

## CHAPTER 125A

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## SPECIAL EDUCATION; INFANT TO ADULT

**125A.01 DEFINITIONS.**

For purposes of this chapter, the words defined in section 120A.05 have the same meaning.

**History:** 1998 c 397 art 2 s 1; art 11 s 3

**125A.02 CHILD WITH A DISABILITY DEFINED.**

Subdivision 1. **Child with a disability.** 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, autism, traumatic brain injury, multiple disabilities, or deaf/blind disability and needs special instruction and services, as determined by the standards of the commissioner, is a child with a disability. In addition, every child under age three, and at local district discretion from age three to age seven, who needs special instruction and services, as determined by the standards of the commissioner, 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. **Not a child with a disability.** A child with a short-term or temporary physical or emotional illness or disability, as determined by the standards of the commissioner, 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; 1998 c 397 art 2 s 164; 1998 c 398 art 2 s 1; art 5 s 55

**125A.023 COORDINATED INTERAGENCY SERVICES.**

Subdivision 1. **Citation.** This section and section 125A.027 shall be cited as the "Interagency Services for Children with Disabilities Act."

Subd. 2. **Purpose.** It is the policy of the state to develop and implement a coordinated, multidisciplinary, interagency intervention service system for children ages three to 21 with disabilities.

Subd. 3. **Definitions.** For purposes of this section and section 125A.027, the following terms have the meanings given them:

(a) "Health plan" means:

- (1) a health plan under section 62Q.01, subdivision 3;
- (2) a county-based purchasing plan under section 256B.692;
- (3) a self-insured health plan established by a local government under section 471.617; or

(4) self-insured health coverage provided by the state to its employees or retirees.

(b) For purposes of this section, "health plan company" means an entity that issues a health plan as defined in paragraph (a).

(c) "Individual interagency intervention plan" means a standardized written plan describing those programs or services and the accompanying funding sources available to eligible children with disabilities.

(d) "Interagency intervention service system" means a system that coordinates services and programs required in state and federal law to meet the needs of eligible children with disabilities ages three to 21, including:

(1) services provided under the following programs or initiatives administered by state or local agencies:

(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 under United States Code, title 20, chapter 33, subchapter II, sections 1411 to 1420;

(iii) medical assistance under the Social Security Act, United States Code, title 42, chapter 7, subchapter XIX, section 1396, et seq.;

(iv) the Developmental Disabilities Assistance and Bill of Rights Act, United States Code, title 42, chapter 75, subchapter II, sections 6021 to 6030, Part B;

(v) the Head Start Act, United States Code, title 42, chapter 105, subchapter II, sections 9831 to 9852;

(vi) rehabilitation services provided under chapter 268A;

(vii) Juvenile Court Act services provided under sections 260.011 to 260.91; 260B.001 to 260B.446; and 260C.001 to 260C.451;

(viii) the children's mental health collaboratives under section 245.493;

(ix) the family service collaboratives under section 124D.23;

(x) the family community support plan under section 245.4881, subdivision 4;

(xi) the MinnesotaCare program under chapter 256L;

(xii) the community health services grants under chapter 145;

(xiii) the Community Social Services Act funding under the Social Security Act, United States Code, title 42, sections 1397 to 1397f; and

(xiv) the community transition interagency committees under section 125A.22;

(2) services provided under a health plan in conformity with an individual family service plan or an individual education plan; and

(3) additional appropriate services that local agencies and counties provide on an individual need basis upon determining eligibility and receiving a request from the interagency early intervention committee and the child's parent.

(e) "Children with disabilities" has the meaning given in section 125A.02.

(f) A "standardized written plan" means those individual services or programs available through the interagency intervention service system to an eligible child other than the services or programs described in the child's individual education plan or the child's individual family service plan.

**Subd. 4. State interagency committee.** (a) The governor shall convene a 19-member interagency committee to develop and implement a coordinated, multidisciplinary, interagency intervention service system for children ages three to 21 with disabilities. The commissioners of commerce, children, families, and learning, health, human rights, human services, economic security, and corrections shall each appoint two committee members from their departments; the association of Minnesota counties shall appoint two county representatives; one of whom must be an elected official, as committee members; and the Minnesota school boards association, the Minnesota administrators of special education, and the school nurse association of Minnesota shall each appoint one committee member. The committee shall select a chair from among its members.

(b) The committee shall:

(1) identify and assist in removing state and federal barriers to local coordination of services provided to children with disabilities;

(2) identify adequate, equitable, and flexible funding sources to streamline these services;

(3) develop guidelines for implementing policies that ensure a comprehensive and coordinated system of all state and local agency services, including multidisciplinary assessment practices for children with disabilities ages three to 21;

(4) develop, consistent with federal law, a standardized written plan for providing services to a child with disabilities;

(5) identify how current systems for dispute resolution can be coordinated and develop guidelines for that coordination;

(6) develop an evaluation process to measure the success of state and local interagency efforts in improving the quality and coordination of services to children with disabilities ages three to 21;

(7) develop guidelines to assist the governing boards of the interagency early intervention committees in carrying out the duties assigned in section 125A.027, subdivision 1, paragraph (b); and

(8) carry out other duties necessary to develop and implement within communities a coordinated, multidisciplinary, interagency intervention service system for children with disabilities.

(c) The committee shall consult on an ongoing basis with the state education advisory committee for special education and the governor's interagency coordinating council in carrying out its duties under this section, including assisting the governing boards of the interagency early intervention committees.

**Subd. 5. Intervention demonstration projects.** (a) The commissioner of children, families, and learning, based on recommendations from the state interagency committee, shall issue a request for proposals by January 1, 1999, for grants to the governing boards of interagency early intervention committees under section 125A.027 or a combination of one or more counties and school districts to establish five voluntary interagency intervention demonstration projects. One grant shall be used to implement a coordinated service system for all eligible children with disabilities up to age five who received services under sections 125A.26 to 125A.48. One grant shall be used to implement a coordinated service system for a population of minority children with disabilities from ages 12 to 21, who may have behavioral problems and are in need of transitional services. Each project must be operational by July 1, 1999. The governing boards of the interagency early intervention committees and the counties and school districts receiving project grants must develop efficient ways to coordinate services and funding for children with disabilities ages three to 21, consistent with the requirements of this section and section 125A.027 and the guidelines developed by the state interagency committee under this section.

(b) The state interagency committee shall evaluate the demonstration projects and provide the evaluation results to interagency early intervention committees.

**Subd. 6. Third-party liability.** Nothing in this section and section 125A.027 relieves a health plan company, third party administrator or other third-party payer of an obligation to pay for, or changes the validity of an obligation to pay for, services provided to children with disabilities ages three to 21 and their families.

**Subd. 7. Agency obligation.** Nothing in this section and section 125A.027 removes the obligation of the state, counties, local school districts, a regional agency, or a local agency or organization to comply with any federal or state law that mandates responsibility for finding, assessing, delivering, assuring, or paying for education or related services for children with disabilities and their families.

**History:** 1997 c 397 art 11 s 3; 1998 c 398 art 3 s 2; 1999 c 123 s 3; 1999 c 139 art 4 s 2; 2000 c 489 art 10 s 7,8; 1Sp2001 c 6 art 3 s 5

## 125A.027 INTERAGENCY EARLY INTERVENTION COMMITTEE RESPONSIBILITIES.

**Subdivision 1. Additional duties.** (a) The governing boards of the interagency early intervention committees are responsible for developing and implementing interagency policies and procedures to coordinate services at the local level for children with disabilities ages three to 21 under guidelines established by the state interagency committee under section 125A.023, subdivision 4. Consistent with the requirements in this section and section 125A.023, the governing boards of the interagency early intervention committees shall organize as a joint powers board under section 471.59 or enter into an interagency agreement that establishes a governance structure.

(b) The governing board of each interagency early intervention committee as defined in section 125A.30, paragraph (a), which may include a juvenile justice professional, shall:

(1) identify and assist in removing state and federal barriers to local coordination of services provided to children with disabilities;

(2) identify adequate, equitable, and flexible use of funding by local agencies for these services;

(3) implement policies that ensure a comprehensive and coordinated system of all state and local agency services, including multidisciplinary assessment practices, for children with disabilities ages three to 21;

(4) use a standardized written plan for providing services to a child with disabilities developed under section 125A.023;

(5) access the coordinated dispute resolution system and incorporate the guidelines for coordinating services at the local level, consistent with section 125A.023;

(6) use the evaluation process to measure the success of the local interagency effort in improving the quality and coordination of services to children with disabilities ages three to 21 consistent with section 125A.023;

(7) develop a transitional plan for children moving from the interagency early childhood intervention system under sections 125A.259 to 125A.48 into the interagency intervention service system under this section;

(8) coordinate services and facilitate payment for services from public and private institutions, agencies, and health plan companies; and

(9) share needed information consistent with state and federal data practices requirements.

**Subd. 2. Appropriate and necessary services.** (a) Parents, physicians, other health care professionals including school nurses, and education and human services providers jointly must determine appropriate and necessary services for eligible children with disabilities ages three to 21. The services provided to the child under this section must conform with the child's standardized written plan. The governing board of an interagency early intervention committee must provide those services contained in a child's individual education plan and those services for which a legal obligation exists.

(b) Nothing in this section or section 125A.023 increases or decreases the obligation of the state, county, regional agency, local school district, or local agency or organization to pay for education, health care, or social services.

(c) A health plan may not exclude any medically necessary covered service solely because the service is or could be identified in a child's individual family service plan, individual education plan, a plan established under section 504 of the federal Rehabilitation Act of 1973, or a student's individual health plan. This paragraph reaffirms the obligation of a health plan company to provide or pay for certain medically necessary covered services, and encourages a health plan company to coordinate this care with any other providers of similar services. Also, a health plan company may not exclude from a health plan any medically necessary covered service such as an assessment or physical examination solely because the resulting information may be used for an individual education plan or a standardized written plan.

**Subd. 3. Implementation timeline.** By July 1, 2000, the individual interagency intervention plan must be available and by January 1, 2001, all governing boards of interagency early intervention committees statewide must implement a coordinated service system for children up to age five with disabilities consistent with the requirements of this section and section 125A.023 and the evaluation results from the demonstration projects under section 125A.023, subdivision 5. Children with disabilities up to the age of 21 shall be eligible for coordinated services and their eligibility to receive such services under this section shall be phased in over a four-year period as follows:

(1) July 1, 2001, children up to age nine become eligible;

(2) July 1, 2002, children up to age 14 become eligible; and

(3) July 1, 2003, children up to age 21 become eligible.

**Subd. 4. Responsibilities of school and county boards.** (a) It is the joint responsibility of school and county boards to coordinate, provide, and pay for appropriate services, and to facilitate payment for services from public and private sources.

Appropriate service for children eligible under section 125A.02 and receiving service from two or more public agencies of which one is the public school must be determined in consultation with parents, physicians, and other education, medical health, and human services providers. The services provided must be in conformity with an Individual Interagency Intervention Plan (IIIP) for each eligible child ages 3 to 21.

(b) Appropriate services include those services listed on a child's IIIP. These services are those that are required to be documented on a plan under federal and state law or rule.

(c) School and county boards shall coordinate interagency services. Service responsibilities for eligible children, ages 3 to 21, shall be established in interagency agreements or joint powers board agreements. In addition, interagency agreements or joint powers board agreements shall be developed to establish agency responsibility that assures that coordinated interagency services are coordinated, provided, and paid for, and that payment is facilitated from public and private sources. School boards must provide, pay for, and facilitate payment for special education services as required under sections 125A.05 and 125A.06. County boards must provide, pay for, and facilitate payment for those programs over which they have service and fiscal responsibility as referenced in section 125A.023, subdivision 3, paragraph (d), clause (1).

**History:** 1998 c 397 art 11 s 3; 1998 c 398 art 3 s 3; 1999 c 123 s 4; 2000 c 489 art 3 s 8; 1Sp2001 c 6 art 3 s 6

### 125A.03 SPECIAL INSTRUCTION FOR CHILDREN WITH A DISABILITY.

(a) As defined in paragraph (b), every district must 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 125A.02. For purposes of state and federal special education laws, the phrase "special instruction and services" in the state education code means a free and appropriate public education provided to an eligible child with disabilities and includes special education and related services defined in the Individuals with Disabilities Education Act, subpart A, section 300.24.

(b) Notwithstanding any age limits in laws to the contrary, special instruction and services must be provided from birth until July 1 after the child with a disability becomes 21 years old but shall not extend beyond secondary school or its equivalent, except as provided in section 124D.68, subdivision 2. Local health, education, and social service agencies must 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 commissioner must cooperate with other districts to maintain a full range of programs for education and services for children with a disability. This section does not alter the compulsory attendance requirements of section 120A.22.

**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; 1998 c 397 art 2 s 22,164; art 11 s 3; 1998 c 398 art 2 s 6; art 5 s 55; 1999 c 123 s 5; 2002 c 294 s 1

**125A.04 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 must be granted a high school diploma that is identical to the diploma granted to a pupil without a disability.

**History:** *Ex*1959 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; 1998 c 397 art 2 s 23,164; art 11 s 3

**125A.05 METHOD OF SPECIAL INSTRUCTION.**

(a) As defined in this subdivision, to the extent required by federal law as of July 1, 1999, 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 must 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 must notify the child's district of residence before the child's individual education plan is developed and must 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.

**History:** *Ex*1959 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; 1998 c 397 art 2 s 24,164; art 11 s 3; 1998 c 398 art 2 s 7

### 125A.06 BLIND PERSONS' LITERACY RIGHTS.

(a) Paragraphs (b) to (f) may be cited as the "Blind Persons' Literacy Rights and Education Act."

(b) The following definitions apply to paragraphs (c) to (f).

"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.

(c) 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 must be available for each blind student for whom the multidisciplinary team has determined that reading and writing is appropriate.

(d) 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.

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

(1) the results obtained from the assessment required under paragraph (c);

(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 (c) 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.

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

(g) Paragraphs (b) to (f) must not be construed to supersede any rights of a parent or guardian of a child with a disability under federal or state law.

**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; 1998 c 397 art 2 s 24,164; art 11 s 3; 1998 c 398 art 2 s 7*

#### 125A.07 RULES OF COMMISSIONER.

(a) As defined in this paragraph, the commissioner must adopt rules relative to qualifications of essential personnel, courses of study, methods of instruction, pupil eligibility, size of classes, rooms, equipment, supervision, parent consultation, and other necessary rules for instruction of children with a disability. These rules must provide standards and procedures appropriate for the implementation of and within the limitations of sections 125A.08 and 125A.09. These rules must also provide standards for the discipline, control, management, and protection of children with a disability. The commissioner must not adopt rules for pupils served primarily in the regular classroom establishing either case loads or the maximum number of pupils that may be assigned to special education teachers. The commissioner, in consultation with the departments of health and human services, must 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 commissioner must adopt rules to determine eligibility for special education services. The rules must include procedures and standards by which to grant variances for experimental eligibility criteria. The commissioner must, 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 commissioner must specify the program standards used to evaluate the request and the reasons for denying the request.

(b) As provided in this paragraph, the state's regulatory scheme should support schools by assuring that all state special education rules adopted by the commissioner result in one or more of the following outcomes:

(1) increased time available to teachers and, where appropriate, to support staff including school nurses 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 and conflict, appropriate due process hearing procedures and reduced 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.

**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; 1998 c 397 art 2 s 25,164; art 11 s 3; 1998 c 398 art 2 s 8; art 5 s 55; 1999 c 123 s 6*

#### 125A.08 SCHOOL DISTRICT OBLIGATIONS.

(a) As defined in this section, every district must ensure the following:

(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 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 individual education plan team shall consider and may authorize services covered by medical assistance according to section 256B.0625, subdivision 26. The student's needs and the special education instruction and services to be provided must be agreed upon through the development of an individual education plan. The plan must address the student's need to develop skills to live and work as independently as possible within the community. The individual education plan team must consider positive behavioral interventions, strategies, and supports that address behavior for children with attention deficit disorder or attention deficit hyperactivity disorder. By grade 9 or age 14, the plan must 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. In developing the plan, districts must inform parents of the full range of transitional goals and related services that should be considered. 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) eligibility and needs of children with a disability are determined by an initial assessment or reassessment, which may be completed using existing data under United States Code, title 20, section 33, et seq.;

(5) 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;

(6) in accordance with recognized professional standards, testing and evaluation materials, and procedures used 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

(7) 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.

(b) For paraprofessionals employed to work in programs for students with disabilities, the school board in each district shall ensure that:

(1) before or immediately upon employment, each paraprofessional develops sufficient knowledge and skills in emergency procedures, building orientation, roles and responsibilities, confidentiality, vulnerability, and reportability, among other things, to begin meeting the needs of the students with whom the paraprofessional works;

(2) annual training opportunities are available to enable the paraprofessional to continue to further develop the knowledge and skills that are specific to the students with whom the paraprofessional works, including understanding disabilities, following lesson plans, and implementing follow-up instructional procedures and activities; and

(3) a districtwide process obligates each paraprofessional to work under the ongoing direction of a licensed teacher and, where appropriate and possible, the supervision of a school nurse.

**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; 1998 c 397 art 2 s 26,164; art 11 s 3; 1998 c 398 art 2 s 9; 1999 c 123 s 7; 1999 c 245 art 4 s 3; 2000 c 489 art 10 s 9,22; 1Sp2001 c 6 art 3 s 7*

## 125A.09 PROCEDURES FOR DECISIONS.

Subdivision 1. **District obligation.** As defined in this section, every district must use the following procedures for decisions involving identification, assessment, and educational placement of children with a disability.

Subd. 2. **Parent notice.** Parents and guardians must 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.

Subd. 3. **Initial action; parent consent.** (a) The district must not proceed with the initial evaluation 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 to an initial evaluation or reevaluation may be overridden by the decision in a hearing held pursuant to subdivision 6 at the district's initiative.

(b) A parent, after consulting with health care, education, or other professional providers, may agree or disagree to provide the parent's child with sympathomimetic medications unless section 144.344 applies.

Subd. 4. **Dispute resolution.** Parents and guardians must 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 under subdivision 1. The state intends to encourage parties to resolve disputes through mediation or other form of alternative dispute resolution. A school district and a parent or guardian must participate in mediation using mediation services acceptable to both parties, unless a party objects to the mediation. Mediation shall remain available to the parties until a party objects to the mediation, or the mediator determines that further efforts to mediate a dispute are not warranted. All mediation is subject to the confidentiality requirements under rule 114.08 of the general rules of practice for the district courts. Alternative dispute resolution must 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 district, the requirement of an opportunity for conciliation or other alternative dispute resolution must be deemed to be satisfied. Notwithstanding other law, in any proceeding following a conciliation conference, the 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.

Subd. 5. **Mediation.** The commissioner must establish a mediation process to assist parents, 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 subdivision 6, but must not be used to deny or postpone the opportunity of a parent or guardian to obtain a due process hearing.

Subd. 6. **Impartial due process hearing.** Parents, guardians, and the district must have an opportunity to obtain an impartial due process hearing initiated and conducted by and in the district responsible for assuring that an appropriate program is provided in accordance with department of children, families, and learning 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.

A hearing officer may limit an impartial due process hearing to an amount of time sufficient for each party to present its case. The party requesting the hearing shall plead with specificity as to what issues are in dispute and all issues not pleaded with specificity are deemed waived. Parties must limit evidence to the issues specifically pleaded. A hearing officer, at the officer's discretion, may exclude cumulative evidence or may encourage parties to present only essential witnesses.

Within five business days after the request for a hearing, or as directed by the hearing officer, the objecting party must 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 must take place before an impartial hearing officer mutually agreed to by the school board and the parent or guardian. Within three business days of the receipt of the request for the hearing, if the parties have not agreed on the hearing officer, the board must request the commissioner to appoint a hearing officer from a

list maintained for that purpose. If the parties have not agreed upon a hearing officer, and the board has not requested that a hearing officer be appointed by the commissioner within four business days after the receipt of the request, the commissioner shall appoint a hearing officer upon the request of either party. A retired judge, retired court referee, or retired federal magistrate judge who is otherwise qualified under this section and wishes to be a hearing officer may be put on the list. The board must 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 must not be a board member or employee of the district where the child resides or of the child's 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 that 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. Any party to a hearing, except an expedited hearing under federal law, may make and serve upon the opposing party and the commissioner a notice to remove a hearing officer appointed by the commissioner. The notice shall be served and filed within two business days after the party receives notice of the appointment of the hearing officer by the commissioner.

No such notice may be filed by a party against a hearing officer who has presided at a motion or any other proceeding of which the party had notice. A hearing officer who has presided at a motion or other proceeding may not be removed except upon an affirmative showing of prejudice on the part of the hearing officer.

After the party has once disqualified a hearing officer as a matter of right, that party may disqualify the substitute hearing officer only by making an affirmative showing of prejudice or bias to the commissioner, or to the chief administrative law judge if the hearing officer is an administrative law judge.

Upon the filing of a notice to remove or if a party makes an affirmative showing of prejudice against a substitute hearing officer, the commissioner shall assign any other hearing officer to hear the matter.

If the hearing officer requests an independent educational assessment of a child, the cost of the assessment must be at district expense. The proceedings must be recorded and preserved, at the expense of the school district, pending ultimate disposition of the action.

**Subd. 7. Hearing officer's decision.** The decision of the hearing officer pursuant to subdivision 6 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. Good cause includes the time required for mediation under subdivision 4. The decision of the hearing officer is binding on all parties unless appealed to the commissioner by the parent; guardian; board of the district where the child resides pursuant to subdivision 9; and also in the case of children birth through two, by the county board.

The local decision must:

- (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 in section 125A.08 and the rules of the state board.

**Subd. 8. Compensatory educational services.** The hearing officer may require the resident school district to provide compensatory educational services to the child if the hearing officer finds that the school district has not offered or made available to the child a free appropriate public education in the child's educational program and that the child has suffered a loss of educational benefit. Such services shall take the form of

direct and indirect special education and related services designed to address any loss of educational benefit that may have occurred. The hearing officer's finding shall be based on a present determination of whether the child has suffered a loss of educational benefit.

**Subd. 9. Appeal to commissioner.** Any local decision issued pursuant to subdivisions 6 and 7 may be appealed to the commissioner within 30 calendar days of receipt of that written decision, by the parent, guardian, or the board of the district responsible for assuring that an appropriate program is provided in accordance with state board rules. The appealing party must note the specific parts of the hearing decision being appealed.

If the decision is appealed, a written transcript of the hearing must be made by the 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 must 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 must seek additional evidence if necessary and may afford the parties an opportunity for written or oral argument. Any hearing held to seek additional evidence must be an impartial due process hearing but is 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 must:

- (1) be in writing;
- (2) include findings and conclusions; and
- (3) be based upon the standards in section 125A.08 and in the rules of the state board.

**Subd. 10. Appeal to state or federal court.** The decision of the hearing review officer is final unless appealed by the parent or guardian or board to the Minnesota court of appeals or federal district court as provided by federal law. State judicial review must be in accordance with chapter 14.

**Subd. 11. Hearing review officer's qualifications.** The commissioner must select an individual who has the qualifications enumerated in this subdivision 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 or the department; and
- (8) the individual is not a current employee or board member of a disability advocacy organization or group.

**Subd. 12. Challenging the impartiality or competence of a proposed hearing review officer.** 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.

**Subd. 13. Child's educational placement.** Pending the completion of proceedings pursuant to this subdivision; unless the district and the parent or guardian of the child

agree otherwise, the child must remain in the child's current educational placement and must not be denied initial admission to school.

Subd. 14. **Districts may be parties to a hearing.** The child's district of residence, a resident district, and providing district must receive notice of and may be a party to any hearings or appeals under this section.

Subd. 15. **District liability.** A district is not liable for harmless technical violations of this section or rules implementing this section 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.

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

Subd. 17. **Hearing officer is state employee.** A hearing officer or hearing review officer appointed under this subdivision is deemed to be an employee of the state under section 3.732 for the purposes of section 3.736 only.

Subd. 18. **Hearing officer training.** In order to be eligible for selection, hearing officers and hearing review officers must participate in training and follow procedures as designated by the commissioner.

Subd. 19. **Admissible evidence.** The hearing officer may admit all evidence that possesses probative value, including hearsay, if it is the type of evidence on which reasonable, prudent persons are accustomed to rely in the conduct of their serious affairs. The hearing officer must give effect to the rules of privilege recognized by law. Evidence that is incompetent, irrelevant, immaterial, or unduly repetitious, shall be excluded.

**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; 1998 c 397 art 2 s 27,164; art 11 s 3; 1998 c 398 art 2 s 10; art 5 s 55; 1999 c 123 s 8,9; 1999 c 241 art 2 s 13; art 9 s 29; 1Sp2001 c 6 art 3 s 8; 2002 c 379 art 1 s 45*

#### 125A.10 COORDINATING INTERAGENCY SERVICES.

If at the time of initial referral for an educational assessment, or a reassessment, the 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 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 must 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 must 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. Any state, county, or city government agency responsible for providing services or resources to students with disabilities under this section is subject to the same dispute resolution systems as local school districts, and all such agencies must comply with corrective action requirements that ensue from these systems.

**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; 1998 c 397 art 2 s 28,164; art 11 s 3; 1999 c 123 s 10*

### 125A.11 SPECIAL INSTRUCTIONS FOR NONRESIDENT CHILDREN.

Subdivision 1. **Nonresident tuition rate; other costs.** 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 must 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 must then set a date for a hearing, giving each board at least ten days' notice, and after the hearing the commissioner must make an order fixing the tuition rate, which is binding on both school districts.

Subd. 2. **Nonresident transportation.** When a district provides instruction and services in a day program outside the district of residence, the district of residence is 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 is 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.

Subd. 3. **Agreement between districts to provide special instruction and services.** For the purposes of this section, any school district may enter into an agreement, upon mutually agreed upon terms and conditions, 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 must 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.

**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; 1998 c 397 art 2 s 29,164; art 11 s 3; 1Sp2001 c 6 art 3 s 9*

**125A.12 ATTENDANCE IN ANOTHER DISTRICT.**

No resident of a district who is eligible for special instruction and services pursuant to this section may be denied provision of this instruction and service because of attending a public school in another district pursuant to section 123B.88, subdivision 5, if the attendance is not subject to section 124D.06, 124D.07, or 124D.08. 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 must 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 must not pay the cost of transportation provided outside the boundary of the district of residence.

**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; 1998 c 397 art 2 s 30,164; art 11 s 3*

**125A.13 SCHOOL OF PARENTS' CHOICE.**

Nothing in this chapter must be construed as preventing parents of a child with a disability from sending the child to a school of their choice, if they so elect, subject to admission standards and policies adopted according to sections 125A.62 to 125A.64 and 125A.66 to 125A.73, and all other provisions of chapters 120A to 129C.

**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; 1998 c 397 art 2 s 31,164; art 11 s 3*

**125A.14 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 section 125A.15 or 125A.16. 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 section 125A.15 or 125A.16, of its intention to provide these programs. Notwithstanding any contrary provisions in sections 125A.15 and 125A.16, the district providing the special instruction and services must 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 must be paid by the resident district. Transportation costs must be paid by the district responsible for providing transportation pursuant to section 125A.15 or 125A.16 and transportation aid must be paid to that district.

**History:** *Ex*1959 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; 1998 c 397 art 2 s 32,164; art 11 s 3

#### **125A.15 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 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 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 to and from the care and treatment facility and an appropriate educational program for the child. Transportation shall only be provided by the district during regular operating hours of the district. The district may provide the educational program at a school within the district of residence, at the child's residence, or in the district in which the day treatment center is located by paying tuition to that district.

(c) When a child is temporarily placed in a residential program for care and treatment, the nonresident district in which the child is placed is responsible for providing an appropriate educational program for the child and necessary transportation while the child is attending the educational program; and must bill the district of the child's residence for the actual cost of providing the program, as outlined in section 125A.11, except as provided in paragraph (d). However, 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 providing for the child's special educational needs must not become the responsibility of either the district providing the instruction or the district of the child's residence. For the purposes of this section, the state correctional facilities operated on a fee-for-service basis are considered to be residential programs for care and treatment.

(d) A privately owned and operated residential facility may enter into a contract to obtain appropriate educational programs for special education children and services with a joint powers entity. The entity with which the private facility contracts for special education services shall be the district responsible for providing students placed in that facility an appropriate educational program in place of the district in which the facility is located. If a privately owned and operated residential facility does not enter into a contract under this paragraph, then paragraph (c) applies.

(e) 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 must be paid by the district responsible for providing the transportation and the state must pay transportation aid to that district.

**History:** *Ex 1959 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; 1998 c 397 art 2 s 33,164; art 11 s 3; 1998 c 398 art 2 s 11; 1999 c 241 art 2 s 14; 2000 c 489 art 3 s 9*

#### 125A.155 SPECIAL EDUCATION RECIPROCITY; COMMISSIONER DUTIES.

The commissioner of children, families, and learning must develop a special education reciprocity agreement form. The reciprocity form must specify the procedures used to calculate special education tuition charges for both Minnesota students that are served in other states and for out-of-state students who are served in Minnesota. The commissioner shall attempt to enter into reciprocity agreements with any state that sends students to Minnesota and any state that provides services to Minnesota students.

**History:** *1999 c 241 art 2 s 15*

#### 125A.16 PLACEMENT IN STATE INSTITUTION; RESPONSIBILITY.

(a) Responsibility for special instruction and services for a child with a disability placed in a state institution on a temporary basis must be determined in the following manner:

(1) the legal residence of the child is the district in which the child's parent resides, if living, or the child's guardian; and

(2) when the educational needs of the child can be met through the institutional program, the costs for the instruction must be paid by the department to which the institution is assigned with exception of children placed in fee-for-service facilities operated by the commissioner of corrections whose cost for such instruction shall be paid as outlined in section 125A.15.

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

(1) determination of eligibility for special instruction and services must be made by the commissioner and the commissioner of the department responsible for the institution;

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

(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 must be paid by the district where the institution is located and the state must pay transportation aid to that district.

**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; 1998 c 397 art 2 s 34,164; art 11 s 3; 1998 c 398 art 2 s 12.*

#### 125A.17 LEGAL RESIDENCE OF A CHILD WITH A DISABILITY PLACED IN A FOSTER FACILITY.

The legal residence of a child with a disability placed in a foster facility for care and treatment is the district in which the child resides when:

- (1) parental rights have been terminated by court order;
- (2) the parent or guardian is not living within the state;
- (3) no other district residence can be established; or

(4) the 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.

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

**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; 1998 c 397 art 2 s 36,164; art 11 s 3; 1Sp2001 c 6 art 8 s 4.*

#### 125A.18 SPECIAL INSTRUCTION; NONPUBLIC SCHOOLS.

No resident of a district who is eligible for special instruction and services under this section may be denied instruction and service on a shared time basis consistent with section 126C.19, subdivision 4, because of attending a nonpublic school defined in section 123B.41, subdivision 9. If a resident pupil with a disability attends a nonpublic school located within the district of residence, the district must 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 under section 126C.19, subdivision 1 or 2, for

providing 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 must 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 must pay the cost of transportation provided outside the district boundary.

Parties serving students on a shared time basis have access to the due process hearing system described under United States Code, title 20, and the complaint system under Code of Federal Regulations, title 34, section 300.660-662. In the event it is determined under these systems that the nonpublic school or staff impeded the public school district's provision of a free appropriate education, the commissioner may withhold public funds available to the nonpublic school proportionally applicable to that student under section 123B.42.

**History:** *Ex*1959 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; 1998 c 397 art 2 s 37,164; art 11 s 3; 1998 c 398 art 2 s 13; 1999 c 123 s 11

### 125A.19 NONRESIDENT EDUCATION; BILLING.

All tuition billing for the education of nonresident children pursuant to sections 125A.03 to 125A.24 and 125A.65 must be done on uniform forms prescribed by the commissioner. The billing shall contain an itemized statement of costs that are being charged to the district of residence. One copy of each billing must be filed with the commissioner.

**History:** *Ex*1959 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; 1998 c 397 art 2 s 38,164; art 11 s 3

### 125A.20 TRANSPORTATION AID AGREEMENTS.

Notwithstanding the provisions of sections 125A.11, 125A.14, and 125A.15, 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 123B.92, subdivision 1, and claim transportation aid for those categories. In this case, the nonresident district may

not obtain any payment from the resident district for the categories covered by the agreement.

**History:** *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; 1998 c 397 art 2 s 164; art 11 s 3*

### 125A.21 THIRD PARTY PAYMENT.

Subdivision 1. **Obligation to pay.** Nothing in sections 125A.03 to 125A.24, and 125A.65 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. A school district shall pay the nonfederal share of medical assistance services provided according to section 256B.0625, subdivision 26. Eligible expenditures must not be made from federal funds or funds used to match other federal funds. Any federal disallowances are the responsibility of the school district. A school district may pay or reimburse copayments, coinsurance, deductibles, and other enrollee cost-sharing amounts, on behalf of the student or family, in connection with health and related services provided under an individual educational plan.

Subd. 2. **Third party reimbursement.** (a) Beginning July 1, 2000, districts shall seek reimbursement from insurers and similar third parties for the cost of services provided by the district whenever the services provided by the district are otherwise covered by the child's health coverage. Districts shall request, but may not require, the child's family to provide information about the child's health coverage when a child with a disability begins to receive services from the district of a type that may be reimbursable, and shall request, but may not require, updated information after that as needed.

(b) For children enrolled in medical assistance under chapter 256B or Minnesota-Care under chapter 256L who have no other health coverage, a district shall provide an initial written notice to the enrolled child's parent or legal representative of its intent to seek reimbursement from medical assistance or MinnesotaCare for the individual education plan health-related services provided by the district.

(c) The district shall give the parent or legal representative annual written notice of:

(1) the district's intent to seek reimbursement from medical assistance or Minnesota-Care for individual education plan health-related services provided by the district;

(2) the right of the parent or legal representative to request a copy of all records concerning individual education plan health-related services disclosed by the district to any third party; and

(3) the right of the parent or legal representative to withdraw consent for disclosure of a child's records at any time without consequence.

The written notice shall be provided as part of the written notice required by Code of Federal Regulations, title 34, section 300.503.

(d) In order to access the private health care coverage of a child who is covered by private health care coverage in whole or in part, a district must:

(1) obtain annual written informed consent from the parent or legal representative, in compliance with subdivision 5; and

(2) inform the parent or legal representative that a refusal to permit the district or state Medicaid agency to access their private health care coverage does not relieve the district of its responsibility to provide all services necessary to provide free and appropriate public education at no cost to the parent or legal representative.

(e) If the commissioner of human services obtains federal approval to exempt covered individual education plan health-related services from the requirement that private health care coverage refuse payment before medical assistance may be billed, paragraphs (b), (c), and (d) shall also apply to students with a combination of private health care coverage and health care coverage through medical assistance or MinnesotaCare.

(f) In the event that Congress or any federal agency or the Minnesota legislature or any state agency establishes lifetime limits, limits for any health care services, cost-sharing provisions, or otherwise provides that individual education plan health-related services impact benefits for persons enrolled in medical assistance or MinnesotaCare, the amendments to this subdivision adopted in 2002 are repealed on the effective date of any federal or state law or regulation that imposes the limits. In that event, districts must obtain informed consent consistent with this subdivision as it existed prior to the 2002 amendments and subdivision 5, before seeking reimbursement for children enrolled in medical assistance under chapter 256B or MinnesotaCare under chapter 256L who have no other health care coverage.

**Subd. 3. Use of reimbursements.** Of the reimbursements received, districts may:

(1) retain an amount sufficient to compensate the district for its administrative costs of obtaining reimbursements;

(2) regularly obtain from education- and health-related entities training and other appropriate technical assistance designed to improve the district's ability to determine which services are reimbursable and to seek timely reimbursement in a cost-effective manner; or

(3) reallocate reimbursements for the benefit of students with special needs in the district.

**Subd. 4. Parents not obligated to use health coverage.** To the extent required by federal law, a school district may not require parents of children with disabilities, if they would incur a financial cost, to use private or public health coverage to pay for the services that must be provided under an individual education plan.

**Subd. 5. Informed consent.** When obtaining informed consent, consistent with sections 13.05, subdivision 4, paragraph (d); and 256B.77, subdivision 2, paragraph (p), to bill health plans for covered services, the school district must notify the legal representative (1) that the cost of the person's private health insurance premium may increase due to providing the covered service in the school setting, (2) that the school district may pay certain enrollee health plan costs, including but not limited to, copayments, coinsurance, deductibles, premium increases or other enrollee cost-sharing amounts for health and related services required by an individual service plan, or individual family service plan, and (3) that the school's billing for each type of covered service may affect service limits and prior authorization thresholds. The informed consent may be revoked in writing at any time by the person authorizing the billing of the health plan.

**Subd. 6. District obligation to provide service.** To the extent required by federal law, no school district may deny, withhold, or delay any service that must be provided under an individual education plan because a family has refused to provide informed consent to bill a health plan for services or a health plan company has refused to pay any, all, or a portion of the cost of services billed.

**Subd. 7. District disclosure of information.** A school district may disclose information contained in a student's individual education plan, consistent with section 13.32, subdivision 3, paragraph (a), including records of the student's diagnosis and treatment, to a health plan company only with the signed and dated consent of the student's parent, or other legally authorized individual. The school district shall disclose only that information necessary for the health plan company to decide matters of coverage and

payment. A health plan company may use the information only for making decisions regarding coverage and payment, and for any other use permitted by law.

**History:** *Ex*1959 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; 1998 c 397 art 2 s 164; art 11 s 3; 1998 c 398 art 2 s 14; 1999 c 123 s 12; 2000 c 464 art 2 s 1; 2002 c 294 s 2; 2002 c 400 s 3

### 125A.22 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, must establish a community transition interagency committee for youth with disabilities, beginning at grade 9 or age equivalent, and their families. Members of the committee must 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 must elect a chair and must meet regularly. The committee must:

- (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 individuals 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 by October 1 of each year.

**History:** *Ex*1959 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; 1998 c 397 art 2 s 39,164; art 11 s 3

**125A.23 AGENCY ACCESS TO NONPUBLIC DATA.**

The commissioner of administration must 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.

**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; 1998 c 397 art 2 s 40,164; art 11 s 3*

**125A.24 PARENT ADVISORY COUNCILS.**

In order to increase the involvement of parents of children with disabilities in district policymaking and decision making, school districts must have a special education advisory council that is incorporated into the district's special education system plan.

(1) This advisory council may be established either for individual districts or in cooperation with other districts who are members of the same special education cooperative.

(2) A district may set up this council as a subgroup of an existing board, council, or committee.

(3) At least half of the designated council members must be parents of students with a disability. The number of members, frequency of meetings, and operational procedures are to be locally determined.

**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; 1998 c 397 art 2 s 41,164; art 11 s 3; 1999 c 123 s 13*

**125A.25 LEGISLATIVE COMMITMENT TO CONCILIATION.**

Subdivision 1. **Policy statement.** The legislature finds that conciliation conferences pursuant to sections 125A.03 to 125A.24 and 125A.65 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 commissioner shall not adopt any provision in the state plan for special education that reduces the opportunities for parents and school districts to resolve their differences through conciliation.

**History:** 1981 c 358 art 3 s 8; 1991 c 265 art 3 s 38; 1998 c 397 art 2 s 60,164; 1998 c 398 art 5 s 55.

### INTERAGENCY EARLY CHILDHOOD INTERVENTION SYSTEM

#### 125A.259 CITATION; INTERAGENCY EARLY CHILDHOOD INTERVENTION SYSTEM.

Sections 125A.26 to 125A.48 may be cited as the Interagency Early Childhood Intervention System.

**History:** 1998 c 397 art 11 s 3

#### 125A.26 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.

**History:** 1994 c 647 art 3 s 9,34; 1Sp1995 c 3 art 16 s 13; 1996 c 412 art 3 s 4,5; 1Sp1997 c 4 art 2 s 1; 1998 c 397 art 2 s 164; art 11 s 3

#### 125A.27 DEFINITIONS.

Subdivision 1. **Scope.** For the purposes of sections 125A.259 to 125A.48, the following terms have the meanings given them.

Subd. 2. **Coordinate.** "Coordinate" means to provide ready access to a community's services and resources to meet child and family needs.

Subd. 3. **Core early intervention services.** "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 125A.08, and United States Code, title 20, section 1401; and
- (7) protection of parent and child rights by means of procedural safeguards.

Subd. 4. **County board.** "County board" means a county board established under chapter 375.

Subd. 5. **Early intervention record.** "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.

Subd. 6. **Early intervention services.** "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 collaboration with the parent. These services include core early intervention services and additional early intervention services listed in section 125A.29, and services defined in Code of Federal Regulations, title 34, section 303, et seq.

Subd. 7. **Early intervention system.** "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.

**Subd. 8. Eligibility for Part H.** "Eligibility for Part H" means eligibility for early childhood special education under section 125A.02 and Minnesota Rules, part 3525.2335, subpart 1, items A and B.

**Subd. 9. Facilitate payment.** "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.

**Subd. 10. Individualized family service plan.** "Individualized family service plan" or "IFSP" means a written plan for providing services to a child age birth to three years and the child's family.

**Subd. 11. Interagency child find systems.** "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.

**Subd. 12. Local primary agency.** "Local primary agency" means the agency designated jointly by the school and county board under section 125A.29.

**Subd. 13. Natural environments.** "Natural environments" means the child's home and community settings in which children without disabilities participate.

**Subd. 14. Parent.** "Parent" means the biological parent with parental rights, adoptive parent, legal guardian, or surrogate parent.

**Subd. 15. Part C state plan.** "Part C 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 C, Public Law Number 105-117).

**Subd. 16. Pay for.** "Pay for" means using federal, state, local, and private dollars available for early intervention services.

**Subd. 17. Respite.** "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 caregiver, normally providing the care.

**Subd. 18. State lead agency.** "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).

**Subd. 19. Surrogate parent.** "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. A person cannot be a surrogate parent to a child for whom the person provides early intervention services.

**History:** 1994 c 647 art 3 s 9,34; 1Sp1995 c 3 art 16 s 13; 1996 c 412 art 3 s 4,5; 1Sp1997 c 4 art 2 s 1; 1998 c 397 art 2 s 42,164; art 11 s.3; 1998 c 398 art 2 s 15; 1Sp2001 c 6 art 3 s 10; 2002 c 294 s 3

#### 125A.28 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 must be appointed by the governor. Council members must elect the council chair. The representative of the commissioner may not serve as the chair. The council must 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, local Head Start 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, a representative from the state agency responsible for child care, and a representative from Indian health services or a tribal council. Section 15.059, subdivisions 2 to 5, apply to the council. The council must meet at least quarterly.

The council must 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.

By September 1, the council must 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 expires on June 30, 2003.

**History:** 1994 c 647 art 3 s 9,34; 1Sp1995 c 3 art 16 s 13; 1996 c 412 art 3 s 4,5; 1997 c 192 s 19; 1Sp1997 c 4 art 2 s 1; 1998 c 397 art 2 s 43,164; art 11 s 3; 1998 c 398 art 2 s 16; 2000 c 254 s 51; 1Sp2001 c 3 art 1 s 14

#### 125A.29 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 125A.02 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 section 125A.33, 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 section 125A.39, service responsibilities for children birth through age two are as follows:

(1) school boards must provide, pay for, and facilitate payment for special education and related services required under sections 125A.05 and 125A.06;

(2) county boards must 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 section 125A.39 to establish agency responsibility that assures early intervention services are coordinated, provided, paid for, and that payment is facilitated from public and private sources:

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

**History:** 1994 c 647 art 3 s 9,34; 1Sp1995 c 3 art 16 s 13; 1996 c 412 art 3 s 4,5; 1Sp1997 c 4 art 2 s 1; 1998 c 397 art 2 s 44,164; art 11 s 3

#### 125A.30 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, must establish an interagency early intervention committee for children with disabilities under age five and their families under this section, and for children with disabilities ages three to 22 consistent with the requirements under sections 125A.023 and 125A.027. Committees must 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 and school nurses. The committee must elect a chair from among its members and must meet at least quarterly.

(b) The committee must 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;

(5) encourage agencies to develop individual family service plans for children with disabilities, age three and older;

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

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

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

(9) 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

(10) 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; and

(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.

**History:** 1994 c 647 art 3 s 9,34; 1Sp1995 c 3 art 16 s 13; 1996 c 412 art 3 s 4,5; 1Sp1997 c 4 art 2 s 1; 1998 c 397 art 2 s 45,164; art 11 s 3; 1998 c 398 art 3 s 1; 1999 c 123 s 14

#### 125A.31 LOCAL PRIMARY AGENCY.

(a) The local primary agency must:

(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 section 125A.30;

(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 must be transferred from a local educational agency to a noneducation 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.

**History:** 1994 c 647 art 3 s 9,34; 1Sp1995 c 3 art 16 s 13; 1996 c 412 art 3 s 4,5; 1Sp1997 c 4 art 2 s 1; 1998 c 397 art 2 s 46,164; art 11 s 3

#### 125A.32 INDIVIDUALIZED FAMILY SERVICE PLAN.

(a) A team must participate in IFSP meetings to develop the IFSP. 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.

**History:** 1994 c 647 art 3 s 9,34; 1Sp1995 c 3 art 16 s 13; 1996 c 412 art 3 s 4,5; 1Sp1997 c 4 art 2 s 1; 1998 c 397 art 2 s 47,164; art 11 s 3

### 125A.33 SERVICE COORDINATION.

(a) The team developing the IFSP under section 125A.32 must 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 90 days before 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 IFSP.

(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.

**History:** 1994 c 647 art 3 s 9,34; 1Sp1995 c 3 art 16 s 13; 1996 c 412 art 3 s 4,5; 1Sp1997 c 4 art 2 s 1; 1998 c 397 art 2 s 48,164; art 11 s 3; 1999 c 123 s 15

**125A.34 EARLY INTERVENTION RESPITE SERVICES.**

The provision of respite services for an eligible child and family must 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 that 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.

**History:** 1994 c 647 art 3 s 9,34; 1Sp1995 c 3 art 16 s 13; 1996 c 412 art 3 s 4,5; 1Sp1997 c 4 art 2 s 1; 1998 c 397 art 2 s 49,164; art 11 s 3

**125A.35 EARLY INTERVENTION SERVICE DOLLARS.**

Subdivision 1. **Lead agency; allocation of resources.** The state lead agency must administer the early intervention account that consists of federal allocations. The Part H state plan must state the amount of federal resources in the early intervention account available for use by local agencies. The state lead agency must 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.

Subd. 2. **Priority funding.** The priority purpose for this fund is subdivision 1, clause (1). The local primary agency must reallocate resources from the early intervention fund as necessary in order to meet this priority.

Subd. 3. **Discretionary funding.** Nothing in this subdivision limits 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.

Subd. 4. **Expenditures; early intervention services.** Each county board must continue to spend for early intervention services under section 125A.27, subdivision 6, 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, must establish a process for determining base year 1993 expenditures.

Subd. 5. **Increased costs.** County boards that have submitted base year 1993 expenditures as required under subdivision 4 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 service dollars.

Subd. 6. **School boards.** School boards are not required to pay for services defined in section 125A.29, paragraph (c), clause (2).

**History:** 1994 c 647 art 3 s 9,34; 1Sp1995 c 3 art 16 s 13; 1996 c 412 art 3 s 4,5; 1Sp1997 c 4 art 2 s 1; 1998 c 397 art 2 s 50,164; art 11 s 3; 1999 c 205 art 1 s 47,70

#### 125A.36 PAYMENT FOR SERVICES.

Core early intervention services must be provided at public expense with no cost to parents. Parents must 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 must be used to pay for additional early intervention services. Parental financial responsibility must be clearly defined in the IFSP. A parent's inability to pay must not prohibit a child from receiving needed early intervention services.

**History:** 1994 c 647 art 3 s 9,34; 1Sp1995 c 3 art 16 s 13; 1996 c 412 art 3 s 4,5; 1Sp1997 c 4 art 2 s 1; 1998 c 397 art 2 s 51,164; art 11 s 3

#### 125A.37 PAYOR OF LAST RESORT.

The state lead agency must maintain 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.

**History:** 1994 c 647 art 3 s 9,34; 1Sp1995 c 3 art 16 s 13; 1996 c 412 art 3 s 4,5; 1Sp1997 c 4 art 2 s 1; 1998 c 397 art 2 s 52,164; art 11 s 3; 1998 c 398 art 2 s 17

#### 125A.38 MAINTENANCE OF EFFORT.

A county human services agency or county board must continue to provide services set forth in their county social service agency plan. The county human services agency or county board must serve children with disabilities under age five and their families, or as specified in the IFSP 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 section 125A.29 and to facilitate payment for services from public and private sources.

**History:** 1994 c 647 art 3 s 9,34; 1Sp1995 c 3 art 16 s 13; 1996 c 412 art 3 s 4,5; 1Sp1997 c 4 art 2 s 1; 1998 c 397 art 2 s 53,164; art 11 s 3

#### 125A.39 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 section 125A.38;
- (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.

**History:** 1994 c 647 art 3 s 9,34; 1Sp1995 c 3 art 16 s 13; 1996 c 412 art 3 s 4,5; 1Sp1997 c 4 art 2 s 1; 1998 c 397 art 2 s 164; art 11 s 3

#### 125A.40 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.

**History:** 1994 c 647 art 3 s 9,34; 1Sp1995 c 3 art 16 s 13; 1996 c 412 art 3 s 4,5; 1Sp1997 c 4 art 2 s 1; 1998 c 397 art 2 s 164; art 11 s 3

#### 125A.41 COORDINATING HEALTH INSURANCE BENEFITS.

The department of health must 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.

**History:** 1994 c 647 art 3 s 9,34; 1Sp1995 c 3 art 16 s 13; 1996 c 412 art 3 s 4,5; 1Sp1997 c 4 art 2 s 1; 1998 c 397 art 2 s 54,164; art 11 s 3

#### 125A.42 PROCEDURAL SAFEGUARDS; PARENT AND CHILD RIGHTS.

(a) This section 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 section 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 sections 125A.259 to 125A.48.

(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 section 125A.46.

(c) The eligible child has the right to have a surrogate parent appointed by a school district as required by section 125A.07.

**History:** 1994 c 647 art 3 s 9,34; 1Sp1995 c 3 art 16 s 13; 1996 c 412 art 3 s 4,5; 1Sp1997 c 4 art 2 s 1; 1998 c 397 art 2 s 164; art 11 s 3

#### 125A.43 MEDIATION PROCEDURE.

(a) The commissioner, or the commissioner's designee, of the state lead agency must use federal funds to provide mediation for the activities in paragraphs (b) and (c).

(b) A parent may resolve a dispute regarding issues in section 125A.42, paragraph (b), clause (5), through mediation. If the parent chooses mediation, mediation must be voluntary on the part of the parties. The parent and the public agencies must complete the mediation process within 30 calendar days of the date the office of dispute resolution 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.

(c) Resolution of a dispute through mediation, or other form of alternative dispute resolution, is not limited to formal disputes arising from the objection of a parent or guardian and is not limited to the period following a request for a due process hearing.

(d) The commissioner shall provide training and resources to school districts to facilitate early identification of disputes and access to mediation.

(e) 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.

**History:** 1994 c 647 art 3 s 9,34; 1Sp1995 c 3 art 16 s 13; 1996 c 412 art 3 s 4,5; 1Sp1997 c 4 art 2 s 1; 1998 c 397 art 2 s 55,164; art 11 s 3; 1998 c 398 art 2 s 18; 1998 c 408 s 23; 2002 c 294 s 4

#### 125A.44 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 section 125A.48. The development and disposition of corrective action orders for nonschool agencies shall be determined by the State Agency Committee (SAC). Failure to comply with corrective orders may result in fiscal actions or other measures.

**History:** 1994 c 647 art 3 s 9,34; 1Sp1995 c 3 art 16 s 13; 1996 c 412 art 3 s 4,5; 1Sp1997 c 4 art 2 s 1; 1998 c 397 art 2 s 164; art 11 s 3; 1999 c 123 s 16

#### 125A.45 INTERAGENCY DISPUTE PROCEDURE.

(a) A dispute between a school board and a county board that is responsible for implementing the provisions of section 125A.29 regarding early identification, child and family assessment, service coordination, and IFSP development and implementation must 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 must be filed with the local primary agency.

(d) The local primary agency must attempt 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 must 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 must 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 must 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 must either assign financial responsibility to an agency or pay for the service from the early intervention account under section 125A.35. 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 must make arrangements for

reimbursing any expenditures incurred by the agency originally assigned financial responsibility.

**History:** 1994 c 647 art 3 s 9,34; 1Sp1995 c 3 art 16 s 13; 1996 c 412 art 3 s 4,5; 1Sp1997 c 4 art 2 s 1; 1998 c 397 art 2 s 56,164; art 11 s 3

#### 125A.46 DUE PROCESS HEARINGS.

The procedures for due process hearings and appeals must be the same as those in section 125A.09. The responsibility for payment of costs and conducting due process hearings and appeals shall be allocated to the appropriate agency in accordance with sections 125A.30, 125A.39, and 125A.42.

**History:** 1994 c 647 art 3 s 9,34; 1Sp1995 c 3 art 16 s 13; 1996 c 412 art 3 s 4,5; 1Sp1997 c 4 art 2 s 1; 1998 c 397 art 2 s 57,164; art 11 s 3

#### 125A.47 DATA COLLECTION.

By July 1, 1994, the departments of children, families, and learning, health, and human services must 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.

**History:** 1994 c 647 art 3 s 9,34; 1Sp1995 c 3 art 16 s 13; 1996 c 412 art 3 s 4,5; 1Sp1997 c 4 art 2 s 1; 1998 c 397 art 2 s 58,164; art 11 s 3

#### 125A.48 STATE INTERAGENCY AGREEMENT.

(a) The commissioners of the departments of children, families, and learning, health, and human services must 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 must 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; 1Sp1997 c 4 art 2 s 1; 1998 c 397 art 2 s 59,164; art 11 s 3

### ALTERNATIVES FOR DELIVERING SPECIALIZED INSTRUCTION

#### 125A.50 ALTERNATIVE DELIVERY OF SPECIALIZED INSTRUCTIONAL SERVICES:

Subdivision 1. **Commissioner approval.** The commissioner may approve applications from districts to provide prevention services as an alternative to special education and other compensatory programs. A district with an approved program may provide instruction and services in a regular education classroom, or an area learning center, 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 sections 125A.03 to 125A.24 and 125A.65 if the intervention services authorized by this section were unavailable. Pupils may be provided services during extended school days and throughout the entire year and through the assurance of mastery program under sections 125A.03 to 125A.24 and 125A.65.

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

- (1) instructional services available to eligible pupils under section 124D.66, subdivision 2; and pupils with a disability under section 125A.02;
- (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 must 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 must 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 sections 125A.03 to 125A.24 and 125A.65. The commissioner may 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.

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 sections 125A.03 to 125A.24 and 125A.65 is entitled to procedural protections provided under United States Code, title 20, section 33, 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 department of children, families, and learning, a pupil's rights under this section cannot be waived by the commissioner.

**History:** 1991 c 265 art 3 s 3,38; 1Sp1995 c 3 art 16 s 13; 1998 c 397 art 2 s 61-64,164; art 11 s 3; 1998 c 398 art 2 s 19,20; art 5 s 55; 1999 c 241 art 2 s 16,17

### 125A.51 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 commissioner, and who is temporarily placed for care and treatment for that illness or disability, must be determined as provided in this section.

(a) The school district of residence of the pupil is the district in which the pupil's parent or guardian resides.

(b) When parental rights have been terminated by court order, the legal residence of a child placed in a residential or foster facility for care and treatment is the district in which the child resides.

(c) Before the placement of a pupil for care and treatment, the district of residence must 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, must notify the district of residence of the emergency placement within 15 days of the placement.

(d) 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 must provide instruction and necessary transportation to and from the treatment facility for the pupil. Transportation shall only be provided by the district during regular operating hours of the district. 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.

(e) 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 must 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 must 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 must 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. For purposes of this section, the state correctional facilities operated on a fee-for-service basis are considered to be residential programs for care and treatment.

(f) The district of residence must include the pupil in its residence count of pupil units and pay tuition as provided in section 123A.488 to the district providing the instruction. Transportation costs must be paid by the district providing the transportation and the state must pay transportation aid to that district. For purposes of computing state transportation aid, pupils governed by this subdivision must 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; 1Sp1997 c 4 art 2 s 2; 1998 c 397 art. 2 s 65,164; art 11 s 3; 1998 c 398 art 2 s 21; art 5 s 55; 1999 c 241 art 2 s 18; 2000 c 489 art 3 s 10

### 125A.515 PLACEMENT OF STUDENTS; APPROVAL OF EDUCATION PROGRAM.

Subdivision 1. **Approval of education programs.** The commissioner shall approve education programs for placement of children and youth in care and treatment facilities including detention centers, before being licensed by the department of human services under Minnesota Rules, parts 9545.0905 to 9545.1125 and 9545.1400 to 9545.1480, or the department of corrections under Minnesota Rules, chapters 2925, 2930, 2935, and 2950. Education programs in these facilities shall conform to state and federal education laws including the Individuals with Disabilities Education Act (IDEA).

Subd. 2. **Definition of care and treatment placement.** Students placed in the following public or private facilities are considered to be placed for care and treatment:

- (1) group foster home, department of corrections;
- (2) secure juvenile detention facilities, department of corrections;
- (3) juvenile residential facilities, department of corrections;
- (4) temporary holdover - eight day, department of corrections;
- (5) group homes, department of human services;
- (6) residential academies, department of human services;
- (7) transitional programs, department of human services;
- (8) shelter care, department of human services and department of corrections;
- (9) shelter for homeless, department of human services;
- (10) adult facilities that admit persons under the age of 22; and
- (11) residential treatment programs.

Subd. 3. **Responsibilities for providing education.** (a) The district in which the facility is located must provide education services, including special education if eligible, to all students placed in a facility for care and treatment.

(b) For education programs operated by the department of corrections, the providing district shall be the department of corrections. For students remanded to the commissioner of corrections, the providing and resident district shall be the department of corrections.

(c) Placement for care and treatment does not automatically make a student eligible for special education. A student placed in a care and treatment facility is eligible for special education under state and federal law including the Individuals with Disabilities Education Act under United States Code, title 20, chapter 33.

Subd. 4. **Education services required.** (a) Education services must be provided to a student beginning within three business days after the student enters the care and treatment facility. The first four days of the student's placement may be used to screen the student for educational and safety issues.

(b) If the student does not meet the eligibility criteria for special education, regular education services must be provided to that student.

Subd. 5. **Education programs for students placed in facilities for care and treatment.** (a) When a student is placed in a care and treatment facility that has an on-site education program, the providing district, upon notice from the care and treatment facility, must contact the resident district within one business day to determine if a student has been identified as having a disability, and to request at least the student's

transcript, and for students with disabilities, the most recent individualized education plan (IEP) and evaluation report, and to determine if the student has been identified as a student with a disability. The resident district must send a facsimile copy to the providing district within two business days of receiving the request.

(b) If a student placed for care and treatment has been identified as having a disability and has an individual education plan in the resident district:

(1) the providing agency must conduct an individualized education plan meeting to reach an agreement about continuing or modifying special education services in accordance with the current individualized education plan goals and objectives and to determine if additional evaluations are necessary; and

(2) at least the following people shall receive written notice or documented phone call to be followed with written notice to attend the individualized education plan meeting:

(i) the person or agency placing the student;

(ii) the resident district;

(iii) the appropriate teachers and related services staff from the providing district;

(iv) appropriate staff from the care and treatment facility;

(v) the parents or legal guardians of the student; and

(vi) when appropriate, the student.

(c) For a student who has not been identified as a student with a disability, a screening must be conducted by the providing districts as soon as possible to determine the student's educational and behavioral needs and must include a review of the student's educational records.

**Subd. 6. Exit report summarizing educational progress.** If a student has been placed in a care and treatment facility for 15 or more business days, the providing district must prepare an exit report summarizing the regular education, special education, evaluation, educational progress, and service information and must send the report to the resident district and the next providing district if different, the parent or legal guardian, and any appropriate social service agency. For students with disabilities, this report must include the student's IEP.

**Subd. 7. Minimum educational services required.** At a minimum, the providing district is responsible for:

(1) the education necessary, including summer school services, for a student who is not performing at grade level as indicated in the education record or IEP; and

(2) a school day, of the same length as the school day of the providing district, unless the unique needs of the student, as documented through the IEP or education record in consultation with treatment providers, requires an alteration in the length of the school day.

**Subd. 8. Placement, services, and due process.** When a student's treatment and educational needs allow, education shall be provided in a regular educational setting. The determination of the amount and site of integrated services must be a joint decision between the student's parents or legal guardians and the treatment and education staff. When applicable, educational placement decisions must be made by the IEP team of the providing district. Educational services shall be provided in conformance with the least restrictive environment principle of the Individuals with Disabilities Education Act. The providing district and care and treatment facility shall cooperatively develop discipline and behavior management procedures to be used in emergency situations that comply with the Minnesota Pupil Fair Dismissal Act and other relevant state and federal laws and regulations.

**Subd. 9. Reimbursement for education services.** (a) Education services provided to students who have been placed for care and treatment are reimbursable in accordance with special education and general education statutes.

(b) Indirect or consultative services provided in conjunction with regular education prereferral interventions and assessment provided to regular education students sus-

pected of being disabled and who have demonstrated learning or behavioral problems in a screening are reimbursable with special education categorical aids.

(c) Regular education, including screening, provided to students with or without disabilities is not reimbursable with special education categorical aids.

**Subd. 10. Students unable to attend school but not placed in care and treatment facilities.** Students who are absent from, or predicted to be absent from, school for 15 consecutive or intermittent days, at home or in facilities not licensed by the departments of corrections or human services are not students placed for care and treatment. These students include students with and without disabilities who are home due to accident or illness, in a hospital or other medical facility, or in a day treatment center. These students are entitled to education services through their district of residence.

**History:** 1999 c 241 art 2 s 19; 1Sp2001 c 6 art 3 s 11; 2002 c 375 art 3 s 2

### **125A.52 RESIDENTIAL TREATMENT FACILITIES; DEPARTMENTS OF HUMAN SERVICES AND CORRECTIONS EDUCATION SCREENING.**

**Subdivision 1. Educational screening.** Secure and nonsecure residential treatment facilities licensed by the department of human services or the department of corrections must 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, unless the facility determines that the juvenile has a current individual education plan and obtains a copy of it.

**Subd. 2. Rulemaking.** The commissioner 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; 1998 c 397 art 2 s 66,164; 1998 c 398 art 5 s 55; 1999 c 123 s 17

### **125A.53 DIRECTOR OF A SPECIAL EDUCATION COOPERATIVE.**

The authority for the selection and employment of the director of a special education cooperative established pursuant to sections 125A.03 to 125A.24 and 125A.65 or section 471.59 is vested in the governing board of the cooperative. Notwithstanding the provisions of section 122A.40, subdivision 10 or 11, 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; 1998 c 397 art 2 s 67,164; art 11 s 3

### **125A.54 INTERAGENCY OFFICE ON TRANSITION SERVICES.**

The commissioner must 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; 1998 c 397 art 2 s 68,164

### **125A.55 ACCOMMODATING STUDENTS WITH DISABILITIES.**

A school or district must 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; 1998 c 397 art 2 s 69,164

#### 125A.56 ALTERNATE INSTRUCTION REQUIRED BEFORE ASSESSMENT REFERRAL; WAIVER.

(a) Before a pupil is referred for a special education assessment, the district must conduct and document at least two instructional strategies, alternatives, or interventions while the pupil is in the regular classroom. The pupil's teacher must provide the documentation. A special education assessment team may waive this requirement when they determine the pupil's need for the assessment is urgent. This section may not be used to deny a pupil's right to a special education assessment.

(b) A school district shall use alternative intervention services, including the assurance of mastery program under section 124D.66 and the supplemental early education program under section 124D.081, to serve at-risk students who demonstrate a need for alternative instructional strategies or interventions.

**History:** 1989 c 329 art 3 s 21; 1998 c 397 art 2 s 164; art 11 s 3; 1998 c 398 art 2 s 38

### ASSISTIVE TECHNOLOGY DEVICES

#### 125A.57 DEFINITION.

Subdivision 1. **Applicability.** For the purposes of sections 125A.57 to 125A.60, 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; 1998 c 397 art 2 s 164; art 11 s 3

#### 125A.58 PURCHASING GUIDELINES.

Subdivision 1. **Rights of districts to purchase school-owned assistive technology.**

(a) When a child with a disability exits a district and enters a new district, the child's new district may purchase any assistive technology devices that the child's former district has purchased on the child's behalf. The child's new district must notify, in writing, the child's former district of the intent to purchase the device. The child's new district must complete a purchase agreement according to section 125A.36. The child's former district must respond, in writing, to the request to purchase within 30 days.

(b) 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 district is not liable for any nonconformities in the equipment after it is purchased by the child's new 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 may 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; 1998 c 397 art 2 s 70,164

#### 125A.59 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 district purchased on the child's behalf.

(b) The department of economic security may purchase an assistive technology device initially purchased by a 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 before the child exits the district.

**Subd. 2. Liability for used equipment.** The department of economic security and the department of children, families, and learning are not 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 may 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; 1998 c 397 art 2 s 71,164

#### 125A.60 PURCHASE AGREEMENT; PRICE FORMULA.

The commissioner must 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; 1998 c 397 art 2 s 72,164

### ACADEMIES FOR THE DEAF AND BLIND

#### 125A.61 LOCATION AND STATUS.

**Subdivision 1. State schools at Faribault.** The Minnesota state academy for the deaf and the Minnesota state academy for the blind are residential schools in Faribault. They are public schools under sections 122A.15, 122A.16, and 122A.32 and state educational institutions.

**Subd. 2. Resource center.** The state academies are a resource center for school districts.

**History:** 1976 c 271 s 66; 1985 c 240 s 2; 1987 c 398 art 3 s 27; 1989 c 220 s 2; 1998 c 397 art 11 s 3

#### 125A.62 DUTIES OF THE BOARD OF THE MINNESOTA STATE ACADEMIES.

**Subdivision 1. Governance.** The board of the Minnesota state academies shall govern the state academies for the deaf and the state academy for the blind. The board must promote academic standards based on high expectation and an assessment system to measure academic performance toward the achievement of those standards. The board must focus on the academies' needs as a whole and not prefer one school over the other. The board of the Minnesota state academies shall consist of nine persons. The members of the board shall be appointed by the governor with the advice and consent of the senate. One member must be from the seven-county metropolitan area, one member must be from greater Minnesota, and one member may be appointed at-large. The board must be composed of:

- (1) one present or former superintendent of an independent school district;
- (2) one present or former special education director;
- (3) the commissioner of children, families, and learning or the commissioner's designee;
- (4) one member of the blind community;
- (5) one member of the deaf community;

(6) two members of the general public with business, administrative, or financial expertise;

(7) one nonvoting, unpaid ex officio member appointed by the site council for the state academy for the deaf; and

(8) one nonvoting, unpaid ex officio member appointed by the site council for the state academy for the blind.

**Subd. 2. Terms; compensation; and other.** The membership terms, compensation, removal of members, and filling of vacancies shall be as provided for in section 15.0575. Notwithstanding section 15.0575, a member may serve not more than two consecutive four-year terms.

**Subd. 3. Meetings.** All meetings of the board shall be as provided in chapter 13D and must be held in Faribault.

**Subd. 4. Most beneficial, least restrictive.** The board must do what is necessary to provide the most beneficial and least restrictive program of education for each pupil at the academies who is handicapped by visual disability or deafness.

**Subd. 5. Planning, evaluation, and reporting.** To the extent required in school districts, the board must establish a process for the academies to include parent and community input in the planning, evaluation, and reporting of curriculum and pupil achievement.

**Subd. 6. Site councils.** The board must establish, and appoint members to, a site council at each academy. The site councils shall exercise power and authority granted by the board. The board must appoint to each site council the exclusive representative's employee designee from each exclusive representative at the academies. The site councils may make a recommendation to the governor regarding board appointments no more than 30 days after receiving the list of applicants from the governor.

**Subd. 7. Trustee of academies' property.** The board is the trustee of the academies' property. Securities and money, including income from the property, must be deposited in the state treasury according to section 16A.275. The deposits are subject to the order of the board.

**Subd. 8. Grants.** The board, through the chief administrators of the academies, may apply for all competitive grants administered by agencies of the state and other government or nongovernment sources. Application may not be made for grants over which the board has discretion.

**History:** 1975 c 271 s 6; 1976 c 222 s 27; 1976 c 271 s 67; 1977 c 447 art 3 s 10,11; 1977 c 449 s 13; 1978 c 764 s 95,96; 1979 c 334 art 3 s 17; 1982 c 424 s 130; 1982 c 560 s 46; 1985 c 240 s 3; 1987 c 384 art 1 s 55; art 2 s 1; 1987 c 398 art 3 s 28,29; 1989 c 220 s 2; 1991 c 265 art 11 s 11; 1Sp1995 c 3 art 11 s 5-8; 1Sp1997 c 4 art 10 s 1; 1998 c 398 art 5 s 14-21; 1999 c 241 art 2 s 20

## 125A.63 RESOURCE CENTERS; DEAF OR HARD OF HEARING AND BLIND OR VISUALLY IMPAIRED.

**Subdivision 1. Also for multiply disabled.** Resource centers for the deaf or hard of hearing, and the blind or visually impaired, each also serving multiply disabled pupils, are transferred to the department of children, families, and learning.

**Subd. 2. Programs.** The resource centers must offer summer institutes and like programs throughout the state for deaf or hard of hearing, blind or visually impaired, and multiply disabled pupils. The resource centers must also offer workshops for teachers, and leadership development for teachers.

A program offered through the resource centers must promote and develop education programs offered by school districts or other organizations. The program must assist school districts or other organizations to develop innovative programs.

**Subd. 3. Programs by nonprofits.** The resource centers may contract to have nonprofit organizations provide programs through the resource centers.

Subd. 4. **Advisory committees.** The special education advisory council shall establish an advisory committee for each resource center. The advisory committees shall develop recommendations regarding the resource centers.

**History:** 1987 c 398 art 3 s 30; 1989 c 220 s 2; 1991 c 265 art 3 s 38; 1Sp1995 c 3 art 11 s 9; art 16 s 13

#### 125A.64 POWERS OF BOARD OF THE MINNESOTA STATE ACADEMIES.

Subdivision 1. **Personnel.** The board of the Minnesota state academies may employ central administrative staff members and other personnel necessary to provide and support programs and services at each academy.

Subd. 2. **Get help from department.** The board of the Minnesota state academies may require the department of children, families, and learning to provide program leadership, program monitoring, and technical assistance at the academies.

Subd. 3. **Unclassified positions.** The board of the Minnesota state academies may place any position other than residential academies administrator in the unclassified service. The position must meet the criteria in section 43A.08, subdivision 1a.

Subd. 4. **Residential and building maintenance services.** The board of the Minnesota state academies may enter into agreements with public or private agencies or institutions to provide residential and building maintenance services. The board of the Minnesota state academies must first decide that contracting for the services is more efficient and less expensive than not contracting for them.

Subd. 5. **Student teachers and professional trainees.** (a) The board of the Minnesota state academies may enter into agreements with teacher preparation institutions for student teachers to get practical experience at the academies. A licensed teacher must provide appropriate supervision of each student teacher.

(b) The board of the Minnesota state academies may enter into agreements with accredited higher education institutions for certain student trainees to get practical experience at the academies. The students must be preparing themselves in a professional field that provides special services to children with a disability in school programs. To be a student trainee in a field, a person must have completed at least two years of an approved program in the field. A person who is licensed or registered in the field must provide appropriate supervision of each student trainee.

Subd. 6. **Exemption to September 1 school start restriction.** Notwithstanding section 120A.40, subdivision 1, the board of the Minnesota state academies for the deaf and blind may begin the school year any day prior to September 1.

**History:** 1989 c 220 s 2; 1991 c 265 art 3 s 38; 1Sp1995 c 3 art 11 s 10,11; art 16 s 13; 1998 c 398 art 5 s 22; 1999 c 241 art 2 s 21; art 10 s 1

#### 125A.65 ATTENDANCE AT ACADEMIES FOR THE DEAF AND BLIND.

Subdivision 1. **Responsibility allocated.** Responsibility for special instruction and services for a blind/visually impaired or deaf/hard of hearing child attending the Minnesota state academy for the deaf or the Minnesota state academy for the blind must be determined in subdivisions 2 to 10.

Subd. 2. **Child's legal residence.** The legal residence of the child is the district in which the child's parent or guardian resides.

Subd. 3. **Educational program; tuition.** When it is determined pursuant to section 125A.69, subdivision 1 or 2, that the child is entitled to attend either school, the board of the Minnesota state academies must provide the appropriate educational program for the child. The board of the Minnesota state academies must make a tuition charge to the child's district of residence for the cost of providing the program. The amount of tuition charged must not exceed the general education revenue formula allowance times the pupil unit weighting factor pursuant to section 126C.05 for that child, for the

amount of time the child is in the program. The district of the child's residence must pay the tuition and may claim general education aid for the child. Tuition received by the board of the Minnesota state academies, except for tuition received under subdivision 4, must be deposited in the state treasury as provided in subdivision 8.

**Subd. 4. Unreimbursed costs.** In addition to the tuition charge allowed in subdivision 3, 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 paragraph must be used by the academies to provide the required service.

**Subd. 5. Providing appropriate educational programs.** 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 district where the institution is located must provide an appropriate educational program for the child and must make a tuition charge to the board of the Minnesota state academies for the actual cost of providing the program, less any amount of aid received pursuant to section 125A.75. The board of the Minnesota state academies must pay the tuition and other program costs including the unreimbursed transportation costs. Aids for children with a disability must be paid to the district providing the special instruction and services. Special transportation must be provided by the district providing the educational program and the state must reimburse that district within the limits provided by law.

**Subd. 6. Tuition reduction.** Notwithstanding the provisions of subdivisions 3 and 5, the board of the Minnesota state academies may agree to make a tuition charge for less than the amount specified in subdivision 3 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 board of the Minnesota state academies for less than the amount specified in subdivision 5 for providing appropriate educational programs to pupils attending the applicable school.

**Subd. 7. Staff allocation.** Notwithstanding the provisions of subdivisions 3 and 5, the board of the Minnesota state academies 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.

**Subd. 8. Student count; tuition.** (a) On May 1, 1996, and each year thereafter, the board of the Minnesota state academies shall count the actual number of Minnesota resident special education eligible students enrolled and receiving education services at the Minnesota state academy for the deaf and the Minnesota state academy for the blind. The board of the Minnesota state academies shall deposit in the state treasury an amount equal to all tuition received less the amount calculated in paragraph (b).

(b) The Minnesota state academies shall credit to their general operation account an amount equal to the tuition received which represents tuition earned for the total number of students over 175 based on:

- (1) the total number of enrolled students on May 1 less 175; times
- (2) the ratio of the number of students in that grade category to the total number of students on May 1; times
- (3) the general education revenue formula allowance; times
- (4) the pupil unit weighting factor pursuant to section 126C.05.

**Subd. 9. Calculation.** The sum provided by the calculation in subdivision 8 must be deposited in the state treasury and credited to the general operation account of the Minnesota state academy for the deaf and the Minnesota state academy for the blind.

**Subd. 10. Annual appropriation.** There is annually appropriated to the department for the Minnesota state 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.

**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; 1998 c 397 art 2 s 35,164; art 11 s 3; 1998 c 398 art 6 s 1; 1999 c 241 art 2 s 22-27; 2002 c 374 art 4 s 2-5*

### 125A.66 OBLIGATIONS OF THE ACADEMIES.

Subdivision 1. **Various levels of service.** The academies must provide their pupils with the levels of service defined in rules of the state board.

Subd. 2. **Pupils' developmental needs.** The academies must deal with the developmental needs of their pupils.

Subd. 3. **Education with pupils without a disability.** The academies must provide opportunities for their pupils to be educated with pupils without a disability. A pupil's opportunities must be consistent with the pupil's individual education plan or individual family service plan and assessment.

**History:** *1989 c 220 s 2; 1991 c 265 art 3 s 38; 1993 c 224 art 13 s 55; 1Sp1995 c 3 art 11 s 12*

### 125A.67 STAFF OF THE ACADEMIES.

Subdivision 1. **Academies' administrator.** The position of the chief administrator at each academy is in the unclassified service.

Subd. 2. **Teacher standards.** A teacher or administrator at the academies is subject to the licensure standards of the board of teaching or the commissioner of children, families, and learning.

Subd. 3. **Instructional supervisors.** An instructional supervisor at the academy for the deaf or the academy for the blind must have appropriate post-secondary credits from a teacher education program for teachers of the deaf or teachers of the blind, respectively. An instructional supervisor must have experience working with pupils with a disability.

Subd. 4. **Signing skills.** A staff member at the academy for the deaf must have the sign language communication skills appropriate for the staff member's job.

Subd. 5. **Braille skills.** A staff member at the academy for the blind must be knowledgeable in Braille communication as appropriate for the staff member's job.

Subd. 6. **Permanent employees must sign or know Braille.** An employee hired after August 1, 1985, cannot get permanent status until the employee is proficient in sign language if employed at the academy for the deaf or knowledgeable in Braille if employed at the academy for the blind.

Subd. 7. **Workers' compensation for trainees.** Student teachers and student trainees are employees of the academies for workers' compensation coverage.

**History:** *1989 c 220 s 2; 1991 c 265 art 3 s 38; 1Sp1995 c 3 art 11 s 13,14; 1998 c 398 art 5 s 55*

### 125A.68 STATE ADOPTED PROCEDURES.

Subdivision 1. **Subjects.** The board of the Minnesota state academies must establish procedures for:

- (1) admission, including short-term admission, to the academies;
- (2) discharge from the academies;
- (3) decisions on a pupil's program at the academies; and
- (4) evaluation of a pupil's progress at the academies.

Subd. 2. **Minimum content.** The discharge procedures must include reasonable notice to the child's district of residence. The procedures must guarantee a pupil and the pupil's parent or guardian appropriate safeguards. The safeguards must include a review of the placement determination made under sections 125A.03 to 125A.24, 125A.65, and 125A.69 and the right to participate in educational program decisions.

Subd. 3. **Not contested case.** A proceeding about admission to or discharge from the academies or about a pupil's program or progress at the academies is not a contested case under section 14.02. The proceeding is governed instead by the rules governing special education.

**History:** 1989 c 220 s 2; 1Sp1995 c 3 art 11 s 15; 1998 c 397 art 11 s 3; 1998 c 398 art 5 s 25,26; 1999 c 241 art 2 s 28

### 125A.69 ADMISSION STANDARDS.

Subdivision 1. **Two kinds.** There are two kinds of admission to the Minnesota state academies.

(a) A pupil who is deaf, hard of hearing, or blind-deaf, may be admitted to the academy for the deaf. A pupil who is blind or visually impaired, blind-deaf, or multiply handicapped may be admitted to the academy for the blind. For a pupil to be admitted, two decisions must be made under sections 125A.03 to 125A.24 and 125A.65.

(1) It must be decided by the individual education planning team that education in regular or special education classes in the pupil's district of residence cannot be achieved satisfactorily because of the nature and severity of the deafness or blindness or visual impairment respectively.

(2) It must be decided by the individual education planning team that the academy provides the most appropriate placement within the least restrictive alternative for the pupil.

(b) A deaf or hard of hearing child or a visually impaired pupil may be admitted to get socialization skills or on a short-term basis for skills development.

Subd. 2. **Pupils with multiple handicaps eligible to attend.** This section does not prevent a pupil with handicaps in addition to being

- (1) deaf or hard of hearing, or
- (2) blind or visually impaired

from attending the academy for the deaf or the academy for the blind, respectively.

Subd. 3. **Out-of-state admissions.** An applicant from another state who can benefit from attending either academy may be admitted to the academy if the admission does not prevent an eligible Minnesota resident from being admitted. The board of the Minnesota state academies must obtain reimbursement from the other state for the costs of the out-of-state admission. The state board may enter into an agreement with the appropriate authority in the other state for the reimbursement. Money received from another state must be deposited in the general fund and credited to the general operating account of the academies. The money is appropriated to the academies.

Subd. 4. **Compulsory attendance.** The compulsory attendance provisions of section 120A.22 apply to attendance at the academies. Attendance may be excused under that section by the commissioner of children, families, and learning or a designee. A person who fails to comply with section 120A.22 is subject to section 120A.26. The academies' administrator must exercise the duties imposed on a superintendent by section 120A.26. Attendance at the academy for the deaf or the academy for the blind fulfills the

requirements of sections 125A.03 to 125A.24 and 125A.65. The academies are subject to sections 121A.40 to 121A.45, the Pupil Fair Dismissal Act of 1970, as amended.

**History:** 1976 c 271 s 70; 1985 c 240 s 5; 1986 c 444; 1987 c 384 art 1 s 55; 1989 c 220 s 2; 1991 c 265 art 11 s 12; 1Sp1995 c 3 art 11 s 16,17; art 16 s 13; 1998 c 397 art 11 s 3; 1999 c 241 art 2 s 29,30

### 125A.70 EXPENSE OF PUPILS.

Subdivision 1. **Person liable for pupil's support pays expenses.** The person who is liable for the support of a pupil attending a state academy must provide the pupil with enough money for proper clothing, postage, and necessary incidental expenses.

Subd. 2. **Local social services agency.** If the person liable for support of a pupil cannot support the pupil, the local social services agency of the county of the pupil's residence must do so. The commissioner of children, families, and learning must decide how much the local social services agency must pay. The board of the Minnesota state academies must adopt rules that tell how the commissioner is to fix the amount. The local social services agency must make the payment to the superintendent of the school district of residence.

Subd. 3. **Transportation expenses.** The school district of residence must pay for the transportation of the pupil from the pupil's residence to the academy and back.

**History:** 1976 c 271 s 72; 1977 c 449 s 15; 1986 c 444; 1987 c 384 art 1 s 55; 1989 c 220 s 2; 1994 c 631 s 31; 1Sp1995 c 3 art 16 s 13; 1998 c 398 art 5 s 27; 1999 c 241 art 2 s 31

### 125A.71 DEPOSIT AND APPROPRIATION OF RENTS AND FEES OF ACADEMIES.

Subdivision 1. **Rental income; appropriation.** Rental income, excluding rent for land and living residences, must be deposited in the state treasury and credited to a revolving fund of the academies. Money in the revolving fund for rental income is annually appropriated to the academies for staff development purposes. Payment from the revolving fund for rental income may be made only according to vouchers authorized by the administrator of the academies.

Subd. 2. **Fees; appropriation.** Income received under subdivision 3 must be deposited in the state treasury and credited to a revolving fund of the academies. Money in the revolving fund for fees from conferences, seminars, technical assistance, production of instructionally related materials and other services is annually appropriated to the academies to defray expenses of those services. Payment from the revolving fund for conferences and other fees may be made only according to vouchers authorized by the administrator of the academies.

Subd. 3. **Contracts; fees; appropriation.** The board of the Minnesota state academies may enter into agreements for the academies to provide respite care and supplemental educational instruction and services including assessments and counseling. The agreements may be made with public or private agencies or institutions, school districts, service cooperatives, or counties. The board may authorize the academies to provide conferences, seminars, nondistrict and district requested technical assistance, and production of instructionally related materials.

**History:** 1987 c 398 art 3 s 31; 1989 c 220 s 2; 1989 c 329 art 12 s 2; 1992 c 499 art 11 s 5,6; 1996 c 305 art 1 s 138; 1999 c 241 art 2 s 32

### 125A.72 STUDENT ACTIVITIES ACCOUNT.

Subdivision 1. **Student activities; receipts; appropriation.** All receipts of any kind generated to operate student activities, including student fees, donations and contributions, and gate receipts must be deposited in the state treasury. The receipts are appropriated annually to the Minnesota state academies for student activities purposes. They are not subject to budgetary control by the commissioner of finance.

Subd. 2. **To student activities account.** The money appropriated in subdivision 1 to the Minnesota state academies for student activities must be credited to a Minnesota state academies' student activities account and may be spent only for Minnesota state academies' student activities purposes.

Subd. 3. **Carryover.** An unexpended balance in the Minnesota state academies' student activities account may be carried over from the first fiscal year of the biennium into the second fiscal year of the biennium and from one biennium to the next. The amount carried over must not be taken into account in determining state appropriations and must not be deducted from a later appropriation.

Subd. 4. **Money from certain student activities specifically included among receipts.** Any money generated by a Minnesota state academies' student activity that involves:

- (1) state employees who are receiving compensation for their involvement with the activity;
- (2) the use of state facilities; or
- (3) money raised for student activities in the name of the Minnesota state academies

is specifically included among the kinds of receipts that are described in subdivision 1.

**History:** 1993 c 224 art 11 s 5; 1999 c 241 art 2 s 33

#### 125A.73 DUTIES OF STATE DEPARTMENTS.

Subdivision 1. **Department of children, families, and learning.** The department of children, families, and learning must assist the board of the Minnesota state academies in preparing reports on the academies.

Subd. 2. **Department of employee relations.** The department of employee relations, in cooperation with the board of the Minnesota state academies, must develop a statement of necessary qualifications and skills for all staff members of the academies.

**History:** 1989 c 220 s 2; 1Sp1995 c 3 art 16 s 13; 1998 c 398 art 5 s 23,24; 1999 c 241 art 2 s 34

### SPECIAL NEEDS FUNDING

#### 125A.74 MEDICAL ASSISTANCE PAYMENTS TO SCHOOL DISTRICTS.

Subdivision 1. **Eligibility.** A district may enroll as a provider in the medical assistance program and receive medical assistance payments for covered special education services provided to persons eligible for medical assistance under chapter 256B. To receive medical assistance payments, the district must pay the nonfederal share of medical assistance services provided according to section 256B.0625, subdivision 26, and comply with relevant provisions of state and federal statutes and regulations governing the medical assistance program.

Subd. 2. **Funding.** A district that provides a covered service to an eligible person and complies with relevant requirements of the medical assistance program is entitled to receive payment for the portion of the services that will subsequently be reimbursed by the federal government, in the same manner as other medical assistance providers.

Subd. 3. **Contract for services.** A district may contract for the provision of medical assistance-covered services, and may contract with a third party agency to assist in administering and billing for these services.

Subd. 4. **Private insurers.** A district may enroll as a provider for insurance companies to provide covered special education services to eligible persons. To receive payments, the district must comply with relevant state and federal statutes. A district may contract for services, and may contract with a third party agency to assist in administering and billing for these services.

Subd. 5. **No reduction in revenue.** A district's revenue for special education programs must not be reduced by any payments for medical assistance or insurance received according to this section.

**History:** 1989 c 191 s 1; 1990 c 562 art 3 s 6; 1994 c 647 art 3 s 16; 1998 c 397 art 2 s 121,164; 2000 c 488 art 11 s 2,3

#### **125A.744 STATEWIDE DATA MANAGEMENT SYSTEM TO MAXIMIZE MEDICAL ASSISTANCE REIMBURSEMENT.**

Subdivision 1. **Definition.** For purposes of this section, cooperative unit has the meaning given in section 123A.24, subdivision 2.

Subd. 2. **Statewide data management system.** The commissioner of children, families, and learning, in cooperation with the commissioner of human services, shall develop a statewide data management system using the educational data reporting system or other existing data management system for school districts and cooperative units to use to maximize medical assistance reimbursement for health and health-related services provided under individual education plans and individual family service plans. The system must be appropriately integrated with state and local existing and developing human services and education data systems. The statewide data management system must enable school district and cooperative unit staff to:

- (1) establish medical assistance billing systems or improve existing systems;
- (2) understand the appropriate medical assistance billing codes for services provided under individual education plans and individual family service plans;
- (3) comply with the Individuals with Disabilities Education Act, Public Law Number 105-17;
- (4) contract with billing agents; and
- (5) carry out other activities necessary to maximize medical assistance reimbursement.

Subd. 3. **Implementation.** Consistent with section 256B.0625, subdivision 26, school districts may enroll as medical assistance providers or subcontractors and bill the department of human services under the medical assistance fee for service claims processing system for special education services which are covered services under chapter 256B, which are provided in the school setting for a medical assistance recipient, and for whom the district has secured informed consent consistent with section 13.05, subdivision 4, paragraph (d), and section 256B.77, subdivision 2, paragraph (p), to bill for each type of covered service. School districts shall be reimbursed by the commissioner of human services for the federal share of individual education plan health-related services that qualify for reimbursement by medical assistance, minus up to five percent retained by the commissioner of human services for administrative costs, not to exceed \$350,000 per fiscal year. The commissioner may withhold up to five percent of each payment to a school district. Following the end of each fiscal year, the commissioner shall settle up with each school district in order to ensure that collections from each district for departmental administrative costs are made on a pro rata basis according to federal earnings for these services in each district. A school district is not eligible to enroll as a home care provider or a personal care provider organization for purposes of billing home care services under section 256B.0627 until the commissioner of human services issues a bulletin instructing county public health nurses on how to assess for the needs of eligible recipients during school hours. To use private duty nursing services or personal care services at school, the recipient or responsible party must provide written authorization in the care plan identifying the chosen provider and the daily amount of services to be used at school.

**History:** 1998 c 397 art 11 s 3; 1998 c 398 art 2 s 2; 1999 c 245 art 4 s 4

#### **125A.75 SPECIAL EDUCATION PROGRAM APPROVAL; AID PAYMENTS; TRAVEL AID.**

Subdivision 1. **Travel aid.** The state must pay each district one-half of the sum actually expended by a district for necessary travel of essential personnel providing home-based services to children with a disability under age five and their families.

Subd. 2. **Aid payment.** The aids provided for children with a disability must be paid to the district providing the special instruction and services. General education aid must be paid to the district of the pupil's residence. The total amount of aid paid may not exceed the amount expended for children with a disability in the year for which the aid is paid.

Subd. 3. **Full state payment.** The state must pay each district the actual cost incurred in providing instruction and services for a child whose district of residence has been determined by section 125A.17 or 125A.51, paragraph (b), and who is temporarily placed in a state institution, a licensed residential facility, or foster facility for care and treatment. The regular education program at the facility must be an approved program according to section 125A.515.

Upon following the procedure specified by the commissioner, the district may bill the state the actual cost incurred in providing the services including transportation costs and a proportionate amount of capital expenditures and debt service, minus the amount of the basic revenue, as defined in section 126C.10, subdivision 2, of the district for the child and the special education aid, transportation aid, and any other aid earned on behalf of the child. The limit in subdivision 2 applies to aid paid pursuant to this subdivision.

To the extent possible, the commissioner shall obtain reimbursement from another state for the cost of serving any child whose parent or guardian resides in that state. The commissioner may contract with the appropriate authorities of other states to effect reimbursement. All money received from other states must be paid to the state treasury and placed in the general fund.

Subd. 4. **Program and aid approval.** Before June 1 of each year, each district providing special instruction and services to children with a disability must submit to the commissioner an application for approval of these programs and their budgets for the next fiscal year. The application must include an enumeration of the costs proposed as eligible for state aid pursuant to this section and of the estimated number and grade level of children with a disability in the district who will receive special instruction and services during the regular school year and in summer school programs during the next fiscal year. The application must also include any other information deemed necessary by the commissioner for the calculation of state aid and for the evaluation of the necessity of the program, the necessity of the personnel to be employed in the program, for determining the amount which the program will receive from grants from federal funds, or special grants from other state sources, and the program's compliance with the rules and standards of the department of children, families, and learning. The commissioner shall review each application to determine whether the program and the personnel to be employed in the program are actually necessary and essential to meet the district's obligation to provide special instruction and services to children with a disability pursuant to sections 125A.03 to 125A.24, 125A.259 to 125A.48, and 125A.65. The commissioner shall not approve aid pursuant to this section for any program or for the salary of any personnel determined to be unnecessary or unessential on the basis of this review. The commissioner may withhold all or any portion of the aid for programs which receive grants from federal funds, or special grants from other state sources. By August 31 the commissioner shall approve, disapprove, or modify each application, and notify each applying district of the action and of the estimated amount of aid for the programs. The commissioner shall provide procedures for districts to submit additional applications for program and budget approval during the fiscal year, for programs needed to meet any substantial changes in the needs of children with a disability in the district. Notwithstanding the provisions of section 127A.42, the commissioner may modify or withdraw the program or aid approval and withhold aid pursuant to this section without proceeding according to section 127A.42 at any time the commissioner determines that the program does not comply with rules of the department of children, families, and learning or that any facts concerning the program or its budget differ from the facts in the district's approved application.

Subd. 5. **Regular classroom programs.** When planning programs for the education of children with a disability in the regular classroom, school districts are encouraged to

consider the size of the regular class and to provide the support services necessary to ensure successful mainstreaming.

Subd. 6. **Summer school.** By March 15 of each year, districts must submit separate applications for program and budget approval for summer school programs. These applications must be reviewed as provided in subdivision 4. By May 1 of each year, the commissioner shall approve, disapprove, or modify the applications and notify the districts of the action and of the estimated amount of aid for the summer school programs.

Subd. 7. **Allocation from cooperative centers, service cooperatives, education districts, and intermediate districts.** For purposes of this section, a special education cooperative, service cooperative, education district, or an intermediate district must allocate its approved expenditures for special education programs among participating districts. Special education aid for services provided by a cooperative, service cooperative, education district, or intermediate district must be paid to the participating school districts.

Subd. 8. **Litigation and hearing costs.** (a) For fiscal year 1999 and thereafter, the commissioner of children, families, and learning, or the commissioner's designee, shall use state funds to pay school districts for the administrative costs of a due process hearing incurred under section 125A.09, subdivisions 6, 10, and 11, including hearing officer fees, court reporter fees, mileage costs, transcript costs, interpreter and transliterator fees, independent evaluations ordered by the hearing officer, and rental of hearing rooms, but not including district attorney fees. To receive state aid under this paragraph, a school district shall submit to the commissioner by August 1 an itemized list of unreimbursed actual costs for fees and other expenses under this paragraph incurred after June 30, 1998, for hearings completed during the previous fiscal year. State funds used for aid to school districts under this paragraph shall be based on the unreimbursed actual costs and fees submitted by a district.

(b) The commissioner shall provide districts with a form on which to annually report litigation costs under this section and shall base aid estimates on preliminary reports submitted by the district during the current fiscal year.

**History:** *Ex1959 c 71 art 5 s 32; 1961 c 559 s 1; 1965 c 870 s 1; 1967 c 853 s 1; 1969 c 913 s 1; 1969 c 981 s 6; 1971 c 25 s 33; 1973 c 501 s 3; 1973 c 683 s 14-16; 1975 c 162 s 41; 1975 c 432 s 48-50; 1976 c 271 s 52; 1977 c 447 art 3 s 9; 1978 c 764 s 58-62; 1979 c 334 art 3 s 6-10; 1981 c 358 art 3 s 11-17; 1Sp1981 c 2 s 10,11; 1982 c 548 art 3 s 12-21; 1983 c 314 art 1 s 22; art 3 s 9-11; 1Sp1985 c 12 art 3 s 11-17; 1Sp1986 c 1 art 9 s 14; 1Sp1986 c 3 art 1 s 17; 1987 c 384 art 2 s 33; 1987 c 398 art 3 s 18-21; 1988 c 486 s 41-45; 1989 c 329 art 3 s 7; 1991 c 265 art 3 s 7,8,38; 1993 c 224 art 3 s 13-16; 1994 c 647 art 13 s 10; 1Sp1995 c 3 art 15 s 7-9; art 16 s 13; 1998 c 397 art 2 s 98,164; art 11 s 3; 1998 c 398 art 2 s 26; art 5 s 55; 1999 c 123 s 18; 1999 c 241 art 2 s 35,36*

## 125A.76 SPECIAL EDUCATION REVENUE.

Subdivision 1. **Definitions.** For the purposes of this section, the definitions in this subdivision apply.

(a) "Base year" for fiscal year 1998 and later fiscal years means the second fiscal year preceding the fiscal year for which aid will be paid.

(b) "Basic revenue" has the meaning given it in section 126C.10, subdivision 2. For the purposes of computing basic revenue pursuant to this section, each child with a disability shall be counted as prescribed in section 126C.05, subdivision 1.

(c) "Essential personnel" means teachers, cultural liaisons, related services, and support services staff providing direct services to students. Essential personnel may also include special education paraprofessionals or clericals providing support to teachers and students by preparing paperwork and making arrangements related to special education compliance requirements, including parent meetings and individual education plans.

(d) "Average daily membership" has the meaning given it in section 126C.05.

(e) "Program growth factor" means 1.08 for fiscal year 2002, and 1.046 for fiscal year 2003 and later.

Subd. 2. **Special education base revenue.** (a) The special education base revenue equals the sum of the following amounts computed using base year data:

(1) 68 percent of the salary of each essential person employed in the district's program for children with a disability during the fiscal year, whether the person is employed by one or more districts or a Minnesota correctional facility operating on a fee-for-service basis;

(2) for the Minnesota state academy for the deaf or the Minnesota state academy for the blind, 68 percent of the salary of each instructional aide assigned to a child attending the academy, if that aide is required by the child's individual education plan;

(3) for special instruction and services provided to any pupil by contracting with public, private, or voluntary agencies other than school districts, in place of special instruction and services provided by the district, 52 percent of the difference between the amount of the contract and the amount of the basic revenue, as defined in section 126C.10, subdivision 2, special education aid, and any other aid earned on behalf of the child for the fraction of the school day the pupil receives services under the contract;

(4) for special instruction and services provided to any pupil by contracting for services with public, private, or voluntary agencies other than school districts, that are supplementary to a full educational program provided by the school district, 52 percent of the amount of the contract for that pupil;

(5) for supplies and equipment purchased or rented for use in the instruction of children with a disability, an amount equal to 47 percent of the sum actually expended by the district, or a Minnesota correctional facility operating on a fee-for-service basis, but not to exceed an average of \$47 in any one school year for each child with a disability receiving instruction;

(6) for fiscal years 1997 and later, special education base revenue shall include amounts under clauses (1) to (5) for special education summer programs provided during the base year for that fiscal year; and

(7) for fiscal years 1999 and later, the cost of providing transportation services for children with disabilities under section 123B.92, subdivision 1, paragraph (b), clause (4).

The department shall establish procedures through the uniform financial accounting and reporting system to identify and track all revenues generated from third-party billings as special education revenue at the school district level; include revenue generated from third-party billings as special education revenue in the annual cross-subsidy report; and exclude third-party revenue from calculation of excess cost aid to the districts.

(b) If requested by a school district operating a special education program during the base year for less than the full fiscal year, or a school district in which is located a Minnesota correctional facility operating on a fee-for-service basis for less than the full fiscal year, the commissioner may adjust the base revenue to reflect the expenditures that would have occurred during the base year had the program been operated for the full fiscal year.

(c) Notwithstanding paragraphs (a) and (b), the portion of a school district's base revenue attributable to a Minnesota correctional facility operating on a fee-for-service basis during the facility's first year of operating on a fee-for-service basis shall be computed using current year data.

Subd. 3. **Adjusted special education base revenue.** For fiscal year 1997 and later, a district's adjusted special education base revenue equals the district's special education base revenue times the ratio of the district's average daily membership for the current school year to the district's average daily membership for the base year.

Subd. 4. **State total special education aid.** The state total special education aid for fiscal year 2000 equals \$463,000,000. The state total special education aid for fiscal year

2001 equals \$474,000,000. The state total special education aid for later fiscal years equals:

- (1) the state total special education aid for the preceding fiscal year; times
- (2) the program growth factor; times
- (3) the ratio of the state total average daily membership for the current fiscal year to the state total average daily membership for the preceding fiscal year.

**Subd. 5. School district special education aid.** (a) A school district's special education aid for fiscal year 2000 and later equals the state total special education aid, minus the amount determined under paragraphs (b) and (c), times the ratio of the district's adjusted special education base revenue to the state total adjusted special education base revenue. If the commissioner of children, families, and learning modifies its rules for special education in a manner that increases a district's special education obligations or service requirements, the commissioner shall annually increase each district's special education aid by the amount necessary to compensate for the increased service requirements. The additional aid equals the cost in the current year attributable to rule changes not reflected in the computation of special education base revenue, multiplied by the appropriate percentages from subdivision 2.

(b) Notwithstanding paragraph (a), if the special education base revenue for a district equals zero, the special education aid equals the amount computed according to subdivision 2 using current year data.

(c) Notwithstanding paragraphs (a) and (b), if the special education base revenue for a district is greater than zero, and the base year amount for the district under subdivision 2, paragraph (a), clause (7), equals zero, the special education aid equals the sum of the amount computed according to paragraph (a), plus the amount computed according to subdivision 2, paragraph (a), clause (7), using current year data.

(d) A charter school under section 124D.10 shall generate state special education aid based on current year expenditures for its first four years of operation and only in its fifth and later years shall paragraphs (a), (b), and (c) apply.

**Subd. 6.** [Repealed, 1999 c 241 art 2 s 62]

**Subd. 7. Revenue allocation from cooperative centers and intermediates.** For the purposes of this section, a special education cooperative, a service cooperative, an education district, or an intermediate district must allocate its approved expenditures for special education programs among participating school districts.

**History:** *1Sp1995 c 3 art 15 s 10; art 16 s 13; 1996 c 412 art 3 s 19-24; 1997 c 7 art 1 s 54; 1Sp1997 c 4 art 2 s 19-22; 1998 c 397 art 2 s 99-101,164; art 11 s 3; 1998 c 398 art 1 s 22; art 2 s 27; art 5 s 55; 1999 c 241 art 2 s 37-40; 1999 c 245 art 4 s 5; 2000 c 489 art 3 s 11,12; art 10 s 10; 2000 c 499 s 32; 1Sp2001 c 6 art 3 s 12,13; 2002 c 294 s 5; 2002 c 375 art 3 s 3*

**125A.77** [Repealed, 1999 c 241 art 2 s 62]

## **125A.78 ALTERNATIVE DELIVERY BASE REVENUE ADJUSTMENT.**

**Subdivision 1. Eligibility.** A district is eligible for an alternative delivery base revenue adjustment if the commissioner has approved the application of the district according to section 125A.50.

**Subd. 2. Base revenue adjustment.** For the third fiscal year after approval of a district's application, and thereafter, the special education base revenue under section 125A.76, subdivision 1, must be computed based on activities defined as reimbursable under department of children, families, and learning rules for special education and nonspecial education students, and additional activities as detailed and approved by the commissioner.

**Subd. 3. Use of revenue.** Revenue under section 125A.76 shall be used to implement the approved program.

**History:** *1991 c 265 art 3 s 10; 1993 c 224 art 3 s 19-22; art 14 s 11,12; 1Sp1995 c 3 art 15 s 14; art 16 s 13; 1997 c 7 art 1 s 59,60; 1998 c 397 art 2, s 104,105,164; art 11 s 3; 1998 c 398 art 5 s 55*

**125A.79 SPECIAL EDUCATION EXCESS COST AID.**

Subdivision 1. **Definitions.** For the purposes of this section, the definitions in this subdivision apply:

(a) "Unreimbursed special education cost" means the sum of the following:

(1) expenditures for teachers' salaries, contracted services, supplies, equipment, and transportation services eligible for revenue under section 125A.76; plus

(2) expenditures for tuition bills received under sections 125A.03 to 125A.24 and 125A.65 for services eligible for revenue under section 125A.76, subdivision 2; minus

(3) revenue for teachers' salaries, contracted services, supplies, and equipment under section 125A.76; minus

(4) tuition receipts under sections 125A.03 to 125A.24 and 125A.65 for services eligible for revenue under section 125A.76, subdivision 2.

(b) "General revenue" means for fiscal year 1996, the sum of the general education revenue according to section 126C.10, subdivision 1, as adjusted according to section 127A.47, subdivision 7, plus the total referendum revenue according to section 126C.17, subdivision 4. For fiscal years 1997 and later, "general revenue" means the sum of the general education revenue according to section 126C.10, subdivision 1, as adjusted according to section 127A.47, subdivisions 7 and 8, plus the total referendum revenue minus transportation sparsity revenue minus total operating capital revenue.

(c) "Average daily membership" has the meaning given it in section 126C.05.

(d) "Program growth factor" means 1.044 for fiscal year 2002 and 1.02 for fiscal year 2003 and later.

Subd. 2. **Excess cost aid, fiscal years 2000 and 2001.** For fiscal years 2000 and 2001, a district's special education excess cost aid equals the greatest of:

(a) 75 percent of the difference between (1) the district's unreimbursed special education cost and (2) 4.36 percent of the district's general revenue;

(b) 70 percent of the difference between (1) the increase in the district's unreimbursed special education cost between the base year as defined in section 125A.76, subdivision 1, and the current year and (2) 1.6 percent of the district's general revenue; or

(c) zero.

Subd. 3. [Repealed, 1999 c 241 art 2 s 62]

Subd. 4. **Tuition.** Notwithstanding sections 125A.03 to 125A.24 and 125A.65, for children who are nonresidents of Minnesota, receive services under section 125A.76, subdivisions 1 and 2, and are placed in the serving school district by court action, the serving school district shall submit unreimbursed tuition bills for eligible services to the department of children, families, and learning instead of the resident school district. To be eligible for reimbursement, the serving school district, as part of its child intake procedures, must demonstrate good faith effort to obtain from the placing agency a financial commitment to pay tuition costs.

Subd. 5. **Initial excess cost aid.** For fiscal years 2002 and later, a district's initial excess cost aid equals the greatest of:

(1) 75 percent of the difference between (i) the district's unreimbursed special education cost and (ii) 4.36 percent of the district's general revenue;

(2) 70 percent of the difference between (i) the increase in the district's unreimbursed special education cost between the base year as defined in section 125A.76, subdivision 1, and the current year and (ii) 1.6 percent of the district's general revenue; or

(3) zero.

Subd. 6. **State total special education excess cost aid.** The state total special education excess cost aid for fiscal year 2002 and later fiscal years equals:

(1) the state total special education excess cost aid for the preceding fiscal year; times

(2) the program growth factor; times

(3) the ratio of the state total average daily membership for the current fiscal year to the state total average daily membership for the preceding fiscal year.

Subd. 7. **District special education excess cost aid.** A district's special education excess cost aid for fiscal year 2002 and later equals the state total special education excess cost aid times the ratio of the district's initial excess cost aid to the state total initial excess cost aid.

Subd. 8. **Out-of-state tuition.** For children who are residents of the state, receive services under section 125A.76, subdivisions 1 and 2, and are placed in a care and treatment facility by court action in a state that does not have a reciprocity agreement with the commissioner under section 125A.155, the resident school district shall submit the balance of the tuition bills, minus the amount of the basic revenue, as defined by section 126C.10, subdivision 2, of the district for the child and the special education aid, and any other aid earned on behalf of the child.

**History:** 1993 c 224 art 3 s 23; 1Sp1995 c 3 art 15 s 15-17; 1996 c 412 art 3 s 26,27; 1997 c 7 art 1 s 61; 1Sp1997 c 4 art 2 s 24,25; 1998 c 397 art 2 s 106,164; art 11 s 3; 1998 c 398 art 2 s 28; 1999 c 241 art 2 s 41-46; 2000 c 254 s 36; 2000 c 489 art 3 s 13,14; art 10 s 11

#### **125A.80 UNIFORM BILLING SYSTEM FOR THE EDUCATION COSTS OF OUT-OF-HOME PLACED STUDENTS.**

The commissioner, in cooperation with the commissioners of human services and corrections and with input from appropriate billing system users, shall develop and implement a uniform billing system for school districts and other agencies, including private providers, who provide the educational services for students who are placed out of the home. The uniform billing system must:

- (1) allow for the proper and timely billing to districts by service providers with a minimum amount of district administration;
- (2) allow districts to bill the state for certain types of special education and regular education services as provided by law;
- (3) provide flexibility for the types of services that are provided for children placed out of the home, including day treatment services;
- (4) allow the commissioner to track the type, cost, and quality of services provided for children placed out of the home;
- (5) conform existing special education and proposed regular education billing procedures;
- (6) provide a uniform reporting standard of per diem rates;
- (7) determine allowable expenses and maximum reimbursement rates for the state reimbursement of care and treatment services; and
- (8) provide a process for the district to appeal to the commissioner tuition bills submitted to districts and to the state.

**History:** 1999 c 241 art 2 s 47; 2000 c 489 art 10 s 12