

1.1 A bill for an act

1.2 relating to education; clarifying school district obligations to children with
1.3 disabilities; authorizing rulemaking; amending Minnesota Statutes 2008, sections
1.4 125A.02; 125A.07; 125A.08; 125A.091; 125A.57, subdivision 2; repealing
1.5 Minnesota Statutes 2008, sections 121A.43; 125A.05; 125A.18; Minnesota
1.6 Rules, parts 3525.0210, subparts 34, 43; 3525.0400; 3525.2445; 3525.4220.

1.7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.8 Section 1. Minnesota Statutes 2008, section 125A.02, is amended to read:

1.9 **125A.02 CHILD WITH A DISABILITY DEFINED.**

1.10 Subdivision 1. **Child with a disability.** ~~Every child who has~~ Child with a disability
1.11 means a child evaluated in accordance with federal and state special education law as
1.12 having a hearing impairment, blindness, visual disability, speech or language impairment,
1.13 physical disability, other health impairment, mental disability, emotional/behavioral
1.14 disorder, specific learning disability, autism, traumatic brain injury, multiple disabilities, or
1.15 deaf/blind disability and who, by reason thereof, needs special instruction and education
1.16 and related services, as determined by the standards rules of the commissioner, is a
1.17 child with a disability. A licensed physician, an advanced practice nurse, or a licensed
1.18 psychologist is qualified to make a diagnosis and determination of attention deficit
1.19 disorder or attention deficit hyperactivity disorder for purposes of identifying a child
1.20 with a disability.

1.21 Subd. 1a. **Children ages three through seven experiencing developmental**
1.22 **delays.** In addition, every child under age three, and at local district discretion from age
1.23 three to age seven, who needs special instruction and services, as determined by the
1.24 standards rules of the commissioner, because the child has a substantial delay or has

2.1 an identifiable physical or mental condition known to hinder normal development is
2.2 a child with a disability.

2.3 Subd. 2. **Not a child with a disability.** A child with a short-term or temporary
2.4 physical or emotional illness or disability, as determined by the ~~standards~~ rules of the
2.5 commissioner, is not a child with a disability.

2.6 Sec. 2. Minnesota Statutes 2008, section 125A.07, is amended to read:

2.7 **125A.07 RULES OF COMMISSIONER RULEMAKING.**

2.8 (a) ~~As defined in~~ Consistent with this paragraph section, the commissioner ~~must~~
2.9 shall adopt new rules and amend existing rules ~~relative to qualifications of essential~~
2.10 ~~personnel, courses of study, methods of instruction, pupil eligibility, size of classes, rooms,~~
2.11 ~~equipment, supervision, parent consultation, and other necessary rules for instruction of~~
2.12 ~~children with a disability. These rules must provide standards and procedures appropriate~~
2.13 ~~for the implementation of and within the limitations of sections 125A.08 and 125A.091.~~
2.14 ~~These rules must also provide standards for the discipline, control, management, and~~
2.15 ~~protection of children with a disability. The commissioner must not adopt rules for pupils~~
2.16 ~~served primarily in the regular classroom establishing either case loads or the maximum~~
2.17 ~~number of pupils that may be assigned to special education teachers. The commissioner, in~~
2.18 ~~consultation with the Departments of Health and Human Services, must adopt permanent~~
2.19 ~~rules for instruction and services for children under age five and their families. These~~
2.20 ~~rules are binding on state and local education, health, and human services agencies. The~~
2.21 ~~commissioner must adopt rules to determine eligibility for special education services. The~~
2.22 ~~rules must include procedures and standards by which to grant variances for experimental~~
2.23 ~~eligibility criteria. The commissioner must, according to section 14.05, subdivision 4,~~
2.24 ~~notify a district applying for a variance from the rules within 45 calendar days of receiving~~
2.25 ~~the request whether the request for the variance has been granted or denied. If a request is~~
2.26 ~~denied, the commissioner must specify the program standards used to evaluate the request~~
2.27 ~~and the reasons for denying the request~~ related to children with disabilities only under
2.28 specific authority and consistent with the requirements of chapter 14 and paragraph (c).

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

2.32 (1) increased time available to teachers and, where appropriate, to support staff
2.33 including school nurses for educating students through direct and indirect instruction;

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

3.1 (3) reduced inequalities and conflict, appropriate due process hearing procedures
3.2 and reduced court actions related to the delivery of special education instruction and
3.3 services for students with disabilities;

3.4 (4) clear expectations for service providers and for students with disabilities;

3.5 (5) increased accountability for all individuals and agencies that provide instruction
3.6 and other services to students with disabilities;

3.7 (6) greater focus for the state and local resources dedicated to educating students
3.8 with disabilities; and

3.9 (7) clearer standards for evaluating the effectiveness of education and support
3.10 services for students with disabilities.

3.11 (c) Subject to chapter 14, the commissioner may adopt, amend, or rescind a rule
3.12 related to children with disabilities if such action is specifically required by federal law.

3.13 Sec. 3. Minnesota Statutes 2008, section 125A.08, is amended to read:

3.14 **125A.08 SCHOOL DISTRICT OBLIGATIONS INDIVIDUALIZED**
3.15 **EDUCATION PROGRAMS.**

3.16 (a) At the beginning of each school year, each school district shall have in effect, for
3.17 each child with a disability, an individualized education program.

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

3.19 (1) all students with disabilities are provided the special instruction and services
3.20 which are appropriate to their needs. Where the individual education plan team has
3.21 determined appropriate goals and objectives based on the student's needs, including the
3.22 extent to which the student can be included in the least restrictive environment, and where
3.23 there are essentially equivalent and effective instruction, related services, or assistive
3.24 technology devices available to meet the student's needs, cost to the district may be among
3.25 the factors considered by the team in choosing how to provide the appropriate services,
3.26 instruction, or devices that are to be made part of the student's individual education plan.
3.27 The individual education plan team shall consider and may authorize services covered
3.28 by medical assistance according to section 256B.0625, subdivision 26. The student's
3.29 needs and the special education instruction and services to be provided must be agreed
3.30 upon through the development of an individual education plan. The plan must address
3.31 the student's need to develop skills to live and work as independently as possible within
3.32 the community. The individual education plan team must consider positive behavioral
3.33 interventions, strategies, and supports that address behavior for children with attention
3.34 deficit disorder or attention deficit hyperactivity disorder. ~~By~~ During grade 9 ~~or age 14,~~
3.35 the plan must address the student's needs for transition from secondary services to

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4.1 postsecondary education and training, employment, community participation, recreation,
4.2 and leisure and home living. In developing the plan, districts must inform parents of the
4.3 full range of transitional goals and related services that should be considered. The plan
4.4 must include a statement of the needed transition services, including a statement of the
4.5 interagency responsibilities or linkages or both before secondary services are concluded;

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

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

4.12 (4) eligibility and needs of children with a disability are determined by an initial
4.13 assessment or reassessment, which may be completed using existing data under United
4.14 States Code, title 20, section 33, et seq.;

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

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

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

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

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

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

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

5.4 Sec. 4. Minnesota Statutes 2008, section 125A.091, is amended to read:

5.5 **125A.091 ALTERNATIVE DISPUTE RESOLUTION AND DUE PROCESS**
5.6 **HEARINGS.**

5.7 ~~Subdivision 1. **District obligation.** A school district must use the procedures in~~
5.8 ~~federal law and state law and rule to reach decisions about the identification, evaluation,~~
5.9 ~~educational placement, manifestation determination, interim alternative educational~~
5.10 ~~placement, or the provision of a free appropriate public education to a child with a~~
5.11 ~~disability.~~

5.12 ~~Subd. 2. **Prior written notice.** A parent must receive prior written notice~~
5.13 ~~a reasonable time before the district proposes or refuses to initiate or change the~~
5.14 ~~identification, evaluation, educational placement, or the provision of a free appropriate~~
5.15 ~~public education to a child with a disability.~~

5.16 ~~Subd. 3. **Content of notice.** The notice under subdivision 2 must:~~

5.17 ~~(1) describe the action the district proposes or refuses;~~

5.18 ~~(2) explain why the district proposes or refuses to take the action;~~

5.19 ~~(3) describe any other option the district considered and the reason why it rejected~~
5.20 ~~the option;~~

5.21 ~~(4) describe each evaluation procedure, test, record, or report the district used as a~~
5.22 ~~basis for the proposed or refused action;~~

5.23 ~~(5) describe any other factor affecting the proposal or refusal of the district to take~~
5.24 ~~the action;~~

5.25 ~~(6) state that the parent of a child with a disability is protected by procedural~~
5.26 ~~safeguards and, if this notice is not an initial referral for evaluation, how a parent can get a~~
5.27 ~~description of the procedural safeguards; and~~

5.28 ~~(7) identify where a parent can get help in understanding this law.~~

5.29 ~~Subd. 4. **Understandable notice.** (a) The written notice under subdivision 2 must~~
5.30 ~~be understandable to the general public and available in the parent's native language or by~~
5.31 ~~another communication form, unless it is clearly not feasible to do so:~~

5.32 ~~(b) If the parent's native language or other communication form is not written,~~
5.33 ~~the district must take steps to ensure that:~~

5.34 ~~(1) the notice is translated orally or by other means to the parent in the parent's~~
5.35 ~~native language or other communication form;~~

6.1 ~~(2) the parent understands the notice; and~~

6.2 ~~(3) written evidence indicates the requirements in subdivision 2 are met.~~

6.3 Subd. 5. **Initial action; parent consent.** (a) The district must not proceed with the
6.4 initial evaluation of a child, the initial placement of a child in a special education program,
6.5 or the initial provision of special education services for a child without the prior written
6.6 consent of the child's parent. A district may not override the written refusal of a parent to
6.7 consent to an initial evaluation or reevaluation.

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

6.11 Subd. 6. **Dispute resolution processes; generally.** Parties are encouraged to
6.12 resolve disputes over the identification, evaluation, educational placement, manifestation
6.13 determination, interim alternative educational placement, or the provision of a free
6.14 appropriate public education to a child with a disability through conciliation, mediation,
6.15 facilitated team meetings, or other alternative process. All dispute resolution options are
6.16 voluntary on the part of the parent and must not be used to deny or delay the right to a
6.17 due process hearing. All dispute resolution processes under this section are provided
6.18 at no cost to the parent.

6.19 Subd. 7. **Conciliation conference.** A parent must have an opportunity to meet with
6.20 appropriate district staff in at least one conciliation conference if the parent objects to any
6.21 proposal of which the parent receives notice under subdivision ~~2~~ 3a. If the parent refuses
6.22 district efforts to conciliate the dispute, the conciliation requirement is satisfied. Following
6.23 a conciliation conference, the district must prepare and provide to the parent a conciliation
6.24 conference memorandum that describes the district's final proposed offer of service. This
6.25 memorandum is admissible in evidence in any subsequent proceeding.

6.26 Subd. 8. **Voluntary dispute resolution options.** In addition to offering at least
6.27 one conciliation conference, a district must inform a parent of other dispute resolution
6.28 processes, including at least mediation and facilitated team meetings. The fact that
6.29 an alternative dispute resolution process was used is admissible in evidence at any
6.30 subsequent proceeding. State-provided mediators and team meeting facilitators shall not
6.31 be subpoenaed to testify at a due process hearing or civil action under federal special
6.32 education law nor are any records of mediators or state-provided team meeting facilitators
6.33 accessible to the parties.

6.34 Subd. 9. **Mediation.** Mediation is a dispute resolution process that involves a
6.35 neutral party provided by the state to assist a parent and a district in resolving disputes
6.36 over the identification, evaluation, educational placement, manifestation determination,

7.1 interim alternative educational placement, or the provision of a free appropriate public
7.2 education to a child with a disability. A mediation process is available as an informal
7.3 alternative to a due process hearing but must not be used to deny or postpone the
7.4 opportunity of a parent or district to obtain a due process hearing. Mediation is voluntary
7.5 for all parties. All mediation discussions are confidential and inadmissible in evidence
7.6 in any subsequent proceeding, unless the:

- 7.7 (1) parties expressly agree otherwise;
- 7.8 (2) evidence is otherwise available; or
- 7.9 (3) evidence is offered to prove bias or prejudice of a witness.

7.10 Subd. 10. **Mediated agreements.** ~~Mediated agreements are not admissible unless~~
7.11 ~~the parties agree otherwise or a party to the agreement believes the agreement is not~~
7.12 ~~being implemented, in which case the aggrieved party may enter the agreement into~~
7.13 ~~evidence at a due process hearing. The parties may request another mediation to resolve~~
7.14 ~~a dispute over implementing the mediated agreement. After a due process hearing is~~
7.15 ~~requested, a party may request mediation and the commissioner must provide a mediator~~
7.16 ~~who conducts a mediation session no later than the third business day after the mediation~~
7.17 ~~request is made to the commissioner. If the parties resolve all or a portion of the dispute,~~
7.18 ~~or agree to use another procedure to resolve the dispute, the mediator shall ensure that the~~
7.19 ~~resolution or agreement is in writing, signed by the parties, and a copy is given to each~~
7.20 ~~party. The written resolution or agreement shall state that all discussions that occurred~~
7.21 ~~during mediation are confidential and may not be used as evidence in any hearing or~~
7.22 ~~civil proceeding. The resolution or agreement is legally binding upon the parties and is~~
7.23 ~~enforceable in the state or federal district court. A party may request another mediation to~~
7.24 ~~resolve a dispute over implementing the mediated agreement.~~

7.25 Subd. 11. **Facilitated team meeting.** A facilitated team meeting is an IEP, IFSP,
7.26 or IIP team meeting led by an impartial state-provided facilitator to promote effective
7.27 communication and assist a team in developing an individualized education plan.

7.28 Subd. 12. **Impartial due process hearing.** (a) A parent or a district is entitled to
7.29 an impartial due process hearing conducted by the state when a dispute arises over the
7.30 identification, evaluation, educational placement, manifestation determination, interim
7.31 alternative educational placement, or the provision of a free appropriate public education
7.32 to a child with a disability. The hearing must be held in the district responsible for
7.33 ensuring that a free appropriate public education is provided according to state and federal
7.34 law. The proceedings must be recorded and preserved, at state expense, pending ultimate
7.35 disposition of the action. The parent and the district shall receive, at state expense, a copy

8.1 of the hearing transcript or recording and the hearing officer's findings of fact, conclusion
8.2 of law, and decisions.

8.3 ~~(b) The due process hearing must be conducted according to the rules of the~~
8.4 ~~commissioner and federal law.~~

8.5 Subd. 13. **Hearing officer qualifications.** ~~The commissioner must appoint an~~
8.6 ~~individual who is qualified under this subdivision to serve as a hearing officer.~~ The
8.7 commissioner shall maintain a list of qualified hearing officers who are not employees of
8.8 or otherwise under contract with the department or the school district except when under
8.9 contract with the department as a hearing officer, and who do not have a personal or
8.10 professional interest that conflicts with their objectivity when serving as hearing officers
8.11 in hearings under this section. The list shall include a statement of the qualifications of
8.12 each person listed. A hearing officer must know and understand state and federal special
8.13 education laws, rules, and regulations, and legal interpretations by federal and state courts.
8.14 A hearing officer also must have the knowledge and ability to conduct hearings and render
8.15 and write decisions according to appropriate, standard legal practice. Upon receipt of a
8.16 written request for a hearing, the commissioner shall appoint a hearing officer from the
8.17 list. The hearing officer must:

8.18 (1) be knowledgeable and impartial;

8.19 (2) have no personal interest in or specific involvement with the student who is a
8.20 party to the hearing;

8.21 (3) not have been employed as an administrator by the district that is a party to
8.22 the hearing;

8.23 (4) not have been involved in selecting the district administrator who is a party
8.24 to the hearing;

8.25 (5) have no personal, economic, or professional interest in the outcome of the
8.26 hearing other than properly administering federal and state laws, rules, and policies;

8.27 (6) have no substantial involvement in developing state or local policies or
8.28 procedures challenged in the hearing;

8.29 (7) not be a current employee or board member of a Minnesota public school district,
8.30 education district, intermediate unit or regional education agency, or the department if
8.31 the department is the service provider; and

8.32 (8) not be a current employee or board member of a disability advocacy organization
8.33 or group.

8.34 Subd. 14. **Request for hearing.** ~~A request for a due process hearing must:~~

8.35 ~~(1) be in writing;~~

9.1 ~~(2) describe the nature of the dispute about providing special education services to~~
9.2 ~~the student including facts relating to the dispute; and~~

9.3 ~~(3) state, to the extent known, the relief sought.~~

9.4 ~~Any school district administrator receiving a request for a due process hearing~~
9.5 ~~must immediately forward the request to the commissioner. Within two business days of~~
9.6 ~~receiving a request for a due process hearing, the commissioner must appoint a hearing~~
9.7 ~~officer. The commissioner must not deny a request for hearing because the request~~
9.8 ~~is incomplete. A party may disqualify a hearing officer only by affirmatively showing~~
9.9 ~~prejudice or bias to the commissioner or to the chief administrative law judge if the hearing~~
9.10 ~~officer is an administrative law judge. If a party affirmatively shows prejudice against a~~
9.11 ~~hearing officer, the commissioner must assign another hearing officer to hear the matter. (a)~~

9.12 A parent or a school district may file a written request for a due process hearing regarding
9.13 a proposal or refusal to initiate or change that child's evaluation, individualized education
9.14 program, or educational placement, or to provide a free appropriate public education.

9.15 (b) The parent shall include in the hearing request the name of the child, the address
9.16 of the child's residence, the name of the school the child attends, a description of the
9.17 child's problem relating to the proposed or refused initiation or change, including facts
9.18 relating to the problem, and a proposed resolution of the problem to the extent known
9.19 and available to the parents at the time.

9.20 (c) A parent or a school district may file a written request for a hearing under United
9.21 States Code, title 20, section 1415, paragraph (k).

9.22 (d) A parent or school district filing a request for a hearing under this subdivision
9.23 must provide the request to the other party and a copy of the request to the department.
9.24 Upon receiving a request for a hearing, the department shall give to the child's parent a
9.25 copy of the procedural safeguards notice available to a parent under federal regulations.

9.26 (e) (1) If the parent of a child with a disability files a written request for a hearing,
9.27 and the school district has not previously sent a written notice to the parent under
9.28 subdivision 3, regarding the subject matter of the hearing request, the school district
9.29 shall, within ten days of receiving the hearing request, send to the child's parent a written
9.30 explanation of why the school district proposed or refused to take the action raised in the
9.31 hearing request, a description of other options that the individualized education program
9.32 team considered and the reason why those options were rejected, a description of each
9.33 evaluation procedure, assessment, record, or report that the school district used as the basis
9.34 for the proposed or refused action, and a description of the factors that are relevant to the
9.35 school district's proposal or refusal. A response by a school district under this subdivision

10.1 does not preclude the school district from asserting that the parent's request for a hearing
10.2 is insufficient under clause (2) of this paragraph.

10.3 (2) A hearing may not occur until the party requesting the hearing files a request that
10.4 meets the requirements of paragraph (b). The request under paragraph (b) is considered
10.5 sufficient unless the party receiving the request notifies the hearing officer and the other
10.6 party in writing within 15 days of receiving the request that the receiving party believes
10.7 the request does not meet the requirements of paragraph (b). Within five days of receiving
10.8 a notice under this subdivision, the hearing officer shall determine whether the request
10.9 meets the requirements under paragraph (b) and notify the parties.

10.10 (f) Except as provided in paragraph (e), clause (1), the party receiving a request for a
10.11 hearing shall send to the party requesting the hearing a written response that addresses the
10.12 issues raised in the hearing request within ten days of receiving the request.

10.13 Subd. 15. **Prehearing conference.** A prehearing conference must be held within
10.14 five business days of the date the commissioner appoints the hearing officer. The hearing
10.15 officer must initiate the prehearing conference which may be conducted in person, at a
10.16 location within the district, or by telephone. The hearing officer must create a written
10.17 verbatim record of the prehearing conference which is available to either party upon
10.18 request. At the prehearing conference, the hearing officer must:

10.19 (1) identify the questions that must be answered to resolve the dispute and eliminate
10.20 claims and complaints that are without merit;

10.21 (2) set a scheduling order for the hearing and additional prehearing activities;

10.22 (3) determine if the hearing can be disposed of without an evidentiary hearing and, if
10.23 so, establish the schedule and procedure for doing so; and

10.24 (4) establish the management, control, and location of the hearing to ensure its fair,
10.25 efficient, and effective disposition.

10.26 Subd. 16. **Burden of proof.** The burden of proof at a due process hearing is on the
10.27 ~~district to demonstrate, by a preponderance of the evidence, that it is complying with the~~
10.28 ~~law and offered or provided a free appropriate public education to the child in the least~~
10.29 ~~restrictive environment. If the district has not offered or provided a free appropriate public~~
10.30 ~~education in the least restrictive environment and the parent wants the district to pay for a~~
10.31 ~~private placement, the burden of proof is on the parent to demonstrate, by a preponderance~~
10.32 ~~of the evidence, that the private placement is appropriate party seeking relief.~~

10.33 Subd. 17. **Admissible evidence.** The hearing officer may admit all evidence
10.34 that possesses probative value, including hearsay, if it is the type of evidence on which
10.35 reasonable, prudent persons are accustomed to rely in conducting their serious affairs. The

11.1 hearing officer must give effect to the rules of privilege recognized by law and exclude
11.2 evidence that is incompetent, irrelevant, immaterial, or unduly repetitious.

11.3 Subd. 18. **Hearing officer authority.** (a) A hearing officer must limit an impartial
11.4 due process hearing to the time sufficient for each party to present its case.

11.5 (b) A hearing officer must establish and maintain control and manage the hearing.

11.6 This authority includes, but is not limited to:

11.7 (1) requiring attorneys representing parties at the hearing, after notice and an
11.8 opportunity to be heard, to pay court reporting and hearing officer costs, or fines payable
11.9 to the state, for failing to: (i) obey scheduling or prehearing orders, (ii) appear, (iii) be
11.10 prepared, or (iv) participate in the hearing process in good faith;

11.11 (2) administering oaths and affirmations;

11.12 (3) issuing subpoenas;

11.13 (4) determining the responsible and providing districts and joining those districts, if
11.14 not already notified, in the proceedings;

11.15 (5) making decisions involving identification, evaluation, educational placement,
11.16 manifestation determination, interim alternative educational placement, or the provision of
11.17 a free appropriate public education to a child with a disability; ~~and~~

11.18 (6) ordering an independent educational evaluation of a child at district expense; and

11.19 (7) extending the hearing decision timeline for good cause shown.

11.20 (c) Good cause includes, but is not limited to, the time required for mediation or
11.21 other settlement discussions, independent educational evaluation, complexity and volume
11.22 of issues, or finding or changing counsel.

11.23 Subd. 19. **Expedited due process hearings.** Consistent with federal law, a parent
11.24 has the right to or a school district may file a written request for an expedited due process
11.25 hearing when there is a dispute over a manifestation determination or a proposed or actual
11.26 placement in an interim alternative educational setting. A district has the right to an
11.27 expedited due process hearing when proposing or seeking to maintain placement in an
11.28 interim alternative educational setting. A hearing officer must hold an expedited due
11.29 process hearing within 20 school days of the date the expedited due process request is
11.30 filed and must issue a decision within ten calendar school days of after the request for a
11.31 hearing. A hearing officer may extend by up to five additional calendar days the time for
11.32 issuing a decision in an expedited due process hearing. All policies in this section apply
11.33 to expedited due process hearings to the extent they do not conflict with federal law. A
11.34 resolution meeting must occur within seven days of receiving the request for an expedited
11.35 due process hearing unless the parent and the school district agree in writing either to
11.36 waive the resolution meeting or use the mediation process. The expedited due process

12.1 hearing may proceed unless the matter has been resolved to the satisfaction of both parties
12.2 within 15 days of receiving the expedited due process hearing request.

12.3 Subd. 20. **Hearing officer's decision; time period.** (a) The hearing officer must
12.4 issue a decision within 45 calendar days of the date on which the commissioner receives
12.5 the request for a due process hearing. A hearing officer is encouraged to accelerate the
12.6 time line to 30 days for a child under the age of three whose needs change rapidly and
12.7 who requires quick resolution of a dispute. A hearing officer may not extend the time
12.8 beyond the 45-day period unless requested by either party for good cause shown on the
12.9 record. ~~Extensions of time must not exceed a total of 30 calendar days unless both parties~~
12.10 ~~and the hearing officer agree or time is needed to complete an independent educational~~
12.11 ~~evaluation. Good cause includes, but is not limited to, the time required for mediation or~~
12.12 ~~other settlement discussions, independent educational evaluation, complexity and volume~~
12.13 ~~of issues, or finding or changing counsel.~~

12.14 ~~(b) The hearing officer's decision must:~~

12.15 ~~(1) be in writing;~~

12.16 ~~(2) state the controlling and material facts upon which the decision is made in order~~
12.17 ~~to apprise the reader of the basis and reason for the decision; and~~

12.18 ~~(3) be based on local standards, state statute, the rules of the commissioner, and~~
12.19 ~~federal law.~~

12.20 (b) Once the hearing officer has issued a final decision, the hearing officer lacks
12.21 authority to amend the decision except for clerical or mathematical errors.

12.22 (c) Nothing in this subdivision precludes a hearing officer from ordering a school
12.23 district to comply with federal procedural safeguards under the federal Individuals with
12.24 Disabilities Education Act.

12.25 Subd. 21. **Compensatory educational services.** The hearing officer may require
12.26 the resident or responsible district to provide compensatory educational services to the
12.27 child if the hearing officer finds that the district has not offered or made available to
12.28 the child a free appropriate public education in the least restrictive environment and the
12.29 child suffered a loss of educational benefit. Such services take the form of direct and
12.30 indirect special education and related services designed to address any loss of educational
12.31 benefit that may have occurred. The hearing officer's finding must be based on a present
12.32 determination of whether the child has suffered a loss of educational benefit.

12.33 ~~Subd. 22. **Child's educational placement during due process hearing.** (a) Until a~~
12.34 ~~due process hearing under this section is completed or the district and the parent agree~~
12.35 ~~otherwise, the child must remain in the child's current educational placement and must~~
12.36 ~~not be denied initial admission to school.~~

13.1 ~~(b) Until an expedited due process hearing challenging an interim alternative~~
13.2 ~~educational placement is completed, the child must remain in the interim alternative~~
13.3 ~~educational setting until the decision of the hearing officer or the expiration of the 45 days~~
13.4 ~~permitted for an interim alternative educational setting, whichever occurs first, unless the~~
13.5 ~~parent and district agree otherwise.~~

13.6 ~~Subd. 23. **Implementation of hearing officer order.** (a) That portion of a hearing~~
13.7 ~~officer's decision granting relief requested by the parent must be implemented upon~~
13.8 ~~issuance.~~

13.9 ~~(b) Except as provided under paragraph (a) or the district and parent agree otherwise,~~
13.10 ~~following a hearing officer's decision granting relief requested by the district, the child~~
13.11 ~~must remain in the current educational placement until the time to request judicial review~~
13.12 ~~under subdivision 24 expires or, if judicial review is requested, at the time the Minnesota~~
13.13 ~~Court of Appeals or the federal district court issues its decision, whichever is later.~~

13.14 Subd. 24. **Review of hearing officer decisions.** The parent or district may seek
13.15 review of the hearing officer's decision in the Minnesota Court of Appeals or in the federal
13.16 district court, consistent with federal law. A party must appeal to the Minnesota Court of
13.17 Appeals within 60 days of receiving the hearing officer's decision.

13.18 Subd. 25. **Enforcement of orders.** The commissioner must monitor final hearing
13.19 officer decisions and ensure enforcement of hearing officer ~~orders~~ decisions.

13.20 Subd. 26. **Hearing officer and person conducting alternative dispute resolution**
13.21 **are state employees.** A hearing officer or person conducting alternative dispute resolution
13.22 under this section is an employee of the state under section 3.732 for purposes of section
13.23 3.736 only.

13.24 Subd. 27. **Hearing officer training.** A hearing officer must participate in training
13.25 ~~and follow procedures established~~ offered by the commissioner.

13.26 Subd. 28. **District liability.** A district is not liable for harmless technical violations
13.27 ~~of this section or rules implementing this section~~ federal or state laws, rules, or regulations
13.28 governing special education if the school district can demonstrate ~~on a case-by-case basis~~
13.29 that the violations did not harm a student's educational progress or the parent's right to
13.30 notice, participation, or due process. This subdivision is applicable to due process hearings
13.31 and special education complaints filed with the department.

13.32 Sec. 5. Minnesota Statutes 2008, section 125A.57, subdivision 2, is amended to read:

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

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14.1 capabilities of ~~children with disabilities~~ a child with a disability. The term does not include
14.2 a medical device that is surgically implanted or a replacement of such a device.

14.3 **EFFECTIVE DATE.** This section is effective the day following final enactment.

14.4 Sec. 6. **REPEALER.**

14.5 Minnesota Statutes 2008, sections 121A.43; 125A.05; and 125A.18, are repealed.

14.6 Minnesota Rules, parts 3525.0210, subparts 34 and 43; 3525.0400; 3525.2445; and
14.7 3525.4220, are repealed.

121A.43 EXCLUSION AND EXPULSION OF PUPILS WITH A DISABILITY.

When a pupil who has an individual education plan is excluded or expelled under sections 121A.40 to 121A.56 for misbehavior that is not a manifestation of the pupil's disability, the district shall continue to provide special education and related services after a period of suspension, if suspension is imposed. The district shall initiate a review of the pupil's individual education plan and conduct a review of the relationship between the pupil's disability and the behavior subject to disciplinary action and determine the appropriateness of the pupil's education plan before commencing an expulsion or exclusion.

125A.05 METHOD OF SPECIAL INSTRUCTION.

(a) As defined in this section, 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.

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.

APPENDIX

Repealed Minnesota Statutes: s1800-1

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.