

1 Department of Education

2

3 Adopted Permanent Rules Relating to Special Education Rules

4

5 Rules as Adopted

6 3500.1000 EXEMPTIONS FOR EXPERIMENTAL AND FLEXIBLE SCHOOL YEAR
7 PROGRAMS.

8 Subpart 1. Request. A district may request approval from
9 the State Board of Education for an experimental program of
10 study, a four-day school week, or a flexible school year
11 program. They shall be designed to accomplish at least one of
12 the following:

13 A. improve instructional quality;

14 B. increase cost effectiveness;

15 C. make better use of community resources or
16 available technology; or

17 D. establish an alternative eligibility criteria
18 intended to identify pupils in need of special education
19 services.

20 Subp. 2. Exemption from state rules. If the proposed
21 program is approved, the State Board of Education shall provide
22 an exemption to state rules that otherwise would apply.

23 Subp. 3. Contents of proposal. The proposal shall include:
24 specific state rules from which the district requests exemption,
25 the goals and objectives of the program, the activities to be
26 used to accomplish the objectives, a definite time limit which
27 may not exceed three years, and the evaluation procedures to be
28 used.

29 Subp. 4. Participation and approval. The district shall
30 provide evidence that the district staff, pupils, and parents
31 who would be affected, participated in the development and will
32 participate in the annual review of the proposal, and that the
33 proposal has the approval of the district school board.

34 Parents whose children will be involved shall be fully
35 informed at the IEP meeting and shall have the opportunity to



1 approve or disapprove placement in the experimental program.

2 Subp. 5. **Criteria for continuation.** If the State Board of
3 Education finds that the program has met the proposed goals and
4 objectives, the board shall authorize continuation of the
5 program and specify the state rules from which the program is
6 exempt and the period of time the program will be continued.

7 3525.0200 DEFINITIONS FOR SPECIAL EDUCATION.

8 [For text of subpart 1, see M.R.]

9 Subp. 1a. **Administrator or administrative designee.**

10 "Administrator" or "administrative designee" means a
11 representative of the school district, other than the pupil's
12 teacher, who is licensed to provide or supervise the provision
13 of special education and who has the authority to make decisions
14 about the appropriateness of the proposed program and who has
15 the authority to commit the responsible district's resources.

16 Subp. 1b. **Aids.** "Aids" means equipment, devices, and
17 materials and curriculum adaptations which enable a pupil to
18 achieve satisfactorily in the regular classroom.

19 Subp. 1c. **Assessment or reassessment.** "Assessment" or
20 "reassessment" means an appropriate individual educational
21 evaluation of a pupil's performance or development conducted by
22 appropriately licensed personnel according to recognized
23 professional standards and parts 3525.2550 to 3525.2750.

24 Subp. 1d. **Aversive procedure.** "Aversive procedure" means
25 the planned application of an aversive stimulus: (1) contingent
26 upon the occurrence of a behavior identified for reduction or
27 elimination in the IEP; or (2) in an emergency situation
28 governed by subpart 2c.

29 Subp. 1e. **Aversive stimulus.** "Aversive stimulus" means an
30 object that is used, or an event or situation that occurs
31 immediately after a specified behavior in order to suppress that
32 behavior.

33 Subp. 1f. **Community-based.** "Community-based" means a
34 service, program, or environment located outside the district
35 with nondistrict governance.

1 **Subp. 1g. Conditional procedures.** "Conditional procedures"
2 means interventions that meet the definitions of aversive and
3 deprivation procedures which are not prohibited. Conditional
4 procedures include:

- 5 A. the use of manual restraint;
- 6 B. the use of mechanical or locked restraints;
- 7 C. time out procedures for seclusion; and
- 8 D. temporary delay or withdrawal of regularly
9 scheduled meals or water not to exceed 30 minutes except as
10 provided in subpart 2a.

11 [For text of subp 2, see M.R.]

12 **Subp. 2a. Deprivation procedure.** "Deprivation procedure"
13 means the planned delay or withdrawal of goods, services, or
14 activities that the pupil would otherwise receive: (1)
15 contingent upon the occurrence of a behavior identified for
16 reduction or elimination on the IEP; or (2) in an emergency
17 situation governed by subpart 2c.

18 **Subp. 2b. Direct services.** "Direct services" means
19 special education services provided by a teacher or a related
20 service professional when the services are related to
21 instruction, including cooperative teaching.

22 **Subp. 2c. Emergency.** "Emergency" means a situation in
23 which immediate intervention is necessary to protect a pupil or
24 other individual from physical injury, emotional abuse due to
25 verbal and nonverbal threats and gestures, or to prevent severe
26 property damage. The emergency intervention must be the least
27 intrusive intervention possible to reasonably react to the
28 emergency situation. This subpart does not prohibit staff
29 persons from using reasonable force to protect themselves or
30 other pupils or students as provided in Minnesota Statutes,
31 section 609.379.

32 [For text of subps 3a and 4a, see M.R.]

33 **Subp. 6a. Individual education program plan or IEP.**
34 "Individual education program plan" or "IEP" means a written
35 individualized educational plan annually developed for a pupil.
36 It is based on an assessment of the pupil's performance,

1 presenting problems and its effect on learning in appropriate
2 settings.

3 [For text of subps 7a and 8a, see M.R.]

4 Subp. 8b. [See repealer.]

5 Subp. 8c. **Indirect services.** "Indirect services" means
6 special education services which include ongoing progress
7 reviews; cooperative planning; consultation; demonstration
8 teaching; modification and adaptation of the environment,
9 curriculum, materials, or equipment; and direct contact with the
10 pupil to monitor and observe. Indirect services may be provided
11 by a teacher or related services professional to another regular
12 education, special education teacher, related services
13 professional, paraprofessional, support staff, parents, and
14 public and nonpublic agencies to the extent that the services
15 are written in the pupil's IEP and IFSP.

16 Subp. 8d. **Individualized family service plan or IFSP.**
17 "Individualized family service plan" or "IFSP" means a written
18 plan for providing services to a pupil and the pupil's family
19 through interagency agreements. Procedural and program
20 requirements for the IEP also apply to the educational
21 components of the IFSP.

22 Subp. 8e. **Manual restraint.** "Manual restraint" means
23 physical intervention intended to hold a person immobile or
24 limit a person's movement by using body contact as the only
25 source of physical restraint.

26 Subp. 8f. **Mechanical restraint.** "Mechanical restraint"
27 means the use of devices such as mittens, straps, or restraint
28 chairs to limit a person's movement or hold a person immobile as
29 an intervention precipitated by the person's behavior.
30 Mechanical restraint applies to uses intended to prevent injury
31 with persons who engage in behaviors such as head-banging,
32 gouging, or other self-injurious actions that result in tissue
33 damage and medical problems. Mechanical restraint does not
34 apply to restraint used to treat a person's medical needs or to
35 position a person with physical disabilities.

36 Subp. 9b. [See repealer.]

1 Subp. 10. **Nondiscrimination.** "Nondiscrimination" means a
2 requirement that districts shall comply with chapter 3535 and
3 Minnesota Statutes, chapter 363.

4 Subp. 10a. **Paraprofessional.** "Paraprofessional" means a
5 district employee who is primarily engaged in direct interaction
6 with one or more pupils for instructional activities, physical
7 or behavior management, or other purposes under the direction of
8 a regular education or special education teacher or related
9 services provider.

10 Subp. 11a. **Parent or parents.** For a pupil under age 18,
11 "parent" or "parents" means the mother, father, guardian, person
12 acting as the parent of the child, conservator, or surrogate
13 parent who has been appointed in accordance with parts 3525.2435
14 to 3525.2455. For a pupil age 18 or over, "parent" or "parents"
15 also includes the pupil unless a guardian or conservator has
16 been appointed, in which case it means the guardian or
17 conservator. When the parents are separated or divorced, it
18 means the parent who has the legal right, by court decree or
19 agreement, to determine the pupil's education, even though the
20 pupil may be living with the other parent.

21 [For text of subp 15a, see M.R.]

22 Subp. 16a. **Pupil.** "Pupil" means a student or other person
23 who is eligible for special education according to Minnesota
24 Statutes, sections 120.03 and 120.17.

25 [For text of subp 17a, see M.R.]

26 Subp. 18a. **Regular education program.** "Regular education
27 program" means the program in which the pupil would be enrolled
28 if the pupil did not have disabilities.

29 Subp. 18b. [See repealer.]

30 [For text of subp 19a, see M.R.]

31 Subp. 19b. **Significant change in program or placement.**
32 "Significant change in program or placement" means:

33 A. the IEP goals have been completed or require
34 modification based on a periodic review;

35 B. there is a need to add or delete a service based
36 on a periodic review or assessment;

1 C. there is a change in the type of site or setting
2 in which the pupil receives special education;

3 D. the amount of time a pupil spends with nondisabled
4 peers is changed;

5 E. the amount of special education to accomplish the
6 goals or objectives needs to be increased or decreased; or

7 F. the team determines there is a need for a
8 conditional intervention procedure.

9 Subp. 20a. **Special education.** "Special education" means
10 any specially designed instruction and related services to meet
11 the unique cognitive, academic, communicative, social and
12 emotional, motor ability, vocational, sensory, physical, or
13 behavioral and functional needs of a pupil as stated in the IEP.

14 Subp. 20b. **Surrogate parent.** "Surrogate parent" means a
15 person appointed by the providing district to intervene on
16 behalf of a pupil, to help ensure that the rights of the pupil
17 to a free and appropriate education are protected. The
18 surrogate parent shall not be a person who receives public funds
19 to educate or care for the child. However, a foster parent may
20 serve as a surrogate parent if appointed and if no conflict of
21 interest exists.

22 [For text of subps 24 and 25, see M.R.]

23 Subp. 25a. **Time out for exclusion.** "Time out for
24 exclusion" involves procedures which remove a pupil from the
25 regularly scheduled education program for brief periods not to
26 exceed 30 minutes. Time out for exclusionary purposes is not
27 regulated by this chapter.

28 Subp. 25b. **Time out for seclusion.** "Time out for
29 seclusion" involves procedures which place the pupil in a
30 specially designated isolation room or similar space.

31 Subp. 26. **Vocational assessment.** "Vocational assessment"
32 means an ongoing, comprehensive process used to assist the pupil
33 and the team to determine the pupil's strengths, interests,
34 abilities, and needed support to be successful in a vocational
35 setting. A vocational assessment is one component of the
36 ongoing special education multidisciplinary assessment described

1 in parts 3525.2550 to 3525.2750.

2 3525.0300 PROVISION OF FULL SERVICES.

3 Children and youth with disabilities and who are eligible
4 for special education services based on an appropriate
5 individual assessment shall have access to free appropriate
6 public education, as that term is defined by applicable law.

7 3525.0400 LEAST RESTRICTIVE ENVIRONMENT.

8 To the maximum extent appropriate, children with
9 disabilities shall be educated with children who do not have
10 disabilities and shall attend regular classes. A person with
11 disabilities shall be removed from a regular educational program
12 only when the nature or severity of the disability is such that
13 education in a regular educational program with the use of
14 supplementary aids and services cannot be accomplished
15 satisfactorily. Furthermore, there must be an indication that
16 the pupil will be better served outside of the regular program.
17 The needs of the pupil shall determine the type and amount of
18 services needed.

19 3525.0700 PARENTAL INVOLVEMENT.

20 Parents of children with disabilities have a right to be
21 involved by the school district in the education decision-making
22 process by participating or being afforded the opportunity to
23 participate at each IEP meeting to develop, review, or revise
24 the IEP. At the time of contact, the district shall inform the
25 parents of their right to bring anyone of their choosing to
26 accompany them to the meeting. The district shall inform the
27 pupil's parents about the alternatives and methods of
28 instruction as described in Minnesota Statutes, section 120.17,
29 subdivision 2.

30 3525.0750 IDENTIFICATION OF CHILDREN WITH DISABILITIES.

31 School districts shall develop systems designed to identify
32 persons with disabilities beginning at birth, students with
33 disabilities attending school, and persons with disabilities who
34 are of school age and are not attending any school.

1 The district's identification system shall be developed in
2 accordance with the requirement of nondiscrimination and
3 included in the district's total special education system plan.

4 3525.0800 RESPONSIBILITY FOR ENSURING PROVISION OF INSTRUCTION
5 AND SERVICES.

6 [For text of subpart 1, see M.R.]

7 Subp. 2. **Purchased services.** The district shall not
8 purchase special educational services for a pupil from a public
9 or private agency when such service is available or can be made
10 available and can be more appropriately provided as the least
11 restrictive alternative within the district. Whenever it is
12 appropriate for a district to purchase special education service
13 for pupils with disabilities and who reside in the district, it
14 continues to be the responsibility of the school district,
15 consistent with the provisions of Minnesota Statutes and parts
16 3525.0200 to 3525.4700, to assure and ascertain that such pupils
17 and youth receive the education and related services and rights
18 to which they are entitled.

19 [For text of subp 3, see M.R.]

20 Subp. 4. **Resident district responsibilities; district**
21 **initiated out-of-district placement.** If the resident district
22 places a pupil in an out-of-district placement, the resident
23 district is still responsible to assure that an appropriate IEP
24 is developed, that the pupil is placed in the least restrictive
25 environment, and that due process procedures associated with
26 these responsibilities are followed.

27 It is the responsibility of the providing district, agency,
28 or academy to implement the IEP, conduct periodic and annual
29 reviews, convene and facilitate the IEP team meeting, and assure
30 that due process procedures associated with these
31 responsibilities are followed.

32 The annual IEP must be developed jointly by the providing
33 district, agency, or academy and resident district. The
34 resident district may appoint a member of the providing district
35 as its representative.

1 Subp. 5. **Responsibility for disagreements.** The resident
2 district is responsible for resolving disagreements between the
3 pupil's parents and district, including conciliation and due
4 process hearings when the placement has been made by the
5 resident district. If the providing district, agency, or
6 academy receives a request for a conciliation conference,
7 mediation, or due process hearing from the parent, the providing
8 district, agency, or academy must notify the resident district
9 of the parent's request within one school day.

10 [For text of subps 6 to 8, see M.R.]

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

19 3525.0850 BEHAVIOR INTERVENTIONS.

20 This policy is intended to encourage the use of positive
21 approaches to behavioral interventions. The objective of any
22 behavioral intervention must be that pupils acquire appropriate
23 behaviors and skills. It is critical that behavioral
24 intervention programs focus on skills acquisition rather than
25 merely behavior reduction or elimination. Behavioral
26 intervention policies, programs, or procedures must be designed
27 to enable a pupil to benefit from an appropriate, individualized
28 educational program as well as develop skills to enable them to
29 function as independently as possible in their communities.

30 3525.1100 STATE AND DISTRICT RESPONSIBILITY FOR TOTAL SPECIAL
31 EDUCATION SYSTEM (TSES).

32 Subpart 1. **State responsibility for all educational**
33 **programs for pupils.** The State Department of Education is
34 responsible for ensuring that all pertinent requirements in the
35 Code of Federal Regulations, and this part are carried out by

1 the local education agencies. Each special education program
2 within the state, including programs administered by any other
3 public agency is under the general supervision of the persons
4 responsible for special education in the State Department of
5 Education.

6 This shall be done, in part, by reviewing each district's
7 and program's TSES for compliance. Districts and programs will
8 also be monitored periodically by the Department of Education
9 for their implementation of the TSES and all requirements in
10 Code of Federal Regulations, title 34, chapter III, Minnesota
11 Statutes, and this part.

12 Subp. 2. District responsibility. A district shall submit
13 to the commissioner the district's plan for providing
14 instruction and related services upon request for all pupils as
15 required by Minnesota Statutes, section 120.17. The plan may
16 represent the plan of a single district or a plan for the member
17 districts of a formal special education cooperative. The plan
18 shall be considered as part of the annual school district
19 application for program review, but will not be required to be
20 resubmitted annually. If a cooperative changes administrative
21 organization, it shall submit a revised plan. The new plan must
22 be submitted before the beginning of the next school year. The
23 plan shall include descriptions of the district's:

24 [For text of items A to C, see M.R.]

25 D. Specific programs for involving parents of
26 children with disabilities and pupils in district policy-making
27 and decision-making pursuant to federal regulations, including,
28 but not limited to, a district or jurisdictional special
29 education advisory council.

30 E. Operating procedures of interagency committees
31 required in statute.

32 F. Interagency agreements the district has entered.

33 The commissioner shall approve or implement appropriate
34 procedures for modification of the district plan. The
35 commissioner shall grant the district a reasonable time to make
36 necessary modifications when the commissioner receives a

1 satisfactory corrective action plan that complies with standards
2 for the education of pupils.

3 G. Policy describing the district's procedures for
4 implementing the use of conditional interventions with pupils.
5 Policies must be reviewed regularly and shall include, at a
6 minimum, the following components:

7 (1) ongoing personnel development activities for
8 all staff, contracted personnel, and volunteers who work with
9 pupils who are disabled that:

10 (a) promote the use of positive approaches;

11 (b) provide an awareness of how to limit the
12 use of aversive and deprivation procedures;

13 (c) provide an awareness of how to avoid
14 abuse of such procedures;

15 (d) provide an awareness of specific
16 cautions for the use of conditional procedures with specific
17 populations of pupils or for the use of certain procedures; and

18 (e) provide staff training requirements for
19 the design and use of all conditional interventions prior to
20 their use;

21 (2) documentation procedures of the use of
22 interventions and maintenance and retention of records of use;
23 and

24 (3) description of the district's procedure for
25 reviewing emergency situations where conditional procedures are
26 used.

27 3525.1150 PROVIDING SPECIAL EDUCATION TO SHARED-TIME PUPILS.

28 Subpart 1. **Availability to nonpublic school students.**

29 Districts shall identify and make available special education to
30 all students who are disabled regardless of whether they attend
31 a nonpublic school. For those students who attend a nonpublic
32 school according to Minnesota Statutes, section 124A.034, and
33 who are referred for special education services, the district
34 shall inform parents of their right to special education
35 services for eligible students.

1 Subp. 2. **Assessment.** In the assessment or provision of
2 special education to eligible pupils, the district may:

3 A. assess the student at the nonpublic school,
4 including observing the student in the classroom as part of the
5 formal assessment;

6 B. meet periodically with the nonpublic school staff
7 to review progress of the pupil in the pupil's special education
8 program;

9 C. periodically observe the pupil in the nonpublic
10 school classroom to evaluate the result of the special education
11 provided; and

12 D. hold IEP or IFSP meetings at the nonpublic school.

13 Special education services provided indirectly or directly
14 to the pupil must be provided at a neutral site that is
15 consistent with Minnesota Statutes, section 123.932, subdivision
16 9. The district may provide indirect or consultative special
17 education services to the pupil's nonpublic school on the
18 specific skills identified in the pupil's IEP by phone or at a
19 meeting in a neutral site.

20 Subp. 3. **Provision of special education.** In the
21 assessment or provision of special education to eligible pupils,
22 the district shall:

23 A. ensure that equipment or individualized
24 instructional materials placed in a nonpublic school are used
25 only to implement a pupil's IEP for the period needed for that
26 plan. Public school staff shall not become involved with the
27 pupil's day-to-day curriculum in the nonpublic school program.
28 Program funds must not be used to support instruction in a
29 nonpublic school or otherwise benefit the nonpublic school, but
30 rather to meet the specific needs of pupils enrolled in the
31 nonpublic school.

32 B. provide necessary transportation for a pupil to
33 receive special education from the nonpublic school to the
34 neutral site where special education is provided on a
35 shared-time basis. If the resident pupil attends a nonpublic
36 school located in a district contiguous to the resident district

1 and no agreement exists under Minnesota Statutes, section
2 124A.034, the district of residence shall provide necessary
3 transportation for that pupil between the boundary of the
4 district of residence and the educational facility where special
5 education is to occur. The district of residence may provide
6 necessary transportation for that pupil between its boundary and
7 the nonpublic school attended, but the nonpublic school shall
8 pay the costs of the transportation provided outside the
9 district boundary.

10 3525.1310 STATE AID FOR SPECIAL EDUCATION PERSONNEL.

11 Salaries for essential personnel who are teachers, related
12 services, and support services staff members are reimbursable
13 for the following activities:

14 [For text of items A to D, see M.R.]

15 E. parental involvement and due process;

16 F. school psychological services and school social
17 worker services provided for pupils identified as emotional or
18 behavioral disordered according to parts 3525.1329 and 3525.2900
19 alone or in conjunction with the instructional program outlined
20 in any pupil's IEP;

21 G. other related services provided in conjunction
22 with the instructional program as outlined in the pupil's IEP;
23 and

24 H. paraprofessional services provided under the
25 direction of a regular or special education teacher or a related
26 services provider. The services must be:

27 (1) to enhance the instruction provided by the
28 teacher or related services staff; and

29 (2) to supplement instructional activities or to
30 provide extended practice in instances in which the
31 paraprofessional has had training and ongoing support from a
32 special education teacher or related services staff.

33 Ongoing services for at-risk students such as truancy,
34 suicide prevention, child abuse, or protection are not
35 reimbursable.

1 3525.1348 TRAUMATIC BRAIN INJURY (TBI) DEFINITION AND ENTRANCE
2 CRITERIA.

3 Subpart 1. Definition. "Traumatic brain injury" means an
4 acquired injury to the brain caused by an external physical
5 force, resulting in total or partial functional disability or
6 psychosocial impairment, or both, that may adversely affect a
7 child's educational performance and result in the need for
8 special education and related services. The term applies to
9 open or closed head injuries resulting in impairments in one or
10 more areas, such as: cognition, speech/language, memory,
11 attention, reasoning, abstract thinking, judgment,
12 problem-solving, sensory, perceptual and motor abilities,
13 psychosocial behavior, physical functions, and information
14 processing. The term does not apply to brain injuries that are
15 congenital or degenerative, or brain injuries induced by birth
16 trauma.

17 Subp. 2. Criteria. The team shall determine that a pupil
18 is eligible and in need of special education and related
19 services if the pupil meets the criterion in item A and the
20 criteria in items B and C as documented by the information
21 gathered according to item D:

22 A. There is documentation by a physician of a
23 medically verified traumatic brain injury.

24 B. There is a functional impairment attributable to
25 the traumatic brain injury that adversely affects educational
26 performance in one or more of the following areas:

27 intellectual-cognitive, academic, communication, motor, sensory,
28 social-emotional-behavioral, and functional skills-adaptive
29 behavior. Examples of functional impairments which may
30 adversely affect educational performance are:

31 (1) intellectual-cognitive, such as, but not
32 limited to, impaired;

33 (a) attention or concentration;

34 (b) ability to initiate, organize, or
35 complete tasks;

- 1 (c) ability to sequence, generalize, or
- 2 plan;
- 3 (d) insight/consequential thinking;
- 4 (e) flexibility in thinking, reasoning, or
- 5 problem-solving;
- 6 (f) abstract thinking;
- 7 (g) judgment or perception;
- 8 (h) long-term or short-term memory;
- 9 (i) ability to acquire or retain new
- 10 information;
- 11 (j) ability to process information;
- 12 (2) academic, such as, but not limited to:
- 13 (a) marked decline in achievement from
- 14 preinjury levels;
- 15 (b) impaired ability to acquire basic skills
- 16 (reading, written language, mathematics);
- 17 (c) normal sequence of skill acquisition
- 18 which has been interrupted by the trauma as related to
- 19 chronological and developmental age;
- 20 (3) communication, such as, but not limited to:
- 21 (a) impaired ability to initiate, maintain,
- 22 restructure, or terminate conversation;
- 23 (b) impaired ability to respond to verbal
- 24 communication in a timely, accurate or efficient manner;
- 25 (c) impaired ability to communicate in
- 26 distracting or stressful environments;
- 27 (d) impaired ability to use language
- 28 appropriately (requesting information, predicting, analyzing, or
- 29 using humor);
- 30 (e) impaired ability to use appropriate
- 31 syntax;
- 32 (f) impaired abstract or figurative
- 33 language;
- 34 (g) perseverative speech (repetition of
- 35 words, phrases, or topics);
- 36 (h) impaired ability to understand verbal

- 1 information;
- 2 (i) impaired ability to discriminate
3 relevant from irrelevant information;
- 4 (j) impaired voice production/articulation
5 (intensity, pitch, quality, apraxia, or dysarthria);
- 6 (4) motor, such as, but not limited to, impaired:
- 7 (a) mobility (balance, strength, muscle
8 tone, or equilibrium);
- 9 (b) fine or gross motor skills;
- 10 (c) speed of processing or motor response
11 time;
- 12 (d) sensory/perceptual motor skills;
- 13 (5) sensory, such as, but not limited to,
14 impaired;
- 15 (a) vision (tracking, blind spots, visual
16 field cuts, blurred vision, or double vision);
- 17 (b) hearing (tinnitus, noise sensitivity, or
18 hearing loss);
- 19 (6) social-emotional-behavioral, such as, but not
20 limited to:
- 21 (a) ability to initiate or sustain
22 appropriate peer or adult relationships;
- 23 (b) impaired ability to perceive, evaluate,
24 or use social cues or context appropriately;
- 25 (c) impaired ability to cope with
26 over-stimulating environments, low frustration tolerance;
- 27 (d) mood swings or emotional ability;
- 28 (e) impaired ability to establish or
29 maintain self-esteem;
- 30 (f) denial of deficits affecting
31 performance;
- 32 (g) poor emotional adjustment to injury
33 (depression, anger, withdrawal, or dependence);
- 34 (h) impaired ability to demonstrate
35 age-appropriate behavior;
- 36 (i) impaired self-control (verbal or

1 physical aggression, impulsivity, or disinhibition);

2 (j) intensification of preexistent

3 maladaptive behaviors or disabilities;

4 (7) functional skills-adaptive behavior, such as

5 but not limited to, impaired:

6 (a) ability to perform developmentally

7 appropriate daily living skills in school, home, leisure, or

8 community setting (hygiene, toileting, dressing, eating);

9 (b) ability to transfer skills from one

10 setting to another;

11 (c) orientation (places, time, situations);

12 (d) ability to find rooms, buildings, or

13 locations in a familiar environment;

14 (e) ability to respond to environmental cues

15 (bells, signs);

16 (f) ability to follow a routine;

17 (g) ability to accept change in an

18 established routine;

19 (h) stamina that results in chronic fatigue.

20 C. The functional impairments are not primarily the
21 result of previously existing:

22 (1) visual, hearing, or motor impairments;

23 (2) emotional-behavioral disorders;

24 (3) mental retardation;

25 (4) language or specific learning disabilities;

26 (5) environmental or economic disadvantage;

27 (6) cultural differences.

28 D. Information/data to document a functional
29 impairment in one or more of the areas in item B must, at a
30 minimum, include one source from Group One and one source from
31 Group Two:

32 (1) GROUP ONE:

33 (a) checklists;

34 (b) classroom or work samples;

35 (c) educational/medical history;

36 (d) documented, systematic behavioral

1 observations;

2 (e) interviews with parents, student, and
3 other knowledgeable individuals;

4 (2) GROUP TWO:

5 (a) criterion-referenced measures;

6 (b) personality or projective measures;

7 (c) sociometric measures;

8 (d) standardized assessment measures;

9 (academic, cognitive, communication, neuropsychological, or
10 motor).

11 3525.1350 EARLY CHILDHOOD: SPECIAL EDUCATION.

12 Subpart 1. Definition. Early childhood special education
13 must be available to pupils from birth to seven years of age who
14 have a substantial delay or disorder in development or have an
15 identifiable sensory, physical, mental, or social/emotional
16 condition or impairment known to hinder normal development and
17 need special education.

18 Subp. 2. Criteria for birth through two years of age. The
19 team shall determine that a child from birth through the age of
20 two years and 11 months is eligible for early childhood special
21 education if:

22 A. the child meets the criteria of one of the
23 disability categories; or

24 B. the child meets one of the criteria in subitem (1)
25 in addition to criteria in subitems (2) and (3):

26 (1) the child:

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

33 (b) has a delay in overall development
34 demonstrated by a composite score of 1.5 standard deviations or
35 more below the mean on an assessment using at least one

1 technically adequate, norm-referenced instrument that has been
2 individually administered by an appropriately trained
3 professional; or

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

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

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

21 Subp. 3. Criteria for three through six years of age. The
22 team shall determine that a child from the age of three years
23 through the age of six years and 11 months is eligible for early
24 childhood special education when:

25 A. the child meets the criteria of one of the
26 disability categories; or

27 B. the child meets one of the criteria in subitem (1)
28 in addition to criteria in subitems (2) and (3):

29 (1) the child:

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

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

8 (2) the child's need for special education is
9 supported by at least one documented, systematic observation in
10 the child's daily routine setting is not possible, the
11 alternative setting must be justified;

12 (3) corroboration of the developmental or medical
13 assessment with a developmental history and at least one other
14 assessment procedure in each area that is conducted on a
15 different day than the medical or norm-referenced assessment.

16 Other procedures may include parent report, language
17 sample, criterion-referenced instruments, or developmental
18 checklists.

19 3525.1352 DEVELOPMENTAL ADAPTED PHYSICAL EDUCATION: SPECIAL
20 EDUCATION.

21 Subpart 1. Definition. "Developmental adapted physical
22 education: special education" means specially designed physical
23 education instruction and services for pupils with disabilities
24 who have a substantial delay or disorder in physical development.
25 Developmental adapted physical education: special education
26 instruction for pupils age three through 21 may include
27 development of physical fitness, motor fitness, fundamental
28 motor skills and patterns, skills in aquatics, dance, individual
29 and group games, and sports.

30 Students with conditions such as obesity, temporary
31 injuries, and short-term or temporary illness or disabilities
32 are termed special needs students. Special needs students are
33 not eligible for developmental adapted physical education:
34 special education. Provisions and modifications for these
35 students must be made within regular physical education as

1 described in Minnesota Statutes, section 126.02.

2 Subp. 2. **Criteria.** A pupil is eligible for developmental
3 adapted physical education: special education when the team
4 determines the pupil has met the criteria in items A and B.

5 A. The pupil has one of the following disabilities in
6 each respective criteria in parts 3525.1325 to 3525.1341,
7 3525.1345, and 3525.1354: autism, deaf/blind, emotional or
8 behavioral disorders, hearing impaired, specific learning
9 disability, mentally impaired, severely multiply impaired, other
10 health impaired, physically impaired, visually impaired,
11 traumatic brain injury or part 3525.1350, subpart 3.

12 B. The pupil is determined by the team to need
13 specially designed physical education instruction because:

14 (1) the pupil's performance on an appropriately
15 selected, technically adequate, norm-referenced psychomotor or
16 physical fitness instrument is 1.5 standard deviations or more
17 below the mean. The instrument must be individually
18 administered by appropriately licensed teachers; or

19 (2) the pupil's development or achievement and
20 independence in school, home, and community settings is
21 inadequate to allow the pupil to succeed in the regular physical
22 education program as supported by written documentation from two
23 or more of the following: motor and skill checklists; informal
24 tests; criterion-referenced measures; deficits in achievement
25 related to the defined curriculum; medical history or reports;
26 parent and staff interviews; systematic observations; and
27 social, emotional, and behavioral assessments.

28 3525.1354 TEAM OVERRIDE ON ELIGIBILITY DECISIONS.

29 Subpart 1. **Documentation required.** If the team determines
30 that a pupil is eligible for special instruction and related
31 services because the pupil has a disability and needs special
32 instruction even though the pupil does not meet the specific
33 requirement in parts 3525.1325 to 3525.1345 and 3525.2335, the
34 team must include the documentation in the pupil's special
35 education record listed in items A to D.

1 A. The pupil's record must contain documents that
2 explain why the standards and procedures, that are used with the
3 majority of pupils, resulted in invalid findings for this pupil.

4 B. The record must indicate what objective data were
5 used to conclude that the pupil has a disability and is in need
6 of specialized instruction. These data may include test scores,
7 work products, self-reports, teacher comments, previous
8 testings, observational data, ecological assessments, and other
9 developmental data.

10 C. Since the eligibility decision is based on a
11 synthesis of multiple data and not all data are equally valid,
12 the team must indicate which data had the greatest relative
13 importance for the eligibility decision.

14 D. The team override decision must include a sign-off
15 by the team members agreeing to the override decision. For
16 those team members who disagree with the override decision, a
17 statement of why they disagree and their signature must be
18 included.

19 Subp. 2. Record of team overrides. The district director
20 of special education shall keep sufficient records regarding the
21 extent of the team override provision to assist the state in
22 evaluating the adequacy of the various entrance criteria.

23 3525.1356 EXIT PROCEDURES.

24 The team shall discontinue special education instruction
25 and services when:

26 A. the pupil has achieved IEP goals and objectives
27 such that the pupil demonstrates the ability to succeed in the
28 regular education program or an appropriate community-based
29 environment without special instruction and services;

30 B. the medical disease or condition originally
31 diagnosed has been corrected and the pupil no longer needs
32 special instruction and services;

33 C. the pupil's physical or other health impairment no
34 longer adversely affects educational performance;

35 D. the pupil graduates having successfully completed

1 graduation requirements as prescribed by the board of education
2 or the pupil's IEP; or

3 E. the pupil exceeds school age through 21 years.

4 For any pupil discontinuing special education and services
5 pursuant to item A or C, the IEP manager shall summarize: (a)
6 the pupil's last IEP goal or objectives attainment status; (b)
7 the most recent assessment data; and (c) any recommendations
8 about future anticipated service needs for postsecondary
9 education, training, and any other relevant areas.

10 3525.1400 FACILITIES, EQUIPMENT AND MATERIALS.

11 Classrooms and other facilities in which pupils receive
12 instruction, related services, and supplementary aids and
13 services shall: be essentially equivalent to the regular
14 education program; provide an atmosphere that is conducive to
15 learning; and meet the pupils' special physical, sensory, and
16 emotional needs.

17 The necessary special equipment and instructional materials
18 shall be supplied to provide instruction, related services, and
19 supplementary aids and services.

20 3525.1510 PERSONNEL VARIANCES.

21 A district may apply to the commissioner of education for
22 and the commissioner shall grant a variance from Minnesota
23 Statutes, section 125.04, with regard to its employees for one
24 year or less when:

25 A. the district has made attempts to employ an
26 appropriately licensed person and no one who meets district
27 qualifications is available; and

28 B. the person who will be employed holds any license
29 issued by the Board of Teaching or the State Board of Education.

30 3525.1550 CONTRACTED SERVICES.

31 Subpart 1. Licensure. When contracting for assessments or
32 special education services, a district shall contract with
33 personnel who hold appropriate licenses issued by the Board of
34 Teaching or State Board of Education. If either board does not

1 issue a license for a necessary service, the district shall
2 contract with personnel who are members in good standing of
3 professional organizations that regulate the conduct of its
4 members and set standards for that profession.

5 Subp. 2. **Community-based services.** A school district may
6 provide direct or indirect special education services by
7 district special education staff to a pupil attending a
8 community-based program. A school district may contract for
9 special education services with a community-based program if the
10 program meets State Board of Education rules.

11 3525.2325 EDUCATION PROGRAMS FOR K-12 PUPILS AND REGULAR
12 STUDENTS PLACED IN CENTERS FOR CARE AND TREATMENT.

13 [For text of subpart 1, see M.R.]

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

26 A. If a regular education student has been identified
27 as disabled and has a current IEP:

28 Initial due process procedures for previously identified
29 pupils placed for care and treatment in a short-term facility
30 may be accomplished by telephone; however, the required written
31 documentation, including notices, consent forms, and IEP's, must
32 follow immediately. If the pupil has a current IEP in the home
33 school, the home school must give the providing agency an oral
34 review of the IEP goals and objectives and services provided.
35 The providing agency must contact the parents and together an

1 agreement must be reached about continuing or modifying special
2 education services in accordance with the current IEP goals and
3 objectives. If agreement is not reached over the phone, the
4 providing district shall hold a team meeting as soon as
5 possible. At least the following people shall receive written
6 notice to attend: the person or agency placing the pupil, the
7 resident district, the appropriate teachers and related services
8 staff from the providing district, the parents, and, when
9 appropriate, the pupil. This meeting may be held in conjunction
10 with a meeting called by a placing agency. A copy of the
11 documentation, including the modified IEP, must be provided to
12 the parents with a copy of their rights, including a response
13 form.

14 B. If a regular education student has not been
15 identified as disabled or if the providing district cannot
16 determine if a student has been identified as disabled:

17 (1) Regular education instruction must begin
18 immediately upon enrollment in the education program.

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

22 (3) Based on the documented results of the
23 screening, a decision must be made about the need for
24 prereferral interventions or an appropriate special education
25 assessment according to parts 3525.2550 to 3525.2750. It is not
26 required that an appropriate assessment be started unless it
27 appears that it can be completed.

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

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

36 [For text of item A, see M.R.]

1 B. If the student has not been identified as disabled
2 or if the providing district cannot determine if the student has
3 been identified as disabled, the student entering a residential
4 facility for a long-term placement must be screened to determine
5 if there is a need for an appropriate educational assessment.
6 An assessment must begin with a review of screening and other
7 information such as the parent or student interview, available
8 educational and social history, and the purpose of the treatment
9 placement. The assessment must be conducted according to parts
10 3525.2550 to 3525.2750.

11 If the student meets entrance criteria for special
12 education, an IEP must be developed. Special education services
13 must be provided by appropriately licensed staff in accordance
14 with the IEP. If the student was not assessed or was assessed
15 and does not meet entrance criteria for special education,
16 regular education services must be provided in accordance with
17 the student's education plan.

18 [For text of subp 4, see M.R.]

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

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

29 B. preferably a normal school day in accordance with
30 part 3525.2900, subpart 3;

31 C. an average of at least two hours a day of
32 one-to-one instruction; or

33 D. a minimum of individualized instruction for
34 one-half of the normal school day if it is justified in the
35 pupil's IEP or student's education plan that none of these
36 options are appropriate.

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

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

9 Subp. 6. Placement, services, and due process requirements
10 for pupils.

11 [For text of items A and B, see M.R.]

12 C. If a pupil is placed in a residential facility
13 outside the resident district, the providing district must
14 provide appropriate special education services. The placement
15 of the pupil in a residential center for care and treatment
16 outside the resident district is not an initial placement in the
17 receiving district. The providing district shall make every
18 effort to implement the resident district's IEP, making the
19 modifications necessary due to the restrictive care and
20 treatment setting and based on agreements reached with the
21 parent. The providing district shall comply with the due
22 process procedures of parts 3525.2550 to 3525.4700. Districts
23 shall develop alternative procedures for implementing the legal
24 requirements for observing the student in a regular classroom
25 and document previous interventions that have been tried before
26 the student placed for care and treatment is identified as
27 having a specific learning disability or an emotional or
28 behavioral disorder. These alternative procedures must be
29 included in the district's entrance criteria. The district and
30 facility shall cooperatively develop procedures to be used in
31 emergency situations that comply with the Pupil Fair Dismissal
32 Act according to Minnesota Statutes, sections 127.26 to 127.39,
33 and the district's discipline policy.

34 Subp. 7. Student's and pupil's and regular education
35 student's placement; aid for special education. Special
36 education services provided to pupils and regular education

1 students who have been placed for care and treatment are
2 reimbursable in accordance with parts 3525.0800 and 3525.1310.

3 A. When regular education and special education
4 services are provided, only the special education portion shall
5 be reimbursed with special education aid.

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

8 C. The indirect or consultative services provided in
9 conjunction with regular education prereferral interventions and
10 assessment provided to regular education students suspected of
11 being disabled and who have demonstrated learning or behavioral
12 problems in a screening are reimbursable.

13 D. Regular education, including screening, provided
14 to students, pupils, and regular education students are not
15 reimbursable with special education categorical aids.

16 3525.2335 EARLY CHILDHOOD PROGRAM SERVICES, ALTERNATIVES, AND
17 SETTINGS.

18 Subpart 1. [See repealer.]

19 Subp. 2. Program services, alternatives, and settings.

20 Appropriate program alternatives to meet the special education
21 needs, goals, and objectives of the pupil must be determined on
22 an individual basis. Choice of specific program alternatives
23 must be based on the pupil's current levels of performance,
24 pupil special education needs, goals, and objectives, and
25 written in the IEP. Program alternatives are comprised of type
26 of services, setting in which services occur, and amount of time
27 and frequency in which special education services occur. A
28 pupil may receive special education services in more than one
29 alternative based on the IEP or IFSP.

30 A. There are two types of special education
31 services: services provided directly and services provided
32 indirectly.

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

1 (1) Home includes the home of the pupil and
2 parent or relative, or legal family day care setting in which
3 the pupil is placed by the parent.

4 (2) District ECSE classroom includes classrooms
5 that are located in one of the district's schools or community
6 center buildings housing elementary students or preschool-aged
7 children who do not have disabilities.

8 (3) Community-based programs include licensed
9 public or private nonsectarian child care programs other than a
10 family day care setting, licensed public or private nonsectarian
11 early education programs, community cultural centers, Head Start
12 programs, and hospitals. A school district may provide direct
13 or indirect special education services by district special
14 education staff to a pupil attending a community-based program.

15 C. For pupils who are not yet five years old on
16 September 1, the amount of time and frequency of special
17 education services must be determined individually and written
18 in the pupil's IEP or IFSP. For pupils who are five years old
19 as of September 1, requirements for amount of time and frequency
20 of special education services must be determined individually,
21 written on the pupil's IEP or IFSP. Direct or indirect special
22 education services must be provided a minimum of an average of
23 one hour every week unless the parents request or the team
24 recommends an alternative.

25 Subp. 3. [See repealer.]

26 Subp. 4. [See repealer.]

27 Subp. 5. [See repealer.]

28 3525.2340 CASE LOADS.

29 Subpart 1. [See repealer.]

30 Subp. 2. [See repealer.]

31 Subp. 3. [See repealer.]

32 [For text of subp 4, see M.R.]

33 Subp. 5. **Case loads for early childhood program**
34 **alternatives.** A teacher's case load must be adjusted downward
35 based on pupils' severity of disability or delay, travel time

1 necessary to serve pupils in more than one program alternative,
2 and if the pupils on the teacher's case loads are receiving
3 services in more than one program alternative or the pupils are
4 involved with other agencies. The maximum number of pupils that
5 can be assigned to a teacher in any early childhood program
6 alternative is:

7 A. birth through two years: 12 pupils per teacher;

8 B. three through six years: 16 pupils per teacher;

9 and

10 C. birth through six years: 14 pupils per teacher.

11 District early childhood special education (ECSE) classes must
12 have at least one paraprofessional employed while pupils are in
13 attendance. The maximum number of pupils in an ECSE classroom
14 at any one time with a teacher and a program support assistant
15 is eight. The maximum number of pupils in an ECSE classroom at
16 any one time with an early childhood team is 16.

17 3525.2350 MULTIDISABILITY TEAM TEACHING MODELS.

18 [For text of subps 1 and 2, see M.R.]

19 Subp. 3. **Team member responsibility.** The team member
20 licensed in a pupil's disability shall be responsible for
21 conducting the pupil's assessment and participating at team
22 meetings when an IEP is developed, reviewed, or revised.

23 Consultation and indirect services as defined in part 3525.0200
24 must be provided to the general or special education teacher
25 providing instruction if not licensed in the disability. The
26 frequency and amount of time for specific consultation and
27 indirect services shall be determined by the IEP team.

28 [For text of subp 4, see M.R.]

29 Subp. 5. [See repealer.]

30 3525.2380 VARIANCES FROM RATIOS.

31 Subpart 1. **Variances.** The district may apply to the State
32 Board of Education or its designee for a variance from the case
33 loads in part 3525.2340. The state board or its designee shall
34 grant a variance for less than 90 days when it is demonstrated
35 that unanticipated special education enrollment increases have

1 occurred for students with severe disabilities.

2 Subp. 3. [See repealer.]

3 3525.2405 DIRECTORS.

4 [For text of subpart 1, see M.R.]

5 Subp. 2. Conditions. Conditions for employment of one
6 full-time director of special education include:

7 [For text of items A to D, see M.R.]

8 [For text of subp 3, see M.R.]

9 Subp. 4. [See repealer.]

10 3525.2415 [See repealer.]

11 3525.2420 VARIANCE.

12 A district may apply to the commissioner of education for a
13 variance from the mandatory employment of a director and
14 conditions for reimbursements. The commissioner shall grant a
15 variance from part 3525.2405 when:

16 A. the growth patterns of a district or cooperative
17 demonstrate that the public and nonpublic school enrollment will
18 increase over the minimum in the next two years;

19 B. districts cannot efficiently cooperate due to
20 geographical isolation; or

21 C. the variance will result in a decrease in combined
22 state and local costs and better delivery of instruction and
23 related services to pupils.

24 3525.2470 SUSPENSION, EXCLUSION, AND EXPULSION.

25 [For text of subpart 1, see M.R.]

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

33 A. determine whether the misconduct is related to the
34 disability;

1 B. review any assessments and determine the need for
2 further assessment; and

3 C. review the IEP and amend the goals and objectives
4 or develop an alternative IEP program.

5 Subp. 3. Exclusion and expulsion. A pupil shall not be
6 excluded or expelled when the misconduct is related to the
7 pupil's disability. When it is determined in a team meeting or
8 a Pupil Fair Dismissal Act proceeding that a pupil's misconduct
9 is related to the pupil's disability, then the assessment, IEP,
10 and least restrictive alternative shall be reviewed according to
11 parts 3525.0200 to 3525.4700.

12 3525.2550 CONDUCT BEFORE ASSESSMENT.

13 Subpart 1. Student performance review. After a referral
14 is submitted and before conducting an assessment, the team shall
15 conduct a review of the person's performance in the following
16 areas: intellectual functioning, academic performance,
17 communicative status, motor ability, vocational potential,
18 sensory status, physical status, emotional and social
19 development, and behavior and functional skills. The referral
20 review shall:

21 [For text of item A, see M.R.]

22 B. Include a review of the regular education-based
23 prereferral interventions required by Minnesota Statutes,
24 section 126.237, conducted before referral for an assessment.
25 Prereferral interventions are planned, systematic efforts by
26 regular education staff to resolve apparent learning or
27 behavioral problems.

28 Subp. 2. Team duties. The team shall:

29 [For text of items A to C, see M.R.]

30 3525.2750 EDUCATIONAL ASSESSMENT.

31 Subpart 1. Function of the assessment. The assessment
32 must reflect the person's present level of performance and shall
33 be the basis for later educational planning. An assessment:

34 A. must be conducted when a person's academic,
35 behavioral, emotional, social, physical, communication, or

1 functional skill acquisition in the present educational
2 placement indicates a disability and a need for a special
3 educational placement, program, or service;

4 B. must be conducted at least every three years. If
5 the previous two reassessments have been consistent and valid, a
6 reassessment of intellectual ability is not needed;

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

9 D. must be conducted if the parent or student over
10 age 18 requests;

11 E. must be conducted by a multidisciplinary team in
12 accordance with parts 3535.0900 to 3535.1200 together with an
13 assessment plan developed as part of the referral review. The
14 team shall conduct a comprehensive assessment in those areas of
15 suspected disability using technically adequate instruments and
16 procedures;

17 F. must make reasonable efforts to obtain information
18 from the parents and others with knowledge of the person and
19 about the person's functioning in current and anticipated
20 environments when the team determines it to be necessary because
21 of cultural or other differences presented by the person or due
22 to the nature of the person's disability;

23 G. must be provided and administered in the person's
24 primary language or mode of communication unless it clearly is
25 not feasible to do so;

26 H. must be performed in accordance with recognized
27 professional standards which include recognition or
28 accommodation for persons whose differences or conditions cause
29 standardized instruments to be invalid and otherwise in
30 accordance with the requirements of nondiscrimination;

31 I. must be conducted with procedures that ensure
32 that, in accordance with recognized professional standards,
33 testing, and evaluation materials and procedures used for the
34 purposes of identification, assessment, classification,
35 educational program plan development, educational placement,
36 including special education services, program implementation,

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

9 J. must include an analysis of purpose, effect, and
 10 seriousness of behavior when the use of a conditional
 11 intervention procedure is under consideration. The assessment
 12 team must document that it has ruled out any other treatable
 13 cause such as a medical or health condition for the interfering
 14 behavior.

15 Subp. 3. **Assessment summary report.** For the person
 16 assessed, results of any or all assessments shall be summarized
 17 in a report. The summary report shall include the results and
 18 interpretation of the assessment, the person's present level of
 19 performance in the areas assessed, and the team's judgments
 20 regarding eligibility for services. The assessment summary
 21 report shall contain the team members' names, titles, and date
 22 of report.

23 3525.2900 DEVELOPMENT AND CONTENT OF INDIVIDUAL EDUCATION
 24 PROGRAM PLAN.

25 Subpart 1. **General requirement to develop an IEP for**
 26 **pupils who are disabled.** Following an initial assessment, and
 27 annually thereafter, an IEP must be developed and implemented
 28 for each pupil determined to be disabled under parts 3525.1325
 29 to 3525.1354. The responsible district shall:

30 A. Designate a team of persons responsible for
 31 determining the IEP and authorizing expenditures to implement
 32 the IEP of pupils through age 21, which, at a minimum, shall
 33 include:

- 34 (1) one or both parents;
 35 (2) the pupil, if appropriate. In cases when

1 transition needs are being considered, the pupil must be invited
2 to the meeting. If the pupil fails to attend, the district must
3 implement procedures to determine pupil preferences;

4 (3) the pupil's special education teacher;

5 (4) a teacher or other representative of the
6 general education program where the pupil is enrolled or
7 expected to enroll;

8 (5) a representative of the school district,
9 other than the pupil's teacher, who is qualified to provide or
10 supervise the provision of special education services;

11 (6) for the pupils initial evaluation, at least
12 one member of the assessment team or a person knowledgeable of
13 the evaluation procedures used and the results;

14 (7) other individuals at the discretion of the
15 parent or district;

16 (8) when a regulated procedure is being
17 considered, one person on the team who is knowledgeable about
18 ethnic and cultural issues relevant to the pupil's behavior and
19 education; and

20 (9) if appropriate, someone who is a member of
21 the same minority or cultural background or who is knowledgeable
22 concerning the racial, cultural, or disabling differences of the
23 pupil.

24 B. Document which team members attended the IEP
25 meeting.

26 C. Schedule the IEP team meeting at a time and place
27 that is mutually acceptable to the school, parents, and pupil
28 according to part 3525.0700. The district shall proceed if the
29 parents do not respond to the district's efforts for the parent
30 to participate.

31 D. Prepare an IEP in writing before an initial
32 out-of-district placement, ensuring that both districts have
33 representatives participating in the meeting. When the
34 responsible district is not the resident district for subsequent
35 IEPs, a copy of the IEP must be sent to the resident district.

36 E. Provide notice according to parts 3525.3200 to

1 3525.3600, whenever the responsible school district proposes to
2 initiate or change or refuse to initiate or change the
3 educational placement. For the purposes of this part, the terms
4 "initiate" or "change" must be construed to include the
5 proposals in Minnesota Statutes, section 120.17, subdivision 3b,
6 paragraph (d), clauses (2) to (5); "significant change" is
7 defined in part 3525.0200, subpart 19b.

8 F. Ensure that the duration of the IEP does not
9 exceed 12 calendar months. For a team to determine the
10 appropriateness of the placement or to resolve questions
11 regarding the content of the IEP including instructional goals
12 and objectives, an interim IEP may be written for a period of no
13 more than 60 school days.

14 G. Provide extended school year services for those
15 pupils when it is determined:

16 (1) that the pupil will experience "significant
17 regression" in the absence of an educational program;

18 (2) the time required to relearn the skills lost
19 is excessive; or

20 (3) the effects of the breaks in programming are
21 such to prevent the student from attaining the state of
22 self-sufficiency that the student would otherwise reasonably be
23 expected to reach.

24 The amount and type of service for summer must be
25 appropriate to maintain performance on IEP goals.

26 H. The educational components of an individual family
27 services plan (IFSP) must meet all requirements of an IEP.

28 I. Prepare an IEP when contracting for special
29 education services from a public, private, or voluntary agency.

30 Subp. 3. Content of individual educational program plan.

31 In preparing the IEP, the district shall include the following:

32 A. for the areas identified in part 3525.2550,
33 subpart 1, item A, where there are presenting problems, a
34 statement of the pupil's present levels of educational
35 performance;

36 B. a statement of annual goals, including short-term

1 instructional objectives;

2 C. a statement of the specific special education and
3 related services to be provided to the pupil and the extent that
4 the pupil will be able to participate in regular educational
5 programs;

6 D. the projected dates for initiation of each service
7 and the anticipated duration of services;

8 E. alterations of the pupil's school day, when
9 needed, which must be based on student needs and not
10 administrative convenience;

11 F. a transition plan, as required by subpart 4;

12 G. conditional intervention procedures to be used;

13 and

14 H. appropriate evaluation procedures and schedules
15 for determining, on at least an annual basis, whether the
16 short-term instructional objectives are being achieved; and

17 I. the pupil's need for and the specific
18 responsibilities of a paraprofessional shall be described in the
19 pupil's IEP.

20 Subp. 4. Transition planning. By grade nine or age 14,
21 whichever comes first, the IEP plan shall address the pupil's
22 needs for transition from secondary services to postsecondary
23 education and training, employment, and community living.

24 A. For each pupil, the district shall conduct a
25 multidisciplinary assessment of secondary transition needs and
26 plan appropriate services to meet the pupil's transition needs.
27 Areas of assessment and planning must be relevant to the pupil's
28 needs and may include work, recreation and leisure, home living,
29 community participation, and postsecondary training and learning
30 opportunities. To appropriately assess and plan for a pupil's
31 secondary transition, additional IEP team members may be
32 necessary and may include vocational education staff members and
33 other community agency representatives as appropriate.

34 B. Secondary transition assessment results must be
35 documented as part of an assessment summary according to part
36 3525.2750. Current and secondary transition needs, goals, and

1 instructional and related services to meet the pupil's secondary
2 transition needs must be considered by the team with annual
3 needs, goals, objectives, and services documented on the pupil's
4 IEP.

5 Subp. 5. The IEP and regulated interventions.

6 A. There are two types of regulated interventions:
7 conditional procedures and prohibited procedures.

8 (1) Conditional procedures may only be used when
9 included as part of the pupil's IEP or in an emergency situation
10 according to part 3525.0200. In order to utilize a conditional
11 procedure, the IEP team must:

12 (a) identify the frequency and severity of
13 target behaviors for which the conditional procedure is being
14 considered;

15 (b) identify at least two positive
16 interventions implemented and the effectiveness of each; and

17 (c) design and implement regulated
18 interventions based on present levels of performance, needs,
19 goals and objectives, and document in the IEP.

20 (2) Prohibited procedures are interventions that
21 are prohibited from use in schools by school district employees,
22 contracted personnel, and volunteers. The procedures or actions
23 listed in subitems (a) to (i) are prohibited:

24 (a) corporal punishment as defined in
25 Minnesota Statutes, section 127.45;

26 (b) requiring a pupil to assume and maintain
27 a specified physical position, activity, or posture that induces
28 physical pain as an aversive procedure;

29 (c) presentation of intense sounds, lights,
30 or other sensory stimuli as an aversive stimulus;

31 (d) use of noxious smell, taste, substance,
32 or spray as an aversive stimulus;

33 (e) denying or restricting a pupil's access
34 to equipment and devices such as hearing aids and communication
35 boards that facilitate the person's functioning except
36 temporarily when the pupil is perceived to be destroying or

1 damaging equipment or devices;

2 (f) faradic skin shock;

3 (g) totally or partially restricting a
4 pupil's auditory or visual sense not to include study carrels
5 when used as an academic intervention;

6 (h) withholding regularly scheduled meals or
7 water; and

8 (i) denying a pupil access to toilet
9 facilities.

10 B. All behavioral interventions not covered in the
11 IEP must be consistent with the district's discipline policy.
12 Continued and repeated use of any element of a district's
13 discipline policy must be reviewed in the development of the
14 individual pupil's IEP.

15 C. If an emergency intervention is used twice in a
16 month or a pupil's pattern of behavior is emerging that
17 interferes with the achievement of the pupil's educational goals
18 and objectives, a team meeting must be called to determine if
19 the pupil's IEP is adequate, if additional assessment is needed,
20 and, if necessary, to amend the IEP. Districts may use
21 regulated conditional procedures in emergencies until the IEP
22 team meets, provided the emergency measures are deemed necessary
23 by the district to protect the individual pupil or others from
24 harm. The IEP team shall meet as soon as possible, but no later
25 than five school days after emergency procedures have commenced.
26 District administration and parents must be notified immediately
27 when a regulated procedure is used in an emergency situation.

28 D. Time-out procedures that seclude a student in a
29 specially designated isolation room or similar space must meet
30 the following conditions:

31 (1) specific criteria for returning the pupil to
32 the routine activities and regular education environment;

33 (2) an evaluation to determine whether seclusion
34 is contraindicated for psychological or physical health reasons;

35 (3) provision for the pupil to be continuously
36 monitored by trained staff;

1 (4) adequate access to drinking water and to a
2 bathroom for a time-out that exceeds 15 minutes;

3 (5) documentation of the length of time spent in
4 each time-out procedure and the number of occurrences each day;

5 (6) a safe environment for the pupil where all
6 fixtures are tamper proof, walls and floors are properly
7 covered, and control switches are located immediately outside
8 the room;

9 (7) an observation window or other device to
10 permit continuous monitoring of the pupil;

11 (8) a space that is at least five feet by six
12 feet or substantially equivalent to these dimensions and be
13 large enough to allow the pupil to stand, to stretch the pupil's
14 arms, and to lie down;

15 (9) be well-lighted, well-ventilated, adequately
16 heated, and clean; and

17 (10) all applicable fire and safety codes.

18 E. A parent has the right to withdraw consent for a
19 behavior intervention plan at any time by notifying the program
20 administrator or designee and the district must stop the
21 procedure immediately. After parental consent is withdrawn and
22 the procedure is stopped, the school must send written
23 acknowledgment to the parent and request parental signature. If
24 a parent's signature to withdraw consent cannot be obtained, the
25 district must document its efforts to communicate and obtain the
26 signature. Parents must be contacted within three school days
27 to determine the need to convene the IEP team to consider a
28 change in program or placement.

29 3525.3100 FOLLOW-UP REVIEW REQUIREMENTS.

30 Pupils who are discontinued from all special education
31 services may be reinstated within 12 months. If data on the
32 student's present levels of performance are available and an
33 assessment had been conducted within three years pursuant to
34 part 3525.2750, the district is not required to document two
35 prereferral interventions or conduct a new assessment.

1 3525.3150 REQUIREMENTS FOR A HIGH SCHOOL DIPLOMA.

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

5 [For text of items A to C, see M.R.]

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

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

13 3525.3200 FORMAL NOTICE TO PARENTS.

14 The notice shall be in writing and shall be served on the
15 parent. Every effort shall be made by the providing school
16 district to assure that no person's rights are denied for lack
17 of a parent, or surrogate parent, or duly appointed guardian.
18 The notice shall be written in the primary language of the home
19 and in English, and the district shall make reasonable
20 provisions for such notice to nonreaders and
21 non-English-speaking persons necessary to ensure that the
22 information contained in the notice is understood. For parents
23 who are disabled because of a hearing, speech, or other
24 communication disorder, or because of the inability to speak or
25 comprehend the English language as provided in Minnesota
26 Statutes, section 546.42 the school district shall cause all
27 pertinent proceedings, including but not limited to the
28 conciliation conference, the prehearing review, the hearing, and
29 any appeal to be interpreted in a language the person with a
30 disability understands by a qualified interpreter as provided in
31 Minnesota Statutes, section 546.42.

32 3525.3300 CONTENTS OF NOTICE.

33 Notices must be sufficiently detailed and precise to
34 constitute adequate notice for hearing of the proposed action

1 and contain a full explanation of the procedural safeguards
2 available to parents under parts 3525.0200 to 3525.4700.

3 Notices must:

4 [For text of items A and B, see M.R.]

5 C. Inform the parents of their right and the
6 procedure to have included on the team that interprets the
7 assessment data and develops the individual program plans, the
8 persons described in part 3525.2900, subpart 1, including a
9 person who is a member of the same minority or cultural
10 background or who is knowledgeable concerning the racial,
11 cultural, or disability differences of the student.

12 [For text of items D to V, see M.R.]

13 3525.3500 NOTICE OF PERFORMANCE OR REFUSAL TO PERFORM ASSESSMENT.

14 Before the performance of or refusal to perform an
15 educational assessment or reassessment as provided in parts
16 3525.2550 to 3525.2750, the providing school district shall
17 prepare and serve a notice that meets the requirements of parts
18 3525.3200 to 3525.3400. The portion of the notice which is
19 specific to assessment or reassessment shall:

20 [For text of items A to F, see M.R.]

21 3525.3600 NOTICE OF CHANGE OR REFUSAL TO CHANGE EDUCATIONAL
22 PLACEMENT OR PROGRAM.

23 Before the initiation or significant change or the refusal
24 to initiate or significantly change a pupil's educational
25 placement or special education services, as set forth in part
26 3525.2900, subpart 1, item F, the school district shall prepare
27 and serve a notice that meets the requirements of parts
28 3525.3200 to 3525.3400.

29 The portion of the notice which is specific to the
30 educational placement and provision of services shall:

31 A. include a copy of the individual educational
32 program plan as described in part 3525.2900, subpart 3;

33 B. inform the parents that the school district will
34 not proceed with the initial placement and provision of services
35 as defined in part 3525.0200 without prior written consent of

1 the pupil's parents; and

2 C. inform the parents that except for the initial
3 placement and provision of services, the district will proceed
4 with the proposed placement and provision of services unless the
5 parents object in writing on the enclosed response form or
6 otherwise in writing within ten days after the receipt of the
7 notice.

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 3525.2750 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.** After the parents and district agree
 8 the final conciliation conference was held, the district shall
 9 serve the parent with a written memorandum within seven days
 10 that informs the parent:

11 [For text of items A to D, see M.R.]

12 [For text of subp 3, see M.R.]

13 3525.3800 WHEN A HEARING MUST BE HELD.

14 A hearing regarding a proposed action under parts 3525.2550
 15 to 3525.2750 or 3525.2900 shall be held whenever: (a) the
 16 district receives the parents' request for a hearing; (b) a
 17 parent refuses to provide written permission for the initial
 18 formal assessment or the initial placement and provision of
 19 special education services, within ten days after the receipt of
 20 the 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; and (c) when the district refuses
 23 to conduct a reassessment requested by a parent.

24 3525.3900 NOTICE OF A HEARING.

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

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

33 [For text of items A to C, see M.R.]

34 D. That at the hearing the burden of proof is on the
 35 district to show that the proposed action is justified on the

1 basis of the person's educational needs or the person's current
2 educational performance, or presenting disabilities taking into
3 account the presumption that placement in a regular public
4 school class with special education services is preferable to
5 removal from the regular classroom.

6 E. That the hearing officer will make a written
7 decision based only on evidence received and introduced into the
8 record at the hearing not more than 45 days from the receipt of
9 the request for the hearing and that the proposed action will be
10 upheld only upon showing by the school district by a
11 preponderance of the evidence. A proposed action that would
12 result in the pupil being removed from regular education program
13 may be sustained only when, and to the extent the nature or
14 severity of the disability is such that a regular education
15 program would not be satisfactory and the pupil would be better
16 served in an alternative program. Consideration of alternative
17 educational programs must also be given.

18 [For text of items F and G, see M.R.]

19 3525.4100 PREHEARING REVIEW BY THE HEARING OFFICER.

20 Subpart 1. Information received before the hearing. Five
21 days before the hearing, the person conducting the hearing shall
22 receive copies of:

23 [For text of items A to C, see M.R.]

24 D. other information from the district or parent as
25 the hearing officer may have requested at a prior date provided
26 that a copy of the information is provided to all parties, and
27 further provided that the information is made a part of the
28 hearing record.

29 The provisions of items B and C need not apply when the
30 hearing concerns a proposed action under parts 3525.2550 to
31 3525.2750.

32 [For text of subp 2, see M.R.]

33 3525.4200 HEARING RIGHTS OF RESPECTIVE PARTIES.

34 The hearing shall be closed unless the parents request an
35 open hearing. The parties shall have the right to

1 representatives of their own choosing, including legal counsel.

2 At a reasonable time before the hearing, the parties or
3 their representatives shall be given access to the providing and
4 resident school districts' records and such other records
5 pertaining to the child that are authorized by law to be
6 disclosed, including but not limited to all tests, evaluations,
7 assessments, reports, and other written information concerning
8 the educational assessment or reassessment, conducted pursuant
9 to parts 3525.2550 to 3525.2750 upon which the proposed action
10 may be based.

11 At least five days before the hearing, the parents shall
12 receive from the school districts, who are parties of the
13 hearing, a brief resume of additional material allegations
14 referring to conduct, situations, or conditions which are
15 discovered and found to be relevant to the issues to be
16 contested at the hearing and which are not contained in the
17 original notice or memorandum provided pursuant to parts
18 3525.3200 to 3525.3600 or 3525.3700, subpart 2. Any party to
19 the hearing may prohibit the introduction of any evidence that
20 has not been disclosed to that party at least five days before
21 the hearing. Within five days after the written request is
22 received, any party shall receive from the other parties a list
23 of witnesses who may be called to testify at the hearing. The
24 list must be filed with the person conducting the hearing. The
25 lists may be modified at any time but each party should be
26 notified immediately if possible. The parties or their
27 representatives have the right to compel the attendance of any
28 employee of the school district, or any other person who may
29 have evidence relating to the proposed action, and to confront,
30 and to cross examine any witness. Any request must be made to
31 the appropriate school district or to the person whose
32 attendance is compelled at least five days in advance of the
33 hearing. The written requests shall also be filed with the
34 person conducting the hearing at the time of hearing.

35 If the person conducting the hearing determines at the
36 conclusion of the hearing that there remain disputes of fact

1 which, in the interest of fairness and the child's educational
2 needs, require the testimony of additional witnesses, or if the
3 hearing officer concludes that alternative educational programs
4 and opportunities have not been sufficiently considered, the
5 hearing officer may continue the hearing for not more than ten
6 days, for the purpose of obtaining the attendance of witnesses
7 or considering alternative programs and opportunities. The
8 parties' right to cross examination and confrontation and other
9 applicable rights and procedures shall continue and be given
10 full force and effect.

11 3525.4300 HEARING PROCEDURES.

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

25 A tape recording, stenographic record, or other record of
26 the hearing shall be made, and if an appeal is filed under parts
27 3525.4600 and 3525.4700, the hearing must be transcribed by the
28 district and must be accessible to the parties involved within
29 five days of the filing of the appeal.

30 3525.4400 DECISIONS OF HEARING OFFICER.

31 [For text of subpart 1, see M.R.]

32 Subp. 2. Decisions regarding assessment or reassessment.

33 The hearing officer may sustain a proposed assessment or
34 reassessment of the person as set forth in parts 3525.2550 to
35 3525.2750 upon a showing by the district by a preponderance of

1 the evidence that demonstrates that there are facts, relating to
2 the person's performance in the present education placement or
3 apparent disabilities, which indicate reasonable grounds to
4 believe that the educational assessment or reassessment
5 procedures are justified, as a step toward the possible
6 initiation of or change in the person's educational placement or
7 program, including special education services, which will
8 provide an educational program, including special education
9 services, appropriately suited to the person's needs.

10 Consistent with the standards, requirements, and principles
11 in statute and parts 3525.0200 to 3525.4700, the hearing officer
12 shall have the authority, based on the evidence received at the
13 hearing, to modify the proposed assessment or reassessment
14 instruments or procedures to ensure compliance with the
15 requirement of nondiscrimination.

16 Subp. 3. Decisions regarding educational placement. Based
17 on an application of the standards, requirements, and principles
18 in Minnesota Statutes, section 120.17, subdivision 3a, and in
19 parts 3525.0200 to 3525.4700, the proposed action regarding the
20 person's educational placement or special education services in
21 part 3525.2900, subpart 3, shall be sustained in whole or in
22 part by the hearing officer only upon a showing of need by the
23 district by a preponderance of the evidence. In deciding if the
24 proposed action is to be sustained, in whole or in part, the
25 educational needs of the child shall be determinative. However,
26 there shall be a presumption that among alternative programs of
27 education, that to the maximum extent appropriate, a primary
28 placement in a regular public school class and program with
29 appropriate special education services is preferable to removal
30 from the regular classroom.

31 The hearing officer may sustain a proposed action that
32 would result in the child being removed from a regular education
33 program only when, and to the extent that, the nature or
34 severity of the disability is such that education in the program
35 with the use of special education services cannot be
36 accomplished satisfactorily, and there is indication that the

1 child will be better served with an alternative program or
2 services. This decision shall be made in accordance with the
3 principle of least restrictive alternatives. The hearing
4 officer shall also determine whether the district sufficiently
5 considered alternative educational programs including special
6 education services and opportunities and at the hearing, may
7 receive any additional evidence presented by any interested
8 party or person about the availability and suitability of
9 reasonable and viable educational alternatives. If the hearing
10 officer concludes that there are no reasonable or viable
11 educational alternatives, the findings shall so state.

12 [For text of subp 4, see M.R.]

13 REPEALER. Minnesota Rules, parts 3525.0200, subparts 8b, 9b,
14 and 18b; 3525.0650; 3525.1200; 3525.1320; 3525.1500; 3525.2300;
15 3525.2330; 3525.2335, subparts 1, 3, 4, and 5; 3525.2340,
16 subparts 1, 2, and 3; 3525.2345; 3525.2350, subpart 5;
17 3525.2380, subpart 3; 3525.2405, subpart 4;
18 3525.2410; 3525.2415; 3525.2430; 3525.2500; 3525.2925; and
19 3525.2950, are repealed.