

SENATE
STATE OF MINNESOTA
EIGHTY-EIGHTH SESSION

S.F. No. 2299

(SENATE AUTHORS: DAHLE)

DATE	D-PG	OFFICIAL STATUS
03/04/2014	5962	Introduction and first reading Referred to Education
03/12/2014		Comm report: To pass as amended and re-refer to State and Local Government

A bill for an act

1.1 relating to education; implementing recommendations of the 2014 Special
 1.2 Education Case Load and Rule Alignment Task Force; authorizing the
 1.3 commissioner of education to use expedited rulemaking to implement the rule
 1.4 recommendations of the task force; amending Minnesota Statutes 2012, sections
 1.5 121A.582, subdivision 1; 125A.08; Minnesota Statutes 2013 Supplement,
 1.6 sections 125A.0942, subdivision 2; 626.556, subdivision 2.
 1.7

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

1.9 Section 1. Minnesota Statutes 2012, section 121A.582, subdivision 1, is amended to
 1.10 read:

1.11 Subdivision 1. **Reasonable force standard.** (a) A teacher or school principal, in
 1.12 exercising the person's lawful authority, may use reasonable force when it is necessary
 1.13 under the circumstances to correct or restrain a student or prevent bodily harm or death
 1.14 to another.

1.15 (b) A school employee, school bus driver, or other agent of a district, in exercising
 1.16 the person's lawful authority, may use reasonable force when it is necessary under the
 1.17 circumstances to restrain a student or prevent bodily harm or death to another.

1.18 (c) Paragraphs (a) and (b) do not authorize conduct prohibited under ~~sections~~
 1.19 ~~121A.58 and 121A.67~~ section 125A.0942.

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

1.21 Sec. 2. Minnesota Statutes 2012, section 125A.08, is amended to read:

1.22 **125A.08 INDIVIDUALIZED EDUCATION PROGRAMS.**

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

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

2.2 (1) all students with disabilities are provided the special instruction and services
2.3 which are appropriate to their needs. Where the individualized education program team
2.4 has determined appropriate goals and objectives based on the student's needs, including
2.5 the extent to which the student can be included in the least restrictive environment,
2.6 and where there are essentially equivalent and effective instruction, related services, or
2.7 assistive technology devices available to meet the student's needs, cost to the district may
2.8 be among the factors considered by the team in choosing how to provide the appropriate
2.9 services, instruction, or devices that are to be made part of the student's individualized
2.10 education program. The individualized education program team shall consider and
2.11 may authorize services covered by medical assistance according to section 256B.0625,
2.12 subdivision 26. The student's needs and the special education instruction and services to
2.13 be provided must be agreed upon through the development of an individualized education
2.14 program. The program must address the student's need to develop skills to live and work
2.15 as independently as possible within the community. The individualized education program
2.16 team must consider positive behavioral interventions, strategies, and supports that address
2.17 behavior for children with attention deficit disorder or attention deficit hyperactivity
2.18 disorder. During grade 9, the program must address the student's needs for transition from
2.19 secondary services to postsecondary education and training, employment, community
2.20 participation, recreation, and leisure and home living. In developing the program, districts
2.21 must inform parents of the full range of transitional goals and related services that should
2.22 be considered. The program must include a statement of the needed transition services,
2.23 including a statement of the interagency responsibilities or linkages or both before
2.24 secondary services are concluded;

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

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

2.31 (4) eligibility and needs of children with a disability are determined by an initial
2.32 ~~assessment or reassessment~~ evaluation and re-evaluation, which may be completed using
2.33 existing data under United States Code, title 20, section 33, et seq.;

2.34 (5) to the maximum extent appropriate, children with a disability, including those
2.35 in public or private institutions or other care facilities, are educated with children who
2.36 are not disabled, and that special classes, separate schooling, or other removal of children

3.1 with a disability from the regular educational environment occurs only when and to the
 3.2 extent that the nature or severity of the disability is such that education in regular classes
 3.3 with the use of supplementary services cannot be achieved satisfactorily;

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

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

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

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

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

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

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

3.24 Sec. 3. Minnesota Statutes 2013 Supplement, section 125A.0942, subdivision 2,
 3.25 is amended to read:

3.26 Subd. 2. **Restrictive procedures.** (a) Restrictive procedures may be used only
 3.27 by a licensed special education teacher, school social worker, school psychologist,
 3.28 behavior analyst certified by the National Behavior Analyst Certification Board, a person
 3.29 with a master's degree in behavior analysis, other licensed education professional,
 3.30 paraprofessional under section 120B.363, or mental health professional under section
 3.31 245.4871, subdivision 27, who has completed the training program under subdivision 5.

3.32 (b) A school shall make reasonable efforts to notify the parent on the same day a
 3.33 restrictive procedure is used on the child, or if the school is unable to provide same-day
 3.34 notice, notice is sent within two days by written or electronic means or as otherwise
 3.35 indicated by the child's parent under paragraph ~~(d)~~ (f).

4.1 (c) The district must hold a meeting of the individualized education program team,
4.2 conduct or review a functional behavioral analysis, review data, consider developing
4.3 additional or revised positive behavioral interventions and supports, consider actions to
4.4 reduce the use of restrictive procedures, and modify the individualized education program
4.5 or behavior intervention plan as appropriate. The district must hold the meeting: within
4.6 ten calendar days after district staff use restrictive procedures on two separate school
4.7 days within 30 calendar days or a pattern of use emerges and the child's individualized
4.8 education program or behavior intervention plan does not provide for using restrictive
4.9 procedures in an emergency; or at the request of a parent or the district after restrictive
4.10 procedures are used. The district must review use of restrictive procedures at a child's
4.11 annual individualized education program meeting when the child's individualized
4.12 education program provides for using restrictive procedures in an emergency.

4.13 (d) If the individualized education program team under paragraph (c) determines
4.14 that existing interventions and supports are ineffective in reducing the use of restrictive
4.15 procedures or the district uses restrictive procedures on a child on ten or more school days
4.16 during the same school year, the team, as appropriate, either must consult with other
4.17 professionals working with the child; consult with experts in behavior analysis, mental
4.18 health, communication, or autism; consult with culturally competent professionals;
4.19 review existing evaluations, resources, and successful strategies; or consider whether to
4.20 reevaluate the child.

4.21 (e) At the individualized education program meeting under paragraph (c), the team
4.22 must review any known medical or psychological limitations, including any medical
4.23 information the parent provides voluntarily, that contraindicate the use of a restrictive
4.24 procedure, consider whether to prohibit that restrictive procedure, and document any
4.25 prohibition in the individualized education program or behavior intervention plan.

4.26 (f) An individualized education program team may plan for using restrictive
4.27 procedures and may include these procedures in a child's individualized education
4.28 program or behavior intervention plan; however, the restrictive procedures may be used
4.29 only in response to behavior that constitutes an emergency, consistent with this section.
4.30 The individualized education program or behavior intervention plan shall indicate how the
4.31 parent wants to be notified when a restrictive procedure is used.

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

4.33 Sec. 4. Minnesota Statutes 2013 Supplement, section 626.556, subdivision 2, is
4.34 amended to read:

5.1 Subd. 2. **Definitions.** As used in this section, the following terms have the meanings
5.2 given them unless the specific content indicates otherwise:

5.3 (a) "Family assessment" means a comprehensive assessment of child safety, risk
5.4 of subsequent child maltreatment, and family strengths and needs that is applied to a
5.5 child maltreatment report that does not allege substantial child endangerment. Family
5.6 assessment does not include a determination as to whether child maltreatment occurred
5.7 but does determine the need for services to address the safety of family members and the
5.8 risk of subsequent maltreatment.

5.9 (b) "Investigation" means fact gathering related to the current safety of a child
5.10 and the risk of subsequent maltreatment that determines whether child maltreatment
5.11 occurred and whether child protective services are needed. An investigation must be used
5.12 when reports involve substantial child endangerment, and for reports of maltreatment in
5.13 facilities required to be licensed under chapter 245A or 245B; under sections 144.50 to
5.14 144.58 and 241.021; in a school as defined in sections 120A.05, subdivisions 9, 11, and
5.15 13, and 124D.10; or in a nonlicensed personal care provider association as defined in
5.16 sections 256B.04, subdivision 16, and 256B.0625, subdivision 19a.

5.17 (c) "Substantial child endangerment" means a person responsible for a child's care,
5.18 and in the case of sexual abuse includes a person who has a significant relationship to the
5.19 child as defined in section 609.341, or a person in a position of authority as defined in
5.20 section 609.341, who by act or omission commits or attempts to commit an act against a
5.21 child under their care that constitutes any of the following:

5.22 (1) egregious harm as defined in section 260C.007, subdivision 14;

5.23 (2) sexual abuse as defined in paragraph (d);

5.24 (3) abandonment under section 260C.301, subdivision 2;

5.25 (4) neglect as defined in paragraph (f), clause (2), that substantially endangers the
5.26 child's physical or mental health, including a growth delay, which may be referred to as
5.27 failure to thrive, that has been diagnosed by a physician and is due to parental neglect;

5.28 (5) murder in the first, second, or third degree under section 609.185, 609.19, or
5.29 609.195;

5.30 (6) manslaughter in the first or second degree under section 609.20 or 609.205;

5.31 (7) assault in the first, second, or third degree under section 609.221, 609.222, or
5.32 609.223;

5.33 (8) solicitation, inducement, and promotion of prostitution under section 609.322;

5.34 (9) criminal sexual conduct under sections 609.342 to 609.3451;

5.35 (10) solicitation of children to engage in sexual conduct under section 609.352;

6.1 (11) malicious punishment or neglect or endangerment of a child under section
6.2 609.377 or 609.378;

6.3 (12) use of a minor in sexual performance under section 617.246; or

6.4 (13) parental behavior, status, or condition which mandates that the county attorney
6.5 file a termination of parental rights petition under section 260C.503, subdivision 2.

6.6 (d) "Sexual abuse" means the subjection of a child by a person responsible for the
6.7 child's care, by a person who has a significant relationship to the child, as defined in
6.8 section 609.341, or by a person in a position of authority, as defined in section 609.341,
6.9 subdivision 10, to any act which constitutes a violation of section 609.342 (criminal sexual
6.10 conduct in the first degree), 609.343 (criminal sexual conduct in the second degree),
6.11 609.344 (criminal sexual conduct in the third degree), 609.345 (criminal sexual conduct
6.12 in the fourth degree), or 609.3451 (criminal sexual conduct in the fifth degree). Sexual
6.13 abuse also includes any act which involves a minor which constitutes a violation of
6.14 prostitution offenses under sections 609.321 to 609.324 or 617.246. Sexual abuse includes
6.15 threatened sexual abuse which includes the status of a parent or household member
6.16 who has committed a violation which requires registration as an offender under section
6.17 243.166, subdivision 1b, paragraph (a) or (b), or required registration under section
6.18 243.166, subdivision 1b, paragraph (a) or (b).

6.19 (e) "Person responsible for the child's care" means (1) an individual functioning
6.20 within the family unit and having responsibilities for the care of the child such as a
6.21 parent, guardian, or other person having similar care responsibilities, or (2) an individual
6.22 functioning outside the family unit and having responsibilities for the care of the child
6.23 such as a teacher, school administrator, other school employees or agents, or other lawful
6.24 custodian of a child having either full-time or short-term care responsibilities including,
6.25 but not limited to, day care, babysitting whether paid or unpaid, counseling, teaching,
6.26 and coaching.

6.27 (f) "Neglect" means the commission or omission of any of the acts specified under
6.28 clauses (1) to (9), other than by accidental means:

6.29 (1) failure by a person responsible for a child's care to supply a child with necessary
6.30 food, clothing, shelter, health, medical, or other care required for the child's physical or
6.31 mental health when reasonably able to do so;

6.32 (2) failure to protect a child from conditions or actions that seriously endanger the
6.33 child's physical or mental health when reasonably able to do so, including a growth delay,
6.34 which may be referred to as a failure to thrive, that has been diagnosed by a physician and
6.35 is due to parental neglect;

7.1 (3) failure to provide for necessary supervision or child care arrangements
7.2 appropriate for a child after considering factors as the child's age, mental ability, physical
7.3 condition, length of absence, or environment, when the child is unable to care for the
7.4 child's own basic needs or safety, or the basic needs or safety of another child in their care;

7.5 (4) failure to ensure that the child is educated as defined in sections 120A.22 and
7.6 260C.163, subdivision 11, which does not include a parent's refusal to provide the parent's
7.7 child with sympathomimetic medications, consistent with section 125A.091, subdivision 5;

7.8 (5) nothing in this section shall be construed to mean that a child is neglected solely
7.9 because the child's parent, guardian, or other person responsible for the child's care in
7.10 good faith selects and depends upon spiritual means or prayer for treatment or care of
7.11 disease or remedial care of the child in lieu of medical care; except that a parent, guardian,
7.12 or caretaker, or a person mandated to report pursuant to subdivision 3, has a duty to report
7.13 if a lack of medical care may cause serious danger to the child's health. This section does
7.14 not impose upon persons, not otherwise legally responsible for providing a child with
7.15 necessary food, clothing, shelter, education, or medical care, a duty to provide that care;

7.16 (6) prenatal exposure to a controlled substance, as defined in section 253B.02,
7.17 subdivision 2, used by the mother for a nonmedical purpose, as evidenced by withdrawal
7.18 symptoms in the child at birth, results of a toxicology test performed on the mother at
7.19 delivery or the child at birth, medical effects or developmental delays during the child's
7.20 first year of life that medically indicate prenatal exposure to a controlled substance, or the
7.21 presence of a fetal alcohol spectrum disorder;

7.22 (7) "medical neglect" as defined in section 260C.007, subdivision 6, clause (5);

7.23 (8) chronic and severe use of alcohol or a controlled substance by a parent or
7.24 person responsible for the care of the child that adversely affects the child's basic needs
7.25 and safety; or

7.26 (9) emotional harm from a pattern of behavior which contributes to impaired
7.27 emotional functioning of the child which may be demonstrated by a substantial and
7.28 observable effect in the child's behavior, emotional response, or cognition that is not
7.29 within the normal range for the child's age and stage of development, with due regard to
7.30 the child's culture.

7.31 (g) "Physical abuse" means any physical injury, mental injury, or threatened injury,
7.32 inflicted by a person responsible for the child's care on a child other than by accidental
7.33 means, or any physical or mental injury that cannot reasonably be explained by the child's
7.34 history of injuries, or any aversive or deprivation procedures, or regulated interventions,
7.35 that have not been authorized under section ~~121A.67~~ 125A.0942 or 245.825.

8.1 Abuse does not include reasonable and moderate physical discipline of a child
8.2 administered by a parent or legal guardian which does not result in an injury. Abuse does
8.3 not include the use of reasonable force by a teacher, principal, or school employee as
8.4 allowed by section 121A.582. Actions which are not reasonable and moderate include,
8.5 but are not limited to, any of the following that are done in anger or without regard to the
8.6 safety of the child:

8.7 (1) throwing, kicking, burning, biting, or cutting a child;

8.8 (2) striking a child with a closed fist;

8.9 (3) shaking a child under age three;

8.10 (4) striking or other actions which result in any nonaccidental injury to a child
8.11 under 18 months of age;

8.12 (5) unreasonable interference with a child's breathing;

8.13 (6) threatening a child with a weapon, as defined in section 609.02, subdivision 6;

8.14 (7) striking a child under age one on the face or head;

8.15 (8) purposely giving a child poison, alcohol, or dangerous, harmful, or controlled
8.16 substances which were not prescribed for the child by a practitioner, in order to control or
8.17 punish the child; or other substances that substantially affect the child's behavior, motor
8.18 coordination, or judgment or that results in sickness or internal injury, or subjects the
8.19 child to medical procedures that would be unnecessary if the child were not exposed
8.20 to the substances;

8.21 (9) unreasonable physical confinement or restraint not permitted under section
8.22 609.379, including but not limited to tying, caging, or chaining; or

8.23 (10) in a school facility or school zone, an act by a person responsible for the child's
8.24 care that is a violation under section 121A.58.

8.25 (h) "Report" means any report received by the local welfare agency, police
8.26 department, county sheriff, or agency responsible for assessing or investigating
8.27 maltreatment pursuant to this section.

8.28 (i) "Facility" means:

8.29 (1) a licensed or unlicensed day care facility, residential facility, agency, hospital,
8.30 sanitarium, or other facility or institution required to be licensed under sections 144.50 to
8.31 144.58, 241.021, or 245A.01 to 245A.16, or chapter 245D;

8.32 (2) a school as defined in sections 120A.05, subdivisions 9, 11, and 13; and
8.33 124D.10; or

8.34 (3) a nonlicensed personal care provider organization as defined in sections 256B.04,
8.35 subdivision 16, and 256B.0625, subdivision 19a.

8.36 (j) "Operator" means an operator or agency as defined in section 245A.02.

9.1 (k) "Commissioner" means the commissioner of human services.

9.2 (l) "Practice of social services," for the purposes of subdivision 3, includes but is
9.3 not limited to employee assistance counseling and the provision of guardian ad litem and
9.4 parenting time expeditor services.

9.5 (m) "Mental injury" means an injury to the psychological capacity or emotional
9.6 stability of a child as evidenced by an observable or substantial impairment in the child's
9.7 ability to function within a normal range of performance and behavior with due regard to
9.8 the child's culture.

9.9 (n) "Threatened injury" means a statement, overt act, condition, or status that
9.10 represents a substantial risk of physical or sexual abuse or mental injury. Threatened
9.11 injury includes, but is not limited to, exposing a child to a person responsible for the
9.12 child's care, as defined in paragraph (e), clause (1), who has:

9.13 (1) subjected a child to, or failed to protect a child from, an overt act or condition
9.14 that constitutes egregious harm, as defined in section 260C.007, subdivision 14, or a
9.15 similar law of another jurisdiction;

9.16 (2) been found to be palpably unfit under section 260C.301, subdivision 1, paragraph
9.17 (b), clause (4), or a similar law of another jurisdiction;

9.18 (3) committed an act that has resulted in an involuntary termination of parental rights
9.19 under section 260C.301, or a similar law of another jurisdiction; or

9.20 (4) committed an act that has resulted in the involuntary transfer of permanent
9.21 legal and physical custody of a child to a relative under Minnesota Statutes 2010, section
9.22 260C.201, subdivision 11, paragraph (d), clause (1), section 260C.515, subdivision 4, or a
9.23 similar law of another jurisdiction.

9.24 A child is the subject of a report of threatened injury when the responsible social
9.25 services agency receives birth match data under paragraph (o) from the Department of
9.26 Human Services.

9.27 (o) Upon receiving data under section 144.225, subdivision 2b, contained in a
9.28 birth record or recognition of parentage identifying a child who is subject to threatened
9.29 injury under paragraph (n), the Department of Human Services shall send the data to the
9.30 responsible social services agency. The data is known as "birth match" data. Unless the
9.31 responsible social services agency has already begun an investigation or assessment of the
9.32 report due to the birth of the child or execution of the recognition of parentage and the
9.33 parent's previous history with child protection, the agency shall accept the birth match
9.34 data as a report under this section. The agency may use either a family assessment or
9.35 investigation to determine whether the child is safe. All of the provisions of this section
9.36 apply. If the child is determined to be safe, the agency shall consult with the county

10.1 attorney to determine the appropriateness of filing a petition alleging the child is in need
 10.2 of protection or services under section 260C.007, subdivision 6, clause (16), in order to
 10.3 deliver needed services. If the child is determined not to be safe, the agency and the county
 10.4 attorney shall take appropriate action as required under section 260C.503, subdivision 2.

10.5 (p) Persons who conduct assessments or investigations under this section shall take
 10.6 into account accepted child-rearing practices of the culture in which a child participates
 10.7 and accepted teacher discipline practices, which are not injurious to the child's health,
 10.8 welfare, and safety.

10.9 (q) "Accidental" means a sudden, not reasonably foreseeable, and unexpected
 10.10 occurrence or event which:

10.11 (1) is not likely to occur and could not have been prevented by exercise of due
 10.12 care; and

10.13 (2) if occurring while a child is receiving services from a facility, happens when the
 10.14 facility and the employee or person providing services in the facility are in compliance
 10.15 with the laws and rules relevant to the occurrence or event.

10.16 (r) "Nonmaltreatment mistake" means:

10.17 (1) at the time of the incident, the individual was performing duties identified in the
 10.18 center's child care program plan required under Minnesota Rules, part 9503.0045;

10.19 (2) the individual has not been determined responsible for a similar incident that
 10.20 resulted in a finding of maltreatment for at least seven years;

10.21 (3) the individual has not been determined to have committed a similar
 10.22 nonmaltreatment mistake under this paragraph for at least four years;

10.23 (4) any injury to a child resulting from the incident, if treated, is treated only with
 10.24 remedies that are available over the counter, whether ordered by a medical professional or
 10.25 not; and

10.26 (5) except for the period when the incident occurred, the facility and the individual
 10.27 providing services were both in compliance with all licensing requirements relevant to the
 10.28 incident.

10.29 This definition only applies to child care centers licensed under Minnesota
 10.30 Rules, chapter 9503. If clauses (1) to (5) apply, rather than making a determination of
 10.31 substantiated maltreatment by the individual, the commissioner of human services shall
 10.32 determine that a nonmaltreatment mistake was made by the individual.

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

10.34 **Sec. 5. RULEMAKING AUTHORITY; SPECIAL EDUCATION TASK FORCE**
 10.35 **RECOMMENDATIONS.**

11.1 The commissioner of education must use the expedited rulemaking process under
11.2 Minnesota Statutes, section 14.389, to make the rule changes recommended by the
11.3 Special Education Case Load and Rule Alignment Task Force in its 2014 report entitled
11.4 "Recommendations for Special Education Case Load and Rule Alignment" submitted
11.5 to the legislature on February 15, 2014.

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