

CHAPTER 125A

SPECIAL EDUCATION; EARLY CHILDHOOD INTERVENTION SYSTEM; ACADEMIES FOR THE DEAF AND BLIND; FUNDING

125A 02	Child with a disability defined	125A 52	Residential treatment facilities
125A 023	Coordinated interagency services		departments of human services and
125A 027	Interagency early intervention		corrections education screening
	committee responsibilities	125A 62	Duties of the board of the Minnesota
125A 03	Special instruction for children with a		state academies
	disability	125A 64	Powers of board of the Minnesota
125A 07	Rules of commissioner		state academies
125A 08	School district obligations	125A 65	Attendance at academies for the deaf
125A 09	Procedures for decisions		and blind
125A 10	Coordinating interagency services	125A 67	Staff of the academies
125A 15	Placement in another district,	125A 68	State adopted procedures
	responsibility	125A 69	Admission standards
125A 155	Special education reciprocity	125A 70	Expense of pupils
	commissioner duties	125A 71	Deposit and appropriation of rents
125A 18	Special instruction nonpublic		and fees of academies
	schools	125A 72	Student activities account
125A 21	Third party payment	125A 73	Duties of state departments
125A 24	Parent advisory councils	125A 744	Statewide data management system to
125A 25	Legislative commitment to		maximize medical assistance
	conciliation		reimbursement
125A 30	Interagency early intervention	125A 75	Special education program approval,
	committees		aid payments travel aid
125A 33	Service coordination	125A 76	Special education revenue
125A 35	Early intervention service dollars	125A 77	Repealed
125A 44	Complaint procedure	125A 78	Alternative delivery base revenue
125A 50	Alternative delivery of specialized		adjustment
	instructional services	125A 79	Special education excess cost aid
125A 51	Placement of children without	125A 80	Uniform billing system for the
	disabilities education and		education costs of out-of-home
	transportation		placed students
125A 515	Placement of children without		
	disabilities approval of education		
	program		

125A.02 CHILD WITH A DISABILITY DEFINED.

Subdivision 1 **Child with a disability.** Every child who has a hearing impairment, visual disability, speech or language impairment, physical handicap, other health impairment, mental handicap, emotional/behavioral disorder, specific learning disability, autism, traumatic brain injury, multiple disabilities, or deaf/blind disability and needs special instruction and services, as determined by the standards of the commissioner, is a child with a disability. In addition, every child under age three, and at local district discretion from age three to age seven, who needs special instruction and services, as determined by the standards of the commissioner, because the child has a substantial delay or has an identifiable physical or mental condition known to hinder normal development is a child with a disability.

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

History: 1998 c 398 art 5 s 55

125A.023 COORDINATED INTERAGENCY SERVICES.

Subdivision 1 **Citation.** This section and section 125A 027 shall be cited as the "Inter-agency Services for Children with Disabilities Act."

Subd 2 **Purpose.** It is the policy of the state to develop and implement a coordinated, multidisciplinary, interagency intervention service system for children ages three to 21 with disabilities.

Subd 3 **Definitions.** For purposes of this section and section 125A 027, the following terms have the meanings given them.

(a) "Health plan" means

(1) a health plan under section 62Q 01, subdivision 3,

(2) a county-based purchasing plan under section 256B 692,

(3) a self-insured health plan established by a local government under section 471 617,

or

(4) self-insured health coverage provided by the state to its employees or retirees

(b) For purposes of this section, "health plan company" means an entity that issues a health plan as defined in paragraph (a)

(c) "Individual interagency intervention plan" means a standardized written plan describing those programs or services and the accompanying funding sources available to eligible children with disabilities

(d) "Interagency intervention service system" means a system that coordinates services and programs required in state and federal law to meet the needs of eligible children with disabilities ages three to 21, including

(1) services provided under the following programs or initiatives administered by state or local agencies

(i) the maternal and child health program under title V of the Social Security Act, United States Code, title 42, sections 701 to 709,

(ii) the Individuals with Disabilities Education Act under United States Code, title 20, chapter 33, subchapter II, sections 1411 to 1420,

(iii) medical assistance under the Social Security Act, United States Code, title 42, chapter 7, subchapter XIX, section 1396, et seq ,

(iv) the Developmental Disabilities Assistance and Bill of Rights Act, United States Code, title 42, chapter 75, subchapter II, sections 6021 to 6030 Part B,

(v) the Head Start Act, United States Code, title 42, chapter 105, subchapter II, sections 9831 to 9852,

(vi) rehabilitation services provided under chapter 268A,

(vii) Juvenile Court Act services provided under sections 260 011 to 260 91, 260B 001 to 260B 446, and 260C 001 to 260C 451,

(viii) the children's mental health collaboratives under section 245 493,

(ix) the family service collaboratives under section 124D 23,

(x) the family community support plan under section 245 4881, subdivision 4,

(xi) the MinnesotaCare program under chapter 256L,

(xii) the community health services grants under chapter 145,

(xiii) the Community Social Services Act funding under the Social Security Act, United States Code, title 42, sections 1397 to 1397f, and

(xiv) the community interagency transition committees under section 125A 22,

(2) services provided under a health plan in conformity with an individual family service plan or an individual education plan, and

(3) additional appropriate services that local agencies and counties provide on an individual need basis upon determining eligibility and receiving a request from the interagency early intervention committee and the child's parent

(e) "Children with disabilities" has the meaning given in section 125A 02 ,

(f) A "standardized written plan" means those individual services or programs available through the interagency intervention service system to an eligible child other than the services or programs described in the child's individual education plan or the child's individual family service plan

Subd 4 **State interagency committee.** (a) The governor shall convene an 18-member interagency committee to develop and implement a coordinated, multidisciplinary, interagency intervention service system for children ages three to 21 with disabilities. The commissioners of commerce, children, families, and learning, health, human rights, human services, economic security, and corrections shall each appoint two committee members from their departments, the association of Minnesota counties shall appoint two county represen-

tatives, one of whom must be an elected official, as committee members, and the Minnesota school boards association and the school nurse association of Minnesota shall each appoint one committee member. The committee shall select a chair from among its members.

(b) The committee shall

(1) identify and assist in removing state and federal barriers to local coordination of services provided to children with disabilities,

(2) identify adequate, equitable, and flexible funding sources to streamline these services,

(3) develop guidelines for implementing policies that ensure a comprehensive and coordinated system of all state and local agency services, including multidisciplinary assessment practices for children with disabilities ages three to 21,

(4) develop, consistent with federal law, a standardized written plan for providing services to a child with disabilities,

(5) identify how current systems for dispute resolution can be coordinated and develop guidelines for that coordination,

(6) develop an evaluation process to measure the success of state and local interagency efforts in improving the quality and coordination of services to children with disabilities ages three to 21,

(7) develop guidelines to assist the governing boards of the interagency early intervention committees in carrying out the duties assigned in section 125A 027, subdivision 1, paragraph (b), and

(8) carry out other duties necessary to develop and implement within communities a coordinated, multidisciplinary, interagency intervention service system for children with disabilities.

(c) The committee shall consult on an ongoing basis with the state education advisory committee for special education and the governor's interagency coordinating council in carrying out its duties under this section, including assisting the governing boards of the interagency early intervention committees.

Subd 5 Intervention demonstration projects. (a) The commissioner of children, families, and learning, based on recommendations from the state interagency committee, shall issue a request for proposals by January 1, 1999, for grants to the governing boards of interagency intervention committees under section 125A 027 or a combination of one or more counties and school districts to establish five voluntary interagency intervention demonstration projects. One grant shall be used to implement a coordinated service system for all eligible children with disabilities up to age five who received services under sections 125A 26 to 125A 48. One grant shall be used to implement a coordinated service system for a population of minority children with disabilities from ages 12 to 21, who may have behavioral problems and are in need of transitional services. Each project must be operational by July 1, 1999. The governing boards of the interagency early intervention committees and the counties and school districts receiving project grants must develop efficient ways to coordinate services and funding for children with disabilities ages three to 21, consistent with the requirements of this section and section 125A 027 and the guidelines developed by the state interagency committee under this section.

(b) The state interagency committee shall evaluate the demonstration projects and provide the evaluation results to interagency early intervention committees.

Subd 6 Third-party liability. Nothing in this section and section 125A 027 relieves a health plan company, third party administrator or other third-party payer of an obligation to pay for, or changes the validity of an obligation to pay for, services provided to children with disabilities ages three to 21 and their families.

Subd 7 Agency obligation. Nothing in this section and section 125A 027 removes the obligation of the state, counties, local school districts, a regional agency, or a local agency or organization to comply with any federal or state law that mandates responsibility for finding,

assessing, delivering, assuring, or paying for education or related services for children with disabilities and their families

History: 1999 c 123 § 3; 1999 c 139 art 4 s 2

NOTE The amendment to this section by Laws 1999 chapter 123 section 3 is effective July 1 2002 Laws 1999 chapter 123 section 22

125A.027 INTERAGENCY EARLY INTERVENTION COMMITTEE RESPONSIBILITIES.

Subdivision 1 Additional duties. (a) The governing boards of the interagency early intervention committees are responsible for developing and implementing interagency policies and procedures to coordinate services at the local level for children with disabilities ages three to 21 under guidelines established by the state interagency committee under section 125A 023, subdivision 4 Consistent with the requirements in this section and section 125A 023, the governing boards of the interagency early intervention committees shall organize as a joint powers board under section 471 59 or enter into an interagency agreement that establishes a governance structure

(b) The governing board of each interagency early intervention committee as defined in section 125A 30, paragraph (a), which may include a juvenile justice professional, shall

- (1) identify and assist in removing state and federal barriers to local coordination of services provided to children with disabilities,
- (2) identify adequate, equitable, and flexible use of funding by local agencies for these services,
- (3) implement policies that ensure a comprehensive and coordinated system of all state and local agency services, including multidisciplinary assessment practices, for children with disabilities ages three to 21,
- (4) use a standardized written plan for providing services to a child with disabilities developed under section 125A 023,
- (5) access the coordinated dispute resolution system and incorporate the guidelines for coordinating services at the local level, consistent with section 125A 023,
- (6) use the evaluation process to measure the success of the local interagency effort in improving the quality and coordination of services to children with disabilities ages three to 21 consistent with section 125A 023,
- (7) develop a transitional plan for children moving from the interagency early childhood intervention system under sections 125A 259 to 125A 48 into the interagency intervention service system under this section,
- (8) coordinate services and facilitate payment for services from public and private institutions, agencies, and health plan companies, and
- (9) share needed information consistent with state and federal data practices requirements

Subd 2 Appropriate and necessary services. (a) Parents, physicians, other health care professionals including school nurses, and education and human services providers jointly must determine appropriate and necessary services for eligible children with disabilities ages three to 21 The services provided to the child under this section must conform with the child's standardized written plan The governing board of an interagency early intervention committee must provide those services contained in a child's individual education plan and those services for, which a legal obligation exists

(b) Nothing in this section or section 125A 023 increases or decreases the obligation of the state, county, regional agency, local school district, or local agency or organization to pay for education, health care, or social services

(c) A health plan may not exclude any medically necessary covered service solely because the service is or could be identified in a child's individual family service plan, individual education plan, a plan established under section 504 of the federal Rehabilitation Act of 1973, or a student's individual health plan This paragraph reaffirms the obligation of a health plan company to provide or pay for certain medically necessary covered services, and encourages a health plan company to coordinate this care with any other providers of similar

services Also, a health plan company may not exclude from a health plan any medically necessary covered service such as an assessment or physical examination solely because the resulting information may be used for an individual education plan or a standardized written plan

Subd 3 **Implementation timeline.** By July 1, 2000, all governing boards of interagency early intervention committees statewide must implement a coordinated service system for children up to age five with disabilities consistent with the requirements of this section and section 125A 023 and the evaluation results from the demonstration projects under section 125A 023, subdivision 5 Children with disabilities up to the age of 21 shall be eligible for coordinated services and their eligibility to receive such services under this section shall be phased in over a four-year period as follows

- (1) July 1, 2001, children up to age nine become eligible,
- (2) July 1, 2002, children up to age 14 become eligible, and
- (3) July 1, 2003, children up to age 21 become eligible

History: 1999 c 123 s 4

NOTE The amendment to this section by Laws 1999 chapter 123 section 4 is effective July 1 2002 Laws 1999 chapter 123 section 22 •

125A.03 SPECIAL INSTRUCTION FOR CHILDREN WITH A DISABILITY.

(a) As defined in paragraph (b), every district must provide special instruction and services, either within the district or in another district, for children with a disability who are residents of the district and who are disabled as set forth in section 125A 02

(b) Notwithstanding any age limits in laws to the contrary, special instruction and services must be provided from birth until July 1 after the child with a disability becomes 21 years old but shall not extend beyond secondary school or its equivalent, except as provided in section 124D 68, subdivision 2 Local health, education, and social service agencies must refer children under age five who are known to need or suspected of needing special instruction and services to the school district Districts with less than the minimum number of eligible children with a disability as determined by the commissioner must cooperate with other districts to maintain a full range of programs for education and services for children with a disability This section does not alter the compulsory attendance requirements of section 120A 22

History: 1998 c 398 art 5 s 55, 1999 c 123 s 5

125A.07 RULES OF COMMISSIONER.

(a) As defined in this paragraph, the commissioner must adopt rules relative to qualifications of essential personnel, courses of study, methods of instruction, pupil eligibility, size of classes, rooms, equipment, supervision, parent consultation, and other necessary rules for instruction of children with a disability These rules must provide standards and procedures appropriate for the implementation of and within the limitations of sections 125A 08 and 125A 09 These rules must also provide standards for the discipline, control, management, and protection of children with a disability The commissioner must not adopt rules for pupils served primarily in the regular classroom establishing either case loads or the maximum number of pupils that may be assigned to special education teachers The commissioner, in consultation with the departments of health and human services, must adopt permanent rules for instruction and services for children under age five and their families These rules are binding on state and local education, health, and human services agencies The commissioner must adopt rules to determine eligibility for special education services The rules must include procedures and standards by which to grant variances for experimental eligibility criteria The commissioner must, according to section 14 05, subdivision 4, notify a district applying for a variance from the rules within 45 calendar days of receiving the request whether the request for the variance has been granted or denied If a request is denied, the commissioner must specify the program standards used to evaluate the request and the reasons for denying the request

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

- (1) increased time available to teachers and, where appropriate, to support staff including school nurses for educating students through direct and indirect instruction,
- (2) consistent and uniform access to effective education programs for students with disabilities throughout the state,
- (3) reduced inequalities and conflict, appropriate due process hearing procedures and reduced court actions related to the delivery of special education instruction and services for students with disabilities,
- (4) clear expectations for service providers and for students with disabilities,
- (5) increased accountability for all individuals and agencies that provide instruction and other services to students with disabilities,
- (6) greater focus for the state and local resources dedicated to educating students with disabilities, and
- (7) clearer standards for evaluating the effectiveness of education and support services for students with disabilities

History: 1998 c 398 art 5 s 55, 1999 c 123 s 6

125A.08 SCHOOL DISTRICT OBLIGATIONS.

(a) As defined in this section, to the extent required by federal law as of July 1, 2000, every district must ensure the following

(1) all students with disabilities are provided the special instruction and services which are appropriate to their needs. Where the individual education plan team has determined appropriate goals and objectives based on the student's needs, including the extent to which the student can be included in the least restrictive environment, and where there are essentially equivalent and effective instruction, related services, or assistive technology devices available to meet the student's needs, cost to the district may be among the factors considered by the team in choosing how to provide the appropriate services, instruction, or devices that are to be made part of the student's individual education plan. The individual education plan team shall consider and may authorize services covered by medical assistance according to section 256B 0625, subdivision 26. The student's needs and the special education instruction and services to be provided must be agreed upon through the development of an individual education plan. The plan must address the student's need to develop skills to live and work as independently as possible within the community. By grade 9 or age 14, the plan must address the student's needs for transition from secondary services to post-secondary education and training, employment, community participation, recreation, and leisure and home living. In developing the plan, districts must inform parents of the full range of transitional goals and related services that should be considered. The plan must include a statement of the needed transition services, including a statement of the interagency responsibilities or linkages or both before secondary services are concluded,

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

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

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

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

(6) in accordance with recognized professional standards, testing and evaluation materials, and procedures used for the purposes of classification and placement of children with a

disability are selected and administered so as not to be racially or culturally discriminatory, and

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

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

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

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

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

History: 1999 c 245 art 4 s 3

NOTE The amendment to this section by Laws 1999 chapter 245, article 4, section 3 is effective July 1, 2000. Laws 1999, chapter 245, article 4, section 121

NOTE This section was also amended by Laws 1999 chapter 123, section 7 to read as follows:

125A 08 School district obligations

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

(1) all students with disabilities are provided the special instruction and services which are appropriate to their needs. Where the individual education plan team has determined appropriate goals and objectives based on the student's needs, including the extent to which the student can be included in the least restrictive environment, and where there are essentially equivalent and effective instruction, related services, or assistive technology devices available to meet the student's needs, cost to the district may be among the factors considered by the team in choosing how to provide the appropriate services, instruction, or devices that are to be made part of the student's individual education plan. The student's needs and the special education instruction and services to be provided must be agreed upon through the development of an individual education plan. The plan must address the student's need to develop skills to live and work as independently as possible within the community. By grade 9 or age 14, the plan must address the student's needs for transition from secondary services to post-secondary education and training, employment, community participation, recreation, and leisure and home living. In developing the plan, districts must inform parents of the full range of transitional goals and related services that should be considered. The plan must include a statement of the needed transition services, including a statement of the interagency responsibilities or linkages or both before secondary services are concluded.

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

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

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

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

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

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

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

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

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

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

125A.09 PROCEDURES FOR DECISIONS.

Subdivision 1 **District obligation.** As defined in this section, every district must use the following procedures for decisions involving identification, assessment, and educational placement of children with a disability

[For text of subs 2 and 3, see M S 1998]

Subd 4 **Dispute resolution.** Parents and guardians must have an opportunity to meet with appropriate district staff in at least one conciliation conference, mediation, or other method of alternative dispute resolution that the parties agree to, if they object to any proposal of which they are notified under subdivision 1. The state intends to encourage parties to resolve disputes through mediation or other form of alternative dispute resolution. A school district and a parent or guardian must participate in mediation using mediation services acceptable to both parties, unless a party objects to the mediation. Mediation shall remain available to the parties until a party objects to the mediation, or the mediator determines that further efforts to mediate a dispute are not warranted. All mediation is subject to the confidentiality requirements under rule 114.08 of the general rules of practice for the district courts. Alternative dispute resolution must not be used to deny or delay a parent or guardian's right to a due process hearing. If the parent or guardian refuses efforts by the district to conciliate the dispute with the district, the requirement of an opportunity for conciliation or other alternative dispute resolution must be deemed to be satisfied. Notwithstanding other law, in any proceeding following a conciliation conference, the district must not offer a conciliation conference memorandum into evidence, except for any portions that describe the district's final proposed offer of service. Otherwise, with respect to forms of dispute resolution, mediation, or conciliation, Minnesota Rule of Evidence 408 applies.

[For text of subd 5, see M S 1998]

Subd 6 **Impartial due process hearing.** Parents, guardians, and the district must have an opportunity to obtain an impartial due process hearing initiated and conducted by and in the district responsible for assuring that an appropriate program is provided in accordance with department of children, families, and learning rules, if the parent or guardian continues to object to

- (1) a proposed formal educational assessment or proposed denial of a formal educational assessment of their child,
- (2) the proposed placement of their child in, or transfer of their child to a special education program,
- (3) the proposed denial of placement of their child in a special education program or the transfer of their child from a special education program,
- (4) the proposed provision or addition of special education services for their child, or
- (5) the proposed denial or removal of special education services for their child.

A hearing officer may limit an impartial due process hearing to an amount of time sufficient for each party to present its case. The party requesting the hearing shall plead with specificity as to what issues are in dispute and all issues not pleaded with specificity are deemed waived. Parties must limit evidence to the issues specifically pleaded. A hearing officer, at the officer's discretion, may exclude cumulative evidence or may encourage parties to present only essential witnesses.

Within five business days after the request for a hearing, or as directed by the hearing officer, the objecting party must provide the other party with a brief written statement of particulars of the objection, the reasons for the objection, and the specific remedies sought. The other party shall provide the objecting party with a written response to the statement of objections within five business days of receipt of the statement.

The hearing must take place before an impartial hearing officer mutually agreed to by the school board and the parent or guardian. Within three business days of the receipt of the request for the hearing, if the parties have not agreed on the hearing officer, the board must request the commissioner to appoint a hearing officer from a list maintained for that purpose. If the parties have not agreed upon a hearing officer, and the board has not requested that a hearing officer be appointed by the commissioner within four business days after the receipt

of the request, the commissioner shall appoint a hearing officer upon the request of either party. A retired judge, retired court referee or retired federal magistrate judge who is otherwise qualified under this section and wishes to be a hearing officer may be put on the list. The board must include with the request the name of the person requesting the hearing, the name of the student, the attorneys involved, if any, and the date the hearing request was received. The hearing officer must not be a board member or employee of the district where the child resides or of the child's district of residence, an employee of any other public agency involved in the education or care of the child, or any person with a personal or professional interest that would conflict with the person's objectivity at the hearing. A person who otherwise qualifies as a hearing officer is not an employee of the district solely because the person is paid by the district to serve as a hearing officer. Any party to a hearing, except an expedited hearing under federal law, may make and serve upon the opposing party and the commissioner a notice to remove a hearing officer appointed by the commissioner. The notice shall be served and filed within two business days after the party receives notice of the appointment of the hearing officer by the commissioner.

No such notice may be filed by a party against a hearing officer who has presided at a motion or any other proceeding of which the party had notice. A hearing officer who has presided at a motion or other proceeding may not be removed except upon an affirmative showing of prejudice on the part of the hearing officer.

After the party has once disqualified a hearing officer as a matter of right, that party may disqualify the substitute hearing officer only by making an affirmative showing of prejudice or bias to the commissioner, or to the chief administrative law judge if the hearing officer is an administrative law judge.

Upon the filing of a notice to remove or if a party makes an affirmative showing of prejudice against a substitute hearing officer, the commissioner shall assign any other hearing officer to hear the matter.

If the hearing officer requests an independent educational assessment of a child, the cost of the assessment must be at district expense. The proceedings must be recorded and preserved, at the expense of the school district, pending ultimate disposition of the action.

[For text of subds 7 to 10, see M S 1998]

Subd 11 Hearing review officer's qualifications. The commissioner must select an individual who has the qualifications enumerated in this subdivision to serve as the hearing review officer:

- (1) the individual must be knowledgeable and impartial,
- (2) the individual must not have a personal interest in or specific involvement with the student who is a party to the hearing,
- (3) the individual must not have been employed as an administrator by the district that is a party to the hearing,
- (4) the individual must not have been involved in the selection of the administrators of the district that is a party to the hearing,
- (5) the individual must not have a personal, economic, or professional interest in the outcome of the hearing other than the proper administration of the federal and state laws, rules, and policies,
- (6) the individual must not have substantial involvement in the development of a state or local policy or procedures that are challenged in the appeal,
- (7) the individual is not a current employee or board member of a Minnesota public school district, education district, intermediate unit or regional education agency or the department, and
- (8) the individual is not a current employee or board member of a disability advocacy organization or group.

[For text of subds 12 to 19, see M S 1998]

History: 1998 c 398 art 5 s 55, 1999 c 123 s 8,9, 1999 c 241 art 2 s 13, art 9 s 29

125A.10 COORDINATING INTERAGENCY SERVICES.

If at the time of initial referral for an educational assessment, or a reassessment, the district determines that a child with disabilities who is age 3 through 21 may be eligible for interagency services, the district may request that the county of residence provide a representative to the initial assessment or reassessment team meeting or the first individual education plan team meeting following the assessment or reassessment. The district may request to have a county representative attend other individual education plan team meetings when it is necessary to facilitate coordination between district and county provided services. Upon request from a district, the resident county shall provide a representative to assist the individual education plan team in determining the child's eligibility for existing health, mental health, or other support services administered or provided by the county. The individual education plan team and the county representative must develop an interagency plan of care for an eligible child and the child's family to coordinate services required under the child's individual education plan with county services. The interagency plan of care must include appropriate family information with the consent of the family, a description of how services will be coordinated between the district and county, a description of service coordinator responsibilities and services, and a description of activities for obtaining third-party payment for eligible services, including medical assistance payments. Any state, county, or city government agency responsible for providing services or resources to students with disabilities under this section is subject to the same dispute resolution systems as local school districts, and all such agencies must comply with corrective action requirements that ensue from these systems.

History: 1999 c 123 s 10

125A.15 PLACEMENT IN ANOTHER DISTRICT; RESPONSIBILITY.

The responsibility for special instruction and services for a child with a disability temporarily placed in another district for care and treatment shall be determined in the following manner:

(a) The district of residence of a child shall be the district in which the child's parent resides, if living, or the child's guardian, or the district designated by the commissioner if neither parent nor guardian is living within the state.

(b) When a child is temporarily placed for care and treatment in a day program located in another district and the child continues to live within the district of residence during the care and treatment, the district of residence is responsible for providing transportation to and from the care and treatment facility and an appropriate educational program for the child. Transportation shall only be provided by the district during regular operating hours of the district. The district may provide the educational program at a school within the district of residence, at the child's residence, or in the district in which the day treatment center is located by paying tuition to that district.

(c) When a child is temporarily placed in a residential program for care and treatment, the nonresident district in which the child is placed is responsible for providing an appropriate educational program for the child and necessary transportation while the child is attending the educational program, and must bill the district of the child's residence for the actual cost of providing the program, as outlined in section 125A 11. However, the board, lodging, and treatment costs incurred in behalf of a child with a disability placed outside of the school district of residence by the commissioner of human services or the commissioner of corrections or their agents, for reasons other than providing for the child's special educational needs must not become the responsibility of either the district providing the instruction or the district of the child's residence. For the purposes of this section, the state correctional facilities operated on a fee-for-service basis are considered to be residential programs for care and treatment.

(d) The district of residence shall pay tuition and other program costs, not including transportation costs, to the district providing the instruction and services. The district of residence may claim general education aid for the child as provided by law. Transportation costs must be paid by the district responsible for providing the transportation and the state must pay transportation aid to that district.

History: 1999 c 241 art 2 s 14

125A.155 SPECIAL EDUCATION RECIPROCITY; COMMISSIONER DUTIES.

The commissioner of children, families, and learning must develop a special education reciprocity agreement form. The reciprocity form must specify the procedures used to calculate special education tuition charges for both Minnesota students that are served in other states and for out-of-state students who are served in Minnesota. The commissioner shall attempt to enter into reciprocity agreements with any state that sends students to Minnesota and any state that provides services to Minnesota students.

History: 1999 c 241 art 2 s 15

125A.18 SPECIAL INSTRUCTION; NONPUBLIC SCHOOLS.

No resident of a district who is eligible for special instruction and services under this section may be denied instruction and service on a shared time basis consistent with section 126C 19, subdivision 4, because of attending a nonpublic school defined in section 123B 41, subdivision 9. If a resident pupil with a disability attends a nonpublic school located within the district of residence, the district must provide necessary transportation for that pupil within the district between the nonpublic school and the educational facility where special instruction and services are provided on a shared time basis. If a resident pupil with a disability attends a nonpublic school located in another district and if no agreement exists under section 126C 19, subdivision 1 or 2, for providing special instruction and services on a shared time basis to that pupil by the district of attendance and where the special instruction and services are provided within the district of residence, the district of residence must provide necessary transportation for that pupil between the boundary of the district of residence and the educational facility. The district of residence may provide necessary transportation for that pupil between its boundary and the nonpublic school attended, but the nonpublic school must pay the cost of transportation provided outside the district boundary.

Parties serving students on a shared time basis have access to the due process hearing system described under United States Code, title 20, and the complaint system under Code of Federal Regulations, title 34, section 300.660-662. In the event it is determined under these systems that the nonpublic school or staff impeded the public school district's provision of a free appropriate education, the commissioner may withhold public funds available to the nonpublic school proportionally applicable to that student under section 123B 42.

History: 1999 c 123 s 11

125A.21 THIRD PARTY PAYMENT.

[For text of subd 1, see M S 1998]

Subd 2 **Third party reimbursement.** Beginning July 1, 2000, districts shall seek reimbursement from insurers and similar third parties for the cost of services provided by the district whenever the services provided by the district are otherwise covered by the child's health coverage. Districts shall request, but may not require, the child's family to provide information about the child's health coverage when a child with a disability begins to receive services from the district of a type that may be reimbursable, and shall request, but may not require, updated information after that as needed. Districts shall request, but may not require, the child's parent or legal representative to sign a consent form, permitting the school district to apply for and receive reimbursement directly from the insurer or other similar third party, to the extent permitted by the insurer or other third party and subject to their networking credentialing, prior authorization, and determination of medical necessity criteria.

[For text of subs 3 to 7, see M S 1998]

History: 1999 c 123 s 12

125A.24 PARENT ADVISORY COUNCILS.

In order to increase the involvement of parents of children with disabilities in district policymaking and decision making, school districts must have a special education advisory council that is incorporated into the district's special education system plan.

(1) This advisory council may be established either for individual districts or in cooperation with other districts who are members of the same special education cooperative

(2) A district may set up this council as a subgroup of an existing board, council, or committee

(3) At least half of the designated council members must be parents of students with a disability. The number of members, frequency of meetings, and operational procedures are to be locally determined

History: 1999 c 123 s 13

125A.25 LEGISLATIVE COMMITMENT TO CONCILIATION.

[For text of subd 1, see M S 1998].

Subd 2 **State plan.** The commissioner shall not adopt any provision in the state plan for special education that reduces the opportunities for parents and school districts to resolve their differences through conciliation

History: 1998 c 398 art 5 s 55

125A.30 INTERAGENCY EARLY INTERVENTION COMMITTEES.

(a) A school district, group of districts, or special education cooperative, in cooperation with the health and human service agencies located in the county or counties in which the district or cooperative is located, must establish an interagency early intervention committee for children with disabilities under age five and their families under this section, and for children with disabilities ages three to 22 consistent with the requirements under sections 125A 023 and 125A 027. Committees must include representatives of local and regional health, education, and county human service agencies, county boards, school boards, early childhood family education programs, parents of young children with disabilities under age 12, current service providers, and may also include representatives from other private or public agencies and school nurses. The committee must elect a chair from among its members and must meet at least quarterly

(b) The committee must develop and implement interagency policies and procedures concerning the following ongoing duties

(1) develop public awareness systems designed to inform potential recipient families of available programs and services,

(2) implement interagency child find systems designed to actively seek out, identify, and refer infants and young children with, or at risk of, disabilities and their families,

(3) establish and evaluate the identification, referral, child and family assessment systems, procedural safeguard process, and community learning systems to recommend, where necessary, alterations and improvements,

(4) assure the development of individualized family service plans for all eligible infants and toddlers with disabilities from birth through age two, and their families, and individual education plans and individual service plans when necessary to appropriately serve children with disabilities, age three and older, and their families and recommend assignment of financial responsibilities to the appropriate agencies,

(5) encourage agencies to develop individual family service plans for children with disabilities, age three and older,

(6) implement a process for assuring that services involve cooperating agencies at all steps leading to individualized programs,

(7) facilitate the development of a transitional plan if a service provider is not recommended to continue to provide services,

(8) identify the current services and funding being provided within the community for children with disabilities under age five and their families,

(9) develop a plan for the allocation and expenditure of additional state and federal early intervention funds under United States Code, title 20, section 1471 et seq (Part H, Public Law Number 102-119) and United States Code, title 20, section 631, et seq (Chapter I, Public Law Number, 89-313), and

(10) develop a policy that is consistent with section 13 05, subdivision 9, and federal law to enable a member of an interagency early intervention committee to allow another member access to data classified as not public

(c) The local committee shall also

(1) participate in needs assessments and program planning activities conducted by local social service, health and education agencies for young children with disabilities and their families, and

(2) review and comment on the early intervention section of the total special education system for the district, the county social service plan, the section or sections of the community health services plan that address needs of and service activities targeted to children with special health care needs, and the section of the maternal and child health special project grants that address needs of and service activities targeted to children with chronic illness and disabilities

History: 1999 c 123 s 14

125A.33 SERVICE COORDINATION.

(a) The team developing the IFSP under section 125A 32 must select a service coordinator to carry out service coordination activities on an interagency basis. Service coordination must actively promote a family's capacity and competency to identify, obtain, coordinate, monitor, and evaluate resources and services to meet the family's needs. Service coordination activities include

(1) coordinating the performance of evaluations and assessments,

(2) facilitating and participating in the development, review, and evaluation of individualized family service plans,

(3) assisting families in identifying available service providers,

(4) coordinating and monitoring the delivery of available services,

(5) informing families of the availability of advocacy services,

(6) coordinating with medical, health, and other service providers,

(7) facilitating the development of a transition plan at least 90 days before the time the child is no longer eligible for early intervention services, if appropriate,

(8) managing the early intervention record and submitting additional information to the local primary agency at the time of periodic review and annual evaluations, and

(9) notifying a local primary agency when disputes between agencies impact service delivery required by an IFSP

(b) A service coordinator must be knowledgeable about children and families receiving services under this section, requirements of state and federal law, and services available in the interagency early childhood intervention system

History: 1999 c 123 s 15

125A.35 EARLY INTERVENTION SERVICE DOLLARS.

[For text of subs 1 to 4, see M S 1998]

Subd 5 **Increased costs.** County boards that have submitted base year 1993 expenditures as required under subdivision 4 are not required to pay any increased cost over the base year 1993 for early intervention services resulting from implementing the early intervention system. Increased costs to county boards may be paid for with early intervention service dollars

[For text of subd 6, see M S 1998]

History: 1999 c 205 art 1 s 47,70

125A.44 COMPLAINT PROCEDURE.

(a) An individual or organization may file a written signed complaint with the commissioner of the state lead agency alleging that one or more requirements of the Code of Federal Regulations, title 34, part 303, is not being met. The complaint must include

(1) a statement that the state has violated the Individuals with Disabilities Education Act, United States Code, title 20, section 1471 et seq (Part H, Public Law Number 102-119) or Code of Federal Regulations, title 34, section 303, and

(2) the facts on which the complaint is based

(b) The commissioner of the state lead agency shall receive and coordinate with other state agencies the review and resolution of a complaint within 60 calendar days according to the state interagency agreement required under section 125A 48. The development and disposition of corrective action orders for nonschool agencies shall be determined by the State Agency Committee (SAC). Failure to comply with corrective orders may result in fiscal actions or other measures.

History: 1999 c 123 s 16

125A.50 ALTERNATIVE DELIVERY OF SPECIALIZED INSTRUCTIONAL SERVICES.

[For text of subd 1, see M S 1998]

Subd 2 **Application contents.** The application must set forth

(1) instructional services available to eligible pupils under section 124D 66, subdivision 2, and pupils with a disability under section 125A 02,

(2) criteria to select pupils for the program and the assessment procedures to determine eligibility,

(3) involvement in the program of parents of pupils in the program, parent advocates, and community special education advocates,

(4) accounting procedures to document that federal special education money is used to supplement or increase the level of special education instruction and related services provided with state and local revenue, but in no case to supplant the state and local revenue, and that districts are expending at least the amount for special education instruction and related services required by federal law,

(5) the role of regular and special education teachers in planning and implementing the program, and

(6) other information requested by the commissioner

[For text of subs 3 and 4, see M S 1998]

Subd 5 **Annual report.** Each year the district must submit to the commissioner a report containing the information described in subdivision 3

Subd 6 **Pupil rights.** A pupil participating in the program must be individually evaluated according to the pupil's actual abilities and needs. A pupil who is eligible for services under sections 125A 03 to 125A 24 and 125A 65 is entitled to procedural protections provided under United States Code, title 20, section 33, in any matter that affects the identification, evaluation, placement, or change in placement of a pupil. The district must ensure the protection of a pupil's civil rights, provide equal educational opportunities, and prohibit discrimination. Failure to comply with this subdivision will at least cause a district to become ineligible to participate in the program. Notwithstanding rules of the department of children, families, and learning, a pupil's rights under this section cannot be waived by the commissioner.

History: 1998 c 398 art 5 s 55, 1999 c 241 art 2 s 16, 17

125A.51 PLACEMENT OF CHILDREN WITHOUT DISABILITIES; EDUCATION AND TRANSPORTATION.

The responsibility for providing instruction and transportation for a pupil without a disability who has a short-term or temporary physical or emotional illness or disability, as determined by the standards of the commissioner, and who is temporarily placed for care and treatment for that illness or disability, must be determined as provided in this section.

(a) The school district of residence of the pupil is the district in which the pupil's parent or guardian resides.

(b) When parental rights have been terminated by court order, the legal residence of a child placed in a residential or foster facility for care and treatment is the district in which the child resides when parental rights have been terminated

(c) Before the placement of a pupil for care and treatment, the district of residence must be notified and provided an opportunity to participate in the placement decision. When an immediate emergency placement is necessary and time does not permit resident district participation in the placement decision, the district in which the pupil is temporarily placed, if different from the district of residence, must notify the district of residence of the emergency placement within 15 days of the placement.

(d) When a pupil without a disability is temporarily placed for care and treatment in a day program and the pupil continues to live within the district of residence during the care and treatment, the district of residence must provide instruction and necessary transportation to and from the treatment facility for the pupil. Transportation shall only be provided by the district during regular operating hours of the district. The district may provide the instruction at a school within the district of residence, at the pupil's residence, or in the case of a placement outside of the resident district, in the district in which the day treatment program is located by paying tuition to that district. The district of placement may contract with a facility to provide instruction by teachers licensed by the state board of teaching.

(e) When a pupil without a disability is temporarily placed in a residential program for care and treatment, the district in which the pupil is placed must provide instruction for the pupil and necessary transportation while the pupil is receiving instruction, and in the case of a placement outside of the district of residence, the nonresident district must bill the district of residence for the actual cost of providing the instruction for the regular school year and for summer school, excluding transportation costs. When a pupil without a disability is temporarily placed in a residential program outside the district of residence, the administrator of the court placing the pupil must send timely written notice of the placement to the district of residence. The district of placement may contract with a residential facility to provide instruction by teachers licensed by the state board of teaching. For purposes of this section, the state correctional facilities operated on a fee-for-service basis are considered to be residential programs for care and treatment.

(f) The district of residence must include the pupil in its residence count of pupil units and pay tuition as provided in section 123A 488 to the district providing the instruction. Transportation costs must be paid by the district providing the transportation and the state must pay transportation aid to that district. For purposes of computing state transportation aid, pupils governed by this subdivision must be included in the disabled transportation category.

History: 1998 c 398 art 5 s 55, 1999 c 241 art 2 s 18

125A.515 PLACEMENT OF CHILDREN WITHOUT DISABILITIES; APPROVAL OF EDUCATION PROGRAM.

The commissioner shall approve education programs in care and treatment facilities for placement of children without disabilities, including detention centers, before being licensed by the department of human services or the department of corrections.

History: 1999 c 241 art 2 s 19

NOTE This section as added by Laws 1999 chapter 241 article 2, section 19 is effective July 1, 2000. Laws 1999 chapter 241 article 2 section 63.

125A.52 RESIDENTIAL TREATMENT FACILITIES; DEPARTMENTS OF HUMAN SERVICES AND CORRECTIONS EDUCATION SCREENING.

Subdivision 1 **Educational screening.** Secure and nonsecure residential treatment facilities licensed by the department of human services or the department of corrections must screen each juvenile who is held in a facility for at least 72 hours, excluding weekends or holidays, using an educational screening tool identified by the department, unless the facility determines that the juvenile has a current individual education plan and obtains a copy of it.

Subd 2 **Rulemaking.** The commissioner may, in consultation with the commissioners of corrections and human services, make or amend rules relating to education programs in residential treatment facilities, if necessary, to implement this section

History: 1998 c 398 art 5 s 55, 1999 c 123 s 17

125A.62 DUTIES OF THE BOARD OF THE MINNESOTA STATE ACADEMIES.

Subdivision 1 **Governance.** The board of the Minnesota state academies shall govern the state academies for the deaf and the state academy for the blind. The board must promote academic standards based on high expectation and an assessment system to measure academic performance toward the achievement of those standards. The board must focus on the academies' needs as a whole and not prefer one school over the other. The board of the Minnesota state academies shall consist of nine persons. The members of the board shall be appointed by the governor with the advice and consent of the senate. One member must be from the seven-county metropolitan area, one member must be from greater Minnesota, and one member may be appointed at-large. The board must be composed of

- (1) one present or former superintendent of an independent school district,
- (2) one present or former special education director,
- (3) the commissioner of children, families, and learning or the commissioner's designee,
- (4) one member of the blind community,
- (5) one member of the deaf community,
- (6) two members of the general public with business, administrative, or financial expertise,
- (7) one nonvoting, unpaid ex officio member appointed by the site council for the state academy for the deaf, and
- (8) one nonvoting, unpaid ex officio member appointed by the site council for the state academy for the blind

Subd 2 **Terms; compensation; and other.** The membership terms, compensation, removal of members, and filling of vacancies shall be as provided for in section 15 0575. Notwithstanding section 15 0575, a member may serve not more than two consecutive four-year terms

Subd 3 **Meetings.** All meetings of the board shall be as provided in section 471 705 and must be held in Faribault

Subd 4 **Most beneficial, least restrictive.** The board must do what is necessary to provide the most beneficial and least restrictive program of education for each pupil at the academies who is handicapped by visual disability or deafness

Subd 5 **Planning, evaluation, and reporting.** To the extent required in school districts, the board must establish a process for the academies to include parent and community input in the planning, evaluation, and reporting of curriculum and pupil achievement

Subd 6 **Site councils.** The board must establish, and appoint members to, a site council at each academy. The site councils shall exercise power and authority granted by the board. The board must appoint to each site council the exclusive representative's employee designee from each exclusive representative at the academies. The site councils may make a recommendation to the governor regarding board appointments no more than 30 days after receiving the list of applicants from the governor

Subd 7 **Trustee of academies' property.** The board is the trustee of the academies' property. Securities and money, including income from the property, must be deposited in the state treasury according to section 16A 275. The deposits are subject to the order of the board

Subd 8 **Grants.** The board, through the chief administrators of the academies, may apply for all competitive grants administered by agencies of the state and other government or nongovernment sources. Application may not be made for grants over which the board has discretion

History: 1999 c 241 art 2 s 20

125A.64 POWERS OF BOARD OF THE MINNESOTA STATE ACADEMIES.

Subdivision 1 **Personnel.** The board of the Minnesota state academies may employ central administrative staff members and other personnel necessary to provide and support programs and services at each academy

Subd 2 **Get help from department.** The board of the Minnesota state academies may require the department of children, families, and learning to provide program leadership, program monitoring, and technical assistance at the academies

Subd 3 **Unclassified positions.** The board of the Minnesota state academies may place any position other than residential academies administrator in the unclassified service The position must meet the criteria in section 43A 08, subdivision 1a

Subd 4 **Residential and building maintenance services.** The board of the Minnesota state academies may enter into agreements with public or private agencies or institutions to provide residential and building maintenance services The board of the Minnesota state academies must first decide that contracting for the services is more efficient and less expensive than not contracting for them

Subd 5 **Student teachers and professional trainees.** (a) The board of the Minnesota state academies may enter into agreements with teacher preparation institutions for student teachers to get practical experience at the academies A licensed teacher must provide appropriate supervision of each student teacher

(b) The board of the Minnesota state academies may enter into agreements with accredited higher education institutions for certain student trainees to get practical experience at the academies The students must be preparing themselves in a professional field that provides special services to children with a disability in school programs To be a student trainee in a field, a person must have completed at least two years of an approved program in the field A person who is licensed or registered in the field must provide appropriate supervision of each student trainee

Subd 6 **Exemption to September 1 school start restriction.** Notwithstanding section 120A 40, subdivision 1, the board of the Minnesota state academies for the deaf and blind may begin the school year any day prior to September 1

History: 1999 c 241 art 2 s 21, art 10 s 1

NOTE The amendment to this section by Laws 1999, chapter 241 article 2, section 21 is effective July 1 2000 Laws 1999 chapter 241 article 2, section 63

125A.65 ATTENDANCE AT ACADEMIES FOR THE DEAF AND BLIND.

[For text of subs 1 and 2, see M S 1998]

Subd 3 **Educational program; tuition.** When it is determined pursuant to section 125A 69, subdivision 1 or 2, that the child is entitled to attend either school, the board of the Minnesota state academies must provide the appropriate educational program for the child The board of the Minnesota state academies must make a tuition charge to the child's district of residence for the cost of providing the program The amount of tuition charged must not exceed the basic revenue of the district for that child, for the amount of time the child is in the program For purposes of this subdivision, "basic revenue" has the meaning given it in section 126C 10, subdivision 2 The district of the child's residence must pay the tuition and may claim general education aid for the child Tuition received by the board of the Minnesota state academies, except for tuition received under subdivision 4, must be deposited in the state treasury as provided in subdivision 8

[For text of subd 4, see M S 1998]

Subd 5 **Providing appropriate educational programs.** When it is determined that the child can benefit from public school enrollment but that the child should also remain in attendance at the applicable school, the district where the institution is located must provide an appropriate educational program for the child and must make a tuition charge to the board of the Minnesota state academies for the actual cost of providing the program, less any amount of aid received pursuant to section 125A 75 The board of the Minnesota state academies must pay the tuition and other program costs including the unreimbursed transportation

costs Aids for children with a disability must be paid to the district providing the special instruction and services Special transportation must be provided by the district providing the educational program and the state must reimburse that district within the limits provided by law

Subd 6 Tuition reduction. Notwithstanding the provisions of subdivisions 3 and 5, the board of the Minnesota state academies may agree to make a tuition charge for less than the amount specified in subdivision 3 for pupils attending the applicable school who are residents of the district where the institution is located and who do not board at the institution, if that district agrees to make a tuition charge to the board of the Minnesota state academies for less than the amount specified in subdivision 5 for providing appropriate educational programs to pupils attending the applicable school

Subd 7 Staff allocation. Notwithstanding the provisions of subdivisions 3 and 5, the board of the Minnesota state academies may agree to supply staff from the Minnesota state academy for the deaf and the Minnesota state academy for the blind to participate in the programs provided by the district where the institutions are located when the programs are provided to students in attendance at the state schools

Subd 8 Student count; tuition. On May 1 of each year, the board of the Minnesota state academies shall count the actual number of Minnesota resident kindergarten and elementary students and the actual number of Minnesota resident secondary students enrolled and receiving education services at the Minnesota state academy for the deaf and the Minnesota state academy for the blind The board of the Minnesota state academies shall deposit in the state treasury an amount equal to all tuition received less

(1) the total number of students on May 1 less 175, times the ratio of the number of kindergarten and elementary students to the total number of students on May 1, times the general education formula allowance, plus

(2) the total number of students on May 1 less 175, times the ratio of the number of secondary students on May 1 to the total number of students on May 1, times 1.3, times the general education formula allowance

[For text of subd 9, see M S 1998]

Subd 10 Annual appropriation. There is annually appropriated to the department for the Minnesota state academies the tuition amounts received and credited to the general operation account of the academies under this section A balance in an appropriation under this paragraph does not cancel but is available in successive fiscal years

History: 1999 c 241 art 2 s 22-27

NOTE The amendment to subdivision 3 by Laws 1999 chapter 241 article 2 section 22 is effective July 1 2000 Laws 1999, chapter 241 article 2, section 63

125A.67 STAFF OF THE ACADEMIES.

[For text of subd 1, see M S 1998]

Subd 2 Teacher standards. A teacher or administrator at the academies is subject to the licensure standards of the board of teaching or the commissioner of children, families, and learning

[For text of subs 3 to 7, see M S 1998]

History: 1998 c 398 art 5 s 55

125A.68 STATE ADOPTED PROCEDURES.

Subdivision 1 Subjects. The board of the Minnesota state academies must establish procedures for

- (1) admission, including short-term admission, to the academies,
- (2) discharge from the academies,
- (3) decisions on a pupil's program at the academies, and
- (4) evaluation of a pupil's progress at the academies

[For text of subs 2 and 3, see M S 1998]

History: 1999 c 241 art 2 s 28

125A.69 ADMISSION STANDARDS.

Subdivision 1 **Two kinds.** There are two kinds of admission to the Minnesota state academies

(a) A pupil who is deaf, hard of hearing, or blind-deaf, may be admitted to the academy for the deaf. A pupil who is blind or visually impaired, blind-deaf, or multiply handicapped may be admitted to the academy for the blind. For a pupil to be admitted, two decisions must be made under sections 125A.03 to 125A.24 and 125A.65

(1) It must be decided by the individual education planning team that education in regular or special education classes in the pupil's district of residence cannot be achieved satisfactorily because of the nature and severity of the deafness or blindness or visual impairment respectively

(2) It must be decided by the individual education planning team that the academy provides the most appropriate placement within the least restrictive alternative for the pupil

(b) A deaf or hard of hearing child or a visually impaired pupil may be admitted to get socialization skills or on a short-term basis for skills development

[For text of subd 2, see M S 1998]

Subd 3 **Out-of-state admissions.** An applicant from another state who can benefit from attending either academy may be admitted to the academy if the admission does not prevent an eligible Minnesota resident from being admitted. The board of the Minnesota state academies must obtain reimbursement from the other state for the costs of the out-of-state admission. The state board may enter into an agreement with the appropriate authority in the other state for the reimbursement. Money received from another state must be deposited in the general fund and credited to the general operating account of the academies. The money is appropriated to the academies

[For text of subd 4, see M S 1998]

History: 1999 c 241 art 2 s 29,30

125A.70 EXPENSE OF PUPILS.

[For text of subd 1, see M S 1998]

Subd 2 **Local social services agency.** If the person liable for support of a pupil cannot support the pupil, the local social services agency of the county of the pupil's residence must do so. The commissioner of children, families, and learning must decide how much the local social services agency must pay. The board of the Minnesota state academies must adopt rules that tell how the commissioner is to fix the amount. The local social services agency must make the payment to the superintendent of the school district of residence

[For text of subd 3, see M S 1998]

History: 1999 c 241 art 2 s 31

125A.71 DEPOSIT AND APPROPRIATION OF RENTS AND FEES OF ACADEMIES.

[For text of subs 1 and 2, see M S 1998]

Subd 3 **Contracts; fees; appropriation.** The board of the Minnesota state academies may enter into agreements for the academies to provide respite care and supplemental educational instruction and services including assessments and counseling. The agreements may be made with public or private agencies or institutions, school districts, service cooperatives, or counties. The board may authorize the academies to provide conferences, seminars, non-

district and district requested technical assistance, and production of instructionally related materials

History: 1999 c 241 art 2 s 32

125A.72 STUDENT ACTIVITIES ACCOUNT.

Subdivision 1 **Student activities; receipts; appropriation.** All receipts of any kind generated to operate student activities, including student fees, donations and contributions, and gate receipts must be deposited in the state treasury. The receipts are appropriated annually to the Minnesota state academies for student activities purposes. They are not subject to budgetary control by the commissioner of finance.

Subd 2 **To student activities account.** The money appropriated in subdivision 1 to the Minnesota state academies for student activities must be credited to a Minnesota state academies' student activities account and may be spent only for Minnesota state academies' student activities purposes.

Subd 3 **Carryover.** An unexpended balance in the Minnesota state academies' student activities account may be carried over from the first fiscal year of the biennium into the second fiscal year of the biennium and from one biennium to the next. The amount carried over must not be taken into account in determining state appropriations and must not be deducted from a later appropriation.

Subd 4 **Money from certain student activities specifically included among receipts.** Any money generated by a Minnesota state academies' student activity that involves

(1) state employees who are receiving compensation for their involvement with the activity,

(2) the use of state facilities, or

(3) money raised for student activities in the name of the Minnesota state academies is specifically included among the kinds of receipts that are described in subdivision 1.

History: 1999 c 241 art 2 s 33

125A.73 DUTIES OF STATE DEPARTMENTS.

Subdivision 1 **Department of children, families, and learning.** The department of children, families, and learning must assist the board of the Minnesota state academies in preparing reports on the academies.

Subd 2 **Department of employee relations.** The department of employee relations, in cooperation with the board of the Minnesota state academies, must develop a statement of necessary qualifications and skills for all staff members of the academies.

History: 1999 c 241 art 2 s 34

125A.744 STATEWIDE DATA MANAGEMENT SYSTEM TO MAXIMIZE MEDICAL ASSISTANCE REIMBURSEMENT.

[For text of subs 1 and 2; see M S 1998]

Subd 3 **Implementation.** Consistent with section 256B 0625, subdivision 26, school districts may enroll as medical assistance providers or subcontractors and bill the department of human services under the medical assistance fee for service claims processing system for special education services which are covered services under chapter 256B, which are provided in the school setting for a medical assistance recipient, and for whom the district has secured informed consent consistent with section 13 05, subdivision 4, paragraph (d), and section 256B 77, subdivision 2, paragraph (p), to bill for each type of covered service. School districts shall be reimbursed by the commissioner of human services for the federal share of individual education plan health-related services that qualify for reimbursement by medical assistance, minus up to five percent retained by the commissioner of human services for administrative costs, not to exceed \$350,000 per fiscal year. The commissioner may withhold up to five percent of each payment to a school district. Following the end of each fiscal year, the commissioner shall settle up with each school district in order to ensure that collections

from each district for departmental administrative costs are made on a pro rata basis according to federal earnings for these services in each district. A school district is not eligible to enroll as a home care provider or a personal care provider organization for purposes of billing home care services under section 256B 0627 until the commissioner of human services issues a bulletin instructing county public health nurses on how to assess for the needs of eligible recipients during school hours. To use private duty nursing services or personal care services at school, the recipient or responsible party must provide written authorization in the care plan identifying the chosen provider and the daily amount of services to be used at school.

History: 1999 c 245 art 4 s 4

125A.75 SPECIAL EDUCATION PROGRAM APPROVAL; AID PAYMENTS; TRAVEL AID.

[For text of subs 1 and 2, see M S 1998]

Subd 3 Full state payment. The state must pay each district the actual cost incurred in providing instruction and services for a child whose district of residence has been determined by section 125A 17 or 125A 51, paragraph (b), and who is temporarily placed in a state institution, a licensed residential facility, or foster facility for care and treatment. The regular education program at the facility must be an approved program according to section 125A 515.

Upon following the procedure specified by the commissioner, the district may bill the state the actual cost incurred in providing the services including transportation costs and a proportionate amount of capital expenditures and debt service, minus the amount of the basic revenue, as defined in section 126C 10, subdivision 2, of the district for the child and the special education aid, transportation aid, and any other aid earned on behalf of the child. The limit in subdivision 2 applies to aid paid pursuant to this subdivision.

To the extent possible, the commissioner shall obtain reimbursement from another state for the cost of serving any child whose parent or guardian resides in that state. The commissioner may contract with the appropriate authorities of other states to effect reimbursement. All money received from other states must be paid to the state treasury and placed in the general fund.

Subd 4 Program and aid approval. Before June 1 of each year, each district providing special instruction and services to children with a disability must submit to the commissioner an application for approval of these programs and their budgets for the next fiscal year. The application must include an enumeration of the costs proposed as eligible for state aid pursuant to this section and of the estimated number and grade level of children with a disability in the district who will receive special instruction and services during the regular school year and in summer school programs during the next fiscal year. The application must also include any other information deemed necessary by the commissioner for the calculation of state aid and for the evaluation of the necessity of the program, the necessity of the personnel to be employed in the program, for determining the amount which the program will receive from grants from federal funds, or special grants from other state sources, and the program's compliance with the rules and standards of the department of children, families, and learning. The commissioner shall review each application to determine whether the program and the personnel to be employed in the program are actually necessary and essential to meet the district's obligation to provide special instruction and services to children with a disability pursuant to sections 125A 03 to 125A 24, 125A 259 to 125A 48, and 125A 65. The commissioner shall not approve aid pursuant to this section for any program or for the salary of any personnel determined to be unnecessary or unessential on the basis of this review. The commissioner may withhold all or any portion of the aid for programs which receive grants from federal funds, or special grants from other state sources. By August 31 the commissioner shall approve, disapprove, or modify each application, and notify each applying district of the action and of the estimated amount of aid for the programs. The commissioner shall provide procedures for districts to submit additional applications for program and budget approval during the fiscal year, for programs needed to meet any substantial changes in the needs of children with a disability in the district. Notwithstanding the provi-

sions of section 127A.42, the commissioner may modify or withdraw the program or aid approval and withhold aid pursuant to this section without proceeding according to section 127A.42 at any time the commissioner determines that the program does not comply with rules of the department of children, families, and learning or that any facts concerning the program or its budget differ from the facts in the district's approved application

[For text of subs 5 to 7, see M S 1998]

Subd 8 Litigation and hearing costs. (a) For fiscal year 1999 and thereafter, the commissioner of children, families, and learning, or the commissioner's designee, shall use state funds to pay school districts for the administrative costs of a due process hearing incurred under section 125A.09, subdivisions 6, 10, and 11, including hearing officer fees, court reporter fees, mileage costs, transcript costs, interpreter and transliterator fees, independent evaluations ordered by the hearing officer, and rental of hearing rooms, but not including district attorney fees. To receive state aid under this paragraph, a school district shall submit to the commissioner by August 1 an itemized list of unreimbursed actual costs for fees and other expenses under this paragraph incurred after June 30, 1998, for hearings completed during the previous fiscal year. State funds used for aid to school districts under this paragraph shall be based on the unreimbursed actual costs and fees submitted by a district.

(b) The commissioner shall provide districts with a form on which to annually report litigation costs under this section and shall base aid estimates on preliminary reports submitted by the district during the current fiscal year.

History: 1998 c 398 art 5 s 55, 1999 c 123 s 18, 1999 c 241 art 2 s 35,36

NOTE The amendment to subdivision 3 by Laws 1999 chapter 241 article 2 section 35, is effective July 1, 2000. Laws 1999 chapter 241 article 2 section 63.

125A.76 SPECIAL EDUCATION REVENUE.

Subdivision 1 Definitions. For the purposes of this section, the definitions in this subdivision apply.

(a) "Base year" for fiscal year 1998 and later fiscal years means the second fiscal year preceding the fiscal year for which aid will be paid.

(b) "Basic revenue" has the meaning given it in section 126C.10, subdivision 2. For the purposes of computing basic revenue pursuant to this section, each child with a disability shall be counted as prescribed in section 126C.05, subdivision 1.

(c) "Essential personnel" means teachers, related services, and support services staff providing direct services to students.

(d) "Average daily membership" has the meaning given it in section 126C.05.

(e) "Program growth factor" means 1.012 for fiscal year 2002 and later.

Subd 2 Special education base revenue. (a) The special education base revenue equals the sum of the following amounts computed using base year data:

(1) 68 percent of the salary of each essential person employed in the district's program for children with a disability during the fiscal year, not including the share of salaries for personnel providing health-related services counted in clause (8), whether the person is employed by one or more districts or a Minnesota correctional facility operating on a fee-for-service basis,

(2) for the Minnesota state academy for the deaf or the Minnesota state academy for the blind, 68 percent of the salary of each instructional aide assigned to a child attending the academy, if that aide is required by the child's individual education plan,

(3) for special instruction and services provided to any pupil by contracting with public, private, or voluntary agencies other than school districts, in place of special instruction and services provided by the district, 52 percent of the difference between the amount of the contract and the basic revenue of the district for that pupil for the fraction of the school day the pupil receives services under the contract,

(4) for special instruction and services provided to any pupil by contracting for services with public, private, or voluntary agencies other than school districts, that are supplementary to a full educational program provided by the school district, 52 percent of the amount of the contract for that pupil,

(5) for supplies and equipment purchased or rented for use in the instruction of children with a disability, not including the portion of the expenses for supplies and equipment used to provide health-related services counted in clause (8), an amount equal to 47 percent of the sum actually expended by the district, or a Minnesota correctional facility operating on a fee-for-service basis, but not to exceed an average of \$47 in any one school year for each child with a disability receiving instruction,

(6) for fiscal years 1997 and later, special education base revenue shall include amounts under clauses (1) to (5) for special education summer programs provided during the base year for that fiscal year,

(7) for fiscal years 1999 and later, the cost of providing transportation services for children with disabilities under section 123B 92, subdivision 1, paragraph (b), clause (4), and

(8) for fiscal years 2001 and later, the cost of salaries, supplies and equipment, and other related costs actually expended by the district for the nonfederal share of medical assistance services according to section 256B 0625, subdivision 26

(b) If requested by a school district operating a special education program during the base year for less than the full fiscal year, or a school district in which is located a Minnesota correctional facility operating on a fee-for-service basis for less than the full fiscal year, the commissioner may adjust the base revenue to reflect the expenditures that would have occurred during the base year had the program been operated for the full fiscal year

(c) Notwithstanding paragraphs (a) and (b), the portion of a school district's base revenue attributable to a Minnesota correctional facility operating on a fee-for-service basis during the facility's first year of operating on a fee-for-service basis shall be computed using current year data

[For text of subd 3, see M S 1998]

Subd 4 State total special education aid. The state total special education aid for fiscal year 2000 equals \$463,000,000. The state total special education aid for fiscal year 2001 equals \$474,000,000. The state total special education aid for later fiscal years equals

(1) the state total special education aid for the preceding fiscal year, times

(2) the program growth factor, times

(3) the ratio of the state total average daily membership for the current fiscal year to the state total average daily membership for the preceding fiscal year

Subd 5 School district special education aid. (a) A school district's special education aid for fiscal year 2000 and later equals the state total special education aid, minus the amount determined under paragraphs (b) and (c), times the ratio of the district's adjusted special education base revenue to the state total adjusted special education base revenue. If the commissioner of children, families, and learning modifies its rules for special education in a manner that increases a district's special education obligations or service requirements, the commissioner shall annually increase each district's special education aid by the amount necessary to compensate for the increased service requirements. The additional aid equals the cost in the current year attributable to rule changes not reflected in the computation of special education base revenue, multiplied by the appropriate percentages from subdivision 2

(b) Notwithstanding paragraph (a), if the special education base revenue for a district equals zero, the special education aid equals the amount computed according to subdivision 2 using current year data

(c) Notwithstanding paragraphs (a) and (b), if the special education base revenue for a district is greater than zero, and the base year amount for the district under subdivision 2, paragraph (a), clause (7), equals zero, the special education aid equals the sum of the amount computed according to paragraph (a), plus the amount computed according to subdivision 2, paragraph (a), clause (7), using current year data

Subd 6 [Repealed, 1999 c 241 art 2 s 62]

[For text of subd 7, see M S 1998]

History: 1998 c 398 art 5 s 55, 1999 c 241 art 2 s 37-40, 1999 c 245 art 4 s 5

NOTE The amendments to subdivision 2 by Laws 1999 chapters 241 article 2 section 38 and 245, article 4 section 5 are effective July 1, 2000. Laws 1999 chapters 241 article 2, section 63 and 245 article 4 section 121

125A.77 [Repealed, 1999 c 241 art 2 s 62]

125A.78 ALTERNATIVE DELIVERY BASE REVENUE ADJUSTMENT.

[For text of subd 1, see M S 1998]

Subd 2 **Base revenue adjustment.** For the third fiscal year after approval of a district's application, and thereafter, the special education base revenue under section 125A 76, subdivision 1, must be computed based on activities defined as reimbursable under department of children, families, and learning rules for special education and nonspecial education students, and additional activities as detailed and approved by the commissioner

[For text of subd 3, see M S 1998]

History: 1998 c 398 art 5 s 55

125A.79 SPECIAL EDUCATION EXCESS COST AID.

Subdivision 1 **Definitions.** For the purposes of this section, the definitions in this subdivision apply

(a) "Unreimbursed special education cost" means the sum of the following

(1) expenditures for teachers' salaries, contracted services, supplies, equipment, and transportation services eligible for revenue under section 125A 76, plus

(2) expenditures for tuition bills received under sections 125A 03 to 125A 24 and 125A 65 for services eligible for revenue under sections 125A 76, subdivision 2, and 124 3202, subdivision 1, minus

(3) revenue for teachers' salaries, contracted services, supplies, and equipment under sections 124 3202 and 124A 76, minus

(4) tuition receipts under sections 125A 03 to 125A 24 and 125A 65 for services eligible for revenue under sections 124 3202, subdivision 1, and 124A 76, subdivision 2

(b) "General revenue" means for fiscal year 1996, the sum of the general education revenue according to section 126C 10, subdivision 1, as adjusted according to section 127A 47, subdivision 7, plus the total referendum revenue according to section 126C 17, subdivision 4 For fiscal years 1997 and later, "general revenue" means the sum of the general education revenue according to section 126C 10, subdivision 1, as adjusted according to section 127A 47, subdivisions 7 and 8, plus the total referendum revenue minus transportation sparsity revenue minus total operating capital revenue

(c) "Average daily membership" has the meaning given it in section 126C 05

(d) "Program growth factor" means 1 044 for fiscal year 2002 and 1 02 for fiscal year 2003 and later

Subd 2 **Excess cost aid, fiscal years 2000 and 2001.** For fiscal years 2000 and 2001, a district's special education excess cost aid equals the greatest of

(a) 75 percent of the difference between (1) the district's unreimbursed special education cost and (2) 4 4 percent of the district's general revenue,

(b) 70 percent of the difference between (1) the increase in the district's unreimbursed special education cost between the base year as defined in section 125A 76, subdivision 1, and the current year and (2) 1 6 percent of the district's general revenue, or

(c) zero

Subd 3 [Repealed, 1999 c 241 art 2 s 62]

[For text of subd 4, see M S 1998]

Subd 5 **Initial excess cost aid.** For fiscal years 2002 and later, a district's initial excess cost aid equals the greatest of

(1) 75 percent of the difference between (i) the district's unreimbursed special education cost and (ii) 4 4 percent of the district's general revenue,

(2) 70 percent of the difference between (i) the increase in the district's unreimbursed special education cost between the base year as defined in section 125A 76, subdivision 1, and the current year and (ii) 1 6 percent of the district's general revenue, or

(3) zero

Subd 6 State total special education excess cost aid. The state total special education excess cost aid for fiscal year 2002 and later fiscal years equals

(1) the state total special education excess cost aid for the preceding fiscal year, times

(2) the program growth factor, times

(3) the ratio of the state total average daily membership for the current fiscal year to the state total average daily membership for the preceding fiscal year

Subd 7 District special education excess cost aid. A district's special education excess cost aid for fiscal year 2002 and later equals the state total special education excess cost aid times the ratio of the district's initial excess cost aid to the state total initial excess cost aid

Subd 8 Out-of-state tuition. For children who are residents of the state, receive services under section 125A 76, subdivisions 1 and 2, and are placed in a care and treatment facility by court action in a state that does not have a reciprocity agreement with the commissioner under section 125A 115, the resident school district shall submit the balance of the tuition bills, minus the amount of the basic revenue, as defined by section 126C 10, subdivision 2, of the district for the child and the special education aid, and any other aid earned on behalf of the child

History: 1999 c 241 art 2 s 41-46

NOTE Subdivision 8, as added by Laws 1999 chapter 241 article 2, section 46 is effective July 1 2000 Laws 1999 chapter 241 article 2 section 63

125A.80 UNIFORM BILLING SYSTEM FOR THE EDUCATION COSTS OF OUT-OF-HOME PLACED STUDENTS.

The commissioner, in cooperation with the commissioners of human services and corrections and with input from appropriate billing system users, shall develop and implement a uniform billing system for school districts and other agencies, including private providers, who provide the educational services for students who are placed out of the home. The uniform billing system must

(1) allow for the proper and timely billing to districts by service providers with a minimum amount of district administration,

(2) allow districts to bill the state for certain types of special education and regular education services as provided by law,

(3) provide flexibility for the types of services that are provided for children placed out of the home, including day treatment services,

(4) allow the commissioner to track the type, cost, and quality of services provided for children placed out of the home,

(5) conform existing special education and proposed regular education billing procedures,

(6) provide a uniform reporting standard of per diem rates,

(7) determine allowable expenses and maximum reimbursement rates for the state reimbursement of care and treatment services according to section 124D 701, and

(8) provide a process for the district to appeal to the commissioner tuition bills submitted to districts and to the state

History: 1999 c 241 art 2 s 47