

CHAPTER 3535
DEPARTMENT OF EDUCATION
EQUAL OPPORTUNITY IN SCHOOLS

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SCHOOL DESEGREGATION/INTEGRATION

3535.0100 PURPOSE.

The purpose of parts 3535.0100 to 3535.0180 is to:

A. recognize that the primary goal of public education is to enable all students to have opportunities to achieve academic success;

B. reaffirm the state of Minnesota's commitment to the importance of integration in its public schools;

C. recognize that while there are societal benefits from schools that are racially balanced, there are many factors which can impact the ability of school districts to provide racially balanced schools, including housing, jobs, and transportation;

D. recognize that providing parents a choice regarding where their children should attend school is an important component of Minnesota's education policy;

E. recognize that there are parents for whom having their children attend integrated schools is an essential component of their children's education;

F. prevent segregation, as defined in part 3535.0110, subpart 9, in public schools;

G. encourage districts to provide opportunities for students to attend schools that are racially balanced when compared to other schools within the district;

H. provide a system that identifies the presence of racially isolated districts and encourage adjoining districts to work cooperatively to improve cross-district integration, while giving parents and students meaningful choices; and

I. work with rules that address academic achievement, including graduation standards under chapter 3501 and inclusive education under part 3500.0550, by providing equitable access to resources.

Statutory Authority: *MS s 124D.896*

History: *24 SR 77*

3535.0110 DEFINITIONS.

Subpart 1. **Scope.** As used in parts 3535.0100 to 3535.0180, the terms defined in this part have the meanings given them.

Subp. 2. **Enrolled American Indian students.** "Enrolled American Indian students" means students who live on or off a reservation and are enrolled in a federally recognized tribe. Enrolled American Indian students have dual status as protected students under subpart 4 and members of sovereign nations.

Subp. 3. **Commissioner.** "Commissioner" means the commissioner of the Department of Education.

Subp. 4. **Protected students.** "Protected students" means:

A. students who self-identify or are identified in the general racial categories of African/Black Americans, Asian/Pacific Americans, Chicano/Latino Americans, and American Indian/Alaskan Native; and

B. multiracial students who self-identify or are identified as having origins in more than one of the categories described in item A or as having origins in one of the categories described in item A and in the category of Caucasian.

Subp. 5. **Racial balance.** "Racial balance" means the increased interaction of protected students and white students within schools and between districts that is consistent with the purposes of parts 3535.0160 to 3535.0180.

Subp. 6. **Racially identifiable school within a district.** "Racially identifiable school within a district" means a school where the enrollment of protected students at the school within a district is more than 20 percentage points above the enrollment of protected students in the entire district for the grade levels served by that school.

Subp. 7. **Racially isolated school district.** "Racially isolated school district" means a district where the districtwide enrollment of protected students exceeds the enrollment of protected students of any adjoining district by more than 20 percentage points.

Subp. 8. **School.** "School" means a site in a public school district serving any of kindergarten through grade 12. For purposes of parts 3535.0160 to 3535.0180 only, school does not mean:

- A. charter schools under Minnesota Statutes, section 124D.10;
- B. area learning centers under Minnesota Statutes, section 123A.05;
- C. public alternative programs under Minnesota Statutes, section 126C.05, subdivision 15;
- D. contracted alternative programs under Minnesota Statutes, section 124D.69;
- E. school sites specifically designed to address limited English proficiency;
- F. school sites specifically designed to address the needs of students with an individualized education program (IEP); and
- G. secure and nonsecure treatment facilities licensed by the Department of Human Services or the Department of Corrections.

Subp. 9. **Segregation.** "Segregation" means the intentional act or acts by a school district that has the discriminatory purpose of causing a student to attend or not attend particular programs or schools within the district on the basis of the student's race and that causes a concentration of protected students at a particular school.

A. It is not segregation for a concentration of protected students or white students to exist within schools or school districts:

- (1) if the concentration is not the result of intentional acts motivated by a discriminatory purpose;
- (2) if the concentration occurs at schools providing equitable educational opportunities based on the factors identified in part 3535.0130, subpart 2; and
- (3) if the concentration of protected students has occurred as the result of choices by parents, students, or both.

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B. In addition to the factors in item A, it is not segregation for concentrations of enrolled American Indian students to exist within schools or school districts:

(1) if the concentration exists as a result of attempting to meet the unique academic and culturally related educational needs of enrolled American Indian students through programs developed pursuant to the federal government's trust relationship with American Indian tribes or through an agreement with an American Indian tribal government; and

(2) the concentration exists as the result of voluntary choices made by American Indian parents, enrolled American Indian students, or both.

Statutory Authority: *MS s 124D.896*

History: *24 SR 77; L 2003 c 130 s 12; L 2011 1Sp11 art 3 s 12*

3535.0120 DUTIES OF DISTRICTS.

Subpart 1. **Report.** A school district shall annually submit to the commissioner, concerning each school site within its district, a report that includes:

- A. the racial composition of each school within its district; and
- B. the racial composition of the grade levels served by each of the schools.

The report shall be submitted according to the Minnesota Automated Reporting Student System (MARSS) deadlines as established annually by the commissioner and noticed to all districts.

Subp. 2. **Data collection.** A district shall collect for all students except American Indian students in subpart 3, the information required in subpart 1 by using one of the following racial identification procedures in the following order:

- A. parent or guardian identification;
- B. age-appropriate student self-identification, when parent or guardian identification is not an option;
- C. if parent, guardian, or student self-identification methods are not possible, sight counts administered by the principal or designee, pursuant to written guidelines developed by the district.

Subp. 3. **American Indian students.** In districts where the American Indian population is ten or more students, the parent education committee under Minnesota Statutes, section 124D.78, subdivision 1, in consultation with the American Indian parents the committee represents, may select as their identification procedure one of the following:

- A. parent or guardian self-identification;
- B. the process for identification specified in United States Code, title 20, section 7881; or
- C. the racial identification procedure used by the district for other students.

Statutory Authority: *MS s 124D.896*

History: *24 SR 77*

3535.0130 DUTIES OF COMMISSIONER.

Subpart 1. **Review of data.** The commissioner shall review the data provided by a school district under part 3535.0120 within 60 days of its receipt. If the commissioner determines that there is a racially identifiable school within a district, or if the commissioner receives a complaint alleging that a district is engaged in acts of segregation, the commissioner shall request further information to determine whether the racial composition at the school or schools in question results from acts motivated at least in part by a discriminatory purpose. The commissioner's finding of a discriminatory purpose must be based on one or

more of the following except that the commissioner shall not rely solely on item D or E, or both:

A. the historical background of the acts which led to the racial composition of the school, including whether the acts reveal a series of official actions taken for discriminatory purposes;

B. whether the specific sequence of events resulting in the school's racial composition reveals a discriminatory purpose;

C. departures from the normal substantive or procedural sequence of decision making, as evidenced, for example, by the legislative or administrative history of the acts in question, especially if there are contemporary statements by district officials, or minutes or reports of meetings that demonstrate a discriminatory purpose;

D. whether the racial composition of the school is the result of acts which disadvantage one race more than another, as evidenced, for example, when protected students are bused further or more frequently than white students; and

E. whether the racially identifiable composition of the school was predictable given the policies or practices of the district.

Subp. 2. **District information.** In order to determine whether a racially identifiable school exists as the result of acts motivated by a discriminatory purpose, the commissioner shall request and the district shall provide the following information related to the factors described in subpart 1:

A. information about how students are assigned to schools within the district, including:

(1) for schools which have been newly added or renovated or if attendance zones have changed, a description of what the attendance zones were and what the racial composition of each zone was at the time the school was planned and added or renovated;

(2) a description of the assignment and transfer options at each of the schools serving the grade levels in question, and the outreach efforts that were made to ensure parents received information about and were able to understand the availability of those options; and

(3) a comparison of the racial composition of the attendance area of the school in question as it relates to the composition of the district as a whole;

B. a list of curricular offerings;

C. a list of the extracurricular options available at each of the schools serving the grade levels in question;

D. a list that breaks down, by race and school, the teachers assigned to all of the schools serving the grade levels in question and, considering the average percentage of teachers of color in the district, an explanation of any concentration of teachers of color assigned at a school at issue;

E. a list that shows how the qualifications and experience of the teachers at the racially identifiable school compares to teachers at the sites which are not racially identifiable;

F. evidence that the racially identifiable school has been provided financial resources on an equitable basis with other schools which are not racially identifiable;

G. a comparison of the facilities, materials, and equipment at the racially identifiable school with schools that are not racially identifiable;

H. information that would allow the commissioner to determine whether the extent of busing is disproportionate between white students and protected students; and

I. any nondiscriminatory circumstances that explain why a particular school has exceeded the districtwide enrollment of protected students by more than 20 percentage points.

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Subp. 3. **Integrated alternatives.** If the enrollment of protected students at a school is more than 25 percent above the enrollment of protected students in the entire district, or if the enrollment of protected students exceeds 90 percent at any given school, whichever is less, the district must provide affirmative evidence to the commissioner that all students in that school have alternatives to attend schools with a protected student enrollment that is comparable to the districtwide average.

Statutory Authority: *MS s 124D.896*

History: *24 SR 77*

3535.0140 RESPONSE OF DISTRICTS.

School districts shall respond to the commissioner's request for information under part 3535.0130 within 60 days of its receipt. If supplemental information is requested by the commissioner, the district must respond within 30 days of the receipt of the request.

Statutory Authority: *MS s 124D.896*

History: *24 SR 77*

3535.0150 DEVELOPMENT OF PLAN FOR MANDATORY DESEGREGATION; ENFORCEMENT.

Subpart 1. **District plan.** If the commissioner determines that segregation exists, the district shall provide a plan within 60 days that proposes how it shall remedy the segregation. The plan shall address the specific actions that were found by the commissioner to contribute to the segregation. The plan shall be developed in consultation with the commissioner. If the commissioner rejects any or all of the plan, the commissioner shall provide technical assistance to help the district revise the plan. However, if the district and the commissioner cannot agree on a plan within 45 days after the original plan was rejected, the commissioner shall develop a revised plan to remedy the segregation that the district shall implement in the time frame specified by the commissioner. A finding of segregation, or a finding that the district's initial plan is inadequate, shall be based on written findings of fact and conclusions of law issued by the commissioner.

Subp. 2. **Remedy.** If the commissioner has made a finding of segregation, student assignments based on race that are made to remedy the finding of segregation are permissible in a plan for mandatory desegregation, so long as they are narrowly tailored to remedy the act of segregation.

Subp. 3. **Extension.** The commissioner may extend the time for response from a district under parts 3535.0140 and 3535.0150 if compliance with the deadline for response would impose an undue hardship on the district, for example, if the information is not easily ascertainable or the plan requires a complex remedy that includes consultation with outside sources.

Subp. 4. **Enforcement of desegregation.** If the district fails to submit data required by the commissioner, fails to provide or implement a plan to remedy the segregation, or fails to implement a plan developed by the commissioner as provided in subpart 1, the commissioner must:

A. notify the district that its aid shall be reduced pursuant to Minnesota Statutes, section 127A.42;

B. refer the finding of segregation to the Department of Human Rights for investigation and enforcement; and

C. report the district's actions to the education committees of the legislature by March 15 of the next legislative session with recommendations for financial or other appropriate sanctions.

Statutory Authority: *MS s 124D.896*

History: *24 SR 77*

3535.0160 INTEGRATION OF RACIALLY IDENTIFIABLE SCHOOLS NOT THE RESULT OF SEGREGATION.

Subpart 1. Notice to district of plan including voluntary measures.

A. If a racially identifiable school reviewed under part 3535.0130 is not the result of segregation, the district shall be notified that it must develop and submit a plan to the commissioner for review that provides options to help integrate the racially identifiable school. The format of the plan shall be determined by the commissioner.

B. A racially identifiable school is not required to develop and submit a plan if the school is racially identifiable only as a result of:

(1) a concentration of enrolled American Indian students that exists as a result of attempting to meet the unique academic and culturally related educational needs of enrolled American Indian students through programs developed pursuant to the federal government's trust relationship with American Indian tribes or through an agreement with an American Indian tribal government; and

(2) the concentration exists as the result of voluntary choices made by American Indian parents, enrolled American Indian students, or both.

A racially identifiable school with a concentration of enrolled American Indian students is required to develop and submit a plan if the school is also racially identifiable as a result of the enrollment of other protected students excluding the enrollment of American Indian students.

Subp. 2. Community collaboration council. The district shall establish and use a community collaboration council to assist in developing the district's plan under this part. The council shall be reasonably representative of the diversity of the district. In communities with ten or more American Indian students, representation from the American Indian parent committee under Minnesota Statutes, section 124D.78 is required on the community collaboration council. If a district has an existing committee whose composition reasonably reflects the diversity of the district, for example, school site councils or district curriculum advisory councils, that committee may be used to provide the planning required by this part. The community collaboration council shall identify ways of creating increased opportunities for interracial contact, and establish goals for meeting this objective. After identifying these opportunities and goals, the council shall develop a plan for integration at each school that may include, for example, options under subpart 3.

Subp. 3. District plan.

A. After receiving the plan required under subpart 2 from its community collaboration council, the district shall provide a plan to the commissioner that describes how the goal of increased opportunities for interracial contact between students will be met, and the integration efforts the district plans to implement at each racially identifiable school. The plan shall be written and adopted by the end of the academic year in which the district received notice under subpart 1, or six months later, whichever is longer. The plan shall include:

- (1) the extent of community outreach that preceded the plan;
- (2) integration issues identified;
- (3) action goals of the integration effort;
- (4) how the action goals will be or are being accomplished.

B. All plans under this part must be educationally justifiable and contain options for intradistrict integration that may include, for example:

- (1) duplicating programs that have demonstrated success in improving student learning at schools that are racially identifiable;

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(2) providing incentives to help balance racially identifiable schools, for example, providing:

- (a) incentives to low-income students to transfer to schools that are not racially identifiable;
- (b) transportation; and
- (c) interdistrict opportunities and collaborative efforts with other districts;

(3) providing incentives to teachers to improve the distribution of teachers of all races at schools across the district, including:

- (a) staff development opportunities;
 - (b) strategies for attracting and retaining staff who serve as role models;
- and

(c) strategies for attracting and retaining staff who have a record of success in teaching protected students, low-income students, or both;

(4) greater promotion of programs provided at racially identifiable schools designed to attract a wide range of students;

(5) providing smaller class sizes, greater counseling and support services, and more extracurricular opportunities and other resources at racially identifiable schools as compared to schools that are not racially identifiable or at schools with a higher concentration of low-income students; and

(6) providing programs promoting instruction about different cultures, including options uniquely relevant to American Indian students, including, for example, American Indian language and culture programs under Minnesota Statutes, section 124D.74.

The format of the integration plan shall be consistent with, and if possible included into, a district's comprehensive plan.

Subp. 4. Commissioner's duties.

A. The commissioner shall:

(1) evaluate any plans developed under this part at the end of each academic year after which a plan is implemented to determine whether the collaboration plan was implemented and whether the goals have been substantially met;

(2) each academic year after a plan is implemented, report to the house and senate education committees any reduction in the percentage of protected students at racially identifiable schools; and

(3) each academic year after a plan is implemented, report to the house and senate education committees if the enrollment of protected students remains constant or increases at racially identifiable schools.

B. The commissioner may recommend financial incentives that are aimed at compensating or rewarding districts for programs or activities that have been successful.

C. The commissioner may recommend legislative action to address the condition of racially identifiable schools within the district.

Subp. 5. Timeline. Each integration plan shall remain in place for three years from the date of review by the commissioner, unless earlier modified by the district and reviewed by the commissioner. Schools that are newly identified as racially identifiable or that were included in a plan under this part but remain racially identifiable after three years from the date of review by the commissioner shall be subject to the procedures outlined in parts 3535.0130 to 3535.0160.

Subp. 6. Schools that did not meet earlier goals. Schools that were included in a plan under this part but remain racially identifiable after three years from the date of review by the commissioner shall work in consultation with the commissioner to develop a new

plan that shall include an analysis of why the previous plan did not achieve its goals, a list and explanation of new or continuing barriers to achieving the plan's goals, and a new plan and rationale for achieving the goals of the plan.

Statutory Authority: *MS s 124D.896*

History: *24 SR 77*

3535.0170 INTEGRATION OF RACIALLY ISOLATED SCHOOL DISTRICTS.

Subpart 1. Evaluation.

A. The commissioner shall annually evaluate the enrollment of protected students in each district to determine whether the district as a whole is racially isolated. If the commissioner determines that a district is racially isolated, as defined in part 3535.0110, subpart 7, the commissioner shall immediately notify the district and its adjoining districts. The commissioner may also send notice to other districts that are not adjoining if the commissioner determines that it would be geographically feasible for such districts to participate in cross-district planning. Districts that are not adjoining may choose whether to participate in the cross-district planning.

B. A racially isolated district shall not be required to follow subparts 2 to 8 if the district is isolated only as a result of the enrollment of American Indian students whose unique academic and culturally related educational needs are being addressed by district programs and the district has established a parent committee under Minnesota Statutes, section 124D.78. A district racially isolated as a result of the enrollment of American Indian students shall be required to follow subparts 2 to 8, if the district is also racially isolated as a result of the enrollment of other protected students excluding the enrollment of American Indian students.

Subp. 2. Establishment of multidistrict collaboration council. Upon receiving notice under subpart 1, the isolated and adjoining districts shall establish a multidistrict collaboration council, as provided in subpart 3, to develop a plan under this part. The council shall work as provided under subpart 5 to identify ways to offer cross-district opportunities to improve integration.

Subp. 3. Membership of multidistrict collaboration council. Each isolated district and each of its adjoining districts shall appoint individuals to participate in the multidistrict collaboration council. The council shall be reasonably representative of the diversity of the participating districts. If any of the participating districts have an American Indian parent committee formed under Minnesota Statutes, section 124D.78, a representative of those committees shall also be appointed.

Subp. 4. Alternatives to a multidistrict collaboration council.

A. Participating districts that are members of joint powers boards that have advisory councils meeting the requirements of subpart 3 may use those joint powers boards and advisory councils in lieu of creating a new council under subpart 2.

B. Participating districts that have an existing committee whose composition reflects the membership requirements of subpart 3, may use this committee in lieu of creating a new council under subpart 2.

Subp. 5. Council cooperation and plan. The multidistrict collaboration council shall identify ways of creating increased opportunities for interracial contact and establish goals for meeting this objective. After identifying these opportunities and goals, the council shall develop a joint collaboration plan for cross-district integration that may include the incentives contained in subpart 6, item B.

Subp. 6. District plan.

A. After receiving the plan required in subpart 5 from its council, each district shall review, modify if necessary, and ratify the integration plan. Each district shall provide a plan to the commissioner that describes how the goal of greater opportunities for

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interracial contact between students will be met and that describes the interdistrict integration efforts the district plans to implement. The plan shall be completed and ratified no longer than 12 months after the district receives notice under part 3535.0180, subpart 1. The plan shall include:

- (1) the extent of community outreach that preceded the interdistrict plan;
- (2) cross-district integration issues identified;
- (3) goals of the integration effort; and
- (4) how the goals will be or are being accomplished.

B. All collaboration plans under this part must be educationally justifiable and contain options for interdistrict integration that may include, for example:

- (1) providing cooperative transportation that helps balance racially isolated districts;
- (2) providing incentives for low-income students to transfer to districts that are not racially isolated;
- (3) developing cooperative magnet programs or schools designed to increase racial balance in the affected districts;
- (4) designing cooperative programs to enhance the experience of students of all races and from all backgrounds and origins;
- (5) providing cooperative efforts to recruit teachers of color, and encouraging teacher exchanges, parent exchanges, and cooperative staff development programs;
- (6) encouraging shared extracurricular opportunities, including, for example, community education programs that promote understanding, respect, and interaction among diverse community populations; and
- (7) documenting, in districts with ten or more American Indian students, how American Indian students are able to participate in program options uniquely relevant to American Indian students, including, for example, language and culture programs under Minnesota Statutes, section 124D.74, and how the students may participate in the district's voluntary integration efforts.

Subp. 7. **Limits on participation in multidistrict collaboration councils.** Notwithstanding subpart 2:

- A. an isolated school district shall not be required to be part of two or more collaboration councils;
- B. adjoining districts shall not be required to be part of two or more collaboration councils;
- C. two adjoining racially isolated school districts shall not be required to participate together on the same collaboration council;
- D. if a racially isolated district is a member of a joint powers board under subpart 4, its adjoining districts shall not be required to participate on the joint powers board; and
- E. if an adjoining district is a racially isolated district exempted from subparts 2 to 8 under subpart 1, item B, the district shall not be required to be part of an interdistrict collaboration council and shall not be required to provide a plan of interdistrict integration efforts to the commissioner.

Subp. 8. **Timeline for reports.** Once a multidistrict collaboration plan has been filed with the commissioner, it does not need to be renewed for a period of four years from the date of filing.

Statutory Authority: *MS s 124D.896*

History: *24 SR 77*

3535.0180 EVALUATION OF COLLABORATIVE EFFORTS.

The commissioner shall biennially evaluate the results of collaborative efforts under part 3535.0170 to determine whether the collaboration plan was implemented and whether the action goals have been substantially met. After reviewing the results, the commissioner shall report to the house and senate education committees whether a district implemented its collaboration plan and substantially met its action goals. The commissioner may also make recommendations for appropriate legislative action.

Statutory Authority: *MS s 124D.896*

History: *24 SR 77*

3535.0200 [Repealed, 24 SR 77]

3535.0300 [Repealed, 24 SR 77]

3535.0400 [Repealed, 24 SR 77]

3535.0500 [Repealed, 24 SR 77]

3535.0600 [Repealed, 24 SR 77]

3535.0700 [Repealed, 24 SR 77]

3535.0800 [Repealed, L 1993 c 224 art 12 s 39]

3535.0900 [Repealed, 24 SR 77]

3535.1000 [Repealed, L 1993 c 224 art 12 s 39]

3535.1100 [Repealed, 24 SR 77]

3535.1200 [Repealed, 24 SR 77]

3535.1300 [Repealed, 24 SR 77]

3535.1400 [Repealed, L 1993 c 224 art 12 s 39]

3535.1500 [Repealed, 24 SR 77]

3535.1600 [Repealed, L 1993 c 224 art 12 s 39]

3535.1700 [Repealed, 24 SR 77]

3535.1800 [Repealed, L 1993 c 224 art 12 s 39]

3535.1900 [Repealed, L 1993 c 224 art 12 s 39]

3535.2000 [Repealed, 24 SR 77]

3535.2100 [Repealed, L 1993 c 224 art 12 s 39]

3535.2200 [Repealed, L 1993 c 224 art 12 s 39]

PROHIBITION OF DISCRIMINATORY PRACTICES IN EDUCATION**3535.2300 POLICY.**

The policy of the commissioner of education is to assure compliance with state and federal law prohibiting discrimination because of age, race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, or disability, and to promote the elimination of these discriminatory practices in public schools and public educational agencies under its general supervision.

Statutory Authority: *MS s 124.15*

History: *L 1998 c 398 art 5 s 55; L 2003 c 130 s 12*

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3535.2400 DUTIES OF LOCAL BOARDS, PENALTY FOR FAILURE TO COMPLY.

Each local board shall submit to the commissioner such data as specified in part 3535.2500 for purposes of determining that the educational program is meeting provisions of state and federal law prohibiting discrimination on the grounds listed in part 3535.2300.

Each local board shall comply with all state and federal law prohibiting discrimination on the grounds listed in part 3535.2300.

Each local board shall direct the superintendent to coordinate, implement, and report to the local board the district's efforts to comply with parts 3535.2300 to 3535.2900.

Each local school board shall, pursuant to Title IX of the Educational Amendments of 1972 (Public Law 92-318), disseminate on a continuing basis its policy of nondiscrimination on the basis of sex.

The penalty for noncompliance with parts 3535.2300 to 3535.2900 shall be the reduction of state aids pursuant to Minnesota Statutes, section 124.15.

Statutory Authority: *MS s 124.15*

3535.2500 COMPLIANCE REPORTS AND SUBMISSION OF DATA.

Annually, on November 15, each school board shall submit to the commissioner a statement of compliance with state and federal law prohibiting discrimination on the grounds specified in part 3535.2300 and, in support of that statement, shall complete the form contained in part 3535.9920, and submit a report as required by Code of Federal Regulations, title 29, section 1602.41 (EEO-5 report), showing the number of certificated and noncertificated personnel employed which belong to each race and sex for each of the schools under its jurisdiction.

The statement of compliance required by Minnesota Statutes, section 124.15, subdivision 2a, shall be specified in part 3535.9910.

The form to be completed in support of the assurance statement shall be as specified in part 3535.9920.

Statutory Authority: *MS s 124.15*

3535.2600 [Repealed, L 1993 c 224 art 12 s 39]

3535.2700 APPEAL OF COMMISSIONER'S DETERMINATION.

Any school district aggrieved by a decision required of the commissioner under parts 3535.2300 to 3535.2900 may dispute that decision pursuant to Minnesota Statutes, section 124.15, subdivision 4.

Statutory Authority: *MS s 124.15*

3535.2800 DUTIES OF THE COMMISSIONER.

Upon receipt of the school board's assurance of compliance and the supporting data, the commissioner shall:

A. In order to determine whether special state aid shall be withheld, process the data and forward it to the commissioner of human rights, pursuant to Minnesota Statutes, section 124.15, subdivision 5a.

B. In order to determine whether a violation of federal laws prohibiting discrimination has occurred: within 90 days of the receipt of the data, the commissioner of education shall review it to determine whether a school district is in compliance with federal law prohibiting discrimination; if, after reviewing the data and finding what appears to be a violation of federal law, the commissioner shall make a prompt investigation; and if the investigation indicates noncompliance with federal law, the commissioner shall inform the

school district. If the noncompliance cannot be resolved by informal means, the commissioner may proceed to suspend or terminate federal assistance.

Statutory Authority: *MS s 124.15*

History: *17 SR 1279; L 1995 1Sp3 art 16 s 13; L 2003 c 130 s 12*

3535.2900 [Repealed, L 1993 c 224 art 12 s 39]

PROHIBITION OF DISCRIMINATORY PRACTICES IN ATHLETIC PROGRAMS

3535.3000 DEFINITIONS.

Subpart 1. **Scope.** All the words listed shall have the meaning herein ascribed to them.

Subp. 2. **Athletic program.** "Athletic program" means all interscholastic and intramural sports offered to students by public and private elementary and secondary educational institutions.

Subp. 3. **Interscholastic athletic program.** "Interscholastic athletic program" means all athletic activities offered within a school the purpose of which is to provide opportunities for students to compete with other students on like teams in other schools within an organized conference under the auspices of the Minnesota State High School League or with other like teams in other schools operating under separate jurisdictions.

Subp. 4. **Intramural athletic program.** "Intramural athletic program" means all non-interscholastic athletic activities offered within a school, which are not a part of the regular physical education curriculum, designed to provide students athletic opportunities, experiences, and the development of competencies in a variety of sports.

Subp. 5. **Participate.** "Participate" means for interscholastic sports, a student has been selected by the coach to be a member of a particular athletic team, inclusive of varsity, junior varsity, and sophomore teams, after the tryout period has ended.

Subp. 6. **Participation rate for a particular sex in the interscholastic athletic program.** "Participation rate for a particular sex in the interscholastic athletic program" means the ratio of the number of participants of that sex in the athletic program to the number of students of that sex in the student body.

Subp. 7. **Participation rate for a particular sex in the intramural athletic program.** "Participation rate for a particular sex in the intramural athletic program" means the ratio of the number of participants of that sex in the athletic program to the number of students of that sex in the student body.

Statutory Authority: *MS s 124.15*

3535.3100 [Repealed, L 1993 c 224 art 12 s 39]

3535.3200 SEPARATION BY TEAMS.

Subpart 1. **Programs for students in the seventh grade and above.** Athletic programs for students in the seventh grade or above may include one or more teams limited to participants of one sex whose overall athletic opportunities have previously been limited.

Subp. 2. **Programs for students in the sixth grade and below.** Athletic programs for students in the sixth grade or below shall be operated without restrictions on the basis of sex, except that when overall athletic opportunities for one sex have previously been limited and there is demonstrated interest by members of that sex to participate on a team restricted to members of that sex, the educational institution may provide a team restricted to members of that sex. The educational institution shall make a biennial determination of students' demonstrated interest. The method used shall be reported to the Department of Education in conjunction with the report required by part 3535.3600.

Subp. 3. **Provision of separate teams.** Any public or private elementary or secondary school may provide in the same sport two teams which are separated according to sex when

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overall athletic opportunities for one sex have previously been limited, but the team for the other sex may only be substantially separated by sex.

When an equal opportunity to participate is not provided to members of a sex whose overall athletic opportunities to participate have previously been limited, the school, where there is a demonstrated interest, shall provide separate teams in sports which it determines will provide members of the excluded sex with an equal opportunity and which will attempt to accommodate their demonstrated interest.

Subp. 4. **Try outs for opposite team.** When overall athletic opportunities for one sex have previously been limited, members of that sex shall be permitted to try out and, if successful, to participate on any team in any sport. This part does not prohibit any elementary or secondary school from making participation on a team in a sport dependent upon a demonstrated level of skill and ability. When an educational institution has established a team exclusively for members of the sex whose overall athletic opportunities have previously been limited, members of the other sex may not try out for or participate on that team.

Statutory Authority: *MS s 124.15*

History: *L 1995 1Sp3 art 16 s 13; L 2003 c 130 s 12*

3535.3300 BIENNIAL DETERMINATION OF STUDENT INTEREST.

Public and private elementary and secondary schools shall make a biennial determination of student demonstrated interest. Schools shall report the method used to make the determination to the Department of Education as part of part 3535.3600. The first biennial determination shall be made prior to the end of the 1981-1982 school year. Student demonstrated interest shall be considered in the selection of those athletic activities to be provided in the athletic program for the purpose of providing separate teams or sports for members of previously excluded sex.

Public and private elementary and secondary schools shall provide equal opportunity for members of each sex to participate in both their intramural and interscholastic athletic program by responding to the following considerations.

The number of opportunities for females to participate on teams is to be comparable to the number of opportunities for males to participate on teams in each school year in the interscholastic athletic program and comparable, as well as in the intramural athletic program. The equipment, supplies, and uniforms for each sport are to be comparable for both sexes. The locker rooms, practice, and competitive facilities are to be comparable for both sexes. The medical services are to be comparable for both sexes. The participation rates for members of both sexes are to be comparable while recognizing the voluntary nature of student involvement in interscholastic and intramural athletics.

Statutory Authority: *MS s 124.15*

History: *L 1995 1Sp3 art 16 s 13; L 2003 c 130 s 12*

3535.3400 CREATING EQUAL OPPORTUNITY FOR TWO TEAMS.

When two teams in the same sport are provided pursuant to part 3535.3200, subpart 1, the two teams shall be treated in a substantially equal manner. Public and private elementary and secondary schools shall accomplish this to the extent that they are applicable in a given situation by providing that:

- A. equipment, supplies, and uniforms for each team are comparable;
- B. the games and competitive events for each team are scheduled so that the number of opportunities to perform before an audience are comparable;
- C. the practice sessions and competitive events scheduled for each team are at equally desirable time periods;
- D. the travel and per diem allowances per participant are comparable;
- E. the amount of coaching provided for members of each team is comparable;

F. the locker rooms, practice, and competitive facilities for each team are comparable;

G. the medical services for each team are comparable;

H. the publicity produced by the school for each team is comparable; and

I. the expenditure, excluding salary of the coach, per participant on each team is substantially equal. Per participant expenditure excludes gate receipts and other revenues generated by that sport. When an item or items of expense are not separated, the expense shall be prorated to the teams according to the number of participants.

Statutory Authority: *MS s 124.15*

3535.3500 [Repealed, L 1993 c 224 art 12 s 39]

3535.3600 COMPLIANCE REPORTS AND SUBMISSION OF DATA.

Annually, on or before October 15, each school/school district shall submit to the commissioner of education an elementary and secondary athletic program report containing information about both intramural and interscholastic athletics provided. The report shall contain by building: number of sports offered for each sex, the season each sport is offered for each sex, the number of weeks each sport is offered, the number of teams in each sport, the number of coaches assigned each sport, the number of students by sex participating in each sport, the dollar expenditure per sport, the total unduplicated count of student participation in the intramural program by sex, and the total unduplicated count of student participation in interscholastic programs by sex.

Statutory Authority: *MS s 124.15*

History: *L 1995 1Sp3 art 16 s 13; L 2003 c 130 s 12*

3535.3700 DUTIES OF THE COMMISSIONER OF EDUCATION.

Upon receipt of an educational institution's athletic program report, the commissioner of education shall evaluate the data contained in the report and forward reports requiring additional attention to the commissioner of human rights, pursuant to Minnesota Statutes, section 127A.42, subdivision 3.

Statutory Authority: *MS s 124.15; 127A.42*

History: *L 1995 1Sp3 art 16 s 13; L 2003 c 130 s 12*

3535.9910 STATEMENT OF COMPLIANCE.

Assurance of Compliance with State and Federal Law

Prohibiting Discrimination

Name of School District

The undersigned hereby affirm that the above named school district is in compliance with the following state and federal laws prohibiting discrimination:

1. Minnesota Statutes, section 363A.13, Minnesota Human Rights Act, which prohibits discrimination in education programs and activities on grounds of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, or disability.

2. Title VI of the Civil Rights Act of 1964 (Public Law 88-352), which provides that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the district receives federal financial assistance.

3. Title VII of the Civil Rights Act of 1964 (Public Law 88-352), as amended by the Equal Employment Opportunity Act of 1972 (Public Law 92-261), which prohibits discrimination in employment because of an individual's race, color, religion, sex, or national origin.

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4. Title IX of the Education Amendments of 1972 (Public Law 92-318), which prohibits discrimination on the basis of sex in education programs and activities receiving or benefiting from federal financial assistance.
5. The Age Discrimination in Employment Act of 1967 (Public Law 90-202), which prohibits discrimination on the basis of age (40 through 64).
6. Minnesota Statutes, section 121A.04, which prohibits sex discrimination in athletic programs.
7. Part 3500.0500, curriculum, which provides that "No school shall provide any course or activity on the basis of sex. This includes health, physical education, home economics, and industrial education."
8. Parts 3535.0200 to 3535.2200, relating to equality of educational opportunity and school desegregation.

This assurance is given in consideration of and for the purpose of obtaining any and all federal grants, loans, contracts, property, discount, or other federal and state financial assistance extended after the date hereof to the district by the Department of Health, Education, and Welfare and the Department of Education including installment payments after such date on applications for federal financial assistance and state aid allotments which were approved before such date. The district recognizes and agrees that such federal and state financial assistance will be extended in reliance on the representations, supporting information required by Minnesota Statutes, section 127A.42, subdivision 3, and agreements made in this assurance. This assurance is binding on the district and the person or persons whose signatures appear below and who are authorized to sign this assurance on behalf of the district.

The attached form, Information Needed to Evidence Compliance, with this assurance statement is made a part thereof.

Dated _____ By _____
(School Superintendent)

By _____
(President or Chair of School Board)

By _____
(Clerk of School Board)

Statutory Authority: *MS s 124.15*

History: 17 SR 1279; L 1995 ISp3 art 16 s 13; L 2003 c 130 s 12

3535.9920 [Repealed, L 2000 c 489 art 3 s 26]

3535.9930 [Repealed, L 1993 c 224 art 12 s 39]

3535.9940 [Repealed, L 1993 c 224 art 12 s 39]

3535.9950 [Repealed, L 1993 c 224 art 12 s 39]