect to any other bordering state upon enactment of provisions by the bordering state that are essentially similar to the provisions for Minnesota pupils in this section.

History: 1991 c 265 art 9 s 2; 1993 c 224 art 6 s 1; art 9 s 1

120.063 SCHOOL ATTENDANCE.

Attendance at a particular public school is a privilege not a right for a pupil.

History: 1996 c 412 art 4 s 1

120.064 RESULTS-ORIENTED CHARTER SCHOOLS.

Subdivision 1. **Purposes.** (a) The purpose of this section is to:

- (1) improve pupil learning;
- (2) increase learning opportunities for pupils;
- (3) encourage the use of different and innovative teaching methods;
- (4) require the measurement of learning outcomes and create different and innovative forms of measuring outcomes;
- (5) establish new forms of accountability for schools; or
- (6) create new professional opportunities for teachers, including the opportunity to be responsible for the learning program at the school site.

(b) This section does not provide a means to keep open a school that otherwise would be closed. Applicants in these circumstances bear the burden of proving that conversion to a charter school fulfills a purpose specified in this subdivision, independent of the school's closing.

Subd. 2. **Applicability.** This section applies only to charter schools formed and operated under this section.

Subd. 3. **Sponsor.** A school board, community college, state university, technical college, or the University of Minnesota may sponsor one or more charter schools.

No more than a total of 40 charter schools may be authorized not more than three of which may be sponsored by public post-secondary institutions. The state board of education shall advise potential sponsors when the maximum number of charter schools has been authorized.

Subd. 4. **Formation of school.** (a) A sponsor may authorize one or more licensed teachers under section 125.05, subdivision 1, to operate a charter school subject to approval by the state board of education. If a school board elects not to sponsor a charter school, the applicant may appeal the school board's decision to the state board of education if two members of the school board voted to sponsor the school. If the state board authorizes the school, the state board shall sponsor the school according to this section. The school shall be organized and operated as a cooperative under chapter 308A or nonprofit corporation under chapter 317A.

(b) Before the operators may form and operate a school, the sponsor must file an affidavit with the state board of education stating its intent to authorize a charter school. The affidavit must state the terms and conditions under which the sponsor would authorize a charter school. The state board must approve or disapprove the sponsor's proposed authorization within 60 days of receipt of the affidavit. Failure to obtain state board approval precludes a sponsor from authorizing the charter school that was the subject of the affidavit.

(c) The operators authorized to organize and operate a school shall hold an election for members of the school's board of directors in a timely manner after the school is operating. Any staff members who are employed at the school, including teachers providing instruction under a contract with a cooperative, and all parents of children enrolled in the school may participate in the election. Licensed teachers employed at the school, including teachers providing instruction under a contract with a cooperative, must be a majority of the members of the board of directors. A provisional board may operate before the election of the school's board of directors. Board of director meetings must comply with section 471.705.

(d) The granting or renewal of a charter by a sponsoring entity shall not be conditioned upon the bargaining unit status of the employees of the school.

Subd. 4a. Conversion of existing schools. A school board may convert one or more of its existing schools to charter schools under this section if 90 percent of the full-time teachers at the school sign a petition seeking conversion. The conversion must occur at the beginning of an academic year.

Subd. 5. Contract. The sponsor's authorization for a charter school shall be in the form of a written contract signed by the sponsor and the board of directors of the charter school. The contract for a charter school shall be in writing and contain at least the following:

- (1) a description of a program that carries out one or more of the purposes in subdivision 1;
- (2) specific outcomes pupils are to achieve under subdivision 10;
- (3) admission policies and procedures;
- (4) management and administration of the school;
- (5) requirements and procedures for program and financial audits;
- (6) how the school will comply with subdivisions 8, 13, 15, and 21;
- (7) assumption of liability by the charter school;
- (8) types and amounts of insurance coverage to be obtained by the charter school; and
- (9) the term of the contract, which may be up to three years.

Subd. 6. [Repealed, 1993 c 337 s 20]

Subd. 7. Public status; exemption from statutes and rules. A charter school is a public school and is part of the state's system of public education. Except as provided in this section, a charter school is exempt from all statutes and rules applicable to a school, a school board, or a school district, although it may elect to comply with one or more provisions of statutes or rules.

Subd. 8. Requirements. (a) A charter school shall meet all applicable state and local health and safety requirements.

(b) The school must be located in the sponsoring district, unless another school board agrees to locate a charter school sponsored by another district in its boundaries. If a school board denies a request to locate within its boundaries a charter school sponsored by another district, the sponsoring district may appeal to the state board of education. If the state board authorizes the school, the state board shall sponsor the school.

(c) A charter school must be nonsectarian in its programs, admission policies, employment practices, and all other operations. A sponsor may not authorize a charter school or program that is affiliated with a nonpublic sectarian school or a religious institution.

(d) Charter schools shall not be used as a method of providing education or generating revenue for students who are being home schooled.

(e) The primary focus of a charter school must be to provide a comprehensive program of instruction for at least one grade or age group from five through 18 years of age. Instruction may be provided to people younger than five years and older than 18 years of age.

(f) A charter school may not charge tuition.

(g) A charter school is subject to and shall comply with chapter 363 and section 126.21.

(h) A charter school is subject to and shall comply with the pupil fair dismissal act, sections 127.26 to 127.39, and the Minnesota public school fee law, sections 120.71 to 120.76.

(i) A charter school is subject to the same financial audits, audit procedures, and audit requirements as a school district. The audit must be consistent with the requirements of sections 121.904 to 121.917, except to the extent deviations are necessary because of the program at the school. The department of children, families, and learning, state auditor, or legislative auditor may conduct financial, program, or compliance audits.

(j) A charter school is a school district for the purposes of tort liability under chapter 466.

Subd. 9. Admission requirements. A charter school may limit admission to:

- (1) pupils within an age group or grade level;

(2) people who are eligible to participate in the graduation incentives program under section 126.22; or

(3) residents of a specific geographic area where the percentage of the population of non-Caucasian people of that area is greater than the percentage of the non-Caucasian population in the congressional district in which the geographic area is located, and as long as the school reflects the racial and ethnic diversity of the specific area.

A charter school shall enroll an eligible pupil who submits a timely application, unless the number of applications exceeds the capacity of a program, class, grade level, or building. In this case, pupils shall be accepted by lot.

A charter school may not limit admission to pupils on the basis of intellectual ability, measures of achievement or aptitude, or athletic ability.

Subd. 10. Pupil performance. A charter school must design its programs to at least meet the outcomes adopted by the state board of education. In the absence of state board requirements, the school must meet the outcomes contained in the contract with the sponsor. The achievement levels of the outcomes contained in the contract may exceed the achievement levels of any outcomes adopted by the state board.

Subd. 11. Employment and other operating matters. A charter school shall employ or contract with necessary teachers, as defined by section 125.03, subdivision 1, who hold valid licenses to perform the particular service for which they are employed in the school. The school may employ necessary employees who are not required to hold teaching licenses to perform duties other than teaching and may contract for other services. The school may discharge teachers and nonlicensed employees.

The board of directors also shall decide matters related to the operation of the school, including budgeting, curriculum and operating procedures.

Subd. 12. Pupils with a disability. A charter school must comply with sections 120.03 and 120.17 and rules relating to the education of pupils with a disability as though it were a school district.

Subd. 13. Length of school year. A charter school shall provide instruction each year for at least the number of days required by section 120.101, subdivision 5. It may provide instruction throughout the year according to sections 120.59 to 120.67 or 121.585.

Subd. 14. Reports. A charter school must report at least annually to its sponsor and the state board of education the information required by the sponsor or the state board. The reports are public data under chapter 13.

Subd. 15. Transportation. (a) By July 1 of each year, a charter school shall notify the district in which the school is located and the department of children, families, and learning if it will provide transportation for pupils enrolled at the school for the fiscal year.

(b) If a charter school elects to provide transportation for pupils, the transportation shall be provided by the charter school within the district in which the charter school is located. The state shall pay transportation aid to the charter school according to section 124.248, subdivision 1a.

For pupils who reside outside the district in which the charter school is located, the charter school is not required to provide or pay for transportation between the pupil's residence and the border of the district in which the charter school is located. A parent may be reimbursed by the charter school for costs of transportation from the pupil's residence to the border of the district in which the charter school is located if the pupil is from a family whose income is at or below the poverty level, as determined by the federal government. The reimbursement may not exceed the pupil's actual cost of transportation or 15 cents per mile traveled, whichever is less. Reimbursement may not be paid for more than 250 miles per week.

At the time a pupil enrolls in a charter school, the charter school shall provide the parent or guardian with information regarding the transportation.

(c) If a charter school does not elect to provide transportation, transportation for pupils enrolled at the school shall be provided by the district in which the school is located, according to sections 120.062, subdivision 9, and 123.39, subdivision 6, for a pupil residing in the same district in which the charter school is located. Transportation may be provided by the district in which the school is located, according to sections 120.062, subdivision 9, and 123.39, subdivision 6, for a pupil residing in a different district.

Subd. 16. Leased space. A charter school may lease space from a board eligible to be a sponsor or other public or private nonprofit nonsectarian organization. If a charter school is unable to lease appropriate space from an eligible board or other public or private nonprofit nonsectarian organization, the school may lease space from another nonsectarian organization if the department of children, families, and learning, in consultation with the department of administration, approves the lease. If the school is unable to lease appropriate space from public or private nonsectarian organizations, the school may lease space from a sectarian organization if the leased space is constructed as a school facility and the department of children, families, and learning, in consultation with the department of administration, approves the lease.

Subd. 17. Initial costs. A sponsor may authorize a charter school before the applicant has secured its space, equipment, facilities, and personnel if the applicant indicates the authority is necessary for it to raise working capital. A sponsor may not authorize a school before the state board of education has approved the authorization.

Subd. 18. Disseminate information. The sponsor, the operators, and the department of children, families, and learning must disseminate information to the public on how to form and operate a charter school and how to utilize the offerings of a charter school. Particular groups to be targeted include low-income families and communities, and students of color.

Subd. 19. Leave to teach in a charter school. If a teacher employed by a school district makes a written request for an extended leave of absence to teach at a charter school, the school district must grant the leave. The school district must grant a leave for any number of years requested by the teacher, and must extend the leave at the teacher's request. The school district may require that the request for a leave or extension of leave be made up to 90 days before the teacher would otherwise have to report for duty. Except as otherwise provided in this subdivision and except for section 125.60, subdivision 6a, the leave is governed by section 125.60, including, but not limited to, reinstatement, notice of intention to return, seniority, salary, and insurance.

During a leave, the teacher may continue to aggregate benefits and credits in the teachers' retirement association account by paying both the employer and employee contributions based upon the annual salary of the teacher for the last full pay period before the leave began. The retirement association may impose reasonable requirements to efficiently administer this subdivision.

Subd. 20. Collective bargaining. Employees of the board of directors of a charter school may, if otherwise eligible, organize under chapter 179A and comply with its provisions. The board of directors of a charter school is a public employer, for the purposes of chapter 179A, upon formation of one or more bargaining units at the school. Bargaining units at the school shall be separate from any other units within the sponsoring district, except that bargaining units may remain part of the appropriate unit within the sponsoring district, if the employees of the school, the board of directors of the school, the exclusive representative of the appropriate unit in the sponsoring district, and the board of the sponsoring district agree to include the employees in the appropriate unit of the sponsoring district.

Subd. 20a. Teachers retirement. Teachers in a charter school shall be public school teachers for the purposes of chapters 354 and 354a.

Subd. 21. Causes for nonrenewal or termination. (a) The duration of the contract with a sponsor shall be for the term contained in the contract according to subdivision 5. The sponsor may or may not renew a contract at the end of the term for any ground listed in paragraph (b). A sponsor may unilaterally terminate a contract during the term of the contract for any ground listed in paragraph (b). At least 60 days before not renewing or terminating a contract, the sponsor shall notify the board of directors of the charter school of the proposed action in writing. The notice shall state the grounds for the proposed action in reasonable detail and that the charter school's board of directors may request in writing an informal hearing before the sponsor within 14 days of receiving notice of nonrenewal or termination of the contract. Failure by the board of directors to make a written request for a hearing within the 14-day period shall be treated as acquiescence to the proposed action. Upon receiving a timely written request for a hearing, the sponsor shall give reasonable notice to the charter school's board of directors of the hearing date. The sponsor shall conduct an informal hearing

before taking final action. The sponsor shall take final action to renew or not renew a contract by the last day of classes in the school year. If the sponsor is a local school board, the school's board of directors may appeal the sponsor's decision to the state board of education.

(b) A contract may be terminated or not renewed upon any of the following grounds:

- (1) failure to meet the requirements for pupil performance contained in the contract;
- (2) failure to meet generally accepted standards of fiscal management;
- (3) for violations of law; or
- (4) other good cause shown.

If a contract is terminated or not renewed, the school shall be dissolved according to the applicable provisions of chapter 308A or 317A.

Subd. 22. Pupil enrollment. If a contract is not renewed or is terminated according to subdivision 21, a pupil who attended the school, siblings of the pupil, or another pupil who resides in the same place as the pupil may enroll in the resident district or may submit an application to a nonresident district according to section 120.062 at any time. Applications and notices required by section 120.062 shall be processed and provided in a prompt manner. The application and notice deadlines in section 120.062 do not apply under these circumstances.

Subd. 23. General authority. The board of directors of a charter school may sue and be sued. The board may not levy taxes or issue bonds.

Subd. 24. Immunity. The state board of education, members of the state board, a sponsor, members of the board of a sponsor in their official capacity, and employees of a sponsor are immune from civil or criminal liability with respect to all activities related to a charter school they approve or sponsor. The board of directors shall obtain at least the amount of and types of insurance required by the contract, according to subdivision 5.

History: 1991 c 265 art 3 s 38; art 9 s 3; 1992 c 499 art 12 s 1; 1993 c 224 art 9 s 2-12; art 14 s 16; 1994 c 465 art 2 s 1; 1994 c 647 art 9 s 1,2; 1Sp1995 c 3 art 9 s 2; art 16 s 13; 1996 c 412 art 4 s 2

120.065 [Repealed, 1978 c 764 s 143]

120.07 MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

120.07 MS 1976 [Repealed, 1978 c 764 s 143]

120.075 ATTENDANCE; PREVIOUS ENROLLMENT; FAMILIES.

Subdivision 1. Any pupil who, pursuant to the provisions of Minnesota Statutes 1976, section 120.065, or Minnesota Statutes, 1977 Supplement, section 123.39, subdivision 5a, was enrolled on either January 1, 1978, or April 5, 1978, in a school district of which the pupil was not a resident may continue in enrollment in that district.

Subd. 1a. Any pupil who, pursuant to section 123.39, subdivision 5, has continuously been enrolled since January 1, 1977, in a school district of which the pupil was not a resident may continue in enrollment in that district.

Subd. 2. Any child who was under school age on either January 1, 1978, or April 5, 1978, but who otherwise would have qualified pursuant to the provisions of Minnesota Statutes 1976, section 120.065, or Minnesota Statutes, 1977 Supplement, section 123.39, subdivision 5a, for enrollment in a school district of which the child was not a resident may enroll in that district.

Subd. 3. Any pupil enrolled on either January 1, 1978, or April 5, 1978, in a nonpublic school, as defined in section 123.932, subdivision 3, located in a district of which the pupil was not a resident who would otherwise have qualified for enrollment in that district as a resident pursuant to subdivision 1 may attend the public schools of that district.

Subd. 3a. Any child who was born on or before January 1, 1978 but who was adopted after January 1, 1978 and whose adoptive parent on January 1, 1978 owned property residence upon which would have qualified the child for enrollment pursuant to Minnesota Statutes 1976, section 120.065, in a school district of which the child was not a resident may enroll in that district. Any child who was born on or before January 1, 1978 but who was adopted after January 1, 1978 and whose adoptive parent on January 1, 1978 owned or was a

tenant upon property so as to qualify a child for enrollment pursuant to Minnesota Statutes, 1977 Supplement, section 123.39, subdivision 5a, in a school district of which the child was not a resident may enroll in that district.

Subd. 4. Subdivisions 1, 1a, 2, 3 and 3a shall also apply to any brother or sister of a qualified pupil who is related to that pupil by blood, adoption or marriage and to any foster child of that pupil's parents. The enrollment of any pupil pursuant to subdivision 1, 2, 3 or 3a and of a brother or sister of that pupil or of a foster child of that pupil's parents pursuant to this subdivision shall remain subject to the provisions of Minnesota Statutes 1976, section 120.065 and Minnesota Statutes, 1977 Supplement, section 123.39, subdivision 5a, as they read on January 1, 1978.

Subd. 5. General education aid, capital expenditure facilities aid, capital expenditure equipment aid, and transportation aid attributable to pupils covered by programs under this section must be paid according to sections 124A.036, subdivision 5, 124.245, subdivision 6, and 124.225, subdivision 8l.

History: 1978 c 764 s 2; 1979 c 334 art 6 s 2; 1980 c 375 s 1; 1980 c 609 art 6 s 1-3; 1986 c 444; 1988 c 718 art 7 s 9-11; 1989 c 222 s 3

120.0751 COMMISSIONER OF CHILDREN, FAMILIES, AND LEARNING; ENROLLMENT EXCEPTIONS.

Subdivision 1. The commissioner may permit a pupil to enroll in a school district of which the pupil is not a resident under this section.

Subd. 2. The pupil or the pupil's parent or guardian shall make application to the commissioner, explaining the particular circumstances which make the nonresident district the appropriate district of attendance for the pupil. The application must be signed by the pupil's parent or guardian and the superintendent of the nonresident district.

Subd. 3. **Criteria for approval.** In approving or disapproving the application the commissioner shall consider the following:

(a) if the circumstances of the pupil are similar or analogous to the exceptions permitted by section 120.075, whether attending school in the district of residence creates a particular hardship for the pupil; or

(b) if the pupil has been continuously enrolled for at least two years in a district of which the pupil was not a resident because of an error made in good faith about the actual district of residence, whether attending school in the district of residence creates a particular hardship for the pupil. If the commissioner finds that a good faith error was made and that attending school in the district of residence would create a particular hardship for the siblings of that pupil or foster children of that pupil's parents, the commissioner may separately approve an application for any or all of the siblings of the pupil who are related by blood, adoption, or marriage and for foster children of the pupil's parents.

Subd. 4. The commissioner shall render its decision in each case within 60 days of receiving the application in subdivision 2.

Subd. 5. The commissioner shall provide the forms required by subdivision 2 and shall adopt the procedures necessary to implement this section.

Subd. 6. **Aid.** General education aid, capital expenditure facilities aid, capital expenditure equipment aid, and transportation aid for pupils covered by programs under this section must be paid according to sections 124A.036, subdivision 5, 124.245, subdivision 6, and 124.225, subdivision 8l.

History: 1980 c 609 art 6 s 4; 1981 c 358 art 7 s 4; 1983 c 314 art 7 s 4; 1986 c 444; 1988 c 718 art 7 s 12,13; 1989 c 222 s 4; 1993 c 224 art 13 s 2; 1Sp1995 c 3 art 16 s 13

120.0752 AGREEMENTS BETWEEN SCHOOL BOARDS; ENROLLMENT EXCEPTIONS.

Subdivision 1. A pupil may enroll in a school district of which the pupil is not a resident under this section.

Subd. 2. The pupil's parent or guardian must receive the approval of the school board of the nonresident district and the school board of the resident district. The nonresident school board shall notify the resident school board of the approval.

Subd. 3. **11th and 12th grade students.** Notwithstanding subdivision 2, an 11th or 12th grade pupil who has been enrolled in a district and whose parent or guardian moves to another district, may continue to enroll in the nonresident district upon the approval of the school board of the nonresident district. The approval of the school board of the pupil's resident district is not required.

Subd. 4. General education aid, capital expenditure facilities aid, capital expenditure equipment aid, and transportation aid for pupils covered by programs under this section must be paid according to sections 124A.036, subdivision 5, 124.245, subdivision 6, and 124.225, subdivision 81.

History: 1980 c 609 art 6 s 5; 1986 c 444; 1987 c 398 art 7 s 4; 1988 c 718 art 7 s 14-16; 1989 c 222 s 5; 1991 c 130 s 3

120.08 MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

120.08 ATTENDANCE; SCHOOL IN ANOTHER STATE; SEVERANCE PAY.

Subdivision 1. Any person under 21 years of age residing in any district not maintaining a secondary school who has successfully completed the elementary school may, with the consent of the board of such district, attend any secondary school of a district in an adjoining state willing to admit the person, which secondary school is nearer to the place of residence than any duly established secondary school in Minnesota, the distances being measured by the usual traveled routes. Any tuition charged by the district so attended shall be paid to the district attended by the district in which the person resides. This tuition shall not be more than (a) such district charges nonresident pupils of that state, (b) the average maintenance cost exclusive of transportation per pupil unit in average daily membership in the school attended, nor (c) the tuition rate provided for in section 124.18, subdivision 2.

Any pupil attending a secondary school in an adjoining state for whom tuition is paid from district funds is entitled to transportation services in accordance with Minnesota Statutes.

Subd. 2. A school board of a district maintaining a secondary school may by a majority vote provide for the instruction of any resident pupil attending an elementary school, a middle school, or a secondary school in a school district in an adjoining state. Any charge for tuition or transportation, by the district in the adjoining state, shall be paid by the resident district. The pupil shall be considered a pupil of the resident district for the purposes of state aid.

Subd. 3. **Severance pay.** A district shall pay severance pay to a teacher who is placed on unrequested leave of absence by the district as a result of an agreement under this section. A teacher is eligible under this subdivision if the teacher:

- (1) is a teacher, as defined in section 125.12, subdivision 1, but not a superintendent;
- (2) has a continuing contract with the district according to section 125.12, subdivision 4.

The amount of severance pay shall be equal to the teacher's salary for the school year during which the teacher was placed on unrequested leave of absence minus the gross amount the teacher was paid during the 12 months following the teacher's termination of salary, by an entity whose teachers by statute or rule must possess a valid Minnesota teaching license, and minus the amount a teacher receives as severance or other similar pay according to a contract with the district or district policy. These entities include, but are not limited to, the school district that placed the teacher on unrequested leave of absence, another school district in Minnesota, an education district, an intermediate school district, a SC, a board formed under section 471.59, a state residential academy, the Lola and Rudy Perpich Minnesota center for arts education, a vocational center, or a special education cooperative. These entities do not include a school district in another state, a Minnesota public post-secondary institution, or a state agency. Only amounts earned by the teacher as a substitute teacher or in a position requiring a valid Minnesota teaching license shall be subtracted. A teacher may decline any offer of employment as a teacher without loss of rights to severance pay.

To determine the amount of severance pay that is due for the first six months following termination of the teacher's salary, the district may require the teacher to provide documented evidence of the teacher's employers and gross earnings during that period. The district shall pay the teacher the amount of severance pay it determines to be due from the proceeds of the levy for this purpose. To determine the amount of severance pay that is due for the second six months of the 12 months following the termination of the teacher's salary, the district may require the teacher to provide documented evidence of the teacher's employers and gross earnings during that period. The district shall pay the teacher the amount of severance pay it determines to be due from the proceeds of the levy for this purpose.

A teacher who receives severance pay under this subdivision waives all further reinstatement rights under section 125.12, subdivision 6a or 6b. If the teacher receives severance pay, the teacher shall not receive credit for any years of service in the district paying severance pay prior to the year in which the teacher becomes eligible to receive severance pay.

The severance pay is subject to section 465.72. The district may levy annually according to section 124.912, subdivision 1, for the severance pay.

History: *Ex1959 c 71 art 1 s 8; 1961 c 562 s 8; 1975 c 162 s 2; 1986 c 444; 1988 c 718 art 7 s 17; 1990 c 596 s 1,2; 1991 c 130 s 37; 1991 c 265 art 6 s 1; 1992 c 499 art 12 s 29; 1996 c 305 art 1 s 138; 1996 c 412 art 9 s 19; art 13 s 4*

120.09 MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

120.09 MS 1967 [Repealed, 1969 c 1082 s 2]

120.095 [Repealed, 1993 c 224 art 12 s 32; 1993 c 374 s 22]

120.10 MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

120.10 Subdivision 1. MS 1986 [Repealed, 1987 c 178 s 10]

Subd. 2. MS 1986 [Repealed, 1987 c 178 s 10]

Subd. 2a. MS 1984 [Repealed, 1986 c 472 s 5; 1987 c 178 s 10]

Subd. 2b. MS 1984 [Repealed, 1986 c 472 s 5; 1987 c 178 s 10]

Subd. 3. MS 1986 [Renumbered 120.101 subd 9]

Subd. 4. MS 1986 [Renumbered 120.101 subd 10]

120.101 COMPULSORY INSTRUCTION.

Subdivision 1. **Parental responsibility.** The parent of a child is primarily responsible for assuring that the child acquires knowledge and skills that are essential for effective citizenship.

Subd. 2. **Applicability.** This section and sections 120.102; 120.103; 120.11; 120.14; 127.19; and 127.20 apply only to a child required to receive instruction according to subdivision 5 and to instruction that is intended to fulfill that requirement.

Subd. 3. **Parent defined.** In sections 120.101 to 120.103, "parent" means a parent, guardian, or other person having legal custody of a child.

Subd. 4. **School defined.** For the purpose of compulsory attendance, a "school" means a public school, as defined in section 120.05, or a nonpublic school, church or religious organization, or home-school in which a child is provided instruction in compliance with sections 120.101 and 120.102.

Subd. 5. **Ages and terms.** For the 1988–1989 school year and the school years thereafter, every child between seven and 16 years of age shall receive instruction for at least the number of days each year required under subdivision 5b. For the 2000–2001 school year and later school years, every child between seven and 18 years of age shall receive instruction for at least the number of days each year required under subdivision 5b. Every child under the age of seven who is enrolled in a half-day kindergarten, or a full-day kindergarten program on alternate days, or other kindergarten programs shall receive instruction at least equivalent to half of each day for the number of days each year set out in subdivision 5b. Except as provided in subdivision 5a, a parent may withdraw a child under the age of seven from enrollment at any time.

Subd. 5a. MS 1992 [Repealed, 1993 c 224 art 12 s 32; 1993 c 374 s 22]

Subd. 5a. **Children under seven.** Once a pupil under the age of seven is enrolled in kindergarten or a higher grade in a public school, the pupil is subject to the compulsory attendance provisions of this chapter and section 127.20, unless the school board of the district in which the pupil is enrolled has a policy that exempts children under seven from this subdivision.

In a school district in which children under seven are subject to compulsory attendance under this subdivision, paragraphs (a) to (c) apply.

(a) A parent or guardian may withdraw the pupil from enrollment in the school for good cause by notifying the school district. Good cause includes, but is not limited to, enrollment of the pupil in another school, as defined in subdivision 4, or the immaturity of the child.

(b) When the pupil enrolls, the enrolling official must provide the parent or guardian who enrolls the pupil with a written explanation of the provisions of this subdivision.

(c) A pupil under the age of seven who is withdrawn from enrollment in the public school under paragraph (a) is no longer subject to the compulsory attendance provisions of this chapter.

In a school district that had adopted a policy to exempt children under seven from this subdivision, the school district's chief attendance officer must keep the truancy enforcement authorities supplied with a copy of the school board's current policy certified by the clerk of the school board.

Subd. 5b. [Repealed, 1993 c 224 art 12 s 32; 1993 c 374 s 22]

Subd. 5c. **Education records.** A school district from which a student is transferring must transmit the student's educational records, within ten business days of a request, to the school district in which the student is enrolling. School districts must make reasonable efforts to determine the school district in which a transferring student is next enrolling in order to comply with this subdivision.

Subd. 6. **Curriculum.** Instruction must be provided in at least the following subject areas:

- (1) basic communication skills including reading and writing, literature, and fine arts;
- (2) mathematics and science;
- (3) social studies including history, geography, and government; and
- (4) health and physical education.

Instruction, textbooks, and materials must be in the English language. Another language may be used pursuant to sections 126.262 to 126.265.

Subd. 7. **Requirements for instructors.** A person who is providing instruction to a child must meet at least one of the following requirements:

- (1) hold a valid Minnesota teaching license in the field and for the grade level taught;
- (2) be directly supervised by a person holding a valid Minnesota teaching license;
- (3) successfully complete a teacher competency examination;
- (4) provide instruction in a school that is accredited by an accrediting agency, recognized according to section 123.935, subdivision 7, or recognized by the state board of education;
- (5) hold a baccalaureate degree; or
- (6) be the parent of a child who is assessed according to the procedures in subdivision 8.

Any person providing instruction in a public school must meet the requirements of clause (1).

Subd. 8. **Assessment of performance.** (a) Each year the performance of every child who is not enrolled in a public school must be assessed using a nationally norm-referenced standardized achievement examination. The superintendent of the district in which the child receives instruction and the person in charge of the child's instruction must agree about the specific examination to be used and the administration and location of the examination.

(b) To the extent the examination in paragraph (a) does not provide assessment in all of the subject areas in subdivision 6, the parent must assess the child's performance in the appli-

cable subject area. This requirement applies only to a parent who provides instruction and does not meet the requirements of subdivision 7, clause (1), (2), or (3).

(c) If the results of the assessments in paragraphs (a) and (b) indicate that the child's performance on the total battery score is at or below the 30th percentile or one grade level below the performance level for children of the same age, the parent shall obtain additional evaluation of the child's abilities and performance for the purpose of determining whether the child has learning problems.

(d) A child receiving instruction from a nonpublic school, person, or institution that is accredited by an accrediting agency, recognized according to section 123.935, subdivision 7, or recognized by the state board of education, is exempt from the requirements of this subdivision.

Subd. 9. Legitimate exemptions. A parent, guardian, or other person having control of a child may apply to a school district to have the child excused from attendance for the whole or any part of the time school is in session during any school year. Application may be made to any member of the board, a truant officer, a principal, or the superintendent. The school board of the district in which the child resides may approve the application upon the following being demonstrated to the satisfaction of that board:

(1) That the child's bodily or mental condition is such as to prevent attendance at school or application to study for the period required; or

(2) That for the school years 1988–1989 through 1999–2000 the child has already completed the studies ordinarily required in the 10th grade and that for the school years beginning with the 2000–2001 school year the child has already completed the studies ordinarily required to graduate from high school; or

(3) That it is the wish of the parent, guardian, or other person having control of the child, that the child attend for a period or periods not exceeding in the aggregate three hours in any week, a school for religious instruction conducted and maintained by some church, or association of churches, or any Sunday school association incorporated under the laws of this state, or any auxiliary thereof. This school for religious instruction shall be conducted and maintained in a place other than a public school building, and in no event, in whole or in part, shall be conducted and maintained at public expense. However, a child may be absent from school on such days as the child attends upon instruction according to the ordinances of some church.

Subd. 10. Issuing and reporting excuses. The clerk or any authorized officer of the school board shall issue and keep a record of such excuses, under such rules as the board may from time to time establish.

History: *Ex1959 c 71 art 1 s 10 subds 2,3; 1961 c 567 s 1; 1967 c 82 s 1; 1969 c 161 s 1,2; 1974 c 326 s 1; 1975 c 162 s 3; 1977 c 306 s 14; 1977 c 447 art 7 s 2,3; 1978 c 616 s 2; 1978 c 706 s 1; 1980 c 609 art 3 s 2; 1Sp1985 c 12 art 7 s 3; 1986 c 444; 1986 c 472 s 1–3; 1987 c 178 s 1,9; 1988 c 718 art 7 s 19,20; 1989 c 296 s 1,2; 1991 c 265 art 7 s 2; 1993 c 224 art 9 s 13,14; 1994 c 465 art 2 s 9,10; 1994 c 647 art 4 s 1; art 9 s 3; 1Sp1995 c 3 art 9 s 3,4*

120.102 REPORTING.

Subdivision 1. Reports to superintendent. The person in charge of providing instruction to a child shall submit the following information to the superintendent of the district in which the child resides:

(1) by October 1 of each school year, the name, age, and address of each child receiving instruction;

(2) the name of each instructor and evidence of compliance with one of the requirements specified in section 120.101, subdivision 7;

(3) an annual instructional calendar showing that instruction will occur on at least the number of days required under section 120.101, subdivision 5b; and

(4) for each child instructed by a parent who meets only the requirement of section 120.101, subdivision 7, clause (6), a quarterly report card on the achievement of the child in each subject area required in section 120.101, subdivision 6.

Subd. 2. Availability of documentation. The person in charge of providing instruction to a child must make available documentation indicating that the subjects required in section 120.101, subdivision 6, are being taught. This documentation must include class schedules, copies of materials used for instruction, and descriptions of methods used to assess student achievement.

Subd. 3. Exemptions. A nonpublic school, person, or other institution that is accredited by an accrediting agency, recognized according to section 123.935, or recognized by the state board of education, is exempt from the requirements in subdivisions 1 and 2, except for the requirement in subdivision 1, clause (1).

Subd. 4. Reports to the state. A superintendent shall make an annual report to the commissioner of children, families, and learning. The report must include the following information:

- (1) the number of children residing in the district attending nonpublic schools or receiving instruction from persons or institutions other than a public school;
- (2) the number of children in clause (1) who are in compliance with section 120.101 and this section; and
- (3) the names, ages, and addresses of children whom the superintendent has determined are not in compliance with section 120.101 and this section.

History: 1987 c 178 s 2; 1993 c 224 art 9 s 15; 1Sp1995 c 3 art 16 s 13

120.103 ENFORCEMENT AND PROSECUTION.

Subdivision 1. On-site visits. A superintendent or the superintendent's designee may make an annual on-site visit, at a mutually agreed upon time, to an unaccredited nonpublic school, home, or other institution where children are receiving instruction. Upon mutual agreement between the parties, the superintendent or the superintendent's designee may also visit an accredited nonpublic school, person, or other institution providing instruction. The purpose of these visits shall be limited to monitoring compliance with the requirements of section 120.101. If the superintendent determines that there is evidence of noncompliance with the requirements of sections 120.101 and 120.102, the superintendent may make additional visits during the school year.

Subd. 2. Alternative to visits. In lieu of the visit authorized in subdivision 1, a parent who is providing instruction may present the documentation required in section 120.102, subdivision 2, to the superintendent.

Subd. 3. Notice to parents. The superintendent shall notify the parent, in writing, if a child is alleged to be receiving instruction in violation of sections 120.101 and 120.102. The written notification shall include a list of the specific alleged violations.

Subd. 4. Fact-finding and mediation. If the specified alleged violations of the compulsory attendance requirements are not corrected within 15 days of receipt of the written notification, the superintendent shall request fact-finding and mediation services from the commissioner of children, families, and learning.

Subd. 5. Notice to county attorney. If the alleged violations are not corrected through the fact-finding and mediation process under subdivision 4, the superintendent shall notify the county attorney of the alleged violations. The superintendent shall notify the parents, by certified mail, of the superintendent's intent to notify the county attorney of the alleged violations.

Subd. 6. Criminal complaint; prosecution. The county attorney in the county in which the alleged violations have occurred has jurisdiction to conduct a prosecution for violations of section 120.101, 120.102, or 120.103. A criminal complaint may be filed in any court in the county exercising criminal jurisdiction and shall name the persons neglecting or refusing to comply with section 120.101, 120.102, or 120.103. After the complaint has been filed, a warrant shall be issued and proceedings in trial shall commence as provided by law in misdemeanor cases.

History: 1987 c 178 s 3; 1Sp1995 c 3 art 16 s 13

120.104 [Repealed, 1991 c 265 art 11 s 26]

120.1045 BACKGROUND CHECK.

Subdivision 1. Background check required. A school hiring authority, as defined in subdivision 4, shall request a criminal history background check from the superintendent of the bureau of criminal apprehension on all individuals who are offered employment in the school, as defined in subdivision 4. In order to be eligible for employment, an individual who is offered employment must provide an executed criminal history consent form and a money order or cashier's check payable to the bureau of criminal apprehension for the fee for conducting the criminal history background check. A school may charge a person offered employment an additional fee of up to \$2 to cover the school's costs under this section. The superintendent shall perform the background check by retrieving criminal history data maintained in the criminal justice information system computers.

Subd. 2. Conditional hiring; discharge. A school hiring authority may hire an individual pending completion of a background check under subdivision 1 but shall notify the individual that the individual's employment may be terminated based on the result of the background check. A school hiring authority is not liable for failing to hire or for terminating an individual's employment based on the result of a background check under this section.

Subd. 3. [Repealed, 1996 c 412 art 9 s 20]

Subd. 4. Definitions. For purposes of this section:

(a) "School" means a school as defined in section 120.101, subdivision 4, except a home-school, and includes a school receiving tribal contract or grant school aid under section 124.86.

(b) "School hiring authority" means the school principal or other person having general control and supervision of the school.

History: 1995 c 226 art 3 s 2; 1996 c 412 art 9 s 2,3

120.105 EDUCATION STATEMENT.

Each year every school, as defined in section 120.101, subdivision 4, offering a kindergarten program must ensure that the school principal, kindergarten teacher, or other professional, discusses and distributes the following statement to every parent, guardian, or other person enrolling a child in kindergarten:

"The state of Minnesota requires that every child entering kindergarten this school year must graduate from high school or remain in high school or in an alternative program until age 18. Only those who have been accepted in the military or an institution of higher learning can leave school before they are 18 years old."

The department of children, families, and learning must make appropriate provisions to accommodate those children who newly enroll in a public school after kindergarten. All other schools must make similar provisions.

History: 1988 c 718 art 7 s 18; 1991 c 265 art 9 s 75; 1992 c 499 art 12 s 28; 1Sp1995 c 3 art 16 s 13

120.106 ABSENCE FROM SCHOOL FOR RELIGIOUS OBSERVANCE.

Reasonable efforts must be made by a school district to accommodate any pupil who wishes to be excused from a curricular activity for a religious observance.

History: 1989 c 60 s 1

120.11 MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]**120.11 SCHOOL BOARDS AND TEACHERS, DUTIES.**

It shall be the duty of each board through its clerk or other authorized agent or employee, to report the names of children required to attend school, with excuses, if any, granted in such district, to the superintendent or principals thereof, within the first week of school. Subsequent excuses granted shall be forthwith reported in the same manner. The clerk or principal shall provide the teachers in the several schools supervised, with the necessary information for the respective grades of school, relating to the list of pupils with excuses granted. On receipt of the list of such pupils of school age and the excuses granted, the clerk or principals

shall report the names of children not excused, who are not attending school, with the names and addresses of their parents, to the district superintendent within five days after receiving the report.

History: *Ex1959 c 71 art 1 s 11; 1975 c 162 s 4; 1Sp1985 c 12 art 7 s 4; 1986 c 444*

120.12 MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

120.12 MS 1986 [Repealed, 1987 c 178 s 10]

120.13 MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

120.13 MS 1988 [Repealed, 1989 c 329 art 9 s 34]

120.14 MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

120.14 ATTENDANCE OFFICERS.

The board of any district may authorize the employment of attendance officers, who shall investigate truancy or nonattendance at school, make complaints, serve notice and process, and attend to the enforcement of all laws and district rules regarding school attendance. When any attendance officer learns of any case of habitual truancy or continued nonattendance of any child required to attend school the officer shall immediately notify the person having control of such child to forthwith send to and keep the child in school. The attendance officer shall also refer a habitual truant child as defined in section 260.015, subdivision 19, and the child's parent or legal guardian to appropriate services and procedures under chapter 260A, if available within the school district. Attendance officers or other designated school officials shall ensure that the notice required by section 260A.03 for a child who is a continuing truant is sent. The officer shall act under the general supervision of the district superintendent.

History: *Ex1959 c 71 art 1 s 14; 1978 c 616 s 3; 1986 c 444; 1995 c 226 art 3 s 3*

120.15 MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

120.15 MS 1988 [Repealed, 1989 c 329 art 9 s 34]

120.16 MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

120.16 MS 1988 [Repealed, 1989 c 329 art 9 s 34]

SPECIAL EDUCATION

120.17 MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

120.17 CHILDREN WITH A DISABILITY.

Subdivision 1. **Special instruction for children with a disability.** Every district shall provide special instruction and services, either within the district or in another district, for children with a disability who are residents of the district and who are disabled as set forth in section 120.03. Notwithstanding any age limits in laws to the contrary, special instruction and services must be provided from birth until September 1 after the child with a disability becomes 22 years old but shall not extend beyond secondary school or its equivalent, except as provided in section 126.22, subdivision 2. Local health, education, and social service agencies shall refer children under age five who are known to need or suspected of needing special instruction and services to the school district. Districts with less than the minimum number of eligible children with a disability as determined by the state board shall cooperate with other districts to maintain a full range of programs for education and services for children with a disability. This subdivision does not alter the compulsory attendance requirements of section 120.101.

Subd. 1a. [Repealed, 1Sp1985 c 12 art 3 s 30]

Subd. 1b. **High school diploma.** Upon completion of secondary school or the equivalent, a pupil with a disability who satisfactorily attains the objectives in the pupil's individual

education plan shall be granted a high school diploma that is identical to the diploma granted to a pupil without a disability.

Subd. 2. Method of special instruction. (a) Special instruction and services for children with a disability must be based on the assessment and individual education plan. The instruction and services may be provided by one or more of the following methods:

- (1) in connection with attending regular elementary and secondary school classes;
- (2) establishment of special classes;
- (3) at the home or bedside of the child;
- (4) in other districts;
- (5) instruction and services by special education cooperative centers established under this section, or in another member district of the cooperative center to which the resident district of the child with a disability belongs;
- (6) in a state residential school or a school department of a state institution approved by the commissioner;
- (7) in other states;
- (8) by contracting with public, private or voluntary agencies;
- (9) for children under age five and their families, programs and services established through collaborative efforts with other agencies;
- (10) for children under age five and their families, programs in which children with a disability are served with children without a disability; and
- (11) any other method approved by the commissioner.

(b) Preference shall be given to providing special instruction and services to children under age three and their families in the residence of the child with the parent or primary caregiver, or both, present.

(c) The primary responsibility for the education of a child with a disability shall remain with the district of the child's residence regardless of which method of providing special instruction and services is used. If a district other than a child's district of residence provides special instruction and services to the child, then the district providing the special instruction and services shall notify the child's district of residence before the child's individual education plan is developed and shall provide the district of residence an opportunity to participate in the plan's development. The district of residence must inform the parents of the child about the methods of instruction that are available.

(d) Paragraphs (e) to (i) may be cited as the "blind persons' literacy rights and education act."

(e) The following definitions apply to paragraphs (f) to (i).

"Blind student" means an individual who is eligible for special educational services and who:

- (1) has a visual acuity of 20/200 or less in the better eye with correcting lenses or has a limited field of vision such that the widest diameter subtends an angular distance of no greater than 20 degrees; or
- (2) has a medically indicated expectation of visual deterioration.

"Braille" means the system of reading and writing through touch commonly known as standard English Braille.

"Individualized education plan" means a written statement developed for a student eligible for special education and services pursuant to this section and section 602(a)(20) of part A of the Individuals with Disabilities Education Act, United States Code, title 20, section 1401(a).

(f) In developing an individualized education plan for each blind student the presumption must be that proficiency in Braille reading and writing is essential for the student to achieve satisfactory educational progress. The assessment required for each student must include a Braille skills inventory, including a statement of strengths and deficits. Braille instruction and use are not required by this paragraph if, in the course of developing the student's individualized education program, team members concur that the student's visual impairment does not affect reading and writing performance commensurate with ability. This

paragraph does not require the exclusive use of Braille if other special education services are appropriate to the student's educational needs. The provision of other appropriate services does not preclude Braille use or instruction. Instruction in Braille reading and writing shall be available for each blind student for whom the multidisciplinary team has determined that reading and writing is appropriate.

(g) Instruction in Braille reading and writing must be sufficient to enable each blind student to communicate effectively and efficiently with the same level of proficiency expected of the student's peers of comparable ability and grade level.

(h) The student's individualized education plan must specify:

- (1) the results obtained from the assessment required under paragraph (f);
- (2) how Braille will be implemented through integration with other classroom activities;
- (3) the date on which Braille instruction will begin;
- (4) the length of the period of instruction and the frequency and duration of each instructional session;

(5) the level of competency in Braille reading and writing to be achieved by the end of the period and the objective assessment measures to be used; and

(6) if a decision has been made under paragraph (f) that Braille instruction or use is not required for the student:

(i) a statement that the decision was reached after a review of pertinent literature describing the educational benefits of Braille instruction and use; and

(ii) a specification of the evidence used to determine that the student's ability to read and write effectively without Braille is not impaired.

(i) Instruction in Braille reading and writing is a service for the purpose of special education and services under this section.

(j) Paragraphs (e) to (i) shall not be construed to supersede any rights of a parent or guardian of a child with a disability under federal or state law.

Subd. 3. Rules of the state board. (a) The state board shall promulgate rules relative to qualifications of essential personnel, courses of study, methods of instruction, pupil eligibility, size of classes, rooms, equipment, supervision, parent consultation, and any other rules it deems necessary for instruction of children with a disability. These rules shall provide standards and procedures appropriate for the implementation of and within the limitations of subdivisions 3a and 3b. These rules shall also provide standards for the discipline, control, management and protection of children with a disability. The state board shall not adopt rules for pupils served in level 1, 2, or 3, as defined in Minnesota Rules, part 3525.2340, establishing either case loads or the maximum number of pupils that may be assigned to special education teachers. The state board, in consultation with the departments of health and human services, shall adopt permanent rules for instruction and services for children under age five and their families. These rules are binding on state and local education, health, and human services agencies. The state board shall adopt rules to determine eligibility for special education services. The rules shall include procedures and standards by which to grant variances for experimental eligibility criteria. The state board shall, according to section 14.05, subdivision 4, notify a district applying for a variance from the rules within 45 calendar days of receiving the request whether the request for the variance has been granted or denied. If a request is denied, the board shall specify the program standards used to evaluate the request and the reasons for denying the request.

(b) The state's regulatory scheme should support schools by assuring that all state special education rules adopted by the state board of education result in one or more of the following outcomes:

(1) increased time available to teachers for educating students through direct and indirect instruction;

(2) consistent and uniform access to effective education programs for students with disabilities throughout the state;

(3) reduced inequalities, conflict, and court actions related to the delivery of special education instruction and services for students with disabilities;

- (4) clear expectations for service providers and for students with disabilities;
- (5) increased accountability for all individuals and agencies that provide instruction and other services to students with disabilities;
- (6) greater focus for the state and local resources dedicated to educating students with disabilities; and
- (7) clearer standards for evaluating the effectiveness of education and support services for students with disabilities.

Subd. 3a. School district obligations. Every district shall ensure that:

(1) all students with disabilities are provided the special instruction and services which are appropriate to their needs. Where the individual education plan team has determined appropriate goals and objectives based on the student's needs, including the extent to which the student can be included in the least restrictive environment, and where there are essentially equivalent and effective instruction, related services, or assistive technology devices available to meet the student's needs, cost to the school district may be among the factors considered by the team in choosing how to provide the appropriate services, instruction, or devices that are to be made part of the student's individual education plan. The student's needs and the special education instruction and services to be provided shall be agreed upon through the development of an individual education plan. The plan shall address the student's need to develop skills to live and work as independently as possible within the community. By grade 9 or age 14, the plan shall address the student's needs for transition from secondary services to post-secondary education and training, employment, community participation, recreation, and leisure and home living. The plan must include a statement of the needed transition services, including a statement of the interagency responsibilities or linkages or both before secondary services are concluded;

(2) children with a disability under age five and their families are provided special instruction and services appropriate to the child's level of functioning and needs;

(3) children with a disability and their parents or guardians are guaranteed procedural safeguards and the right to participate in decisions involving identification, assessment including assistive technology assessment, and educational placement of children with a disability;

(4) to the maximum extent appropriate, children with a disability, including those in public or private institutions or other care facilities, are educated with children who are not disabled, and that special classes, separate schooling, or other removal of children with a disability from the regular educational environment occurs only when and to the extent that the nature or severity of the disability is such that education in regular classes with the use of supplementary services cannot be achieved satisfactorily;

(5) in accordance with recognized professional standards, testing and evaluation materials, and procedures utilized for the purposes of classification and placement of children with a disability are selected and administered so as not to be racially or culturally discriminatory; and

(6) the rights of the child are protected when the parents or guardians are not known or not available, or the child is a ward of the state.

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

(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.

The refusal of a parent or guardian to consent may be overridden by the decision in a hearing held pursuant to clause (e) at the district's initiative;

(c) Parents and guardians shall have an opportunity to meet with appropriate district staff in at least one conciliation conference, mediation, or other method of alternative dispute resolution that the parties agree to, if they object to any proposal of which they are notified pursuant to clause (a). The conciliation process or other form of alternative dispute resolution shall not be used to deny or delay a parent or guardian's right to a due process hearing. If the parent or guardian refuses efforts by the district to conciliate the dispute with the school district, the requirement of an opportunity for conciliation or other alternative dispute resolution shall be deemed to be satisfied. Notwithstanding other law, in any proceeding following a conciliation conference, the school district must not offer a conciliation conference memorandum into evidence, except for any portions that describe the district's final proposed offer of service. Otherwise, with respect to forms of dispute resolution, mediation, or conciliation, Minnesota Rule of Evidence 408 applies. The department of children, families, and learning may reimburse the districts or directly pay the costs of lay advocates, not to exceed \$150 per dispute, used in conjunction with alternative dispute resolution.

(d) The commissioner shall establish a mediation process to assist parents, school districts, or other parties to resolve disputes arising out of the identification, assessment, or educational placement of children with a disability. The mediation process must be offered as an informal alternative to the due process hearing provided under clause (e), but must not be used to deny or postpone the opportunity of a parent or guardian to obtain a due process hearing.

(e) Parents, guardians, and the district shall have an opportunity to obtain an impartial due process hearing initiated and conducted by and in the school district responsible for assuring that an appropriate program is provided in accordance with state board rules, if 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.

Within five business days after the request for a hearing, or as directed by the hearing officer, the objecting party shall provide the other party with a brief written statement of particulars of the objection, the reasons for the objection, and the specific remedies sought. The other party shall provide the objecting party with a written response to the statement of objections within five business days of receipt of the statement.

The hearing shall take place before an impartial hearing officer mutually agreed to by the school board and the parent or guardian. Within four business days of the receipt of the request for the hearing, if the parties have not agreed on the hearing officer, the school board shall request the commissioner to appoint a hearing officer. The school board shall include with the request the name of the person requesting the hearing, the name of the student, the attorneys involved, if any, and the date the hearing request was received. 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 the person's objectivity at the hearing. A person who otherwise qualifies as a hearing officer is not an employee of the district solely because the person is paid by the district to serve as a hearing officer. If 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.

(f) The decision of the hearing officer pursuant to clause (e) shall be rendered not more than 45 calendar days from the date of the receipt of the request for the hearing, except that

hearing officers are encouraged to accelerate the timeline to 30 days for children birth through two whose needs change rapidly and require quick resolution of complaints. A hearing officer may not grant specific extensions of time beyond the 45-day period unless requested by either party for good cause shown on the record. The decision of the hearing officer shall be binding on all parties unless appealed to the commissioner by the parent; guardian; school board of the district where the child resides pursuant to clause (g); and also in the case of children birth through two, by the county board.

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 hearing review officer of the basis and reason for the decision; and
 - (3) be based on the standards set forth in subdivision 3a and the rules of the state board.
- (g) Any local decision issued pursuant to clauses (e) and (f) may be appealed to the commissioner within 30 calendar days of receipt of that written decision, by the parent, guardian, or the school board of the district responsible for assuring that an appropriate program is provided in accordance with state board rules. The appealing party shall note the specific parts of the hearing decision being appealed.

If the decision is appealed, a written transcript of the hearing shall be made by the school district and provided by the district to the parties involved and the hearing review officer within five calendar days of the filing of the appeal. The hearing review officer shall conduct an appellate review and issue a final independent decision based on an impartial review of the local decision and the entire record within 30 calendar days after the filing of the appeal. However, the hearing review officer 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 14. The hearing review officer may grant specific extensions of time beyond the 30-day period at the request of any party for good cause shown on the record.

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.

(h) The decision of the hearing review officer shall be final unless appealed by the parent or guardian or school board to the Minnesota court of appeals or federal district court as provided by federal law. State judicial review shall be in accordance with chapter 14.

(i) The commissioner of children, families, and learning shall select an individual who has the qualifications enumerated in this paragraph to serve as the hearing review officer:

- (1) the individual must be knowledgeable and impartial;
- (2) the individual must not have a personal interest in or specific involvement with the student who is a party to the hearing;
- (3) the individual must not have been employed as an administrator by the district that is a party to the hearing;
- (4) the individual must not have been involved in the selection of the administrators of the district that is a party to the hearing;
- (5) the individual must not have a personal, economic, or professional interest in the outcome of the hearing other than the proper administration of the federal and state laws, rules, and policies;
- (6) the individual must not have substantial involvement in the development of a state or local policy or procedures that are challenged in the appeal;
- (7) the individual is not a current employee or board member of a Minnesota public school district, education district, intermediate unit or regional education agency, the department of children, families, and learning, the state board of education; and
- (8) the individual is not a current employee or board member of a disability advocacy organization or group.

(j) In all appeals, the parent or guardian of the pupil with a disability or the district that is a party to the hearing may challenge the impartiality or competence of the proposed hearing review officer by applying to the hearing review officer.

(k) 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 the child's current educational placement and shall not be denied initial admission to school.

(l) The child's school district of residence, a resident district, and providing district shall receive notice of and may be a party to any hearings or appeals under this subdivision.

(m) A school district is not liable for harmless technical violations of this subdivision or rules implementing this subdivision if the school district can demonstrate on a case-by-case basis that the violations did not harm the student's educational progress or the parent or guardian's right to notice, participation, or due process.

(n) Within ten calendar days after appointment, the hearing officer shall schedule and hold a prehearing conference. At that conference, or later, the hearing officer may take any appropriate action that a court might take under Rule 16 of Minnesota Rules of Civil Procedure including, but not limited to, scheduling, jurisdiction, and listing witnesses including expert witnesses.

(o) A hearing officer or hearing review officer appointed under this subdivision shall be deemed to be an employee of the state under section 3.732 for the purposes of section 3.736 only.

(p) In order to be eligible for selection, hearing officers and hearing review officers shall participate in training and follow procedures as designated by the commissioner.

(q) The hearing officer may admit all evidence which 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 shall give effect to the rules of privilege recognized by law. Evidence which is incompetent, irrelevant, immaterial, or unduly repetitious shall be excluded.

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

Subd. 3d. **Interagency services.** If at the time of initial referral for an educational assessment, or a reassessment, the school district determines that a child with disabilities who is age 3 through 21 may be eligible for interagency services, the district may request that the county of residence provide a representative to the initial assessment or reassessment team meeting or the first individual education plan team meeting following the assessment or reassessment. The district may request to have a county representative attend other individual education plan team meetings when it is necessary to facilitate coordination between district and county provided services. Upon request from a school district, the resident county shall provide a representative to assist the individual education plan team in determining the child's eligibility for existing health, mental health, or other support services administered or provided by the county. The individual education plan team and the county representative shall develop an interagency plan of care for an eligible child and the child's family to coordinate services required under the child's individual education plan with county services. The interagency plan of care shall include appropriate family information with the consent of the family, a description of how services will be coordinated between the district and county, a description of service coordinator responsibilities and services, and a description of activities for obtaining third-party payment for eligible services, including medical assistance payments.

Subd. 4. **Special instructions for nonresident 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 child with a disability 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 children with a disability 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 an 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 children with a disability. 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.

Subd. 4a. Attendance in another district. 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 because of attending a public school in another school district pursuant to section 123.39, subdivision 5, if the attendance is not subject to section 120.075, 120.0751, or 120.0752. If the pupil attends a public school located in a contiguous district and the district of attendance does not provide special instruction and services, the district of residence shall provide necessary transportation for the pupil between the boundary of the district of residence and the educational facility where special instruction and services are provided within the district of residence. The district of residence may provide necessary transportation for the pupil between its boundary and the school attended in the contiguous district, but shall not pay the cost of transportation provided outside the boundary of the district of residence.

Subd. 5. School of parents' choice. Nothing in this chapter shall be construed as preventing parents of a child with a disability from sending such child to a school of their choice, if they so elect, subject to admission standards and policies adopted according to chapter 128A, and all other provisions of chapters 120 to 129.

Subd. 5a. Summer programs. A district may provide summer programs for children with a disability living within the district and nonresident children temporarily placed in the district pursuant to subdivision 6 or 7. Prior to March 31 or 30 days after the child with a disability 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 subdivision 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. The unreimbursed actual cost of providing the program for nonresident children with a disability, 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 child with a disability 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 the child's parent resides, if living, or the child's guardian, or the district designated by the commissioner of children, families, and learning 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 pro-

gram 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 an appropriate educational program for the child and necessary transportation while the child is attending the educational program; 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 child with a disability placed outside of the school district of residence by the commissioner of human services or the commissioner of corrections or their agents, for reasons other than for making provision for the child's 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 general education 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 child with a disability 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 the child's parent resides, if living, or the child's 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 children, families, and learning 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 general education 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.

Subd. 7a. Attendance at school for the disabled. Responsibility for special instruction and services for a visually disabled or hearing impaired child attending the Minnesota state academy for the deaf or the Minnesota state academy for the blind shall be determined in the following manner:

(a) The legal residence of the child shall be the school district in which the child's parent or guardian resides.

(b) When it is determined pursuant to section 128A.05, subdivision 1 or 2, that the child is entitled to attend either school, the state board shall provide the appropriate educational program for the child. The state board shall make a tuition charge to the child's district of residence for the cost of providing the program. The amount of tuition charged shall not exceed the basic revenue of the district for that child, for the amount of time the child is in the program. For purposes of this subdivision, "basic revenue" has the meaning given it in section 124A.22, subdivision 2. The district of the child's residence shall pay the tuition and may claim general education aid for the child. Tuition received by the state board, except for tuition received under clause (c), shall be deposited in the state treasury as provided in clause (g).

(c) In addition to the tuition charge allowed in clause (b), the academies may charge the child's district of residence for the academy's unreimbursed cost of providing an instructional aide assigned to that child, if that aide is required by the child's individual education plan.

Tuition received under this clause must be used by the academies to provide the required service.

(d) When it is determined that the child can benefit from public school enrollment but that the child should also remain in attendance at the applicable school, the school district where the institution is located shall provide an appropriate educational program for the child and shall make a tuition charge to the state board for the actual cost of providing the program, less any amount of aid received pursuant to section 124.32. The state board shall pay the tuition and other program costs including the unreimbursed transportation costs. Aids for children with a disability shall be paid to the district providing the special instruction and services. Special transportation shall be provided by the district providing the educational program and the state shall reimburse such district within the limits provided by law.

(e) Notwithstanding the provisions of clauses (b) and (d), the state board may agree to make a tuition charge for less than the amount specified in clause (b) for pupils attending the applicable school who are residents of the district where the institution is located and who do not board at the institution, if that district agrees to make a tuition charge to the state board for less than the amount specified in clause (d) for providing appropriate educational programs for pupils attending the applicable school.

(f) Notwithstanding the provisions of clauses (b) and (d), the state board may agree to supply staff from the Minnesota state academy for the deaf and the Minnesota state academy for the blind to participate in the programs provided by the district where the institutions are located when the programs are provided to students in attendance at the state schools.

(g) On May 1 of each year, the state board shall count the actual number of Minnesota resident kindergarten and elementary students and the actual number of Minnesota resident secondary students enrolled and receiving education services at the Minnesota state academy for the deaf and the Minnesota state academy for the blind. The state board shall deposit in the state treasury an amount equal to all tuition received less:

(1) the total number of students on May 1 less 175, times the ratio of the number of kindergarten and elementary students to the total number of students on May 1, times the general education formula allowance; plus

(2) the total number of students on May 1 less 175, times the ratio of the number of secondary students on May 1 to the total number of students on May 1, times 1.3, times the general education formula allowance.

(h) The sum provided by the calculation in clause (g), subclauses (1) and (2), must be deposited in the state treasury and credited to the general operation account of the academy for the deaf and the academy for the blind.

(i) There is annually appropriated to the department of children, families, and learning for the Faribault academies the tuition amounts received and credited to the general operation account of the academies under this section. A balance in an appropriation under this paragraph does not cancel but is available in successive fiscal years.

Subd. 8. [Repealed, 1973 c 683 s 30]

Subd. 8a. **Residence of child under special conditions.** The legal residence of a child with a disability placed in a foster facility for care and treatment when:

(1) parental rights have been terminated by court order;

(2) parent or guardian is not living within the state;

(3) no other school district residence can be established; or

(4) parent or guardian having legal custody of the child is an inmate of a Minnesota correctional facility or is a resident of a halfway house under the supervision of the commissioner of corrections;

shall be the school district in which the child resides. The school board of the district of residence shall provide the same educational program for such child as it provides for all resident children with a disability in the district.

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 pupil with a disability attends a nonpublic school located

within the 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 pupil with a disability attends a nonpublic school located in another district and if no agreement exists pursuant to section 124A.034, subdivision 1 or 1a, for the provision of special instruction and services on a shared time basis to that pupil by the district of attendance and where the special instruction and services are provided within the district of residence, the district of residence shall provide necessary transportation for that pupil between the boundary of the district of residence and the educational facility. 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.

Subd. 10. Nonresident education; billing. All tuition billing for the education of nonresident children pursuant to this section shall be done on uniform forms prescribed by the commissioner. The billing shall contain an itemized statement of costs which are being charged to the district of residence. One copy of each such billing shall be filed with the commissioner.

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.

Subd. 11a. MS 1993 Supp [Renumbered 120.1701 subd 3]

Subd. 11b. MS 1993 Supp [Renumbered 120.1701 subd 4]

Subd. 12. MS 1993 Supp [Renumbered 120.1701 subd 5]

Subd. 13. MS 1986 [Repealed, 1987 c 398 art 3 s 41]

Subd. 14. MS 1993 Supp [Renumbered 120.1701 subd 12]

Subd. 14a. MS 1993 Supp [Renumbered 120.1701 subd 13]

Subd. 15. Third party payment. Nothing in this section relieves an insurer or similar third party from an otherwise valid obligation to pay, or changes the validity of an obligation to pay, for services rendered to a child with a disability, and the child's family.

Subd. 16. Community transition interagency committee. A district, group of districts, or special education cooperative, in cooperation with the county or counties in which the district or cooperative is located, shall establish a community transition interagency committee for youth with disabilities, beginning at grade 9 or age equivalent, and their families. Members of the committee shall consist of representatives from special education; vocational and regular education; community education; post-secondary education and training institutions; adults with disabilities who have received transition services if such persons are available; parents of youth with disabilities; local business or industry; rehabilitation services; county social services; health agencies; and additional public or private adult service providers as appropriate. The committee shall elect a chair and shall meet regularly. The committee shall:

(1) identify current services, programs, and funding sources provided within the community for secondary and post-secondary aged youth with disabilities and their families;

(2) facilitate the development of multiagency teams to address present and future transition needs of individual students on their individual education plans;

(3) develop a community plan to include mission, goals, and objectives, and an implementation plan to assure that transition needs of individuals with disabilities are met;

(4) recommend changes or improvements in the community system of transition services;

(5) exchange agency information such as appropriate data, effectiveness studies, special projects, exemplary programs, and creative funding of programs; and

(6) following procedures determined by the commissioner, prepare a yearly summary assessing the progress of transition services in the community including follow-up of indi-

viduals with disabilities who were provided transition services to determine postschool outcomes. The summary must be disseminated to all adult services agencies involved in the planning and to the commissioner of children, families, and learning by October 1 of each year.

Subd. 17. MS 1993 Supp [Renumbered 120.1701 subd 22]

Subd. 18. **Agency access to nonpublic data.** The commissioner of administration shall prepare a form and disseminate guidelines for state agencies, political subdivisions, and other responsible authorities to use to enable a responsible authority to allow another responsible authority access to data about a child with a disability that is classified as not public. The form and guidelines must be consistent with section 13.05, subdivision 9, and federal law, and are not subject to the rulemaking requirements under chapter 14.

Subd. 19. **Parent advisory committees.** Provisions of Minnesota Rules, part 3525.1100, regarding parent advisory committees shall apply to local school boards or cooperative boards carrying out the provisions of this section.

History: *Ex1959 c 71 art 1 s 17; 1961 c 559 s 2; 1961 c 690 s 1; 1965 c 241 s 1-3; 1967 c 872 s 1; 1969 c 981 s 2-5; 1971 c 689 s 1-3; 1973 c 683 s 1,2; 1975 c 162 s 41; 1975 c 321 s 2; 1975 c 432 s 8-10; 1976 c 211 s 1-6; 1976 c 271 s 13-18; 1977 c 447 art 3 s 1-4; 1977 c 449 s 12; 1978 c 733 s 1; 1978 c 764 s 3-5; 1978 c 793 s 61; 1979 c 334 art 2 s 1,2; art 3 s 2,3; 1980 c 509 s 30; 1981 c 358 art 1 s 1; art 3 s 2-7; 1982 c 424 s 28,29,130; 1982 c 548 art 3 s 1-3; 1983 c 247 s 55; 1983 c 258 s 13; 1983 c 314 art 1 s 22; art 3 s 1; 1984 c 463 art 3 s 1; 1984 c 654 art 5 s 58; 1Sp1985 c 12 art 3 s 2-8; 1986 c 444; 1987 c 384 art 2 s 24; 1987 c 398 art 3 s 2-14; 1988 c 486 s 2-5; 1988 c 629 s 24; 1988 c 718 art 3 s 1; art 6 s 2; 1989 c 209 art 2 s 1; 1989 c 329 art 3 s 1-3; 1991 c 265 art 3 s 1,2,38; art 11 s 1; 1991 c 292 art 6 s 58 subd 2; 1992 c 499 art 3 s 1-7; art 11 s 1; 1993 c 224 art 3 s 1-9; art 14 s 3; 1994 c 483 s 1; 1994 c 647 art 3 s 2-8,34; 1Sp1995 c 3 art 3 s 1-3; art 16 s 13; 1996 c 412 art 2 s 1,2; art 3 s 1-3*

120.1701 INTERAGENCY EARLY CHILDHOOD INTERVENTION SYSTEM.

Subdivision 1. **Purpose.** It is the policy of the state to develop and implement comprehensive, coordinated, multidisciplinary interagency programs of early intervention services for children with disabilities and their families.

Subd. 2. **Definitions.** For the purposes of this section the following terms have the meaning given them.

(a) "Coordinate" means to provide ready access to a community's services and resources to meet child and family needs.

(b) "Core early intervention services" means services that are available at no cost to children and families. These services include:

- (1) identification and referral;
- (2) screening;
- (3) evaluation;
- (4) assessment;
- (5) service coordination;
- (6) special education and related services provided under section 120.17, subdivision 3a, and United States Code, title 20, section 1401; and
- (7) protection of parent and child rights by means of procedural safeguards.

(c) "County board" means a county board established under chapter 375.

(d) "Early intervention record" means any personally identifiable information about a child or the child's family that is generated by the early intervention system, and that pertains to evaluation and assessment, development of an individualized family service plan, and the delivery of early intervention services.

(e) "Early intervention services" means services provided in conformity with an individualized family service plan that are designed to meet the special developmental needs of a child eligible under Code of Federal Regulations, title 34, part 303, and the needs of the child's family related to enhancing the child's development and that are selected in collabo-

ration with the parent. These services include core early intervention services and additional early intervention services listed in subdivision 4 and services defined in Code of Federal Regulations, title 34, section 303, et seq.

(f) "Early intervention system" means the total effort in the state to meet the needs of eligible children and their families, including, but not limited to:

(1) any public agency in the state that receives funds under the Individuals with Disabilities Education Act, United States Code, title 20, sections 1471 to 1485 (Part H, Public Law Number 102-119);

(2) other state and local agencies administering programs involved in the provision of early intervention services, including, but not limited to:

(i) the Maternal and Child Health program under title V of the Social Security Act, United States Code, title 42, sections 701 to 709;

(ii) the Individuals with Disabilities Education Act, United States Code, title 20, sections 1411 to 1420 (Part B);

(iii) medical assistance under the Social Security Act, United States Code, title 42, section 1396 et seq.;

(iv) the Developmental Disabilities Assistance and Bill of Rights Act, United States Code, title 42, sections 6021 to 6030 (Part B); and

(v) the Head Start Act, United States Code, title 42, sections 9831 to 9852; and

(3) services provided by private groups or third-party payers in conformity with an individualized family service plan.

(g) "Eligibility for Part H" means eligibility for early childhood special education under section 120.03 and Minnesota Rules, part 3525.2335, subpart 1, items A and B.

(h) "Facilitate payment" means helping families access necessary public or private assistance that provides payment for services required to meet needs identified in a service plan, individual education plan (IEP), individual service plan (ISP), or individualized family service plan (IFSP), according to time frames required by the plan. This may also include activities to collect fees for services provided on a sliding fee basis, where permitted by state law.

(i) "Individualized family service plan" or "IFSP" means a written plan for providing services to a child and the child's family.

(j) "Interagency child find systems" means activities developed on an interagency basis with the involvement of interagency early intervention committees and other relevant community groups to actively seek out, identify, and refer infants and young children with, or at risk of, disabilities, and their families.

(k) "Local primary agency" means the agency designated jointly by the school and county board under subdivision 4.

(l) "Parent" means the biological parent with parental rights, adoptive parent, legal guardian, or surrogate parent.

(m) "Part H state plan" means the annual state plan application approved by the federal government under the Individuals with Disabilities Education Act, United States Code, title 20, section 1471 et seq. (Part H, Public Law Number 102-119).

(n) "Pay for" means using federal, state, local, and private dollars available for early intervention services.

(o) "Respite" means short-term, temporary care provided to a child with a disability due to the temporary absence or need for relief of the family member or members or primary care giver, normally providing the care.

(p) "State lead agency" means the state agency receiving federal funds under the Individuals with Disabilities Education Act, United States Code, title 20, section 1471 et seq. (Part H, Public Law Number 102-119).

(q) "Surrogate parent" means a person appointed by the local education agency to assure that the rights of the child to early intervention services are protected.

Subd. 3. State interagency coordinating council. An interagency coordinating council of at least 17, but not more than 25 members is established, in compliance with Public Law

Number 102–119, section 682. The members shall be appointed by the governor. Council members shall elect the council chair. The representative of the commissioner of children, families, and learning may not serve as the chair. The council shall be composed of at least five parents, including persons of color, of children with disabilities under age 12, including at least three parents of a child with a disability under age seven, five representatives of public or private providers of services for children with disabilities under age five, including a special education director, county social service director, and a community health services or public health nursing administrator, one member of the senate, one member of the house of representatives, one representative of teacher preparation programs in early childhood–special education or other preparation programs in early childhood intervention, at least one representative of advocacy organizations for children with disabilities under age five, one physician who cares for young children with special health care needs, one representative each from the commissioners of commerce, children, families, and learning, health, human services, and economic security, and a representative from Indian health services or a tribal council. Section 15.059, subdivisions 2 to 5, apply to the council. The council shall meet at least quarterly.

The council shall address methods of implementing the state policy of developing and implementing comprehensive, coordinated, multidisciplinary interagency programs of early intervention services for children with disabilities and their families.

The duties of the council include recommending policies to ensure a comprehensive and coordinated system of all state and local agency services for children under age five with disabilities and their families. The policies must address how to incorporate each agency's services into a unified state and local system of multidisciplinary assessment practices, individual intervention plans, comprehensive systems to find children in need of services, methods to improve public awareness, and assistance in determining the role of interagency early intervention committees.

Each year by June 1, the council shall recommend to the governor and the commissioners of children, families, and learning, health, human services, commerce, and economic security policies for a comprehensive and coordinated system.

Notwithstanding any other law to the contrary, the state interagency coordinating council shall expire on June 30, 1997.

Subd. 4. Responsibilities of county boards and school boards. (a) It is the joint responsibility of county boards and school boards to coordinate, provide, and pay for appropriate services, and to facilitate payment for services from public and private sources. Appropriate services for children eligible under section 120.03 must be determined in consultation with parents, physicians, and other educational, medical, health, and human services providers. The services provided must be in conformity with an IFSP for each eligible infant and toddler from birth through age two and its family, or an individual education plan (IEP) or individual service plan (ISP) for each eligible child ages three through four.

(b) Appropriate services include family education and counseling, home visits, occupational and physical therapy, speech pathology, audiology, psychological services, special instruction, nursing, respite, nutrition, assistive technology, transportation and related costs, social work, vision services, case management including service coordination under subdivision 8, medical services for diagnostic and evaluation purposes, early identification, and screening, assessment, and health services necessary to enable children with disabilities to benefit from early intervention services.

(c) School and county boards shall coordinate early intervention services. In the absence of agreements established according to subdivision 13, service responsibilities for children birth through age two are as follows:

(1) school boards are required to provide, pay for, and facilitate payment for special education and related services required under section 120.17, subdivision 2;

(2) county boards are required to provide, pay for, and facilitate payment for noneducational services of social work, psychology, transportation and related costs, nursing, respite, and nutrition services not required under clause (1).

(d) School and county boards may develop an interagency agreement according to subdivision 13 to establish agency responsibility that assures that early intervention services are

coordinated, provided, paid for, and that payment is facilitated from public and private sources.

(e) County and school boards shall jointly determine the primary agency in this cooperative effort and must notify the commissioner of the state lead agency of their decision.

Subd. 5. Interagency early intervention committees. (a) A school district, group of districts, or special education cooperative, in cooperation with the health and human service agencies located in the county or counties in which the district or cooperative is located, shall establish an interagency early intervention committee for children with disabilities under age five and their families. Committees shall include representatives of local and regional health, education, and county human service agencies; county boards; school boards; early childhood family education programs; parents of young children with disabilities under age 12; current service providers; and may also include representatives from other private or public agencies. The committee shall elect a chair from among its members and shall meet at least quarterly.

(b) The committee shall develop and implement interagency policies and procedures concerning the following ongoing duties:

(1) develop public awareness systems designed to inform potential recipient families of available programs and services;

(2) implement interagency child find systems designed to actively seek out, identify, and refer infants and young children with, or at risk of, disabilities and their families;

(3) establish and evaluate the identification, referral, child and family assessment systems, procedural safeguard process, and community learning systems to recommend, where necessary, alterations and improvements;

(4) assure the development of individualized family service plans for all eligible infants and toddlers with disabilities from birth through age two, and their families, and individual education plans and individual service plans when necessary to appropriately serve children with disabilities, age three and older, and their families and recommend assignment of financial responsibilities to the appropriate agencies. Agencies are encouraged to develop individual family service plans for children with disabilities, age three and older;

(5) implement a process for assuring that services involve cooperating agencies at all steps leading to individualized programs;

(6) facilitate the development of a transitional plan if a service provider is not recommended to continue to provide services;

(7) identify the current services and funding being provided within the community for children with disabilities under age five and their families;

(8) develop a plan for the allocation and expenditure of additional state and federal early intervention funds under United States Code, title 20, section 1471 et seq. (Part H, Public Law Number 102-119) and United States Code, title 20, section 631, et seq. (Chapter I, Public Law Number 89-313); and

(9) develop a policy that is consistent with section 13.05, subdivision 9, and federal law to enable a member of an interagency early intervention committee to allow another member access to data classified as not public.

(c) The local committee shall also:

(1) participate in needs assessments and program planning activities conducted by local social service, health and education agencies for young children with disabilities and their families;

(2) review and comment on the early intervention section of the total special education system for the district, the county social service plan, the section or sections of the community health services plan that address needs of and service activities targeted to children with special health care needs, and the section of the maternal and child health special project grants that address needs of and service activities targeted to children with chronic illness and disabilities; and

(3) prepare a yearly summary on the progress of the community in serving young children with disabilities, and their families, including the expenditure of funds, the identification of unmet service needs identified on the individual family services plan and other indi-

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visualized plans, and local, state, and federal policies impeding the implementation of this section.

(d) The summary must be organized following a format prescribed by the commissioner of the state lead agency and must be submitted to each of the local agencies and to the state interagency coordinating council by October 1 of each year.

The departments of children, families, and learning, health, and human services must provide assistance to the local agencies in developing cooperative plans for providing services.

Subd. 6. Local primary agency. (a) The local primary agency shall:

(1) facilitate the development of annual fund requests that identify arrangements with other local and regional agencies providing services as part of the state's early childhood intervention system and that result in service availability on a year-round basis, as necessary;

(2) administer funds received through the annual fund request;

(3) provide oversight for data collection efforts;

(4) facilitate completion of interagency early intervention committee duties as indicated in subdivision 5;

(5) request mediation from the state lead agency, if necessary;

(6) request assistance from the state lead agency when disputes between agencies cannot be resolved within 20 calendar days; and

(7) receive written requests from parents for matters that may be resolved through due process hearings.

(b) When the local primary agency is not an education agency, resources distributed under the early intervention fund shall be transferred from a local educational agency to a non-education agency using a state provided contract. A local primary agency may budget for indirect costs at an amount not to exceed five percent of the amount allocated from the early intervention fund.

Subd. 7. Individualized family service plan. (a) A team must participate in IFSP meetings to develop the individualized family service plan. The team shall include:

(1) a parent or parents of the child;

(2) other family members, as requested by the parent, if feasible to do so;

(3) an advocate or person outside of the family, if the parent requests that the person participate;

(4) the service coordinator who has been working with the family since the initial referral, or who has been designated by the public agency to be responsible for implementation of the IFSP; and

(5) a person or persons involved in conducting evaluations and assessments.

(b) The IFSP must include:

(1) information about the child's developmental status;

(2) family information, with the consent of the family;

(3) major outcomes expected to be achieved by the child and the family, that include the criteria, procedures, and timelines;

(4) specific early intervention services necessary to meet the unique needs of the child and the family to achieve the outcomes;

(5) payment arrangements, if any;

(6) medical and other services that the child needs, but that are not required under the Individual with Disabilities Education Act, United States Code, title 20, section 1471 et seq. (Part H, Public Law Number 102-119) including funding sources to be used in paying for those services and the steps that will be taken to secure those services through public or private sources;

(7) dates and duration of early intervention services;

(8) name of the service coordinator;

(9) steps to be taken to support a child's transition from early intervention services to other appropriate services; and

(10) signature of the parent and authorized signatures of the agencies responsible for providing, paying for, or facilitating payment, or any combination of these, for early intervention services.

Subd. 8. Service coordination. (a) The team developing the individualized family service plan under subdivision 7 shall select a service coordinator to carry out service coordination activities on an interagency basis. Service coordination must actively promote a family's capacity and competency to identify, obtain, coordinate, monitor, and evaluate resources and services to meet the family's needs. Service coordination activities include:

- (1) coordinating the performance of evaluations and assessments;
- (2) facilitating and participating in the development, review, and evaluation of individualized family service plans;
- (3) assisting families in identifying available service providers;
- (4) coordinating and monitoring the delivery of available services;
- (5) informing families of the availability of advocacy services;
- (6) coordinating with medical, health, and other service providers;
- (7) facilitating the development of a transition plan at least six months prior to the time the child is no longer eligible for early intervention services, if appropriate;
- (8) managing the early intervention record and submitting additional information to the local primary agency at the time of periodic review and annual evaluations; and
- (9) notifying a local primary agency when disputes between agencies impact service delivery required by an individualized family service plan.

(b) A service coordinator must be knowledgeable about children and families receiving services under this section, requirements of state and federal law, and services available in the interagency early childhood intervention system.

Subd. 8a. Early intervention respite. The provision of respite services for an eligible child and family shall be determined in the context of the IFSP development based on the individual needs of the child and family and with consideration given to the following criteria:

- (1) severity of the child's disability and needs;
- (2) potential risk of out-of-home placement for the child if respite services are not provided;
- (3) parental lack of access to informal support systems, including, but not limited to, extended family, supportive friends, and community supports;
- (4) presence of factors known to increase family stress, including, but not limited to, family size and presence of another child or family member with a disability;
- (5) the availability of other public services provided to the family which assist the parent or primary caretaker in obtaining relief from caretaking responsibilities; and
- (6) the perceived and expressed level of need for respite services by the parent.

Counties are encouraged to make a variety of respite service models available, which may include in or out-of-home respite, family reimbursement programs, and parent-to-parent respite projects.

Subd. 9. Early intervention flow-through dollars. (a) The state lead agency shall administer the early intervention account which consists of federal allocations. The Part H state plan shall state the amount of federal resources in the early intervention account available for use by local agencies. The state lead agency shall distribute the funds to the local primary agency based on a December 1 count of the prior year of Part H eligible children for the following purposes:

- (1) as provided in Code of Federal Regulations, title 34, part 303.425, to arrange for payment for early intervention services not elsewhere available, or to pay for services during the pendency of a conflict procedure, including mediation, complaints, due process hearings, and interagency disputes; and
- (2) to support interagency child find system activities.

(b) The priority purpose for this fund is paragraph (a), clause (1). The local primary agency shall reallocate resources from the early intervention fund as necessary in order to meet this priority.

(c) Nothing in this subdivision shall limit the state lead agency's authority to allocate discretionary federal funds for any purpose consistent with the Individuals with Disabilities Education Act, United States Code, title 20, sections 1471 to 1485 (Part H, Public Law Number 102-119) and regulations adopted under United States Code, title 20, sections 1471 to 1485.

(d) Each county board must continue to spend for early intervention services under subdivision 2, paragraph (e), an amount equal to the total county expenditure during the period from January 1, 1993, to December 31, 1993, for these same services. The commissioner of human services, in consultation with the commissioner of health and the association of Minnesota counties, shall establish a process for determining base year 1993 expenditures.

(e) County boards that have submitted base year 1993 expenditures as required under paragraph (d) are not required to pay any increased cost over the base year 1993 for early intervention services resulting from implementing the early intervention system. Increased costs to county boards may be paid for with early intervention flow-through dollars.

(f) School boards are not required to pay for services defined in subdivision 4, paragraph (c), clause (2).

Subd. 10. Payment for services. Core early intervention services shall be provided at public expense with no cost to parents. Parents shall be requested to assist in the cost of additional early intervention services by using third-party payment sources and applying for available resources. Payment structures permitted under state law shall be used to pay for additional early intervention services. Parental financial responsibility shall be clearly defined in the individualized family service plan. A parent's inability to pay shall not prohibit a child from receiving needed early intervention services.

Subd. 11. Payor of last resort. (a) For fiscal years 1995 and 1996, the state lead agency shall establish a reserve account from federal sources to pay for services in dispute or to pay for early intervention services when local agencies have exhausted all other public and private funds available for Part H eligible children.

(b) The lead agency shall report to the legislature by January 1, 1996, regarding county board expenditures for early intervention services and the continuing need and funding of the reserve account.

Subd. 12. Maintenance of effort. A county human services agency or county board shall continue to provide services set forth in their county social service agency plan. The county human services agency or county board shall serve children with disabilities under age five, and their families, or as specified in the individualized family service plan for children with disabilities, birth through age two, or the individual service plan of each child. Special instruction and related services for which a child with a disability is eligible under this section are the responsibility of the local school board. It is the joint responsibility of county boards and school boards to coordinate, provide, and pay for all appropriate services required in subdivision 11b and to facilitate payment for services from public and private sources.

Subd. 13. Local interagency agreements. School boards and the county board may enter into agreements to cooperatively serve and provide funding for children with disabilities, under age five, and their families within a specified geographic area.

The local interagency agreement must address, at a minimum, the following issues:

(1) responsibilities of local agencies on local interagency early intervention committees (IEIC's), consistent with subdivision 12;

(2) assignment of financial responsibility for early intervention services;

(3) methods to resolve intraagency and interagency disputes;

(4) identification of current resources and recommendations about the allocation of additional state and federal early intervention funds under the auspices of United States Code, title 20, section 1471 et seq. (Part H, Public Law Number 102-119) and United States Code, title 20, section 631, et seq. (Chapter I, Public Law Number 89-313);

(5) data collection; and

(6) other components of the local early intervention system consistent with Public Law Number 102-119.

Subd. 14. **Third-party payment.** Nothing in this section relieves an insurer or similar third party from an otherwise valid obligation to pay, or changes the validity of an obligation to pay, for services rendered to a child with a disability, and the child's family.

Subd. 15. **Benefits coordination.** The department of health shall provide technical assistance in a timely manner to service coordinators, parents of children with disabilities, and agencies in situations requiring the coordination of health insurance benefits, or the identification of third-party payor responsibilities to provide necessary health benefits.

Subd. 16. **Procedural safeguards; parent and child rights.** (a) This subdivision applies to local school and county boards for children from birth through age two who are eligible for Part H, Public Law Number 102-119, and their families. This subdivision must be consistent with the Individuals with Disabilities Education Act, United States Code, title 20, sections 1471 to 1485 (Part H, Public Law Number 102-119), regulations adopted under United States Code, title 20, sections 1471 to 1485, and this section.

(b) A parent has the right to:

- (1) inspect and review early intervention records;
- (2) prior written notice of a proposed action in the parents' native language unless it is clearly not feasible to do so;
- (3) give consent to any proposed action;
- (4) selectively accept or decline any early intervention service; and
- (5) resolve issues regarding the identification, evaluation, or placement of the child, or the provision of appropriate early intervention services to the child and the child's family through an impartial due process hearing pursuant to subdivision 20.

(c) The eligible child has the right to have a surrogate parent appointed by a school district as required by section 120.17, subdivision 3.

Subd. 17. **Mediation procedure.** The commissioner of the state lead agency shall use federal funds to provide mediation for the activities in paragraphs (a) and (b).

(a) A parent may resolve a dispute regarding issues in subdivision 16, paragraph (b), clause (5), through mediation. If the parent chooses mediation, all public agencies involved in the dispute shall participate in the mediation process. The parent and the public agencies must complete the mediation process within 20 calendar days of the date the commissioner receives a parent's written request for mediation. The mediation process may not be used to delay a parent's right to a due process hearing. The resolution of the mediation is not binding on any party.

(b) The local primary agency may request mediation on behalf of involved agencies when there are disputes between agencies regarding responsibilities to coordinate, provide, pay for, or facilitate payment for early intervention services.

Subd. 18. **Complaint procedure.** (a) An individual or organization may file a written signed complaint with the commissioner of the state lead agency alleging that one or more requirements of the Code of Federal Regulations, title 34, part 303, is not being met. The complaint must include:

(1) a statement that the state has violated the Individuals with Disabilities Education Act, United States Code, title 20, section 1471 et seq. (Part H, Public Law Number 102-119) or Code of Federal Regulations, title 34, section 303; and

(2) the facts on which the complaint is based.

(b) The commissioner of the state lead agency shall receive and coordinate with other state agencies the review and resolution of a complaint within 60 calendar days according to the state interagency agreement required under subdivision 22.

Subd. 19. **Interagency dispute procedure.** (a) A dispute between a school board and a county board that is responsible for implementing the provisions of subdivision 4 regarding early identification, child and family assessment, service coordination, and IFSP development and implementation shall be resolved according to this subdivision when the dispute involves services provided to children and families eligible under the Individuals with Disabilities Education Act, United States Code, title 20, section 1471 et seq. (Part H, Public Law Number 102-119).

(b) A dispute occurs when the school board and county board are unable to agree as to who is responsible to coordinate, provide, pay for, or facilitate payment for services from public and private sources.

(c) Written and signed disputes shall be filed with the local primary agency.

(d) The local primary agency shall have attempted to resolve the matter with the involved school board and county board and may request mediation from the commissioner of the state lead agency for this purpose.

(e) When interagency disputes have not been resolved within 30 calendar days, the local primary agency shall request the commissioner of the state lead agency to review the matter with the commissioners of health and human services and make a decision. The commissioner shall provide a consistent process for reviewing those procedures. The commissioners' decision is binding subject to the right of an aggrieved party to appeal to the state court of appeals.

(f) The local primary agency shall ensure that eligible children and their families receive early intervention services during resolution of a dispute. While a local dispute is pending, the local primary agency shall either assign financial responsibility to an agency or pay for the service from the early intervention account under subdivision 9. If in resolving the dispute, it is determined that the assignment of financial responsibility was inappropriate, the responsibility for payment must be reassigned to the appropriate agency and the responsible agency shall make arrangements for reimbursing any expenditures incurred by the agency originally assigned financial responsibility.

Subd. 20. Due process hearings. The procedures for due process hearings and appeals shall be the same as those in section 120.17, subdivision 3b. The responsibility for payment of costs and conducting due process hearings and appeals shall be allocated to the appropriate agency in accordance with subdivisions 5, 13, and 16.

Subd. 21. Data collection. By July 1, 1994, the departments of children, families, and learning, health, and human services shall develop a plan to collect data about which early intervention services are being provided to children and families eligible under the Individuals with Disabilities Education Act, United States Code, title 20, section 1471 et seq. (Part H, Public Law Number 102-119) and sources of payment for those services.

Subd. 22. State interagency agreement. (a) The commissioners of the departments of children, families, and learning, health, and human services shall enter into an agreement to implement this section and Part H, Public Law Number 102-119, and as required by Code of Federal Regulations, title 34, section 303.523, to promote the development and implementation of interagency, coordinated, multidisciplinary state and local early childhood intervention service systems for serving eligible young children with disabilities, birth through age two, and their families. The agreement must be reviewed annually.

(b) The state interagency agreement shall outline at a minimum the conditions, procedures, purposes, and responsibilities of the participating state and local agencies for the following:

(1) membership, roles, and responsibilities of a state interagency committee for the oversight of priorities and budget allocations under Part H, Public Law Number 102-119, and other state allocations for this program;

(2) child find;

(3) establishment of local interagency agreements;

(4) review by a state interagency committee of the allocation of additional state and federal early intervention funds by local agencies;

(5) fiscal responsibilities of the state and local agencies;

(6) intraagency and interagency dispute resolution;

(7) payor of last resort;

(8) maintenance of effort;

(9) procedural safeguards, including mediation;

(10) complaint resolution;

(11) quality assurance;

(12) data collection;

(13) an annual summary to the state interagency coordinating council regarding conflict resolution activities including disputes, due process hearings, and complaints; and

(14) other components of the state and local early intervention system consistent with Public Law Number 102-119.

Written materials must be developed for parents, IEIC's, and local service providers that describe procedures developed under this section as required by Code of Federal Regulations, title 34, section 303.

History: 1994 c 647 art 3 s 9,34; 1Sp1995 c 3 art 16 s 13; 1996 c 412 art 3 s 4,5

120.171 [Repealed, 1979 c 334 art 3 s 19]

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 children with a disability. 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. [Repealed, 1Sp1985 c 12 art 3 s 30]

History: 1981 c 358 art 3 s 8; 1991 c 265 art 3 s 38

120.173 ALTERNATIVE DELIVERY OF SPECIALIZED INSTRUCTIONAL SERVICES.

Subdivision 1. Commissioner approval. The commissioner of children, families, and learning may approve applications from school districts to provide prevention services as an alternative to special education and other compensatory programs during three school years. A district with an approved program may provide instruction and services in a regular education classroom to eligible pupils. Pupils eligible to participate in the program are low-performing pupils who, based on documented experience, the professional judgment of a classroom teacher, or a team of licensed professionals, would eventually qualify for special education instruction or related services under section 120.17 if the intervention services authorized by this section were unavailable. Pupils may be provided services during extended school days and throughout the entire year.

Subd. 2. Application contents. The application must set forth:

(1) instructional services available to eligible pupils under section 124.311, subdivision 3, and pupils with a disability under section 120.03;

(2) criteria to select pupils for the program and the assessment procedures to determine eligibility;

(3) involvement in the program of parents of pupils in the program, parent advocates, and community special education advocates;

(4) accounting procedures to document that federal special education money is used to supplement or increase the level of special education instruction and related services provided with state and local revenue, but in no case to supplant the state and local revenue, and that districts are expending at least the amount for special education instruction and related services required by federal law;

(5) the role of regular and special education teachers in planning and implementing the program; and

(6) other information requested by the commissioner.

Subd. 3. Evaluation. The application shall also set forth the review and evaluation procedures to be used by the district addressing at least the following:

(1) the number of pupils with and without a disability served;

- (2) the impact of the program on the academic progress and social adjustment of the pupils;
- (3) the level of satisfaction teachers, parents, and pupils have with the program;
- (4) the effect of the program on the number of referrals for special education, federal chapter 1, and other programs;
- (5) the amount of time spent by teachers on procedural activities;
- (6) the increased amount of time the pupil is in a regular education classroom; and
- (7) cost implications.

Subd. 4. **Review for excess expenditures.** The commissioner shall review each application to determine whether the personnel, equipment, supplies, residential aid, and summer school are necessary to meet the district's obligation to provide special instruction and services to children with a disability according to section 120.17. The commissioner shall not approve revenue for any expenditures determined to be unnecessary.

Subd. 5. **Annual report.** Each year the district must submit to the commissioner a report containing the information described in subdivision 3 and section 124.311, subdivision 7.

Subd. 6. **Pupil rights.** A pupil participating in the program must be individually evaluated according to the pupil's actual abilities and needs. A pupil who is eligible for services under section 120.17 is entitled to procedural protections provided under Public Law Number 94-142 in any matter that affects the identification, evaluation, placement, or change in placement of a pupil. The district must ensure the protection of a pupil's civil rights, provide equal educational opportunities, and prohibit discrimination. Failure to comply with this subdivision will at least cause a district to become ineligible to participate in the program. Notwithstanding rules of the state board of education, a pupil's rights under this section cannot be waived by the state board.

History: 1991 c 265 art 3 s 3,38; 1Sp1995 c 3 art 16 s 13

120.18 MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

120.18 MS 1967 [Repealed, 1969 c 981 s 7]

120.181 PLACEMENT OF CHILDREN WITHOUT DISABILITIES; EDUCATION AND TRANSPORTATION.

The responsibility for providing instruction and transportation for a pupil without a disability who has a short-term or temporary physical or emotional illness or disability, as determined by the standards of the state board, and who is temporarily placed for care and treatment for that illness or disability, shall be determined as provided in this section.

(a) The school district of residence of the pupil shall be the district in which the pupil's parent or guardian resides or the district designated by the commissioner of children, families, and learning if neither parent nor guardian is living within the state.

(b) Prior to the placement of a pupil for care and treatment, the district of residence shall be notified and provided an opportunity to participate in the placement decision. When an immediate emergency placement is necessary and time does not permit resident district participation in the placement decision, the district in which the pupil is temporarily placed, if different from the district of residence, shall notify the district of residence of the emergency placement within 15 days of the placement.

(c) When a pupil without a disability is temporarily placed for care and treatment in a day program and the pupil continues to live within the district of residence during the care and treatment, the district of residence shall provide instruction and necessary transportation for the pupil. The district may provide the instruction at a school within the district of residence, at the pupil's residence, or in the case of a placement outside of the resident district, in the district in which the day treatment program is located by paying tuition to that district. The district of placement may contract with a facility to provide instruction by teachers licensed by the state board of teaching.

(d) When a pupil without a disability is temporarily placed in a residential program for care and treatment, the district in which the pupil is placed shall provide instruction for the

pupil and necessary transportation while the pupil is receiving instruction, and in the case of a placement outside of the district of residence, the nonresident district shall bill the district of residence for the actual cost of providing the instruction for the regular school year and for summer school, excluding transportation costs. When a pupil without a disability is temporarily placed in a residential program outside the district of residence, the administrator of the court placing the pupil shall send timely written notice of the placement to the district of residence. The district of placement may contract with a residential facility to provide instruction by teachers licensed by the state board of teaching.

(e) The district of residence shall include the pupil in its residence count of pupil units and pay tuition as provided in section 124.18 to the district providing the instruction. Transportation costs shall be paid by the district providing the transportation and the state shall pay transportation aid to that district. For purposes of computing state transportation aid, pupils governed by this subdivision shall be included in the disabled transportation category.

History: 1982 c 548 art 1 s 1; 1988 c 486 s 6; 1991 c 265 art 3 s 4,38; 1992 c 499 art 3 s 8; 1Sp1995 c 3 art 16 s 13; 1996 c 412 art 2 s 3

120.1811 RESIDENTIAL TREATMENT FACILITIES; EDUCATION.

Subdivision 1. **Educational screening.** Secure and nonsecure residential treatment facilities licensed by the department of human services or the department of corrections shall screen each juvenile who is held in a facility for at least 72 hours, excluding weekends or holidays, using an educational screening tool identified by the department of children, families, and learning, unless the facility determines that the juvenile has a current individual education plan and obtains a copy of it. The department of children, families, and learning shall develop or identify an education screening tool for use in residential facilities. The tool must include a life skills development component.

Subd. 2. **Rulemaking.** The state board of education may, in consultation with the commissioners of corrections and human services, make or amend rules relating to education programs in residential treatment facilities, if necessary, to implement this section.

History: 1995 c 226 art 3 s 4; 1Sp1995 c 3 art 16 s 13

120.182 SPECIAL EDUCATION DIRECTOR.

The authority for the selection and employment of the director of a special education cooperative established pursuant to section 120.17 or 471.59 shall be vested in the governing board of the cooperative. Notwithstanding the provisions of section 125.12, subdivision 6a or 6b, no individual shall have a right to employment as a director based on seniority or order of employment by the cooperative.

History: 1983 c 314 art 7 s 5

120.183 INTERAGENCY OFFICE ON TRANSITION SERVICES.

The commissioner of children, families, and learning shall establish an interagency office on transition services to:

- (1) gather and coordinate data on transition services for secondary age pupils with a disability;
- (2) provide information, consultation, and technical assistance to state and local agencies involved in the delivery of services to pupils with a disability in transition from secondary school programs to employment and post-secondary training programs;
- (3) assist agencies in establishing local interagency agreements to assure the necessary services for efficient and appropriate transition from school to work or post-secondary training programs; and
- (4) assist regions and local areas in planning interagency in-service training to develop and improve transition services.

History: 1Sp1985 c 12 art 3 s 9; 1991 c 265 art 3 s 38; 1Sp1995 c 3 art 16 s 13

120.185 ACCOMMODATING STUDENTS WITH DISABILITIES.

A school or school district shall provide a student who is an "individual with a disability" under Section 504 of the Rehabilitation Act of 1973, United States Code, title 29, section

794, or under the Americans with Disabilities Act, Public Law Number 101-336, with reasonable accommodations or modifications in programs.

History: 1994 c 647 art 3 s 10

ASSISTIVE TECHNOLOGY DEVICES

120.187 DEFINITION.

Subdivision 1. **Applicability.** For the purposes of sections 120.187 to 120.190, the following terms have the meanings given them.

Subd. 2. **Assistive technology device.** "Assistive technology device" means any item, piece of equipment, software, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of children with disabilities.

History: 1996 c 412 art 3 s 6

120.188 PURCHASING GUIDELINES.

Subdivision 1. **Rights of school districts to purchase school-owned assistive technology.** (a) When a child with a disability exits a school district and enters a new school district, the child's new school district may purchase any assistive technology devices that the child's former school district has purchased on the child's behalf. The child's new school district must notify, in writing, the child's former school district of the intent to purchase the device. The child's new school district must complete a purchase agreement according to section 120.1701, subdivision 10. The child's former school district must respond, in writing, to the request to purchase within 30 days.

(b) School districts may decline to sell a device if they can demonstrate the technology is a general use device or can be modified for use by other students.

Subd. 2. **Liability for used equipment.** The child's former school district shall not be liable for any nonconformities in the equipment after it is purchased by the child's new school district, or for injuries arising out of the use of the assistive technology device. This section does not foreclose the child's right to bring suit against the manufacturer, assistive device lessor, or assistive device dealer for nonconformities in or injuries arising out of the use of the assistive technology device.

Subd. 3. **Third-party payors.** Nothing contained in this section shall be construed as decreasing the obligation of an insurance company or other third-party payor to provide coverage for assistive technology.

History: 1996 c 412 art 3 s 7

120.189 INTERAGENCY AGREEMENT TO PURCHASE USED ASSISTIVE TECHNOLOGY DEVICES.

Subdivision 1. **Option to purchase by department of economic security.** (a) When a child with a disability transitions into a work environment or enrolls in a post-secondary course or program, the department of economic security may purchase any assistive technology device that the child's former school district purchased on the child's behalf.

(b) The department of economic security may purchase an assistive technology device initially purchased by a school district for a child who is currently a recipient of rehabilitation services and who needs the identical assistive technology device as stated on the recipient's individual written rehabilitation plan. The purchase may be made not more than three months prior to the child exiting the school district.

Subd. 2. **Liability for used equipment.** The department of economic security and the department of children, families, and learning shall not be liable for any nonconformities in the equipment after it is purchased by the department of economic security, or for injuries arising out of the use of the assistive technology device. This section does not foreclose the child's right to bring suit against the manufacturer, assistive device lessor, or assistive device

dealer for nonconformities in or injuries arising out of the use of the assistive technology device.

Subd. 3. **Third-party payor.** Nothing contained in this section shall be construed as decreasing the obligation of an insurance company or other third-party payor to provide coverage for assistive technology.

History: 1996 c 412 art 3 s 8

120.190 PURCHASE AGREEMENT; PRICE FORMULA.

The commissioner shall develop guidelines for the sale of used assistive technology including a purchase agreement, a formula for establishing the sale price, and other terms and conditions of the sale.

History: 1996 c 412 art 3 s 9

120.19–120.38 MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

120.41–120.43 MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

120.44 MS 1957 [Repealed, Ex1959 c 71 art 8 s 26; 1961 c 446 s 2; 1961 c 567 s 2 subd 2]

120.46 MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

120.51–120.57 MS 1957 [Repealed, 1959 c 687 s 13; Ex1959 c 27 s 13; Ex1959 c 71 art 8 s 26]

120.58 MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

FLEXIBLE LEARNING YEAR PROGRAMS

120.59 PURPOSE OF FLEXIBLE LEARNING YEAR PROGRAMS.

The purpose of sections 120.59 to 120.67 is to authorize districts to evaluate, plan and employ the use of flexible learning year programs. It is anticipated that the open selection of the type of flexible learning year operation from a variety of alternatives will allow each district which seeks to utilize this concept to suitably fulfill the educational needs of its pupils. These alternatives shall include, but not be limited to, various 45–15 plans, four-quarter plans, quinmester plans, extended learning year plans, flexible all-year plans, and four-day week plans.

History: 1974 c 326 s 2; 1991 c 265 art 9 s 4

120.60 DEFINITION OF FLEXIBLE LEARNING YEAR.

“Flexible learning year program” means any district plan approved by the state board of education which utilizes buildings and facilities during the entire year and/or which provides forms of optional scheduling of pupils and personnel during the learning year in elementary and secondary schools or residential facilities for children with a disability.

History: 1974 c 326 s 3; 1991 c 265 art 3 s 38; art 9 s 5

120.61 ESTABLISHMENT OF FLEXIBLE LEARNING YEAR PROGRAM.

The board of any district, with the approval of the state board of education, may establish and operate a flexible learning year program in one or more of the day or residential facilities for children with a disability within the district.

History: 1974 c 326 s 4; 1991 c 265 art 3 s 38; art 9 s 6

120.62 DIVISION OF CHILDREN INTO GROUPS.

The board of any district operating a flexible learning year program in one or more of the facilities within the district shall divide the students of each selected facility into as many groups as necessary to accommodate this program. Students of the same family shall be

placed in the same group unless one or more of these students is enrolled in a special education class or unless the parent or guardian of these students requests that the students be placed in different groups. No board shall discriminate on the basis of race, color, creed, religion, marital status, status with regard to public assistance, sex, or national origin when assigning pupils to attendance groups pursuant to this section.

History: 1974 c 326 s 5; 1991 c 265 art 9 s 7

120.63 PUBLIC HEARING BEFORE IMPLEMENTATION.

Prior to implementing a flexible learning year program in any facility of the district, the board shall negotiate with the teachers, principals, assistant principals, supervisory personnel and employees to the extent required by the public employment labor relations act, and shall consult with the parents of pupils who would be affected by the change, and with the community at large. These procedures shall include at least three informational meetings for which the board has given published notice to the teachers and employees and to the parents of pupils affected.

History: 1974 c 326 s 6; 1991 c 265 art 9 s 8

120.64 ASSIGNMENT OF TEACHERS.

Subdivision 1. In districts where a flexible learning year program is implemented in fewer than all of the facilities maintained by the district, the board of the district shall make every reasonable effort to assign qualified teachers who prefer a traditional schedule to facilities of the same level retaining a traditional schedule.

Subd. 2. A full-time teacher currently employed by a district which converts to a flexible learning year program shall not, without the teacher's written consent, be required to teach under this program (1) more or less than the number of scheduled days or their equivalent facilities of the district were maintained during the year preceding implementation of the flexible learning year program; (2) in a period of the calendar year substantially different from the period in which the teacher taught during the year preceding implementation of the flexible learning year program.

Subd. 3. In no event shall a teacher's continuing contract rights to a position held the year preceding implementation of a flexible learning year program or teaching experience earned during a probationary period the year preceding implementation be lost or impaired upon adoption of a flexible learning year program. If the year of teaching preceding implementation was the end of a probationary period, the continuing contract right to a full year's contract which normally would be acquired for the next succeeding learning year shall be acquired in the year of adoption of the flexible program.

Subd. 4. Any district operating a flexible learning year program shall enter into one contract governing the entire learning year with each teacher employed in a flexible program. If individual teachers contract to teach less than a period of 175 days during a learning year, each 175 days of employment accrued during any five-year period after the adoption of a flexible learning year program shall be deemed consecutive and shall constitute a full year's employment for purposes of establishing and retaining continuing contract rights to a full learning year position pursuant to sections 125.12, subdivisions 3 and 4, and 125.17, subdivisions 2 and 3. A teacher who has not been discharged or advised of a refusal to renew the teacher's contract by the applicable date, as specified in section 125.12 or 125.17, in the year in which the teacher will complete the requisite number of days for securing a continuing contract shall have a continuing full learning year contract with the district.

Subd. 5. Continuing contract rights established pursuant to this section shall not be impaired or lost by the termination of a flexible learning year program.

History: 1974 c 326 s 7; 1978 c 764 s 6; 1986 c 444; 1991 c 265 art 9 s 9

120.65 ESTABLISHMENT AND APPROVAL.

The state board of education shall:

(1) establish standards and requirements for the qualification of districts which may operate on a flexible learning year basis;

- (2) establish standards and evaluation criteria for flexible learning year programs;
- (3) prepare and distribute all necessary forms for application by any district for state authorization for a flexible learning year program;
- (4) review the proposed flexible learning year program of any qualified district as to conformity to standards and the evaluation of appropriateness of priorities, workability of procedure and overall value;
- (5) approve or disapprove proposed flexible learning year programs.

History: 1974 c 326 s 8; 1991 c 265 art 9 s 10

120.66 POWERS AND DUTIES OF THE STATE BOARD.

Subdivision 1. The state board of education shall:

- (1) Promulgate rules necessary to the operation of sections 120.59 to 120.67;
- (2) Cooperate with and provide supervision of flexible learning year programs to determine compliance with the provisions of sections 120.59 to 120.67, the state board standards and qualifications, and the proposed program as submitted and approved;
- (3) Provide any necessary adjustments of (a) attendance and membership computations and (b) the dates and percentages of apportionment of state aids;
- (4) Consistent with the definition of "average daily membership" in section 124.17, subdivision 2, furnish the board of a district implementing a flexible learning year program with a formula for computing average daily membership. This formula shall be computed so that tax levies to be made by the district, state aids to be received by the district, and any and all other formulas based upon average daily membership are not affected solely as a result of adopting this plan of instruction.

Subd. 2. Sections 120.59 to 120.67 shall not be construed to authorize the state board to require the establishment of a flexible learning year program in any district in which the board has not voted to establish, maintain, and operate such a program.

History: 1974 c 326 s 9; 1978 c 706 s 3; 1991 c 265 art 9 s 11

120.67 TERMINATION OF PROGRAM.

The board of any district, with the approval of the state board of education, may terminate a flexible learning year program in one or more of the day or residential facilities for children with a disability within the district. This section shall not be construed to permit an exception to section 120.101 or 124.19.

History: 1974 c 326 s 10; 1989 c 209 art 2 s 1; 1991 c 265 art 3 s 38; art 9 s 12

120.68 [Repealed, 1Sp1985 c 12 art 7 s 33]

PUBLIC SCHOOL FEE LAW

120.71 MINNESOTA PUBLIC SCHOOL FEE LAW, CITATION.

Sections 120.71 to 120.76 may be cited as "the Minnesota public school fee law."

History: 1974 c 561 s 1

120.72 GENERAL POLICY.

It is the policy of the state of Minnesota that public school education shall be free and no pupil shall be denied an education because of economic inability to furnish educational books and supplies necessary to complete educational requirements necessary for graduation. Any practice leading to suspension, coercion, exclusion, withholding of grades or diplomas, or discriminatory action based upon nonpayment of fees denies pupils their right to equal protection and entitled privileges. It is recognized that school boards do have the right to accept voluntary contributions and to make certain charges and to establish fees in areas considered extra curricular, noncurricular or supplementary to the requirements for the successful completion of a class or educational program. No public school board may require, except as authorized by sections 120.73 and 120.75, the payment of fees.

History: 1974 c 561 s 2

120.73 AUTHORIZED FEES.

Subdivision 1. A school board is authorized to require payment of fees in the following areas:

(a) in any program where the resultant product, in excess of minimum requirements and at the pupil's option, becomes the personal property of the pupil;

(b) admission fees or charges for extra curricular activities, where attendance is optional;

(c) a security deposit for the return of materials, supplies, or equipment;

(d) personal physical education and athletic equipment and apparel, although any pupil may personally provide it if it meets reasonable requirements and standards relating to health and safety established by the school board;

(e) items of personal use or products which a student has an option to purchase such as student publications, class rings, annuals, and graduation announcements;

(f) fees specifically permitted by any other statute, including but not limited to section 171.04, subdivision 1, clause (1);

(g) field trips considered supplementary to a district educational program;

(h) any authorized voluntary student health and accident benefit plan;

(i) for the use of musical instruments owned or rented by the district, a reasonable rental fee not to exceed either the rental cost to the district or the annual depreciation plus the actual annual maintenance cost for each instrument;

(j) transportation of pupils to and from extra curricular activities conducted at locations other than school, where attendance is optional;

(k) transportation of pupils to and from school for which aid for fiscal year 1996 is not authorized under Minnesota Statutes 1994, section 124.223, subdivision 1, and for which levy for fiscal year 1996 is not authorized under Minnesota Statutes 1994, section 124.226, subdivision 5, if a district charging fees for transportation of pupils establishes guidelines for that transportation to ensure that no pupil is denied transportation solely because of inability to pay;

(l) motorcycle classroom education courses conducted outside of regular school hours; provided the charge shall not exceed the actual cost of these courses to the school district;

(m) transportation to and from post-secondary institutions for pupils enrolled under the post-secondary enrollment options program under section 123.39, subdivision 16. Fees collected for this service must be reasonable and shall be used to reduce the cost of operating the route. Families who qualify for mileage reimbursement under section 123.3514, subdivision 8, may use their state mileage reimbursement to pay this fee. If no fee is charged, districts shall allocate costs based on the number of pupils riding the route.

Subd. 2. Students may be required to furnish personal or consumable items including pencils, paper, pens, erasers and notebooks.

Subd. 2a. Students may be required to furnish their own transportation to and from an instructional community-based employment station which is part of an approved occupational experience secondary vocational program. As an alternative, a school board may require the payment of reasonable fees for transportation to and from these instructional community-based employment stations. This subdivision shall only be applied to students who receive remuneration for their participation in these programs.

Subd. 2b. **School uniforms.** Notwithstanding section 120.74, a school board may require students to furnish or purchase clothing that constitutes a school uniform if the board has adopted a uniform requirement or program for the student's school. In adopting a uniform requirement, the board shall promote student, staff, parent, and community involvement in the program and account for the financial ability of students to purchase uniforms.

Subd. 3. Sections 120.71 to 120.76 shall not preclude the operation of a school store wherein pupils may purchase school supplies and materials.

Subd. 4. A school board may waive any such deposit or fee if any pupil or the pupil's parent or guardian is unable to pay it.

History: 1974 c 561 s 3; 1976 c 271 s 19; 1978 c 764 s 7; 1986 c 444; 1988 c 718 art 2 s 1; 1990 c 562 art 2 s 1; 1991 c 130 s 37; 1992 c 499 art 12 s 29; 1993 c 224 art 2 s 2; 1995 c 226 art 3 s 5; 1996 c 412 art 2 s 4

120.74 PROHIBITED FEES.

Subdivision 1. (a) A school board is not authorized to charge fees in the following areas:

- (1) textbooks, workbooks, art materials, laboratory supplies, towels;
- (2) supplies necessary for participation in any instructional course except as authorized in sections 120.73 and 120.75;
- (3) field trips which are required as a part of a basic education program or course;
- (4) graduation caps, gowns, any specific form of dress necessary for any educational program, and diplomas;
- (5) instructional costs for necessary school personnel employed in any course or educational program required for graduation;
- (6) library books required to be utilized for any educational course or program;
- (7) admission fees, dues, or fees for any activity the pupil is required to attend;
- (8) any admission or examination cost for any required educational course or program;
- (9) locker rentals;
- (10) transportation of pupils (i) for which state transportation aid for fiscal year 1996 is authorized pursuant to Minnesota Statutes 1994, section 124.223, or (ii) for which a levy for fiscal year 1996 is authorized under Minnesota Statutes 1994, section 124.226, subdivision 5.

(b) Notwithstanding paragraph (a), clauses (1) and (6), a school board may charge fees for textbooks, workbooks, and library books, lost or destroyed by students. The board must annually notify parents or guardians and students about its policy to charge a fee under this paragraph.

Subd. 2. No pupil's rights or privileges, including the receipt of grades or diplomas may be denied or abridged for nonpayment of fees; but this provision shall not prohibit a school district from maintaining any action provided by law for the collection of such fees authorized by sections 120.73 and 120.75.

History: 1974 c 561 s 4; 1976 c 271 s 20; 1988 c 718 art 2 s 2; 1991 c 130 s 37; 1992 c 499 art 12 s 29; 1Sp1995 c 3 art 9 s 5; 1996 c 412 art 2 s 5

120.75 HEARING.

Subdivision 1. Prior to the initiation of any fee not authorized or prohibited by sections 120.73 and 120.74, the local school board shall hold a public hearing within the district upon three weeks published notice in the district's official newspaper, or such notice as is otherwise required for a regular school board meeting given three weeks prior to the hearing on the proposed adoption of the policy.

Subd. 2. [Repealed, 1993 c 224 art 12 s 32; 1993 c 374 s 22]

History: 1974 c 561 s 5; 1982 c 424 s 130; 1985 c 248 s 70; 1987 c 384 art 2 s 1; 1990 c 422 s 10; 1993 c 224 art 13 s 3; 1994 c 465 art 3 s 64; 1Sp1995 c 3 art 9 s 6

120.76 POST-SECONDARY INSTRUCTIONAL PROGRAMS.

Sections 120.71 to 120.76 shall not be construed to prohibit a school board from charging reasonable fees for goods and services provided in connection with any post-secondary instructional program, including but not limited to vocational technical, veteran farmer cooperative training, and community education programs, and continuing education and evening school programs other than those conducted pursuant to section 124.26.

History: 1974 c 561 s 6; 1975 c 432 s 11; 1980 c 609 art 4 s 22

120.77 [Repealed, 1989 c 329 art 9 s 34]

- 120.78** Subdivision 1. MS 1981 SUPP [Repealed, 1982 c 563 s 17]
 Subd. 2. MS 1980 [Repealed, 1981 c 358 art 7 s 31]

OTHER PROVISIONS

120.80 EARLY GRADUATION.

Subdivision 1. Notwithstanding any law to the contrary, any secondary school student who has completed all required courses may, with the approval of the student, the student's parent or guardian, and local school officials, graduate prior to the completion of the school year. General education revenue attributable to the student must be paid as though the student was in attendance for the entire year.

Subd. 2. [Repealed, 1993 c 224 art 12 s 32; 1993 c 374 s 22]

History: 1974 c 521 s 7; 1975 c 432 s 12; 1979 c 334 art 1 s 1; 1983 c 216 art 1 s 24; 1983 c 314 art 1 s 22; 1985 c 248 s 70; 1986 c 444; 1988 c 486 s 7

- 120.801** [Repealed, 1984 c 619 s 17]
120.802 [Repealed, 1984 c 619 s 17]
120.803 [Repealed, 1984 c 619 s 17]
120.804 [Repealed, 1984 c 619 s 17]
120.805 [Repealed, 1984 c 619 s 17]
120.806 [Repealed, 1984 c 619 s 17]
120.81 [Repealed, 1984 c 619 s 17]
120.82 [Repealed, 1983 c 258 s 72]
120.83 [Repealed, 1984 c 619 s 17]
120.84 MS 1990 [Renumbered 124.078]
120.85 MS 1990 [Renumbered 124.079]

120.90 PRODUCTS FROM COUNCIL ON QUALITY EDUCATION MONEY.

Subdivision 1. **Copyright, sale, labels.** Products of projects and programs developed with a grant or loan from the council on quality education, including curriculum and instructional materials, computer and telecommunications software, and associated manuals and reports, may be copyrighted by the department in the name of the state and may be sold. The state shall sell the products at prices that do not exceed the cost of reproduction and distribution. Products sold shall be clearly labeled as products developed pursuant to a grant or loan from the council on quality education.

Subd. 2. [Repealed, 1991 c 265 art 8 s 20]

History: 1983 c 314 art 9 s 6; 1984 c 463 art 7 s 18,19; 1987 c 398 art 8 s 31,32; 1Sp1987 c 4 art 1 s 4,11; 1991 c 130 s 37