

1 Department of Education

2

3 Adopted Permanent Rules Relating to Special Education

4

5 Rules as Adopted

6 STANDARDS AND PROCEDURES

7 3525.0200 DEFINITIONS FOR SPECIAL EDUCATION.

8 Subpart 1. **Scope.** As used in parts 3525.0200 to
9 3525.4700, the terms defined in this part have the meanings
10 given them.

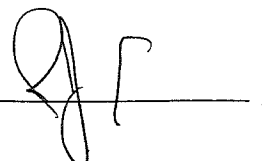
11 Subp. 1a. **Administrator or administrative designee.**
12 "Administrator" or "administrative designee" means a
13 representative of the school district, other than the pupil's
14 teacher, who is licensed to provide or supervise the provision
15 of special education and who has the authority to make decisions
16 about the appropriateness of the proposed program and who has
17 the authority to commit the responsible district's resources.
18 An administrator or an administrative designee must ~~be-in~~
19 ~~attendance~~ participate at each IEP meeting and must be
20 identified at the ~~beginning-of-the~~ meeting.

21 Subp. 1b. **Assessment or reassessment.** "Assessment" or
22 "reassessment" means ~~a-full-and~~ an appropriate individual
23 educational evaluation of a pupil's performance or development
24 conducted by appropriately licensed personnel in accordance with
25 recognized professional standards and parts 3525.2500 to
26 3525.2850.

27 Subp. 2. **Days.** "Days" means the days school is in session
28 when used in parts 3525.1100 to 3525.3600. "Days" means
29 calendar days when used in parts 3525.3700 to 3525.4700.

30 Subp. 3a. **Functional skills assessment.** "Functional
31 skills assessment" means the use of test instruments and
32 assessment procedures to determine current levels of skill
33 development and factors relevant to ~~the-emergence-of-future~~
34 ~~skills-that-currently-are-critical-to-increased:~~

35 A. independence and self-sufficiency in school, home,



1 and community settings;

2 B. freedom to participate in leisure activities; and

3 C. postsecondary and other life long learning

4 opportunities.

5 Subp. 4a. **Functional skills.** "Functional skills" means
6 skills to increase performance and independence at work, in
7 school, in the home, in the community, for leisure time, and for
8 postsecondary and other life long learning opportunities.

9 Subp. 6a. **Individual education program plan or IEP.**

10 "Individual education program plan" or "IEP" means a written
11 individualized educational plan annually developed for a pupil.
12 It is based on an assessment of the pupil's performance,
13 presenting problems and its effect on learning in appropriate
14 settings. It shall include a description of:

15 A. the pupil's current level of performance;

16 B. the pupil's needs determined in a team process;

17 C. an identification of appropriate goals and

18 objectives;

19 D. a description of special education services
20 designed to help the pupil accomplish the goals and objectives;

21 E. a description of the environment in which the
22 services will be provided;

23 F. a schedule for periodic review; and

24 G. criteria for evaluating the pupil's performance.

25 Subp. 7a. **Initial formal assessment.** "Initial formal
26 assessment" means the first formal assessment by the district
27 that addresses the specific problems as outlined on the notice
28 to assess in accordance with parts 3525.2650 and 3525.3500.

29 Subp. 8a. **Initial placement.** "Initial placement" means
30 the first special education placement and provision of special
31 education services by the district.

32 Subp. 8b. **Instruction.** "Instruction" means the action or
33 practice of a teacher.

34 Subp. 9a. [See Repealer.]

35 Subp. 9b. **Program or pupil support assistant.** "Program
36 support assistant" or "pupil support assistant" means a district

1 employee who is engaged in direct interaction with one or more
2 pupils for instructional activities, physical or behavior
3 management, or integration purposes under the direction of a
4 regular education or special education teacher. A program or
5 pupil support assistant shall only provide services to a pupil
6 under the direction of a regular education or special education
7 teacher or related services provider. The services must be:

8 A. to enhance the instruction provided by the teacher
9 or related services staff in the areas of academic instruction,
10 physical or behavior management programs, transition, and other
11 integration activities; and

12 B. to supplement instructional activities or to
13 provide extended practice in instances in which the support
14 assistant has had training from a special education teacher or
15 related services staff and continues to receive ongoing
16 direction and support from a special education teacher.

17 The pupil's need for and the specific responsibilities of a
18 pupil support assistant shall be described in writing on the
19 pupil's IEP. A program support assistant is required in an
20 early childhood special education center-based classroom as such
21 classroom is described in part 3525.2335, subpart 2, and may be
22 assigned to level 4, 5, and 6 programs described in part
23 3525.2340, subpart 2.

24 Subp. 10. **Nondiscrimination.** "Nondiscrimination" means a
25 requirement that districts shall:

26 A. comply with Minnesota Statutes, chapter 363 and
27 not discriminate in any manner in the full use of or benefit
28 from any services rendered by an educational institution because
29 of race, color, creed, religion, national origin, sex, marital
30 status, status with regard to public assistance, or disability;
31 and

32 B. provide procedures that ensure that, in accordance
33 with recognized professional standards, testing and evaluation
34 materials and procedures used for the purposes of
35 identification, assessment, classification, educational program
36 plan development, educational placement including special

1 education services, program implementation, review and
2 evaluation, notice and hearing are selected and administered so
3 as not to be discriminatory including cultural discrimination.
4 The procedures and materials shall take into account the special
5 limitations of handicapped persons and the racial or cultural
6 differences presented by persons and must be justified on the
7 basis of their usefulness in making educational program
8 decisions that serve the individual pupil.

9 Subp. 11a. Parent or parents. "Parent" or "parents" means
10 the mother, father, guardian, conservator, or surrogate parent
11 who has been appointed in accordance with parts 3525.2430 to
12 3525.2455 for a pupil under age 18. For a pupil over age 18, it
13 means the pupil unless a guardian or conservator has been
14 appointed, in which case it means the guardian or conservator.
15 When the parents are separated or divorced, it means the parent
16 who has the legal right, by court decree or agreement, to
17 determine the pupil's education, even though the pupil may be
18 living with the other parent.

19 Parents whose legal rights have not been terminated but who
20 have not been granted legal custody have the right of access to,
21 and to receive copies of important school records and the right
22 to be informed by school officials about the child's welfare,
23 educational progress, and status, and to attend school and
24 parent-teacher conferences unless otherwise ordered by a court.
25 The school need not hold a separate conference for each parent.

26 Subp. 15a. Providing district. "Providing district" means
27 a district with the responsibility of providing special
28 education services to a pupil according to part 3525.0800.

29 Subp. 16a. Pupil. "Pupil" means a student or other person
30 who is eligible for special education according to Minnesota
31 Statutes, sections 120.03 and 120.17. Students or other persons
32 who are pregnant or chemically dependent and do not have a
33 handicapping condition are not eligible for special education.

34 Subp. 17a. Recognized professional standards. "Recognized
35 professional standards" means reasonable principles and concepts
36 accepted by acknowledged experts that bear a direct relationship

1 to the particular needs of the pupil.

2 Subp. 18a. **Regular education program.** "Regular education
3 program" means the normal early childhood, elementary,
4 secondary, gifted, or vocational education offerings, including
5 instruction, training, aids, and services in the classroom or
6 other appropriate places.

7 Subp. 18b. **Related services.** "Related services" means any
8 specially designed services not provided by regular education or
9 special education instruction to meet the unique needs of a
10 pupil to benefit from the educational program. This includes
11 psychological services, social worker services, occupational
12 therapy, physical therapy, audiology, orientation and mobility
13 training, health services, medical services for diagnostic
14 purposes, music therapy, and other similar services.

15 Subp. 19a. **Resident district.** "Resident district" means
16 the district in which the pupil's parent, as defined by parts
17 3525.0200, subpart 11a, and 3525.0800, subpart 9, resides. It
18 does not mean the district in which a surrogate parent resides.
19 If the parents of the pupil are separated or divorced and both
20 maintain legal rights to determine the pupil's education, but
21 are living in different districts, the district of residence is
22 the district in which the pupil primarily resides for the
23 greater part of the school year.

24 In those situations when a pupil is placed for care and
25 treatment or foster care by an agency other than the school
26 district, the district of residence is the district in which the
27 pupil's parent resides or the district designated by the
28 commissioner as provided in Minnesota Statutes, section 120.17,
29 subdivisions 6 and 8a. If the parents of the pupil are
30 separated or divorced and both maintain legal rights to
31 determine the pupil's education, but are living in different
32 districts, the district of residence is the district last
33 responsible for education services when the pupil resided with
34 either parent.

35 Subp. 20a. **Special education.** "Special education" means
36 any specially ~~designated~~ designed instruction and related

1 services or support services to meet the unique cognitive,
2 affective, or psychomotor needs of a pupil as stated in the IEP.

3 Subp. 23. **Support services.** "Support services" means any
4 specially designed services that assist in the delivery of
5 instruction or related services to a pupil. This includes
6 braillists, interpreter services, ~~management-aides~~ program or
7 pupil support assistants, transportation, and other similar
8 services.

9 Subp. 24. **Teacher.** "Teacher" means a person licensed
10 under parts 8700.5400 to 8700.5502 by the Board of Teaching to
11 instruct pupils with specific handicapping conditions.

12 Subp. 25. **Technically adequate instrument.** "Technically
13 adequate instrument" means tests and assessment procedures for
14 which recognized professional standards about construction,
15 validity, reliability, and use have been met.

16 Subp. 26. **Vocational assessment.** "Vocational assessment"
17 means an ongoing, comprehensive process used to assist the pupil
18 and the team to determine the pupil's strengths, interests,
19 abilities, and needed support to be successful in a vocational
20 setting. A vocational assessment is one component of the
21 ongoing special education multidisciplinary assessment described
22 in parts 3525.2500 to 3525.2850.

23 POLICIES

24 3525.0300 PROVISION OF FULL SERVICES.

25 Children and youth who are handicapped and who are eligible
26 for special education services based on ~~a-full-and~~ an
27 appropriate individual assessment shall have access to free
28 appropriate public education, as that term is defined by
29 applicable law. The special education shall be suited to the
30 pupil's individual needs including the special education based
31 on ~~adequate~~ an appropriate assessment and according to the IEP.
32 School districts shall provide education suitable to pupils'
33 individual needs regardless of the severity of the pupil's
34 mental, physical, or emotional disability, or other impairment
35 or handicap. The responsibility of the school district is not

1 diminished by the availability of nonpublic schools or other
2 services located within the district.

3 3525.0550 PUPIL IEP MANAGER.

4 The district shall assign a teacher who is a member of the
5 pupil's IEP team as the pupil's IEP manager to coordinate the
6 instruction, related and support services for the pupil. The
7 IEP manager's responsibility shall be to coordinate the delivery
8 of special education services in the pupil's IEP and to serve as
9 the primary contact for the parent. A district may assign the
10 following responsibilities to the pupil's IEP manager: assuring
11 compliance with procedural requirements; communication and
12 coordination among home, school, and other agencies; regular and
13 special education programs; facilitating placement; and
14 scheduling team meetings.

15 3525.0650 INTERAGENCY COMMITTEES.

16 Subpart 1. Local participation. A district shall
17 establish or participate in a local interagency early
18 intervention committee and a local community transition
19 interagency committee according to Minnesota Statutes, section
20 120.17, subdivisions 12 and 16. The local committees shall:

21 A. meet at least quarterly to fulfill the duties
22 prescribed in statute; and

23 B. report annually when directed to the Department of
24 Education summarizing progress and recommendations.

25 Operating procedures ~~and progress toward~~ fulfilling the
26 requirements in each statute must be included in the district's
27 total special education system plan.

28 3525.0700 PARENTAL INVOLVEMENT.

29 Parents of children with handicaps have a right to be
30 involved by the school district in the education decision-making
31 process by participating ~~at each meeting~~ or being afforded the
32 opportunity to participate at each IEP meeting to develop,
33 review, or revise the IEP. School district staff members shall
34 document efforts to contact and involve parents in developing a

1 pupil's IEP including scheduling IEP meetings at a mutually
2 agreed upon time and location. At the time of contact, the
3 district shall inform the parents of their right to bring anyone
4 of their choosing to accompany them to the meeting. The
5 district shall inform the pupil's parents about the alternatives
6 and methods of instruction as described in Minnesota Statutes,
7 section 120.17, subdivision 2.

8 3525.0800 RESPONSIBILITY FOR ENSURING THE PROVISION OF
9 INSTRUCTION AND SERVICES.

10 Subpart 1. **Pupil's district of residence.** As provided in
11 Minnesota Statutes, section 120.17, subdivision 2, a pupil's
12 district of residence is responsible for assuring that an
13 appropriate program is provided for all eligible pupils placed
14 by the district's team within the district or in an
15 out-of-district placement regardless of the method or location
16 of instruction used.

17 Subp. 2. **Purchased services.** The district shall not
18 purchase special educational services for a child from a public
19 or private agency when such service is available or can be made
20 available and can be more appropriately provided as the least
21 restrictive alternative within the district. Whenever it is
22 appropriate for a district to purchase special education service
23 for children who are handicapped and who reside in the district,
24 it continues to be the responsibility of the school district,
25 consistent with the provisions of Minnesota Statutes and parts
26 3525.0200 to 3525.4700, to assure and ascertain that such
27 children and youth receive the education and related services
28 and rights to which they are entitled.

29 Subp. 3. **Initial activities.** The resident district is
30 responsible for the pupil's initial assessment, initial IEP, due
31 process procedures, and initial placement regardless of whether
32 the placement is within the district or outside the district,
33 unless the pupil is placed for care and treatment or through one
34 of the education choice options.

35 If the team determines that it may be appropriate to

1 consider placement options outside of the resident district,
2 representatives from the outside district, agency, or academy
3 must be invited to attend a team meeting as a participant to
4 complete an appropriate IEP for the pupil including the needs,
5 goals, objectives, services, and placement of the pupil.

6 Subp. 4. Resident district responsibilities; district
7 initiated out-of-district placement. If the resident district
8 places a pupil in an out-of-district placement, the resident
9 district is still responsible to assure that an appropriate IEP
10 is developed, that the pupil is placed in the least restrictive
11 environment, and that due process procedures associated with
12 these responsibilities are followed.

13 It is the responsibility of the providing district, agency,
14 or academy to implement the IEP, conduct periodic and annual
15 reviews, convene and facilitate the IEP team meeting, and assure
16 that due process procedures associated with these
17 responsibilities are followed.

18 The annual IEP must be developed jointly by the providing
19 district, agency, or academy and resident district. The
20 resident district must, at a minimum, involve a district
21 administrator or an administrative designee according to part
22 3525.0200, subpart 1a, to assure that the pupil's educational
23 needs and rights are met. The resident district may appoint a
24 member of the providing district as its administrative designee.

25 Subp. 5. Responsibility for disagreements. The resident
26 district is responsible for resolving disagreements between the
27 pupil's parents and district, including conciliation and due
28 process hearings when the placement has been made by the
29 resident district. If the providing district, agency, or
30 academy receives a request for a conciliation conference or due
31 process hearing from the parent, the providing district, agency,
32 or academy must notify the resident district of the parent's
33 request within 24-hours one school day.

34 Subp. 6. Tuition rate appeal. If the districts do not
35 agree on the tuition rate, either district may appeal to the
36 commissioner as provided in Minnesota Statutes, section 120.17,

1 subdivision 4.

2 Subp. 7. Pupils placed for care and treatment. The
3 educational and financial responsibilities of the resident and
4 providing districts for pupils placed for care and treatment
5 under Minnesota Statutes, section 120.17, subdivisions 6 and 7,
6 are as follow:

7 A. District placements: If the resident district
8 places a pupil for care and treatment, the resident district
9 shall be responsible for providing and paying for an appropriate
10 education program in accordance with part 3525.2320 and this
11 part, either directly or through tuition agreement, and shall
12 also be responsible for the costs associated with care and
13 treatment.

14 B. Nondistrict placement:

15 (1) When the pupil is placed in a residential
16 facility or foster care by someone other than the resident
17 district, the district in which the facility is located is
18 responsible for providing an appropriate education program as
19 set forth in statutes and parts 3525.0200 to 3525.4700 including
20 the notice and hearing provisions. The resident district is
21 responsible for assuming the cost of the educational program
22 when notified in accordance with Minnesota Statutes, sections
23 120.17, subdivision 6, and 124A.036. The district is not
24 responsible for the cost of care and treatment.

25 (2) When the pupil is placed in a day treatment
26 program by an agency other than the resident district, the
27 resident district is responsible for determining the location of
28 the special education services in accordance with the options
29 outlined in Minnesota Statutes, section 120.17, subdivision 6.
30 The resident district shall be responsible for ensuring that an
31 appropriate program is provided in accordance with subparts 4 to
32 6, including all costs for the education program and any due
33 process proceedings regardless of the method or locations of
34 services selected.

35 Subp. 8. Pupils placed through education choice options.
36 When a pupil is placed outside of the district residence by the

1 parent or pupil for the purpose of education and in accordance
 2 with a statutory education choice enrollment act, the resident
 3 district shall be responsible for assuming the cost of the
 4 education program when notified in accordance with Minnesota
 5 Statutes, section 124A.036, subdivision 3. The providing
 6 district shall be responsible for assuring that an appropriate
 7 program is available for the pupil including the notice and
 8 hearing provisions. Responsibility for transportation costs
 9 between the pupil's home and the providing school district shall
 10 be determined in accordance with Minnesota Statutes.

11 Subp. 9. ~~For-determination-of~~ Financial and legal
 12 responsibility for pupils ~~18-21-years-of-age~~ 18-20. For a pupil
 13 who is age 18 through ~~21~~ 20 years of age and is receiving
 14 special education, the district where the pupil's parents, legal
 15 guardian, or conservator lives shall be financially responsible
 16 for the cost of the special education program even in those
 17 cases where the pupil serves as the parent according to part
 18 3525.0200, subpart 11a, for due process purposes.

19 APPLICATIONS

20 3525.1100 STATE AND DISTRICT RESPONSIBILITY FOR TOTAL SPECIAL
 21 EDUCATION SYSTEM (TSES).

22 Subpart 1. State responsibility for all educational
 23 programs for pupils. The State Department of Education is
 24 responsible for ensuring that all requirements in Code of
 25 Federal Regulations, title 34, chapter III, and this part are
 26 carried out by the local education agencies. Each special
 27 education program within the state, including programs
 28 administered by any other public agency is under the general
 29 supervision of the persons responsible for special education in
 30 the State Department of Education.

31 This shall be done, in part, by reviewing each district's
 32 and program's TSES for compliance. Districts and programs will
 33 also be monitored periodically by the Department of Education
 34 for their implementation of the TSES and all requirements in
 35 Code of Federal Regulations, title 34, chapter III, Minnesota

1 Statutes, and this part.

2 Subp. 2. **District responsibility.** A district shall submit
3 to the commissioner the district's plan for providing
4 instruction and related services upon request for all pupils as
5 required by Minnesota Statutes, section 120.17. The plan may
6 represent the plan of a single district or a plan for the member
7 districts of a formal special education cooperative. The plan
8 shall be considered as part of the annual school district
9 application for program review, but will not be required to be
10 resubmitted annually. If a cooperative changes administrative
11 organization, it shall submit a revised plan. The new plan must
12 be submitted before the beginning of the next school year. The
13 plan shall include descriptions of the district's:

14 A. child study procedures for the identification and
15 assessment of students or other persons suspected of having a
16 handicap beginning at birth that include a plan for receiving
17 referrals from parents, physicians, private and public programs,
18 and health and human services agencies;

19 B. method of providing the special education services
20 for the identified pupils;

21 C. administration and management plan to assure
22 effective and efficient results of items A and B, including due
23 process procedure assurances available to parents;

24 D. operating procedures of interagency committees
25 required in statute; and

26 E. interagency agreements the district has entered.

27 The commissioner shall approve or implement appropriate
28 procedures for modification of the district plan. The
29 commissioner shall grant the district a reasonable time to make
30 necessary modifications when the commissioner gets satisfactory
31 assurances of compliance with standards for the education of
32 pupils.

33 3525.1310 STATE AID FOR SPECIAL EDUCATION PERSONNEL.

34 Salaries for essential personnel who are teachers, related
35 services and support services staff members, directors, and

1 supervisors are reimbursable for the following activities:

2 A. child find and pupil identification;

3 B. necessary short-term indirect or consultative
4 services that are provided in conjunction with regular education
5 prereferral activities to an individual suspected of having a
6 handicapping condition to determine whether referrals for
7 assessments shall be made;

8 C. assessment and IEP planning for individual pupils;

9 D. instruction or related and support services to
10 pupils who have an IEP;

11 E. necessary follow-up activities after termination
12 from special education;

13 F. parental involvement and due process;

14 G. personnel development;

15 H. special education curriculum development;

16 I. special education program evaluation;

17 J. supervision and administration of the total
18 special education system;

19 K. school psychological services and school social
20 worker services provided alone or in conjunction with the
21 instructional program as outlined in the pupil's IEP; and

22 L. other related or support services provided in
23 conjunction with the instructional program as outlined in the
24 pupil's IEP.

25 FACILITIES AND STAFF

26 3525.1550 CONTRACTED SERVICES.

27 When contracting for assessments or special education
28 services, a district shall contract with personnel who hold
29 appropriate licenses issued by the Board of Teaching or State
30 Board of Education. If either board does not issue a license
31 for a necessary service, the district shall contract with
32 personnel who are members in good standing of professional
33 organizations that regulate the conduct of its members and set
34 standards for that profession.

35 TREATMENT PROGRAMS AND LEVELS OF SERVICE

1 3525.2325 EDUCATION PROGRAMS FOR K-12 PUPILS AND REGULAR
2 EDUCATION STUDENTS PLACED IN CENTERS FOR CARE AND TREATMENT.

3 Subpart 1. When education is required. The district in
4 which the facility is located must provide regular education,
5 special education, or both to a pupil or regular education
6 student in kindergarten ~~to~~ through grade 12 placed in a
7 facility, or in the student's home for care and treatment.
8 Education services must be provided to a pupil or regular
9 education student who is:

10 A. prevented from attending the pupil's or student's
11 normal school site for 15 consecutive days; or

12 B. predicted to be absent from the normal school site
13 for 15 consecutive days according to the placing authority, such
14 as a medical doctor, psychologist, psychiatrist, judge, or other
15 court-appointed authority; or

16 C. health-impaired and in need of special education
17 and predicted by the team to be absent from the normal school
18 site for 15 intermittent days.

19 A pupil or regular education student shall begin receiving
20 instruction as soon as practicable under treatment conditions.

21 Special education services must be provided as required by
22 a pupil's IEP, and to the extent that treatment considerations
23 allow the pupil to participate. Number of school days for
24 determining due process procedures shall begin upon enrollment
25 in an education program. Placement for care and treatment does
26 not of itself require special education placement.

27 D. For those education programs run by the Department
28 of Corrections, the district shall be the Department of
29 Corrections for the purpose of this part. The district is
30 responsible for ensuring that a cooperative agreement is reached
31 with the care and treatment center facility which addresses all
32 the requirements of Department of Human Services Rules, parts
33 9545.0900 to 9545.1090 and 9545.1400 to 9545.1500 which pertain
34 to the provision of education services for students placed in
35 centers for care and treatment. Provision of special education

1 services requires implementation of all due process safeguards
2 defined in state and federal law. Some procedures are modified
3 to assure the pupil's access to education.

4 For purposes of this part, pupils and regular education
5 students placed in the following facilities by someone other
6 than the district are considered to be placed for care and
7 treatment:

- 8 (1) chemical dependency and other substance abuse
- 9 treatment centers;
- 10 (2) shelter care facilities;
- 11 (3) home, due to accident or illness;
- 12 (4) hospitals;
- 13 (5) day treatment centers;
- 14 (6) correctional facilities;
- 15 (7) residential treatment centers; and
- 16 (8) mental health programs.

17 ~~Provision-of-special-education-services-requires~~
18 ~~implementation-of-all-due-process-safeguards-defined-in-state~~
19 ~~and-federal-law.--Some-procedures-are-modified-to-assure-the~~
20 ~~pupil's-access-to-education.~~

21 Subp. 2. Education programs for students and pupils and
22 regular education students placed in short-term programs for
23 care and treatment. A placement for care and treatment is a
24 short-term placement if the anticipated duration of the
25 placement is less than 31 school days. The school district must
26 begin to provide instruction to the pupil or regular education
27 student immediately after the pupil or student is enrolled in
28 the education program. If the student is enrolled in the
29 educational program without an educational record or IEP, the
30 district's procedures must include immediate phone contact with
31 the home school to see if the regular education student has been
32 identified as handicapped.

33 A. If a regular education student has been identified
34 as handicapped and has a current IEP:

35 Initial due process procedures for previously identified
36 pupils placed for care and treatment in a short-term facility

1 may be accomplished by telephone; however, the required written
2 documentation, including notices, consent forms, and IEP's, must
3 follow immediately. If the pupil has a current IEP in the home
4 school, the home school must give the providing agency an oral
5 review of the IEP goals and objectives and services provided.
6 The providing agency must contact the parents and together an
7 agreement must be reached about continuing or modifying special
8 education services in accordance with the current IEP goals and
9 objectives. If agreement is not reached over the phone, the
10 providing district shall hold a team meeting as soon as
11 possible. At least the following people shall receive written
12 notice to attend: the person or agency placing the pupil, the
13 resident district, the appropriate teachers and related services
14 staff from the providing district, the parents, and, when
15 appropriate, the pupil. This meeting may be held in conjunction
16 with a meeting called by a placing agency. A copy of the
17 documentation, including the modified IEP, must be provided to
18 the parents with a copy of their rights, including a response
19 form.

20 B. If a regular education student has not been
21 identified as handicapped or if the providing district cannot
22 determine if a student has been identified as handicapped:

23 (1) Regular education instruction must begin
24 immediately upon enrollment in the education program.

25 (2) A screening must be conducted by education
26 staff to determine the student's academic, social, and
27 behavioral needs.

28 (3) Based on the documented results of the
29 screening, a decision must be made about the need for
30 prereferral interventions or ~~a-full~~ an appropriate special
31 education assessment according to parts 3525.2500 to 3525.2850,
32 based on the providing district's criteria. It is not required
33 that ~~a-full~~ an appropriate assessment be started unless it
34 appears that it can be completed.

35 (4) During the student's placement, regular
36 education instruction must be provided.

1 Subp. 3. Education programs for pupils and regular
2 education students placed in long-term programs for care and
3 treatment. A placement made for care and treatment is long term
4 if it is anticipated to extend beyond 30 school days. The pupil
5 or regular education student must receive educational services
6 immediately upon enrollment in the education program:

7 A. If the student has been identified as handicapped
8 and has a current IEP.

9 If the education staff of the providing district **believes**
10 decides that the pupil's current IEP can be implemented while
11 the pupil is placed for care and treatment, the education staff
12 must contact the parents to secure an agreement to continue to
13 provide special education services according to the IEP. If the
14 parents do not agree with the providing district's proposal, the
15 district shall hold a team meeting as soon as possible.

16 If the education staff needs additional assessment
17 information or the pupil's current IEP cannot be fully
18 implemented while the pupil is placed for care and treatment,
19 the education staff must:

20 (1) contact the parents to secure an agreement to
21 provide special education on an interim basis while an
22 assessment is being completed; or

23 (2) call a team meeting to revise the current IEP
24 or develop a short-term IEP while the pupil is undergoing
25 additional assessment to determine an appropriate program.

26 B. If the student has not been identified as
27 handicapped or if the providing district cannot determine if the
28 student has been identified as handicapped.

29 The student entering a residential facility for a long-term
30 placement must be screened to determine if there is a need for a
31 ~~full~~ an appropriate educational assessment. An assessment must
32 begin with a review of screening and other information such as
33 the parent or student interview, available educational and
34 social history, and the purpose of the treatment placement. The
35 assessment must be conducted according to parts 3525.2500 to
36 3525.2850.

1 If the student meets the providing district's entrance
 2 criteria for special education, an IEP must be developed.
 3 Special education services must be provided by appropriately
 4 licensed staff in accordance with the IEP. If the student was
 5 not assessed or was assessed and does not meet entrance criteria
 6 for special education, regular education services must be
 7 provided in accordance with the student's education plan.

8 Subp. 4. **When a student or pupil leaves the facility.** If
 9 a student or pupil has received an assessment or special
 10 education services for 15 or more days, the providing district
 11 must prepare an exit report summarizing the regular education or
 12 special education assessment or service information and must
 13 send the report to the home school, the receiving facility, the
 14 parent, and any appropriate social service agency. For a pupil,
 15 this report must include a summary of current levels of
 16 performance, progress, and any modifications made in the pupil's
 17 IEP or services. Record transfers between anyone other than
 18 educational agencies and the parent require prior approval of
 19 the parents in accordance with data privacy laws.

20 Subp. 5. **Minimum service required.** The team must predict
 21 how long the pupil or regular education student must be placed
 22 for care and treatment. If the prediction is for a restricted
 23 period of more than 170 days or its equivalent, exclusive of
 24 summer school, the district shall make available:

25 (1) the instruction necessary for the student or pupil
 26 to make progress in the appropriate grade level for the
 27 successful completion of the courses, programs, or classes the
 28 student or pupil would have been enrolled in if the student or
 29 pupil were not placed for care and treatment;

30 (2) preferably a normal school day in accordance with
 31 part 3525.2310. ~~---The-district-shall-make-available~~ 3525.2300;

32 (3) an average of at least two hours a day of
 33 one-to-one instruction unless; or

34 (4) a minimum of individualized instruction for
 35 one-half of the normal school day if it is justified in the
 36 pupil's IEP or student's education plan that ~~an-average-of-two~~

1 ~~hours-per-day-is-not~~ none of these options are appropriate. The
2 district shall apply for a variance from length of a normal
3 school day in accordance with part 3525.2300.

4 If the predicted restricted period is fewer than 171 days,
5 exclusive of summer school, the district shall make available at
6 a minimum either small group instruction for one-half of the
7 normal school day or at least an average of one hour a day of
8 one-to-one instruction.

9 Provision of special educational services for pupils
10 outside of the providing school district's regular calendar is
11 optional unless the pupil has an extended year IEP.

12 Subp. 6. Placement, services, and due process requirements
13 for pupils.

14 A. The IEP developed by the team must include the
15 provisions of part 3525.2900, the location of the special
16 education services, the projected duration of the special
17 education services, and provisions for coordinating the care and
18 treatment and the special education services.

19 B. The nature of and the restrictiveness of some
20 long-term facilities require the pupils to remain on site. When
21 a pupil's treatment and educational needs allow, integration
22 shall be provided in a regular educational setting. The
23 determination of the amount and site of integrated services must
24 be a joint decision between parents, the treatment and education
25 staff, and when possible final educational placement decisions
26 must be made by the IEP team of the providing educational
27 agency. If the IEP team concludes a pupil can benefit from an
28 average of more than three hours of educational services, it
29 must, in conjunction with care and treatment center staff,
30 consider the feasibility and appropriateness of an education
31 placement at a regular school site.

32 C. If a pupil is placed in a residential facility
33 outside the resident district, the providing district must
34 provide appropriate special education services. The placement
35 of the pupil in a residential center for care and treatment
36 outside the resident district is not an initial placement in the

1 receiving district. The providing district shall make every
2 effort to implement the resident district's IEP, making the
3 modifications necessary due to the restrictive care and
4 treatment setting and based on agreements reached with the
5 parent. The providing district shall comply with the due
6 process procedures of parts 3525.2500 to 3525.4700. Districts
7 shall develop alternative procedures for implementing the legal
8 requirements for observing the student in a regular classroom
9 and document previous interventions that have been tried before
10 the student placed for care and treatment is identified as
11 having a learning disability (LD) or an emotional/behavioral
12 disorder (E/BD). These alternative procedures must be included
13 in the district's entrance criteria. The district and facility
14 shall cooperatively develop procedures to be used in emergency
15 situations that comply with the Pupil Fair Dismissal Act
16 according to Minnesota Statutes, sections 127.26 to 127.39, and
17 the district's discipline policy.

18 Subp. 7. **Student's and pupil's and regular education**
19 **student's placement; aid for special education.** Special
20 education services provided to pupils and regular education
21 students who have been placed for care and treatment are
22 reimbursable in accordance with parts 3525.0800 and 3525.1310.

23 A. When regular education and special education
24 services are provided, only the special education portion shall
25 be reimbursed with special education aid.

26 B. The special education services provided to pupils
27 in accordance with an IEP are reimbursable.

28 C. The indirect or consultative services provided in
29 conjunction with regular education prereferral interventions and
30 assessment provided to regular education students suspected of
31 being handicapped who have demonstrated learning or behavioral
32 problems in a screening are reimbursable.

33 D. Regular education, including screening, provided
34 to students, pupils, and regular education students are not
35 reimbursable with special education categorical aids.

1 3525.2330 REQUIREMENT FOR EARLY CHILDHOOD SERVICES.

2 Subpart 1. Special education services required. A
3 district shall provide special education instruction and related
4 services to pupils beginning at birth. Pupils who are
5 handicapped and younger than ~~six~~ seven years old on September 1
6 of any year shall be provided special education services in one
7 or more early childhood program alternatives as determined by
8 the team and written on the IEP.

9 Subp. 2. to 4. [See Repealer.]

10 3525.2335 EARLY CHILDHOOD CRITERIA FOR ELIGIBILITY AND PROGRAM
11 ALTERNATIVES.

12 Subpart 1. Definition and criteria for eligibility.

13 A. Early childhood special education must be
14 available to pupils from birth to ~~six~~ seven years of age who
15 have a substantial delay or disorder in development or have an
16 identifiable sensory, physical, mental, or social/emotional
17 condition or impairment known to hinder normal development and
18 need special education.

19 B. The team shall determine that a child from birth
20 to the age of two years and 11 months is eligible for early
21 childhood special education if:

22 (1) the child meets the criteria of one of the
23 disability categories; or

24 (2) the child meets one of the criteria in unit
25 (a) in addition to criteria in units (b) and (c):

26 (a) The child:

27 (i) has a medically diagnosed syndrome
28 or condition that is known to hinder normal development
29 including but not limited to cerebral palsy, chromosome
30 abnormalities, fetal alcohol syndrome, maternal drug use, neural
31 tube defects, neural muscular disorders, cytomegalovirus, grades
32 III and IV intracranial hemorrhage, and bronchopulmonary
33 dysplasia (BPD);

34 (ii) has a delay in overall development
35 demonstrated by a composite score of 1.5 standard deviations or

1 more below the mean on an assessment using at least one
 2 technically adequate, norm-referenced instrument that has been
 3 individually administered by an appropriately trained
 4 professional; or

5 (iii) is less than 18 months of age and
 6 has a delay in motor development demonstrated by a composite
 7 score of 2.0 standard deviations or more below the mean on an
 8 assessment using a technically adequate, norm-referenced
 9 instruments. These instruments must be individually
 10 administered by an appropriately trained professional.

11 (b) The child's need for instruction and
 12 services is supported by at least one documented, systematic
 13 observation in the child's daily routine setting by an
 14 appropriate professional. If observation in the daily routine
 15 setting is not possible, the alternative setting must be
 16 justified.

17 (c) Corroboration of the developmental or
 18 medical assessment with a developmental history and at least one
 19 other assessment procedure that is conducted on a different day
 20 than the medical or norm-referenced assessment. Other
 21 procedures may include parent report, language sample,
 22 criterion-referenced instruments, or developmental checklists.

23 C. The team shall determine that a child from the age
 24 of three years to the age of five six years and 11 months is
 25 eligible for early childhood special education when:

26 (1) the child meets the criteria of one of the
 27 disability categories; or

28 (2) the child meets one of the criteria in unit
 29 (a) in addition to criteria in units (b) and (c).

30 (a) The child:

31 (i) has a medically diagnosed syndrome
 32 or condition that is known to hinder normal development
 33 including cerebral palsy, chromosome abnormalities, fetal
 34 alcohol syndrome, maternal drug use, neural tube defects, neural
 35 muscular disorders, cytomegalovirus, grades III and IV
 36 intracranial hemorrhage, and bronchopulmonary dysplasia (BPD);

1 or

2 (ii) has a delay in each of two or more
3 areas of development that is verified by an assessment using
4 technically adequate, norm-referenced instruments. Subtests of
5 instruments are not acceptable. The instruments must be
6 individually administered by appropriately trained professionals
7 and the scores must be at least 1.5 standard deviations below
8 the mean in each area.

9 (b) The child's need for special education
10 is supported by at least one documented, systematic observation
11 in the child's daily routine setting by an appropriate
12 professional. If observation in the daily routine setting is
13 not possible, the alternative setting must be justified.

14 (c) Corroboration of the developmental or
15 medical assessment with a developmental history and at least one
16 other assessment procedure in each area that is conducted on a
17 different day than the medical or norm-referenced assessment.
18 Other procedures may include parent report, language sample,
19 criterion-referenced instruments, or developmental checklists.

20 D. If the team determines that a child is eligible
21 for special education services in an early childhood program
22 alternative because the child has a handicap and needs special
23 instruction even though the child does not meet the requirements
24 in item C, the team must include the following documentation in
25 the child's special education file:

26 (1) the objective data obtained in the evaluation
27 of the educational functioning which support the presence of the
28 handicap;

29 (2) additional data from the child's parents,
30 other agency representatives, and, when appropriate, the
31 student's regular education classroom teachers that support the
32 presence of a handicap and the need for special education;

33 (3) documentation of the rationale used by the
34 team to use an alternative criteria to substantiate the presence
35 of a handicap; and

36 (4) a sign off by the team members agreeing to

1 the variance decision; for those team members who disagree with
2 the variance decision, a statement of why they disagree and
3 their signature.

4 Subp. 2. Program alternatives. Appropriate program
5 alternatives to meet the special education needs, goals, and
6 objectives of the pupil must be determined on an individual
7 basis. Choice of specific program alternatives must be based on
8 the pupil's current levels of performance, pupil special
9 education needs, goals, and objectives, and written in the IEP.
10 Program alternatives are comprised of type of services, setting
11 in which services occur, and amount of time and frequency in
12 which special education services occur. A pupil may receive
13 special education services in more than one alternative based on
14 the IEP.

15 A. There are two types of special education
16 services: services provided directly and services provided
17 indirectly.

18 (1) Direct special education services are
19 provided by a teacher or a related services professional when
20 the services are related to instruction. Direct services occur
21 when a teacher provides instruction directly to the pupil, or to
22 the pupil, parent, or caregiver together in a center-based,
23 home-based, or community-based setting. Direct services occur
24 when a related services professional provides services related
25 to instruction directly to the pupil, or to the pupil, parent,
26 or caregiver together in a center-based, home-based, or
27 community-based setting.

28 (2) Indirect special education services include
29 ongoing progress review; cooperative planning; consultation;
30 demonstration teaching; modification and adaptation of the
31 environment, curriculum, materials, or equipment; and direct
32 contact with the pupil to monitor, observe, and follow up.
33 Indirect services may be provided by a teacher or related
34 services professional to another teacher, related services
35 professional, support staff, parents, and public and nonpublic
36 agencies to the extent that the services are written in the

1 pupil's IEP.

2 B. There are three types of settings: home, district
3 early childhood special education (ECSE) classroom, and
4 community-based programs.

5 (1) Home includes the home of the pupil and
6 parent or relative, or legal family day-care setting in which
7 the pupil is placed by the parent. Home is the preferred
8 setting for pupils under age three to receive special education.

9 (2) District ECSE classroom includes classrooms
10 that are located in one of the district's ~~elementary~~ schools or
11 community center buildings housing elementary students or
12 preschool-aged nonhandicapped children. District ECSE classes
13 must have at least one program support assistant employed while
14 pupils are in attendance. The maximum number of pupils in an
15 ECSE classroom at any one time with a teacher and a program
16 support assistant is eight. The maximum number of pupils in an
17 ECSE classroom at any one time with an early childhood team
18 according to part 3525.2335, subpart 5, is 16. Class size must
19 be adjusted downward based on age, severity of disabilities or
20 delays, and amount of services necessary to meet the IEP goals
21 and objectives.

22 (3) Community-based programs are any early
23 childhood ~~program-classrooms~~ programs other than an ECSE
24 classroom or district elementary school or community center
25 including early childhood family education, licensed public or
26 private nonsectarian child care programs other than a family
27 day-care setting, licensed public or private nonsectarian early
28 education programs, community cultural centers, Head Start
29 programs, and hospitals.

30 C. Amount of time and frequency of special education
31 services must be determined individually and written in the
32 pupil's IEP for pupils who are not yet five years old on
33 September 1. For pupils who are five years old as of September
34 1, requirements for amount of time and frequency of special
35 education services must be determined individually, written on
36 the pupil's IEP, and be consistent with part ~~3525.2310~~ 3525.2300.

1 Direct or indirect special education services must be provided a
 2 minimum of an average of one hour every week unless the parents
 3 request or the team recommends an alternative.

4 Subp. 3. Placement Provision of special education in a
 5 community-based setting. A pupil who is already attending or
 6 receiving care in the home or a community-based setting may
 7 receive special education services directly or indirectly from
 8 the school district in the same environment. In those cases
 9 when the team determines that an integrated setting is
 10 appropriate and the district chooses to place the pupil in a
 11 community-based program to receive special education services,
 12 the district may contract for that service to meet the
 13 instructional needs of the pupil if the community-based program
 14 meets State Board of Education rules. A school district may
 15 provide direct or indirect special education services by
 16 district special education staff to a pupil attending a
 17 community-based program. A school district may contract for
 18 special education services with a community-based program if the
 19 program meets State Board of Education rules.

20 Subp. 4. Case loads for early childhood program
 21 alternatives. A teacher case load must be adjusted downward
 22 based on age, severity of disability or delay, travel time
 23 necessary to serve pupils in more than one program alternative,
 24 and if the pupils on the teacher's case loads are receiving
 25 services in more than one program alternative or the pupil is
 26 involved with a number of other agencies. The district shall
 27 reduce the teacher-to-pupil case load to the extent necessary to
 28 ensure the provision of services delineated in the pupil's IEP.
 29 The maximum number of pupils that can be assigned to a teacher
 30 in any early childhood program alternative is:

31 A. birth to through two years: 12 pupils per
 32 teacher;

33 B. three to five through six years: 16 pupils per
 34 teacher; and

35 C. birth to five through six years: 14 pupils per
 36 teacher.

1 Subp. 5. Early childhood teams.

2 A. A center-based team consists of an ECSE teacher, a
3 program support assistant, and no more than two related services
4 professionals whose combined assignment is equal to that of the
5 teacher. A minimum of one teacher, the program support
6 assistant, and one related services professional must be in a
7 center-based class at all times. The maximum number of pupils
8 that can be assigned to a full-time center-based team is 32.
9 The team's caseload must be adjusted downward based on pupil's
10 age, severity of disability or delay, and amount of services
11 necessary to meet the IEP goals and objectives. Other
12 appropriate related or support services must be provided.

13 B. A home- or community-based team consists of an
14 ECSE teacher and no more than two related services professionals
15 whose combined assignment is equal to that of the teacher. The
16 ECSE teacher and assigned related services professionals shall
17 function as a team to provide special education services through
18 consultation, cooperative planning, and implementation of the
19 IEP by meeting consulting a minimum of once every two weeks to
20 plan for the pupil. Direct or indirect special education
21 services must be provided a minimum of an average of one hour
22 every week with instruction by the ECSE teacher occurring a
23 minimum of an average of once every two weeks unless the parents
24 request or the team recommends an alternative. The maximum
25 number of pupils that can be assigned to a full-time home- or
26 community-based team is 24. The teams' caseloads must be
27 adjusted downward based on pupil's age, severity of disability
28 or delay, travel time necessary to serve pupils, and amount of
29 services necessary to meet the IEP goals and objectives.
30 Additional related or support services shall be provided as
31 appropriate.

32 3525.2350 MULTIDISABILITY TEAM TEACHING MODELS.

33 Subpart 1. Team staff. A district may assign more than
34 one teacher licensed in different areas or one or more teachers
35 and related services staff as a team to provide instruction and

1 related services to pupils in a school-age level of service.

2 Subp. 2. License requirement. There must be a teacher on
3 the team who is licensed in the disability area of each pupil
4 served by the team.

5 Subp. 3. Team member responsibility. The team member
6 licensed in a pupil's disability shall be responsible
7 for conducting the pupil's assessment, ~~IEP development and~~
8 ~~coordination, and periodic and annual reviews~~ and participating
9 at team meetings when an IEP is developed, reviewed, or
10 revised. At least weekly, consultation and indirect services as
11 defined in part 3525.2340, subpart 2, item B, must be provided
12 to the regular or special education teacher providing
13 instruction if not licensed in the disability. The frequency,
14 amount of time, and documentation of the specific consultation
15 and indirect services shall be included in the pupil's IEP.

16 Subp. 4. Implementation. Pupils may receive instruction
17 and related services from any or all of the team members with
18 appropriate skills. The special education provided by each team
19 member shall be included in the IEP.

20 Subp. 5. Case loads. If the team consists of one or more
21 teachers and a related services professional whose assignment is
22 equal to that of the teachers who work together in a program in
23 the same location, the teachers' caseloads may be increased. A
24 pupil or program support assistant may be a part of the team but
25 must not be counted when determining caseloads for the
26 multidisciplinary team.

27 SURROGATE PARENTS

28 3525.2430 DEFINITION.

29 A surrogate parent is a person appointed by the providing
30 district to ensure, by intervening on behalf of a pupil, that
31 the rights of the pupil to a free and appropriate education are
32 protected. The surrogate parent shall not be a person who
33 receives public funds to educate or care for the child.
34 However, a foster parent may serve as a surrogate parent if
35 appointed and if no conflict of interest exists.

1 3525.2440 SURROGATE PARENT APPOINTMENT.

2 The district shall appoint the surrogate parent when:

3 A. the parent, guardian, or conservator is unknown or
4 unavailable;

5 B. the pupil is a ward of the commissioner of human
6 services; or

7 C. the parent requests in writing the appointment of
8 a surrogate parent. The request may be revoked in writing at
9 any time.

10 3525.2445 CONSULTATION WITH COUNTY SOCIAL SERVICES.

11 The district shall consult the county social services
12 office before appointing the surrogate parent when a pupil is
13 the ward of the commissioner of human services.

14 3525.2450 REMOVAL OF SURROGATE PARENT.

15 A surrogate parent may be removed by majority vote of the
16 school board. The surrogate parent must be notified of the time
17 and place of the meeting at which a vote is to be taken and of
18 the reasons for the proposed removal. The surrogate parent
19 shall be given the opportunity to be heard. Removal may be for
20 any of the following reasons:

21 A. failure to perform the duties required in the team
22 meeting and IEP process and those cited in Code of Federal
23 Regulations, title 34, section 300, a federal regulation to
24 implement part B of the Education of the Handicapped Act;

25 B. conflict of interest as referenced in Code of
26 Federal Regulations, title 34, section 300.514 (c)(2);

27 C. actions that threaten the well-being of the
28 assigned pupil;

29 D. failure to appear to represent the pupil; or

30 E. the pupil no longer needs special education.

31 3525.2470 SUSPENSION, EXCLUSION, AND EXPULSION.

32 Subpart 1. Pupil Fair Dismissal Act. The Pupil Fair
33 Dismissal Act, Minnesota Statutes, sections 127.26 to 127.39,
34 applies to all pupils. For the purpose of this part, the

1 definitions in Minnesota Statutes, section 127.27, apply.

2 Subp. 2. Team meeting required. A team meeting shall be
3 held before exclusion or expulsion of a pupil. Within five
4 school days of a suspension, a team meeting shall occur. If a
5 pupil is placed on in-school suspension status according to the
6 district policy established for all students for all or part of
7 the day for two or more consecutive days or three times in one
8 month, a team meeting must be held. The team shall:

9 A. determine whether the misconduct is related to the
10 handicapping condition;

11 B. review any assessments and determine the need for
12 further assessment; and

13 C. review the IEP and amend the goals and objectives
14 or develop an alternative IEP program.

15 Subp. 3. Exclusion and expulsion. A pupil shall not be
16 excluded or expelled when the misconduct is related to the
17 pupil's handicapping condition. When it is determined in a team
18 meeting or a Pupil Fair Dismissal Act proceeding that a pupil's
19 misconduct is related to the pupil's handicapping condition,
20 then the assessment, IEP, and least restrictive alternative
21 shall be reviewed according to parts 3525.0200 to 3525.4700.

22 3525.2500 IDENTIFICATION OF CHILDREN WHO ARE HANDICAPPED.

23 School districts shall develop systems ~~for-locating-persons~~
24 ~~residing-within-their-jurisdiction-who-may-be-handicapped-~~
25 ~~Those-systems-shall-be~~ designed to identify persons who are
26 handicapped beginning at birth, students with handicaps
27 attending school, and persons who are handicapped and are of
28 school age who are not attending any school.

29 The district's identification system shall be developed in
30 accordance with the requirement of nondiscrimination and
31 included in the district's total special education system plan.

32 ASSESSMENT, NOTICE, AND HEARING

33 3525.2600 EDUCATIONAL ASSESSMENT.

34 Subpart 1. Assessment. An assessment:

35 A. must be conducted when a person's needs are

1 considered by the local school district to be interfering with
 2 or affecting the person's academic or functional skill
 3 acquisition in the present educational placement and the person
 4 is thought to be in need of a possible initiation or change in
 5 the person's educational placement, program, or services;

6 B. must be conducted at least every three years;

7 C. may be conducted if the parent, student, or other
 8 agency requests.

9 Subp. 2. Function of the assessment. The assessment must
 10 reflect the person's current level of performance and shall be
 11 the basis for later educational planning. The assessment must:

12 A. Be conducted by a multidisciplinary team that
 13 ~~shall address the following areas of education performance:~~
 14 ~~evaluation of the person's intellectual functioning, academic~~
 15 ~~performance, communicative status, motor ability, vocational~~
 16 ~~potential, sensory status, physical status, emotional and social~~
 17 ~~development, and functional skills~~ in accordance with the
 18 assessment plan developed as part of the referral review. The
 19 team shall conduct an in-depth comprehensive assessment in
 20 those areas of suspected disability using technically adequate
 21 instruments and procedures.

22 B. Include a review of the person's functioning in
 23 current and anticipated environments. The environmental
 24 assessments review must address classroom performance based on
 25 the specific instructional strategies used in the classroom,
 26 performance in other daily routine environments, and information
 27 reported by parents, classroom teachers, and others involved
 28 regularly with the person. Specific instructional strategies
 29 include curriculum and curriculum modifications, classroom
 30 grouping patterns, and supports such as adaptive devices,
 31 materials and equipment available, and staff members.

32 C. Make reasonable efforts to obtain information from
 33 the parents and others with knowledge of the person and about
 34 the person's functioning in current and anticipated environments
 35 when the team determines it to be necessary because of cultural
 36 or other differences presented by the person or due to the

1 nature of the person's presenting handicapping condition.

2 D. Be provided and administered in the person's
3 primary language or mode of communication unless it clearly is
4 not feasible to do so.

5 E. Be performed in accordance with recognized
6 professional standards which include recognition or
7 accommodation for persons whose differences or conditions cause
8 standardized instruments to be invalid and otherwise in
9 accordance with the requirements of nondiscrimination.

10 Subp. 3. **Assessment summary report.** For the person
11 assessed, results of any or all assessments shall be summarized
12 in a report. The summary report shall include the reason for
13 referral, summary of instruments and procedures used, results
14 and interpretation of the assessment including the review of the
15 person's functioning in current and anticipated environments,
16 and, the person's current level of performance, and the
17 ~~examiner's~~ team's judgments and recommendations. The assessment
18 summary report shall contain the ~~examiner's~~ team's signature,
19 title, and date of report.

20 3525.2700 CONDUCT BEFORE ASSESSMENT.

21 Subpart 1. **Student performance review.** After a referral
22 is submitted and before conducting an assessment, the team shall
23 conduct a review of the person's performance in the following
24 areas: intellectual functioning, academic performance,
25 communicative status, motor ability, vocational potential,
26 sensory status, ~~and~~ physical status, emotional and social
27 development, and behavior and functional skills. The referral
28 review must be documented and used as the basis to plan the
29 assessment to ensure that the person is assessed in areas of the
30 presenting problems. The referral review shall:

31 A. Include a review of any additional screening,
32 referral, or other data about the person and select licensed
33 special education personnel and others as appropriate to conduct
34 the assessment including licensed special education personnel
35 and others who may have the responsibility for implementing the

1 educational program for the person.

2 B. Include a review of the regular education-based
3 prereferral interventions conducted before referral for an
4 assessment. Prereferral interventions are planned, systematic
5 efforts by regular education staff to resolve apparent learning
6 or behavioral problems. The design and outcome of these
7 interventions must be documented.

8 Subp. 2. Team duties after review. Based on the referral
9 review, the team shall:

10 A. Plan to conduct the educational assessment
11 preferably at the home, school, or community setting which the
12 person attends. When the district determines that the
13 assessment or a portion of the assessment cannot be performed
14 utilizing the personnel resources of the district, the district
15 shall make arrangements elsewhere for that portion of the
16 assessment and shall assume all costs for such assessment.

17 B. Give due consideration to assessment results
18 provided by outside sources but need not implement
19 recommendations unless agreed to by the team.

20 C. ~~Arrange to~~ Conduct the assessment within a
21 reasonable time not to exceed 30 days from the date the district
22 receives parental permission to conduct the assessment or the
23 expiration of the ten-day parental response time in cases other
24 than initial assessment, unless a conciliation conference or
25 hearing is requested.

26 3525.2800 NOTICE BEFORE ASSESSMENT.

27 Subpart 1. **When required.** Notice before assessment must
28 be provided in accordance with parts 3525.3200 to 3525.3500
29 before conducting an educational assessment or reassessment or
30 when the district receives a parent's written request to conduct
31 an educational assessment or reassessment. When a district
32 receives a parent's written request to conduct a formal
33 assessment or reassessment, the district shall serve notice of
34 its decision within ten days of their receipt of the written
35 request.

1 Subp. 2. **When not required.** Notice before assessment is
 2 not required for actions which are components of the district's
 3 identification system including large group screening,
 4 individual student observation within the regular classroom,
 5 informal inventories, and consultation between regular and
 6 special education personnel.

7 3525.2850 READING AND WRITING ASSESSMENT FOR PUPILS WHO ARE
 8 BLIND.

9 A. Pupils who are blind ~~according to Minnesota~~
 10 ~~Statutes, section 290.06, subdivision 3f, paragraph (4)(c),~~
 11 shall receive a reading and writing assessment at least once
 12 every three years to determine whether or not instruction in
 13 braille should begin or continue. An individual is blind if
 14 central visual acuity does not exceed 20/200 in the better eye
 15 with correcting lenses, or if visual acuity is greater than
 16 20/200 but is accompanied by a limitation in the fields of
 17 vision such that the widest diameter of the visual field
 18 subtends an angle no greater than 20 degrees.

19 B. The reading and writing assessment must be
 20 conducted by a multidisciplinary team included in part
 21 3525.2750. The team shall include a teacher who is licensed to
 22 teach pupils with visual handicaps and who is knowledgeable
 23 about braille as mutually agreed upon between the parents and
 24 the district.

25 C. The following age-appropriate factors shall be
 26 considered when conducting a reading and writing assessment to
 27 determine whether or not braille instruction must begin or
 28 continue:

- 29 (1) reading readiness skills;
- 30 (2) functional reading skills including reading
 31 level, print size, reading rate, comprehension, and stamina;
- 32 (3) functional writing skills;
- 33 (4) prognosis of eye condition for change in
 34 visual status;
- 35 (5) functional communication skills and primary

1 language of communication;

2 (6) functional visual abilities; and

3 (7) tactual discrimination.

4 D. It is recommended that braille instruction for a
5 blind pupil begin under the following conditions if indicated by
6 the assessment ~~unless-the-team-determines-otherwise~~ and:

7 (1) if a multi-disciplinary team determines that
8 a pupil cannot read standard sized print at a normal reading
9 rate, holding it at a normal reading distance, and if the pupil
10 cannot read for a sustained period of time without eye strain;
11 or

12 (2) if the multidisciplinary team determines that
13 braille would assist the pupil's academic achievement,
14 transition from school to postsecondary education, training,
15 employment, and community living.

16 E. Information about braille reading and writing
17 shall be provided to parents of pupils who are blind. The
18 information shall include a list of resources and advocacy
19 organizations, including consumer organizations, that the
20 parents may wish to contact.

21 F. Information about braille reading and writing
22 methods must be provided to teachers who will be instructing
23 pupils who use braille reading and writing.

24 G. The periodic review for a pupil who is blind shall
25 include a review of the pupil's current and anticipated needs.
26 If the review of the pupil's progress in reading and writing
27 does not meet the expectations determined through the IEP goals
28 and objectives, a reading and writing reassessment must be
29 conducted to determine whether braille instruction must begin.

30 3525.2950 SECONDARY TRANSITION PLANNING.

31 By grade nine or age 14, the IEP plan shall address the
32 pupil's needs for transition from secondary services to
33 postsecondary education and training, employment, and community
34 living.

35 A. For each pupil, the district shall conduct a

1 multidisciplinary assessment of secondary transition needs and
2 plan appropriate services to meet the pupil's transition needs.
3 Areas of assessment and planning must be relevant to the pupil's
4 needs and may include work, recreation and leisure, home living,
5 community participation, and postsecondary training and learning
6 opportunities. To appropriately assess and plan for a pupil's
7 secondary transition, additional IEP team members may be
8 necessary and may include vocational education staff members and
9 other community agency representatives as appropriate.

10 B. Secondary transition assessment results must be
11 documented as part of an assessment summary according to part
12 3525.2750. Current and secondary transition needs, goals, and
13 instructional and related services to meet the pupil's secondary
14 transition needs must be considered by the team with annual
15 needs, goals, objectives, and services documented on the pupil's
16 IEP.

17 3525.3000 PERIODIC REVIEWS.

18 The providing school district shall determine the
19 effectiveness of the pupil's IEP by conducting periodic reviews
20 of the pupil's program plan. The IEP team shall address the
21 plan for, location of, and frequency of at least one periodic
22 review and one annual review of the pupil's progress in
23 achieving the prescribed educational goals and objectives and
24 the appropriateness of the program and placement, and if only
25 one periodic review is done, it must not be done at the same
26 time as the annual review. The periodic review shall determine:

27 A. the degree to which the periodic review objectives
28 as identified in the educational program plan are being
29 achieved;

30 B. the appropriateness of the educational program
31 plan as it relates to the pupil's current needs;

32 C. what modifications, if any, need to be made in the
33 program plan.

34 The initial review shall be made when specified in the
35 program plan, but at least once a year following placement.

1 These periodic reviews shall be made by those persons
2 directly responsible for implementing the educational program
3 and by other school district agents as may be needed to ensure
4 an informed and adequate review.

5 The results of periodic reviews shall be included in the
6 pupil's school records and a copy sent to the parent and to the
7 resident district if different from the providing district.
8 This copy shall inform the parents and the resident district
9 that they may request a conference to review the pupil's program
10 plan at any time and the procedure to do so.

11 The reviews shall be made in accordance with the
12 requirements for nondiscrimination and recognized professional
13 standards.

14 3525.3100 REQUIREMENTS FOR FOLLOW-UP REVIEW.

15 The responsible school district shall conduct a follow-up
16 review of the student's ~~or-other-person's~~ current performance no
17 later than 12 calendar months after special education services
18 are discontinued to determine if progress is satisfactory.

19 3525.3150 REQUIREMENTS FOR A HIGH SCHOOL DIPLOMA.

20 Beginning at grade nine or age 14 and annually thereafter,
21 the IEP team shall address the graduation requirements for a
22 high school diploma for a pupil.

23 A. The team must determine those courses, programs,
24 or classes that must be successfully completed by regular
25 education students in the regular education program which are
26 needed to attain a high school diploma and are appropriate and
27 attainable by the pupil.

28 B. The team must determine those courses, programs,
29 or classes which are needed to attain a high school diploma that
30 cannot be successfully attained by the pupil without special
31 education or are not appropriate for the pupil. These
32 requirements must be modified on the IEP or waived by the team.

33 C. The standard for a pupil's attainment of a high
34 school diploma shall be:

35 (1) those courses, programs, or classes

1 identified in item A;

2 (2) those modified and waived courses, programs,
3 or classes determined in item B; and

4 (3) the pupil's goals and objectives on the IEP.

5 D. The IEP team shall determine the criteria for
6 satisfactory achievement of the IEP goals and objectives
7 including modified courses, programs, or classes.

8 A pupil shall receive an identical high school diploma
9 granted to all regular education students upon graduation or
10 termination of special education services at age 21, with
11 satisfactory attainment of the program plan objectives.

12 3525.3300 CONTENTS OF NOTICE.

13 Notices must be sufficiently detailed and precise to
14 constitute adequate notice for hearing of the proposed action
15 and contain a full explanation of the procedural safeguards
16 available to parents under parts 3525.0200 to 3525.4700.

17 Notices must:

18 A. Inform the parents of their right and the
19 procedure and time for them to participate as a team member in
20 developing and determining their child's educational program,
21 including special education services and to provide information
22 relative to the child's assessment and the development of the
23 program plan.

24 B. Inform the parents of their right and the
25 procedure to receive interpretations of assessment or
26 reassessment procedures, instruments and data or results and of
27 the program plan from a knowledgeable school employee and for
28 that conference to be held in private.

29 C. Inform the parents of their right and the
30 procedure to have included on the team that interprets the
31 assessment data and develops the individual program plans, the
32 persons described in part 3525.2900, subpart 1, including a
33 person who is a member of the same minority or cultural
34 background or who is knowledgeable concerning the racial,
35 cultural, or handicapping differences of the student.

1 D. Inform the parents that they may:

2 (1) Obtain an independent assessment at their own
3 expense.

4 (2) Request from the district information about
5 where an independent assessment may be obtained.

6 (3) Obtain an independent assessment at public
7 expense if the parent disagrees with an assessment obtained by
8 the district. The district shall initiate conciliation and a
9 due process hearing if necessary when refusing a parent's
10 request for an independent assessment at public expense. If the
11 hearing officer determines that the district's assessment is
12 appropriate, the parents still have the right to an independent
13 assessment, but not at public expense. When an independent
14 evaluation is at public expense, the criteria under which the
15 evaluation is obtained, including the location of the evaluation
16 and the qualifications of the examiner, must be the same as the
17 criteria the district uses when it initiates an evaluation.

18 E. Inform the parents that the district will not
19 proceed with proposed actions defined in part 3525.0200,
20 subparts 7a and 8a, without prior written consent.

21 F. Inform the parents that if they notify the
22 district in writing that they do not agree with the proposed
23 assessment or placement, they will be requested to attend a
24 conciliation conference at a mutually convenient time and place.
25 If this is not an initial assessment or an initial placement
26 being proposed by the district, the district must proceed with
27 its proposal after ten school days of the parent's receipt of
28 the notice and response form unless the parent objects in
29 writing.

30 G. Inform the parents that if they do not wish to
31 participate in a conciliation conference they have a right to
32 proceed directly to an impartial due process hearing and bypass
33 the informal conciliation conference. Even if they do attend a
34 conciliation conference, if they do not agree with action
35 proposed by the district, they have a right to proceed to a due
36 process hearing. The conciliation process cannot be used to

1 delay or deny the parents' rights to a due process hearing.

2 H. Inform the parents that they have the right to be
3 represented by counsel or another person of their choosing at
4 the conciliation conference or the impartial due process hearing.

5 I. Include a statement assuring that their child's
6 educational program will not be changed as long as the parent
7 objects to the proposed action, in the manner prescribed by
8 parts 3525.0200 to 3525.4700.

9 J. Inform the parents of their right to be
10 represented in preparation of and at the hearing by legal
11 counsel or other representative of their choice.

12 K. Inform the parents of their right, in accordance
13 with laws relating to confidentiality, to examine and receive
14 copies of the child's school records before the hearing,
15 including tests, assessments, reports, or other information
16 concerning the educational assessment or reassessment upon which
17 the proposed action may be based.

18 L. Inform the parents of their right to call their
19 own witnesses and to present evidence, including expert medical,
20 psychological, and educational testimony and relevant records,
21 tests, assessments, reports, or other information.

22 M. Inform the parents of their right to request the
23 attendance of any official or employee of the providing or
24 resident school district or any other person, who may have
25 evidence relating to the proposed action and the manner and time
26 in which to do so.

27 N. Inform the parents of their right to present
28 evidence and cross examine any employee of the school district
29 or other persons who present evidence at the hearing.

30 O. Inform the parents of any free or low cost legal
31 services available in the area.

32 P. Inform the parents of their right to have the
33 child who is the subject of the hearing present at the hearing.

34 Q. Inform the parents that the hearing shall be
35 closed unless the parents request an open hearing.

36 R. Inform the parents that they have a right to

1 obtain a record of the hearing including the written findings of
2 fact and decisions whether or not they appeal.

3 S. Inform the parents that if a due process hearing
4 is held and the parents' position is upheld, the parents may be
5 awarded attorney's fees by the courts in certain situations.

6 T. Inform the parents that their consent for their
7 child's program and placement including the use of aversive and
8 deprivation procedures is voluntary and that they may revoke it
9 at any time.

10 U. Include a response form on which the parents may
11 indicate their approval of or objection to the proposed action
12 and identify the district employee to whom the response form
13 must be mailed or given and to whom questions may be directed.

14 3525.3400 NOTICE TO RESIDENT SCHOOL DISTRICT.

15 The resident school district, if different from the
16 providing school district, shall receive notice of and will be
17 responsible for any hearings or appeals provided under parts
18 3525.0200 to 3525.4700 for pupils placed by the resident
19 district if the providing district notifies the school district
20 according to part 3525.0800, subpart 5.

21 3525.3500 NOTICE OF PERFORMANCE OR REFUSAL TO PERFORM ASSESSMENT.

22 Before the performance of or refusal to perform an
23 educational assessment or reassessment as provided in parts
24 3525.2550 to 3525.2850, the providing school district shall
25 prepare and serve a notice that meets the requirements of parts
26 3525.3200 to 3525.3400. The portion of the notice which is
27 specific to assessment or reassessment shall:

28 A. include the reasons for assessment or the refusal
29 to assess and how the results may be used;

30 B. include a description of areas to be assessed and
31 the procedures to be used;

32 C. state where and by whom the assessment will be
33 conducted;

34 D. inform the parents that the district will not
35 proceed with the initial formal assessment as defined in part

1 3525.0200, without prior written consent of the child's parents;
2 and

3 E. inform the parents that except for the initial
4 formal assessment, the district shall proceed with the proposed
5 assessment unless the parent objects on the enclosed response
6 form or otherwise in writing within ten days after receipt of
7 the notice.

8 3525.3600 NOTICE OF CHANGE OR REFUSAL TO CHANGE EDUCATIONAL
9 PLACEMENT OR PROGRAM.

10 Before the initiation or significant change or the refusal
11 to initiate or significantly change a pupil's educational
12 placement or special education services, as set forth in part
13 3525.2900, subpart 5, the school district shall prepare and
14 serve a notice that meets the requirements of parts 3525.3200 to
15 3525.3400.

16 A. The portion of the notice which is specific to the
17 educational placement and provision of services shall:

18 (1) include a copy of the individual educational
19 program plan as described in part 3525.2900, subpart 3;

20 (2) inform the parents that the school district
21 will not proceed with the initial placement and provision of
22 services as defined in part 3525.0200 without prior written
23 consent of the pupil's parents; and

24 (3) inform the parents that except for the
25 initial placement and provision of services, the district will
26 proceed with the proposed placement and provision of services
27 unless the parents object in writing on the enclosed response
28 form or otherwise in writing within ten days after the receipt
29 of the notice.

30 B. For purposes of this part, a significant change in
31 program or placement requiring a notice to parent and revision
32 of the IEP shall occur when:

33 (1) the IEP goals have been completed or require
34 modification based on a periodic review;

35 (2) there is a need to add or delete a service

1 based on a periodic review or assessment;

2 (3) there is a change in the type of site or
3 setting in which the pupil receives special education;

4 (4) the amount of time a pupil spends with
5 nonhandicapped peers is changed; and

6 (5) the amount of special education to accomplish
7 the goals or objectives needs to be increased or decreased.

8 3525.3700 CONCILIATION CONFERENCE.

9 Subpart 1. **When a conference must be offered.** If the
10 parent does not object in writing, to a proposed action as set
11 forth in parts 3525.2550 to 3525.2850 or part 3525.2900, subpart
12 5, within 14 days after receipt of the notice, and the proposed
13 action is not an initial action as defined in part 3525.0200,
14 subparts 7a and 8a, the proposed action shall take place. If a
15 written objection is made, the resident school district shall
16 offer the parent an opportunity to conciliate the matter. If
17 the parent is willing to enter conciliation, the district shall
18 arrange for a conference with the parent to review the reasons
19 for the proposed action and conciliating the matter. The
20 conference shall be held at a time and place mutually convenient
21 to the parent and the school district representatives and shall
22 be held within ten days after receipt of the written objection.
23 There may be more than one conference and the parent or district
24 may request a hearing under part 3525.3800 at any time.

25 If the parent refuses to provide prior written consent for
26 initial assessment and initial placement under parts 3525.3500,
27 item D, and 3525.3600, item A, subitem (2), within ten days
28 after the receipt of the notice and response form, the district
29 shall offer the parent an opportunity to conciliate the matter.
30 If the parent is willing to enter conciliation, the district
31 shall arrange for a conference with the parent to review the
32 parent's suggestions and concerns, and to conciliate the
33 matter. The conference shall be held at a time and place
34 mutually convenient to the parent and school district
35 representatives. If no response is received in cases of initial

1 assessment or placement, the school district shall offer a
2 conciliation conference to be held within ten days after the
3 expiration of the ten-day period for parent response. In cases
4 where the parent fails to attend the initial conciliation
5 conference, the district may choose to offer to schedule
6 additional conciliation conferences.

7 Subp. 2. **Memorandum.** Within seven days of the final
8 conciliation conference, the district shall serve the parent
9 with a written memorandum that informs the parent:

10 A. Of the school district's proposed action following
11 the conference.

12 B. That if they continue to object to the proposed
13 action they have a right to object to the proposed action at an
14 impartial due process hearing and the procedure and time in
15 which to do so, including a request form on which the parent may
16 request the hearing, and the identification of the district
17 employee to whom the written request form or other written
18 request for hearing should be mailed, and to whom questions and
19 legal documents or requests relating to the hearing may be
20 directed.

21 C. That if they do not request a hearing on the
22 written request form or otherwise in writing pursuant to part
23 3525.3800 within seven days after receipt of the notice, the
24 district will proceed with the proposed action; unless the
25 proposed action is an initial action as defined in part
26 3525.0200, subparts 7a and 8a. In cases of proposed initial
27 actions, when a parent continues to refuse to provide written
28 permission, the district shall schedule a hearing within seven
29 days after the expiration of the seven days allowed for parent
30 response.

31 D. That if a hearing is scheduled, the district shall
32 send a notice describing the rights and procedures available to
33 the parents relative to the hearing.

34 Subp. 3. **Right to a hearing without conciliation.** The
35 conciliation process must not be used to deny or delay a
36 parent's right to a due process hearing. If the parent refuses

1 efforts by the district to conciliate the dispute with the
2 school district, the district's obligation to offer an
3 opportunity for conciliation is satisfied.

4 When the parent refuses efforts by the district to
5 conciliate the dispute and notifies the district of the intent
6 to go to an impartial due process hearing, the district must
7 provide the parent with the procedure and time in which to
8 request the hearing, and the identification of the district
9 employee to whom the written request form or other written
10 request for a hearing must be mailed, and to whom questions and
11 legal documents or requests about the hearing may be directed.

12 3525.3800 WHEN A HEARING MUST BE HELD.

13 A hearing regarding a proposed action under parts 3525.2550
14 to 3525.2850 or part 3525.2900, subpart 5, shall be held
15 whenever the district receives the parents' request for a
16 hearing. The district shall conduct a hearing whenever a parent
17 refuses to provide written permission for the initial formal
18 assessment or the initial placement and provision of special
19 education services, within ten days after the receipt of the
20 notice and response form, provided the district has made at
21 least one offer to enter into conciliation in an attempt to
22 obtain this written consent.

23 3525.3900 NOTICE OF A HEARING.

24 Written notice of the time, date, and place of hearings
25 shall be given to all parties by the district at least ten days
26 in advance of the hearings; and the hearing shall be held at a
27 time, date, and place mutually convenient to all parties.

28 Within five days of receipt of the parent's written request
29 for a hearing, the district shall serve the parent with a
30 written notice of rights and procedures relative to the hearing
31 that informs the parent:

32 A. That the hearing shall take place before an
33 impartial hearing officer mutually agreed to by the school board
34 and the parent. If the school board and parent cannot agree on
35 a hearing officer, the school board shall request the

1 commissioner to appoint a hearing officer.

2 B. That they will receive notice of the time, date,
3 and place of the hearing at least ten days in advance of the
4 hearing which will be held within 30 days after the written
5 request.

6 C. Inform the parents:

7 (1) of their right to receive a list of persons
8 who will testify on behalf of the district concerning the
9 proposed action within five days of the date the district
10 receives their written request for the list of persons
11 testifying;

12 (2) of their responsibility, within five days
13 after written request by the school district, to provide to the
14 district a list of persons who will testify on the parent's
15 behalf concerning the proposed action;

16 (3) of their right, at least five days before the
17 hearing, to receive from the district, a brief resume of
18 additional material allegations referring to conduct,
19 situations, or conditions which are discovered to be relevant
20 and which were not contained in the original notice or
21 memorandum; any party to a hearing has the right to prohibit
22 evidence not disclosed five days before a hearing.

23 D. That at the hearing the burden of proof is on the
24 district to show that the proposed action is justified on the
25 basis of the person's educational needs or the person's current
26 educational performance, or presenting handicapping conditions
27 taking into account the presumption that placement in a regular
28 public school class with special education services is
29 preferable to removal from the regular classroom.

30 E. That the hearing officer will make a written
31 decision based only on evidence received and introduced into the
32 record at the hearing not more than 45 days from the receipt of
33 the request for the hearing and that the proposed action will be
34 upheld only upon showing by the school district by a
35 preponderance of the evidence. A proposed action that would
36 result in the ~~regular-education-student~~ pupil being removed from

1 regular education program may be sustained only when, and to the
2 extent the nature or severity of the handicap is such that a
3 regular education program would not be satisfactory and the
4 ~~regular-education-student~~ pupil would be better served in an
5 alternative program. Consideration of alternative educational
6 programs must also be given.

7 F. That the decision of the hearing officer is
8 binding on all parties unless appealed to the commissioner by
9 the parent or the district.

10 G. That unless the district and parents agree
11 otherwise, the student shall not be denied initial admission to
12 school and that the student's education program shall not be
13 changed, as long as the parents object to the proposed action in
14 the manner prescribed by parts 3525.0200 to 3525.4700.

15 3525.4000 HEARING OFFICERS.

16 The hearing shall take place before an impartial hearing
17 officer mutually agreed to by the school board and the parents.
18 If the school board and the parents cannot agree on a hearing
19 officer, the school board shall request the commissioner to
20 appoint a hearing officer. The hearing officer shall not be a
21 school board member or employee of the school district where the
22 student or child resides or of the child's school district of
23 residence, an employee of any other public agency involved in
24 the education or care of the child or regular education student,
25 or any person with a personal or professional interest which
26 would conflict with the person's objectivity at the hearing. A
27 person who otherwise qualifies as a hearing officer is not an
28 employee of the district solely because the person is paid by
29 the district to serve as a hearing officer. If a hearing
30 officer requests an independent educational assessment of a
31 child or regular education student, the cost of the assessment
32 shall be at district expense.

33 3525.4100 PREHEARING REVIEW BY THE HEARING OFFICER.

34 Subpart 1. Information received before the hearing. Five
35 days before the hearing, the person conducting the hearing shall

1 receive copies of:

2 A. the district's notices and memorandum prepared
3 pursuant to part 3525.3700, subpart 2, to the parents;

4 B. written information concerning the district's
5 educational assessment or reassessment and copies of any
6 parties' tests, evaluations, or other admissible reports or
7 written information relating to the assessment or reassessment,
8 or the proposed action;

9 C. a copy of the pupil's current and proposed IEP;
10 and

11 D. other information from the district or parent as
12 the hearing officer may have requested at a prior date provided
13 that a copy of the information is provided to all parties, and
14 further provided that the information is made a part of the
15 hearing record.

16 The provisions of items B and C need not apply when the
17 hearing concerns a proposed action under parts 3525.2550 to
18 3525.2850.

19 Subp. 2. Duties of hearing officers after receipt of the
20 information. Upon receipt of the information in subpart 1, the
21 hearing officer:

22 A. shall review the same for compliance with parts
23 3525.0200 to 3525.4700;

24 B. may meet with the parties together before the
25 hearing;

26 C. may require the district to perform an additional
27 educational assessment or reassessment;

28 D. may require the district to propose an alternative
29 IEP;

30 E. may require the district to send additional notice
31 to the parents;

32 F. may do the additional things necessary to achieve
33 compliance with parts 3525.0200 to 3525.4700;

34 G. may postpone the hearing for up to 15 days to
35 achieve the purposes of this subpart; and

36 H. may grant specific extensions of time beyond the

1 45-day period established in part 3525.3900, item E, at the
2 request of either party.

3 3525.4200 HEARING RIGHTS OF THE RESPECTIVE PARTIES.

4 The hearing shall be closed unless the parents request an
5 open hearing. The parties shall have the right to
6 representatives of their own choosing, including legal counsel.

7 At a reasonable time before the hearing, the parties or
8 their representatives, as the case may be, shall be given access
9 to the providing and resident school districts' records and such
10 other records pertaining to the child that are authorized by law
11 to be disclosed, including but not limited to all tests,
12 evaluations, assessments, reports, and other written information
13 concerning the educational assessment or reassessment, conducted
14 pursuant to parts 3525.2550 to 3525.2850 upon which the proposed
15 action may be based.

16 At least five days before the hearing the parents shall
17 receive from the school districts, who are parties of the
18 hearing, a brief resume of additional material allegations
19 referring to conduct, situations, or conditions which are
20 discovered and found to be relevant to the issues to be
21 contested at the hearing and which are not contained in the
22 original notice or memorandum provided pursuant to parts
23 3525.3200 to 3525.3600 or part 3525.3700, subpart 2. If the
24 material allegation or information about the allegation is not
25 disclosed, the person conducting the hearing must determine if
26 the material allegation may be considered. Within five days
27 after the written request is received, any party shall receive
28 from the other parties a list of witnesses who may be called to
29 testify at the hearing. The list must be filed with the person
30 conducting the hearing. The lists may be modified at any time
31 but each party should be notified immediately if possible. The
32 parties or their representatives, as the case may be, have the
33 right to request the attendance of any employee of the school
34 district, or any other person who may have evidence relating to
35 the proposed action, and to confront, and to cross examine any

1 witness. Any request must be made to the appropriate school
2 district or to the person whose attendance is requested at least
3 five days in advance of the hearing. The written requests shall
4 also be filed with the person conducting the hearing at the time
5 of hearing.

6 If the person conducting the hearing determines at the
7 conclusion of the hearing that there remain disputes of fact
8 which, in the interest of fairness and the child's educational
9 needs, require the testimony of additional witnesses, or if the
10 hearing officer concludes that alternative educational programs
11 and opportunities have not been sufficiently considered, the
12 hearing officer may continue the hearing for not more than ten
13 days, for the purpose of obtaining the attendance of witnesses
14 or considering alternative programs and opportunities. The
15 parties' right to cross examination and confrontation and other
16 applicable rights and procedures shall continue and be given
17 full force and effect.

18 3525.4300 HEARING PROCEDURES.

19 The hearing officer shall preside over and conduct the
20 hearing and shall rule on procedural and evidentiary matters,
21 and the hearing officer's decision shall be based solely upon
22 the evidence introduced and received into the record. The
23 district shall bear the burden of proof as to all facts and as
24 to grounds for the proposed action. One purpose of the hearing
25 is to develop evidence of specific facts concerning the
26 educational needs, current educational performance, or
27 presenting handicapping conditions of the person as it relates
28 to the need for the proposed action. Consistent with the rights
29 and procedures in parts 3525.3300 to 3525.4700, nothing in parts
30 3525.0200 to 3525.4700 limits the right of the hearing officer
31 to question witnesses or request information.

32 A tape recording, stenographic record, or other record of
33 the hearing shall be made, and if an appeal is filed under parts
34 3525.4600 and 3525.4700, the hearing must be transcribed by the
35 district and must be accessible to the parties involved within

1 five days of the filing of the appeal.

2 3525.4400 DECISIONS OF HEARING OFFICER.

3 Subpart 1. Preparation of written decision. Not more than
4 45 days from the receipt of the request for a hearing, the
5 hearing officer shall prepare a written decision based on
6 evidence received and introduced into the record at the
7 hearing. The decision must address itself to subparts 2 and 3.

8 Subp. 2. Decisions regarding assessment or reassessment.

9 The hearing officer may sustain a proposed assessment or
10 reassessment of the person as set forth in parts 3525.2550 to
11 3525.2750 upon a showing by the district by a preponderance of
12 the evidence that demonstrates that there are facts, relating to
13 the person's performance in the present education placement or
14 presenting handicapping conditions, which indicate reasonable
15 grounds to believe that the educational assessment or
16 reassessment procedures are justified, as a step toward the
17 possible initiation of or change in the person's educational
18 placement or program, including special education services,
19 which will provide an educational program, including special
20 education services, appropriately suited to the person's needs.

21 Consistent with the standards, requirements, and principles
22 in statute and parts 3525.0200 to 3525.4700, the hearing officer
23 shall have the authority, based on the evidence received at the
24 hearing, to modify the proposed assessment or reassessment
25 instruments or procedures to ensure compliance with the
26 requirement of nondiscrimination.

27 Subp. 3. Decisions regarding educational placement. Based
28 on an application of the standards, requirements, and principles
29 in Minnesota Statutes, section 120.17, subdivision 3a, and in
30 parts 3525.0200 to 3525.4700, the proposed action regarding the
31 person's educational placement or special education services in
32 part 3525.2900, subpart 3, shall be sustained in whole or in
33 part by the hearing officer only upon a showing of need by the
34 district by a preponderance of the evidence. In deciding if the
35 proposed action is to be sustained, in whole or in part, the

1 educational needs of the child shall be determinative. However,
2 there shall be a presumption that among alternative programs of
3 education, that to the maximum extent appropriate, a primary
4 placement in a regular public school class and program with
5 appropriate special education services is preferable to removal
6 from the regular classroom.

7 The hearing officer may sustain a proposed action that
8 would result in the child being removed from a regular education
9 program only when, and to the extent that, the nature or
10 severity of the handicap is such that education in the program
11 with the use of special education services cannot be
12 accomplished satisfactorily, and there is indication that the
13 child will be better served with an alternative program or
14 services. This decision shall be made in accordance with the
15 principle of least restrictive alternatives. The hearing
16 officer shall also determine whether the district sufficiently
17 considered alternative educational programs including special
18 education services and opportunities and at the hearing, may
19 receive any additional evidence presented by any interested
20 party or person about the availability and suitability of
21 reasonable and viable educational alternatives. If the hearing
22 officer concludes that there are no reasonable or viable
23 educational alternatives, the findings shall so state.

24 Subp. 4. Local decisions. A local decision must:

25 A. contain written findings of fact, and conclusions
26 of law, including a statement of the controlling facts upon
27 which the decision is made in sufficient detail to appraise the
28 parties and the commissioner of the basis and reason for the
29 decision;

30 B. state whether the special education services
31 appropriate to the child's needs can be reasonably provided
32 within the resources available to the district;

33 C. state the amount and source of any additional
34 district expenditures necessary to implement the decision; and

35 D. be based on the standards and principles in
36 Minnesota Statutes, section 120.17, subdivision 3a, and subparts

1 2 and 3.

2 3525.4600 EFFECTIVE DATE OF ACTION AND APPEALS.

3 The decision of the hearing officer is binding on all
4 parties unless appealed to the hearing review officer by the
5 parent or the district, and shall become effective 15 days after
6 service of the decision unless the decision is appealed. The
7 hearing officer's decision issued under part 3525.4400, subpart
8 2, 3, or 4, may be appealed by the parent or the district to the
9 hearing review officer within 30 days of receipt of that written
10 decision in the following manner: the appeal decision shall be
11 based on a review of the local decision and the entire record;
12 notices of appeal shall be on the appeal form or otherwise in
13 writing and shall be sent by mail to all parties to the hearing
14 when the appeal is filed.

15 The school board shall be a party to any appeal. The
16 hearing review officer shall issue a final decision based on a
17 review of the local decision and the entire records within 30
18 calendar days after the filing of the appeal. A written
19 transcript of the hearing shall be made by the district; the
20 transcript and entire record shall be accessible to the parties
21 and provided to the hearing review officer within five calendar
22 days after the filing of the appeal. If the transcript and
23 record are not provided to the hearing review officer within
24 five days of the filing of the appeal, the district shall
25 request an extension of the time beyond the 30-day period equal
26 to the number of days which exceeded the five-day period for
27 filing the transcript and entire record. The hearing review
28 officer shall seek additional evidence if necessary and may
29 afford the parties an opportunity for written or oral argument.
30 A hearing held to seek additional evidence must be an impartial
31 due process hearing but is not a contested case hearing. The
32 hearing review officer may grant specific extensions of time
33 beyond the 30-day period at the request of any party.

34 3525.4700 FINAL DECISION.

35 The hearing review officer's final decision must be in

1 writing, include findings and conclusions, and be based on the
 2 standards in Minnesota Statutes, section 120.17, subdivision 3a,
 3 and the standards, requirements, and principles in parts
 4 3525.4400, subparts 2 and 3, and 3525.0200 to 3525.4700.

5 The decision of the hearing review officer is final unless
 6 appealed by the parent or the school board to the district court
 7 of the county in which the school district, in whole or in part,
 8 is located. The scope of judicial review shall be as provided
 9 in Minnesota Statutes, chapter 14.

10 If the district fails to implement the hearing officer's
 11 decision, the parent shall have the right to bring the failure
 12 to the attention of the commissioner. In accordance with
 13 Minnesota Statutes, section 124.15, the State Board of Education
 14 shall impose sanctions necessary to correct any failure.

15

16 REPEALER. Minnesota Rules, parts 3525.0200, subpart 9a;
 17 3525.1600; ~~3525.2300~~; 3525.2320; 3525.2330, subparts 2, 3, and
 18 4; 3525.2360; 3525.4800; 3525.4900; 3525.5000; 3525.5100;
 19 3525.5200; 3525.5300; 3525.5400; 3525.5500; 3525.5600;
 20 3525.5700; 3525.5800; 3525.5900; 3525.6000; 3525.6100;
 21 3525.6200; 3525.6300; 3525.6400; 3525.6500; 3525.6600;
 22 3525.6700; 3525.6800; 3525.6900; 3525.7000; 3525.7100;
 23 3525.7200; 3525.7300; 3525.7400; and 3525.7500, are repealed.

24

25 RENUMBER RENUMBERER. Minnesota Rules, parts 3525.2600;
 26 3525.2700; and 3525.2800, should be renumbered as 3525.2750;
 27 3525.2550, and 3525.2650 respectively.