DEPARTMENT OF EDUCATION

TO: DISTRICT SUPERINTENDENTS AND SPECIAL EDUCATION DIRECTORS

FROM: ROBYN WIDLEY, DIRECTOR OF SPECIAL EDUCATION
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DATE: MARCH 13, 2018

SUBJECT: FEDERAL REPORTING REQUIREMENTS UNDER IDEA 2004, SECTION 608

CC: SECRETARY OF EDUCATION

Pursuant to the 2004 Individuals with Disabilities Education Act (IDEA), states are required to identify state-level laws and rules that impose requirements not required by the federal laws or regulations. The exact language of this requirement is found at § 608(a):

> *(a) RULEMAKING – Each State that receives funds under this title shall--*
>
> *(1) ensure that any State rules, regulations, and policies relating to this title conform to the purposes of this title;*
>
> *(2) identify in writing to local educational agencies located in the State and the Secretary any such rule, regulation, or policy as a State-imposed requirement that is not required by this title and Federal regulations; and*
>
> *(3) minimize the number of rules, regulations, and policies to which the local educational agencies and schools located in the State are subject under this title.*

This memorandum serves to provide public notice of Minnesota requirements not required by Federal laws. The organizational structure for this memorandum is the Minnesota regulations and statutes, and the discussion is ordered sequentially by the Minnesota laws and rules. For the purpose of this notice "state-imposed requirements" result in the following list of items that require a district to do something it would not have to do absent the state law or rule.

Multiple formal stakeholder committees have reviewed and recommended revisions of Minnesota's special education laws. These committees generally sought to reduce the instances Minnesota duplicated or exceeded federal law. Some requirements are unique to Minnesota and are not driven by federal law but rather constitute Minnesota's own formulation and evolution of special education policy. Minnesota provided special education services before these services were mandated by the federal government and has developed its own policy at times exclusive of the IDEA.

MINNESOTA STATUTORY PROVISIONS THAT IMPOSE A REQUIREMENT NOT REQUIRED BY THE FEDERAL LAWS OR REGULATIONS

125A.023 STATE AGENCY COORDINATION RESPONSIBILITES

This statute is the state's mechanism for interagency coordination, which is required by federal law. However, the duties of the State Interagency Committee go beyond what is specifically required in federal law. This includes developing 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 3 to 21.

125A.027 LOCAL AGENCY COORDINATION RESPONSIBILITIES

This statute is aligned with the local interagency responsibilities for children ages birth through five. This statute exceeds minimal federal requirements.

125A.04 HIGH SCHOOL DIPLOMA

Minnesota's diploma statute states that a student with a disability must be granted a regular high school diploma upon attaining the objectives in the student's IEP.

> *Upon completion of secondary school or the equivalent, a pupil with a disability who satisfactorily attains the objectives in the pupil's individualized education program must be granted a high school diploma that is identical to the diploma granted to a pupil without a disability.*

The federal regulations define "regular high school diploma" consistent with the Elementary and Secondary Education Act (ESEA) regulations in 34 C.F.R. § 200.19 as meaning "the standard high school diploma that is awarded to students in the State and that is fully aligned with the State's academic content standards or a higher diploma and does not include a GED credential, certificate of attendance, or any alternative award."

125A.06 BLIND PERSON'S LITERACY RIGHTS

This statue sets forth a number of specific provisions that must be contained in a blind student's individualized education program. Federal regulations do not contain the specificity of what must be contained in an individualized education program (IEP) for students who are considered "Blind" as defined in the statute and are in need of special education services.

125A.08 INDIVIDUALIZED EDUCATION PROGRAMS

Minnesota's special education statute 125A.08 enumerates a number of provisions related to the general school district obligations to provide a free appropriate public education (FAPE). The timing of transition services is addressed below:

During grade 9, the program must address the student's needs for transition from secondary services to postsecondary education and training, employment, community participation, recreation, and leisure and home living. In developing the program, districts must inform parents of the full range of transitional goals and related services that should be considered. The program 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. If the individualized education program meets the plan components in section 120B.125, the individualized education program satisfies the requirement and no additional transition plan is needed;

Under state law, planning for transition for students with disabilities must occur during grade nine. The federal requirement is that transition services must begin, "not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP team." 34 C.F.R. § 300.320(b). This law was amended to ensure that if the IEP or standardized written plan meets the requirement for a transition plan under Minnesota Statutes, section 120B.125, no additional transition plan is needed. Transition plans for all students must be in place no later than grade nine.

125A.091 ALTERNATIVE DISPUTE RESOLUTION AND DUE PROCESS HEARINGS

Subd. 3a. ***Additional requirements for prior written notice.***

In addition to federal law requirements, a prior written notice shall:

(1) inform the parent that except for the initial placement of a child in special education, the school district will proceed with its proposal for the child's placement or for providing special education services unless the child's parent notifies the district of an objection within 14 days of when the district sends the prior written notice to the parent; and

(2) state that a parent who objects to a proposal or refusal in the prior written notice may request a conciliation conference under subdivision 7 or another alternative dispute resolution procedure under subdivision 8 or 9.

These prior written notice requirements are in addition to those required by the federal regulations at 34 C.F.R. § 300.503.

Subd. 5. ***Initial action; parent consent.***

(a) The district must not proceed with the initial evaluation of a child, the initial placement of a child in a special education program, or the initial provision of special education services for a child without the prior written consent of the child's parent. A district may not override the written refusal of a parent to consent to an initial evaluation or reevaluation.

In Minnesota, override procedures cannot be used to override a parent's refusal to consent to a reevaluation. This is not the case with the federal regulations. Although the federal regulations regarding parental consent,

found at 34 C.F.R. § 300.300, make clear that due process procedures may not be used to override a parent's lack of consent for an initial evaluation, they do not address a failure to consent to a reevaluation:

> *If the parent of a child fails to respond to a request for, or refuses to consent to, the initial provision of special education and related services, the public agency—*
>
> *(i) May not use the procedures in subpart E of this part (including the mediation procedures under §300.506 or the due process procedures under §§300.507 through 300.516) in order to obtain agreement or a ruling that the services may be provided to the child;*
>
> *(ii) Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with the special education and related services for which the parent refuses to or fails to provide consent; and*
>
> *(iii) Is not required to convene an IEP Team meeting or develop an IEP under §§300.320 and 300.324 for the child.*

34 C.F.R. § 300.300(b)(3). While not strictly requiring districts to do something they would not otherwise be required to do, this provision restricts districts from changing or deleting services by allowing parents to refuse reevaluation.

> *Subd. 7.* ***Conciliation conference.***
>
> *A parent must have an opportunity to meet with appropriate district staff in at least one conciliation conference if the parent objects to any proposal of which the parent receives notice under subdivision 3a. A district must hold a conciliation conference within ten calendar days from the date the district receives a parent's objection to a proposal or refusal in the prior written notice. Except as provided in this section, all discussions held during a conciliation conference are confidential and are not admissible in a due process hearing. Within five school days after the final conciliation conference, the district must prepare and provide to the parent a conciliation conference memorandum that describes the district's final proposed offer of service. This memorandum is admissible in evidence in any subsequent proceeding.*
>
> *Subd. 8.* ***Voluntary dispute resolution options.***
>
> *In addition to offering at least one conciliation conference, a district must inform a parent of other dispute resolution processes, including at least mediation and facilitated team meetings. The fact that an alternative dispute resolution process was used is admissible in evidence at any subsequent proceeding. State-provided mediators and team meeting facilitators shall not be subpoenaed to testify at a due process hearing or civil action under federal special education law nor are any records of mediators or state-provided team meeting facilitators accessible to the parties.*
>
> *Subd. 11.* ***Facilitated team meeting.***

A facilitated team meeting is an IEP, IFSP, or multiagency team meeting led by an impartial state-provided facilitator to promote effective communication and assist a team in developing an individualized education program.

The Minnesota Legislature requires that districts provide and participate in a conciliation conference if the parent objects to a district's proposal or refusal in a prior written notice. In addition, Minnesota offers facilitated team meetings as a dispute resolution option, although these are voluntary on the part of all parties. Neither of these dispute resolution processes is required by the IDEA. Minnesota has implemented these requirements in Minnesota Rules 3525.3700 and 3525.3750 discussed below. IDEA 2004 places extensive emphasis on alternative dispute resolution, including the resolution sessions found at 615(f)(1)(B).[1] It is clear that the federal structure contemplates early opportunities for dispute resolution. However, conciliation conferences and facilitated team meetings are not federal requirements.

Minnesota requires that parents be informed of their right to various alternative dispute resolution options, including conciliation conferences, mediation, and facilitated IEP team meetings whenever they object to any proposal for which they receive notice. The federal statutes and regulations require that parents only be informed of the availability of mediation when a procedural safeguard notice is required.

Subd. 15. ***Prehearing conference.***

A prehearing conference must be held within five business days of the date the commissioner appoints the hearing officer. The hearing officer must initiate the prehearing conference which may be conducted in person, at a location within the district, or by telephone. The hearing officer must create a written verbatim record of the prehearing conference which is available to either party upon request. At the prehearing conference, the hearing officer must:

(1) identify the questions that must be answered to resolve the dispute and eliminate claims and complaints that are without merit;

(2) set a scheduling order for the hearing and additional prehearing activities;

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[1] The federal statute explains the resolution session thusly:

(B) RESOLUTION SESSION.-

(i) PRELIMINARY MEETING.-Prior to the opportunity for an impartial due process hearing under subparagraph (A) the local educational agency shall convene a meeting with the parents and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the complaint-

(I) within 15 days of receiving notice of the parents' complaint;

(II) which shall include a representative of the agency who has decision-making authority on behalf of such agency;

(III) which may not include an attorney of the local educational agency unless the parent is accompanied by an attorney; and

(IV) where the parents of the child discuss their complaint, and the facts that form the basis of the complaint, and the local educational agency is provided the opportunity to resolve the complaint, unless the parents and the local educational agency agree in writing to waive such meeting, or agree to use the mediation process described in subsection (e).

(3) determine if the hearing can be disposed of without an evidentiary hearing and, if so, establish the schedule and procedure for doing so; and

(4) establish the management, control, and location of the hearing to ensure its fair, efficient, and effective disposition.

As discussed and in the corollary Minnesota Rule 3500.4110, federal regulation requires a hearing officer to make a determination on the sufficiency of a due process complaint when the opposing party raises an objection. 34 C.F.R. § 300.508(d)(2). Minnesota formalizes that process through a prehearing conference. This conference is an additional requirement; however, determining the sufficiency of a due process complaint is addressed in federal regulation.

Subd. 28. ***District liability****.*

A district is not liable for harmless technical violations of federal or state laws, rules, or regulations governing special education if the school district can demonstrate that the violations did not harm a student's educational progress or the parent's right to notice, participation, or due process. This subdivision is applicable to due process hearings and special education complaints filed with the department.

This Minnesota provision parallels the federal regulations 34 C.F.R. § 300.513 stating that a hearing officer's determination of whether a student received FAPE must be based on substantive grounds. In matters alleging a procedural violation, a hearing officer may find that a child did not receive FAPE only if the procedural inadequacies impeded the child's right to a FAPE, significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE or caused a deprivation of educational benefit.

The Minnesota law goes beyond the federal regulations in applying this provision to the State administrative complaint process.

125A.094 RESTRICTIVE PROCEDURES FOR CHILDREN WITH DISABILITIES

The use of restrictive procedures for children with disabilities is governed by sections 125A.0941 and 125A.0942.

125A.0941 DEFINITIONS

(a) The following terms have the meanings given them.

(b) "Emergency" means a situation where immediate intervention is needed to protect a child or other individual from physical injury. Emergency does not mean circumstances such as: a child who does not respond to a task or request and instead places his or her head on a desk or hides under a desk or table; a child who does not respond to a staff person's request unless failing to respond would result in physical injury to the child or other individual; or an emergency incident has already occurred and no threat of physical injury currently exists.

(c) "Physical holding" means physical intervention intended to hold a child immobile or limit a child's movement, where body contact is the only source of physical restraint, and where immobilization is used to effectively gain control of a child in order to protect a child or other individual from physical injury. The term physical holding does not mean physical contact that:

(1) helps a child respond or complete a task;

(2) assists a child without restricting the child's movement;

(3) is needed to administer an authorized health-related service or procedure; or

(4) is needed to physically escort a child when the child does not resist or the child's resistance is minimal.

(d) "Positive behavioral interventions and supports" means interventions and strategies to improve the school environment and teach children the skills to behave appropriately, including the key components under section 122A.627.

(e) "Prone restraint" means placing a child in a face down position.

(f) "Restrictive procedures" means the use of physical holding or seclusion in an emergency. Restrictive procedures must not be used to punish or otherwise discipline a child.

(g) "Seclusion" means confining a child alone in a room from which egress is barred. Egress may be barred by an adult locking or closing the door in the room or preventing the child from leaving the room. Removing a child from an activity to a location where the child cannot participate in or observe the activity is not seclusion.

These terms are not defined by the IDEA, although "positive behavioral interventions and supports" is referenced in the IDEA and accompanying regulations. These definitions are part of state-imposed requirements for school districts choosing to use restrictive procedures with children with disabilities.

125A.0942 STANDARDS FOR RESTRICTIVE PROCEDURES

This Minnesota statute enumerates a number of provisions related to school district obligations when using restrictive procedures on children with disabilities. It should be noted that these state-imposed obligations are not required for school districts that choose not to use restrictive procedures. There are no additional state-imposed requirements for school districts that choose to use only positive behavioral supports and interventions with children with disabilities.

Subdivision 1. ***Restrictive procedures plan.***

(a) Schools that intend to use restrictive procedures shall maintain and make publicly accessible in an electronic format on a school or district Web site or make a paper copy available upon request describing a restrictive procedures plan for children with disabilities that at least:

(1) lists the restrictive procedures the school intends to use;

(2) describes how the school will implement a range of positive behavior strategies and provide links to mental health services;

(3) describes how the school will provide training on de-escalation techniques, consistent with section 122A.09, subdivision 4, paragraph (k);

(4) describes how the school will monitor and review the use of restrictive procedures, including:

(i) conducting post-use debriefings, consistent with subdivision 3, paragraph (a), clause (5); and

(ii) convening an oversight committee to undertake a quarterly review of the use of restrictive procedures based on patterns or problems indicated by similarities in the time of day, day of the week, duration of the use of a procedure, the individuals involved, or other factors associated with the use of restrictive procedures; the number of times a restrictive procedure is used schoolwide and for individual children; the number and types of injuries, if any, resulting from the use of restrictive procedures; whether restrictive procedures are used in nonemergency situations; the need for additional staff training; and proposed actions to minimize the use of restrictive procedures; and

(5) includes a written description and documentation of the training staff completed under subdivision 5.

(b) Schools annually must publicly identify oversight committee members who must at least include:

(1) a mental health professional, school psychologist, or school social worker;

(2) an expert in positive behavior strategies;

(3) a special education administrator; and

(4) a general education administrator.

Subd. 2. ***Restrictive procedures.***

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

(b) A school shall make reasonable efforts to notify the parent on the same day a restrictive procedure is used on the child, or if the school is unable to provide same-day notice, notice is sent

within two days by written or electronic means or as otherwise indicated by the child's parent under paragraph (f).

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

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

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

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

Subd. 3. ***Physical holding or seclusion.***

(a) Physical holding or seclusion may be used only in an emergency. A school that uses physical holding or seclusion shall meet the following requirements:

(1) physical holding or seclusion is the least intrusive intervention that effectively responds to the emergency;

(2) physical holding or seclusion is not used to discipline a noncompliant child;

(3) physical holding or seclusion ends when the threat of harm ends and the staff determines the child can safely return to the classroom or activity;

(4) staff directly observes the child while physical holding or seclusion is being used;

(5) each time physical holding or seclusion is used, the staff person who implements or oversees the physical holding or seclusion documents, as soon as possible after the incident concludes, the following information:

(i) a description of the incident that led to the physical holding or seclusion;

(ii) why a less restrictive measure failed or was determined by staff to be inappropriate or impractical;

(iii) the time the physical holding or seclusion began and the time the child was released; and

(iv) a brief record of the child's behavioral and physical status;

(6) the room used for seclusion must:

(i) be at least six feet by five feet;

(ii) be well lit, well ventilated, adequately heated, and clean;

(iii) have a window that allows staff to directly observe a child in seclusion;

(iv) have tamperproof fixtures, electrical switches located immediately outside the door, and secure ceilings;

(v) have doors that open out and are unlocked, locked with keyless locks that have immediate release mechanisms, or locked with locks that have immediate release mechanisms connected with a fire and emergency system; and

(vi) not contain objects that a child may use to injure the child or others;

(7) before using a room for seclusion, a school must:

(i) receive written notice from local authorities that the room and the locking mechanisms comply with applicable building, fire, and safety codes; and

(ii) register the room with the commissioner, who may view that room; and

(b) By February 1, 2015, and annually thereafter, stakeholders may, as necessary, recommend to the commissioner specific and measurable implementation and outcome goals for reducing the use of restrictive procedures and the commissioner must submit to the legislature a report on districts' progress in reducing the use of restrictive procedures that recommends how to further reduce these procedures and eliminate the use of seclusion. The statewide plan includes the following components: measurable goals; the resources, training, technical assistance, mental health services, and collaborative efforts needed to significantly reduce districts' use of seclusion; and recommendations to clarify and improve the law governing districts' use of restrictive procedures. The commissioner must consult with interested stakeholders when preparing the report, including representatives of advocacy organizations, special education directors, teachers, paraprofessionals, intermediate school districts, school boards, day treatment providers, county social services, state human services department staff, mental health professionals, and autism experts. Beginning with the 2016-2017 school year, in a form and manner determined by the commissioner, districts must report data quarterly to the department by January 15, April 15, July 15, and October 15 about individual students who have been secluded. By July 15 each year, districts must report summary data on their use of restrictive procedures to the department for the prior school year, July 1 through June 30, in a form and manner determined by the commissioner. The summary data must include information about the use of restrictive procedures, including use of reasonable force under section 121A.582.

Subd. 4. ***Prohibitions****.*

The following actions or procedures are prohibited:

(1) engaging in conduct prohibited under section 121A.58;

(2) requiring a child to assume and maintain a specified physical position, activity, or posture that induces physical pain;

(3) totally or partially restricting a child's senses as punishment;

(4) presenting an intense sound, light, or other sensory stimuli using smell, taste, substance, or spray as punishment;

(5) denying or restricting a child's access to equipment and devices such as walkers, wheelchairs, hearing aids, and communication boards that facilitate the child's functioning, except when temporarily removing the equipment or device is needed to prevent injury to the child or others or serious damage to the equipment or device, in which case the equipment or device shall be returned to the child as soon as possible;

(6) interacting with a child in a manner that constitutes sexual abuse, neglect, or physical abuse under section 626.556;

(7) withholding regularly scheduled meals or water;

(8) denying access to bathroom facilities;

(9) physical holding that restricts or impairs a child's ability to breathe, restricts or impairs a child's ability to communicate distress, places pressure or weight on a child's head, throat, neck, chest, lungs, sternum, diaphragm, back, or abdomen, or results in straddling a child's torso; and

(10) prone restraint.

Subd. 5. ***Training for staff.***

(a) To meet the requirements of subdivision 1, staff who use restrictive procedures, including paraprofessionals, shall complete training in the following skills and knowledge areas:

(1) positive behavioral interventions;

(2) communicative intent of behaviors;

(3) relationship building;

(4) alternatives to restrictive procedures, including techniques to identify events and environmental factors that may escalate behavior;

(5) de-escalation methods;

(6) standards for using restrictive procedures only in an emergency;

(7) obtaining emergency medical assistance;

(8) the physiological and psychological impact of physical holding and seclusion;

(9) monitoring and responding to a child's physical signs of distress when physical holding is being used;

(10) recognizing the symptoms of and interventions that may cause positional asphyxia when physical holding is used;

(11) district policies and procedures for timely reporting and documenting each incident involving use of a restricted procedure; and

(12) schoolwide programs on positive behavior strategies.

(b) The commissioner, after consulting with the commissioner of human services, must develop and maintain a list of training programs that satisfy the requirements of paragraph (a). The

commissioner also must develop and maintain a list of experts to help individualized education program teams reduce the use of restrictive procedures. The district shall maintain records of staff who have been trained and the organization or professional that conducted the training. The district may collaborate with children's community mental health providers to coordinate trainings.

Subd. 6. ***Behavior supports; reasonable force.***

(a) School districts are encouraged to establish effective schoolwide systems of positive behavior interventions and supports.

(b) Nothing in this section or section 125A.0941 precludes the use of reasonable force under sections 121A.582; 609.06, subdivision 1; and 609.379. For the 2014-2015 school year and later, districts must collect and submit to the commissioner summary data, consistent with subdivision 3, paragraph (b), on district use of reasonable force that is consistent with the definition of physical holding or seclusion for a child with a disability under this section.

The Office of Special Education Programs (OSEP) at the U.S. Department of Education developed a Restraint and Seclusion Resource Document (www.ed.gov/policy/restraintseclusion), and the U.S. Department of Education, Office for Civil Rights, issued a significant guidance document dated December 28, 2016. (https://www.ed.gov/news/press-releases/us-department-education-releases-guidance-civil-rights-students-disabilities), informing school districts how the use of restraint and seclusion may result in discrimination against students with disabilities. While federal bills have been proposed, there is currently no federal statute or regulation addressing the use of restraint and seclusion in the public school setting. Many of the recommendations in the OSEP document are included in the state statutes listed above. In addition, Minnesota's Olmstead Plan contains two goals in the positive supports section that specifically focus on the reduction of the emergency use of restrictive procedures in the school setting. The associated work plan addresses activities to eliminate the emergency use of seclusion in the school setting.

125A.03 SPECIAL INSTRUCTION FOR CHILDREN WITH A DISABILITY

Minnesota provides special education services from birth until July 1 after a child with a disability becomes 21 years old, but shall not extend beyond secondary school or its equivalent, except as provided in Minnesota Statute section 124D.68, subdivision 2. By comparison, the federal requirement is that services must be provided from age 3 to age 21.

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.

This Minnesota statute provides that special instruction and services be provided to nonpublic school students on a shared time basis. As set forth in a recent eighth circuit court of appeals decision, Minnesota Statutes sections 125A.03 and 125A.18 read together show that nonpublic school students have a right to FAPE in Minnesota. *Minneapolis Pub. Sch. (SSD 1) v. R.M.M*, 861 F.3d 769 at 774 (8th Cir. 2017). The court further held that public school districts must provide the appropriate services for part of the regular school day while the student attends the private school for the rest of the day. Id at 777. *See also ISD 709 v. Bonney*, 705 N.W.2d 209 (Minn. Ct. App. 2005), and *ISD 281 v. Minnesota Dept. of Educ.*, 743 N.W.2d 315 (Minn. Ct. App. 2008).

125A.21 THIRD PARTY PAYMENT

Subd. 2. ***Third-party reimbursement.***

(b) For children enrolled in medical assistance under chapter 256B or MinnesotaCare under chapter 256L who have no other health coverage, a district shall provide an initial and annual written notice to the enrolled child's parent or legal representative of its intent to seek reimbursement from medical assistance or MinnesotaCare for the individualized education program or individualized family service plan health-related services provided by the district. The initial notice must give the child's parent or legal representative the right to request a copy of the child's education records on the health-related services that the district provided to the child and disclosed to a third-party payer.

(c) The district shall give the parent or legal representative annual written notice of:

(1) the district's intent to seek reimbursement from medical assistance or MinnesotaCare for evaluations required as part of the individualized education program process or individualized family service plan process, and for health-related services provided by the district according to the individualized education program or individualized family service plan;

Federal regulation requires that a district obtain consent at the time insurance is used. Minnesota requires annual notice as a way to comply with the federal regulation.

125A.22 COMMUNITY TRANSITION INTERAGENCY COMMITTEE

A district, group of districts, or special education cooperative, in cooperation with the county or counties in which the district or cooperative is located, may establish a community transition interagency committee for youth with disabilities, beginning at grade 9 or age equivalent, and their families. Members of the committee may include representatives from special education, vocational and regular education, community education, postsecondary education and training institutions, mental health, adults with disabilities who have received transition services if such persons are available, parents of youth with disabilities, local business or industry, rehabilitation services, county social services, health agencies, and additional public or private adult service providers as appropriate. The committee may:

(1) identify current services, programs, and funding sources provided within the community for secondary and postsecondary aged youth with disabilities and their families that prepare them for further education; employment, including integrated competitive employment; and independent living;

(2) facilitate the development of multiagency teams to address present and future transition needs of individual students on their individualized education programs;

(3) develop a community plan to include mission, goals, and objectives, and an implementation plan to assure that transition needs of individuals with disabilities are met;

(4) recommend changes or improvements in the community system of transition services; and

(5) exchange agency information such as appropriate data, effectiveness studies, special projects, exemplary programs, and creative funding of programs.

Community Transition Interagency Committees are a state-imposed requirement not required by the IDEA.

125A.24 PARENT ADVISORY COUNCILS

In order to increase the involvement of parents of children with disabilities in district policy making 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. When a nonpublic school is located in the district, the council must include at least one member

who is a parent of a nonpublic school student with a disability, or an employee of a nonpublic school if no parent of a nonpublic school student with a disability is available to serve. Each local council must meet no less than once each year. The number of members, frequency of meetings, and operational procedures are to be locally determined.

Parent advisory councils are not required by the IDEA and constitute a state-imposed requirement.

125A.30 INTERAGENCY EARLY INTERVENTION COMMITTEES

(a) A group of school districts or special education cooperatives, in cooperation with the health and human service agencies located in the county or counties in which the districts or cooperatives are 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 3 to 22 consistent with the requirements under sections 125A.023 and 125A.027. Committees must include representatives of local health, education, and county human service agencies, early childhood family education programs, Head Start, parents of young children with disabilities under age 12, child care resource and referral agencies, school readiness programs, current service providers, and agencies that serve families experiencing homelessness, 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, especially parents with premature infants, or infants with other physical risk factors associated with learning or development complications, of available programs and services;

(2) to reduce families' need for future services, and especially parents with premature infants, or infants with other physical risk factors associated with learning or development complications, implement interagency child find systems designed to actively seek out, identify, and refer infants and young children with, or at risk of, disabilities, including a child under the age of 3 who: (i) is the subject of a substantiated case of abuse or neglect or (ii) is identified as directly affected by illegal substance abuse, or withdrawal symptoms resulting from prenatal drug exposure;

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

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

(5) develop a plan for the allocation and expenditure of federal early intervention funds under United States Code, title 20, section 1471 et seq. (Part C, Public Law 108-446) and United States Code, title 20, section 631, et seq. (Chapter I, Public Law 89-313).

(c) The local committee shall also 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.

Interagency Early Intervention Committees are not required by the IDEA and constitute a state-imposed requirement.

125A.515 PLACEMENT OF STUDENTS; APPROVAL OF EDUCATION PROGRAM

This statute sets forth specific requirements related to the provision of services for students with disabilities who are in a children's residential facility licensed by the Minnesota Department of Human Services or the Minnesota Department of Corrections. In addition, it contains requirements related to students with disabilities who are considered to be in "care and treatment" separate from the definition above. Federal law sets forth requirements related to the provision of FAPE to students with disabilities who are in residential facility. *See* 34 C.F.R. §§ 300.101-300.104. Some of the state requirements in this statute exceed minimal federal requirements.

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 individualized education program and obtains a copy of it.

Federal regulations do not specify a time period for screening.

125A.53 DIRECTOR OF A SPECIAL EDUCATION COOPERATIVE

The authority for the selection and employment of the director of a special education cooperative established pursuant to sections 125A.03 to 125A.24 and 125A.65 or section 471.59 is vested in the governing board of the cooperative. Notwithstanding the provisions of section 122A.40, subdivision 10 or 11, no individual shall have a right to employment as a director based on seniority or order of employment by the cooperative.

Federal regulations do not address the formation and structure of a special education cooperation. This statute exceeds minimal federal requirements.

125A.56 ALTERNATE INSTRUCTION REQUIRED BEFORE ASSESSMENT REFERRAL

Subdivision 1. ***Requirement.***

(a) Before a pupil is referred for a special education evaluation, the district must conduct and document at least two instructional strategies, alternatives, or interventions using a system of scientific, research-based instruction and intervention in academics or behavior, based on the pupil's needs, while the pupil is in the regular classroom. The pupil's teacher must document the results. A special education evaluation team may waive this requirement when it determines the pupil's need for the evaluation is urgent. This section may not be used to deny a pupil's right to a special education evaluation.

(b) A school district shall use alternative intervention services, including the assurance of mastery program under section 124D.66, or an early intervening services program under subdivision 2 to serve at-risk pupils who demonstrate a need for alternative instructional strategies or interventions.

(c) A student identified as being unable to read at grade level under section 120B.12, subdivision 2, paragraph (a), must be provided with alternate instruction under this subdivision that is multisensory, systematic, sequential, cumulative, and explicit.

Subd. 2. ***Early intervening services program.***

(a) A district may meet the requirement under subdivision 1 by establishing an early intervening services program that includes:

(1) a system of valid and reliable general outcome measures aligned to state academic standards that is administered at least three times per year to pupils in kindergarten through grade 8 who need additional academic or behavioral support to succeed in the general education environment. The school must provide interim assessments that measure pupils' performance three times per year and implement progress monitoring appropriate to the pupil. For purposes of this section, "progress monitoring" means the frequent and continuous measurement of a pupil's performance that includes these three interim assessments and other pupil assessments during the school year. A school, at its discretion, may allow pupils in grades 9 through 12 to participate in interim assessments;

(2) a system of scientific, research-based instruction and intervention; and

(3) an organizational plan that allows teachers, paraprofessionals, and volunteers funded through various sources to work as a grade-level team or use another configuration across grades and settings to deliver instruction. The team must be trained in scientific, research-based instruction and intervention. Teachers and paraprofessionals at a site operating under this paragraph must work collaboratively with those pupils who need additional academic or behavioral support to succeed in a general education environment.

(b) As an intervention under paragraph (a), clause (2), staff generating special education aid under section 125A.76 may provide small group instruction to pupils who need additional academic or behavioral support to succeed in the general education environment. Small group instruction that includes pupils with a disability may be provided in the general education environment if the needs of the pupils with a disability are met, consistent with their individualized education programs, and all pupils in the group receive the same level of instruction and make the same progress in the instruction or intervention. Teachers and paraprofessionals must ensure that the needs of pupils with a disability participating in small group instruction under this paragraph remain the focus of the instruction. Expenditures attributable to the time special education staff spends providing instruction to nondisabled pupils in this circumstance is eligible for special education aid under section 125A.76 as an incidental benefit if:

(1) the group consists primarily of disabled pupils;

(2) no special education staff are added to meet nondisabled pupils' needs; and

(3) the primary purpose of the instruction is to implement the individualized education programs of pupils with a disability in this group.

Expenditures attributable to the time special education staff spends providing small group instruction to nondisabled pupils that affords more than an incidental benefit to such pupils is not eligible for special education aid under section 125A.76, except that such expenditures may be included in the alternative delivery initial aid adjustment under section 125A.78 if the district has an approved program under section 125A.50. During each 60-day period that a nondisabled pupil participates in small group instruction under this paragraph, the pupil's progress monitoring data must be examined to determine whether the pupil is making progress and, if the pupil is not making progress, the pupil's intervention strategies must be changed or the pupil must be referred for a special education evaluation

The state statute includes language related to early intervening services, consistent with IDEA 2004, § 665(b), and § 613(f). The federal statutes and regulations do not require pre-referral interventions in the regular classroom before an evaluation for special education is conducted. The state statutory language specifically provides that the pre-referral interventions/early intervening services may not be used to deny a student's right to a special education evaluation. During the 2016 legislative session, language was added to require schools to provide pre-referral interventions to students unable to read at grade level under section 120B.12, subdivision 2, paragraph (a). Minnesota Statutes, section 120B.12, was also revised with similar language.

125A.58 PURCHASING GUIDELINES

Subdivision 1. ***Rights of districts to purchase school-owned assistive technology.***

(a) When a child with a disability exits a district and enters a new district, the child's new district may purchase any assistive technology devices that the child's former district has purchased on the child's behalf. The child's new district must notify, in writing, the child's former district of the

intent to purchase the device. The child's new district must complete a purchase agreement according to section 125A.36. The child's former district must respond, in writing, to the request to purchase within 30 days.

The specific requirement that the former district must respond in writing within 30 days of the request exceeds federal requirements.

125A.60 PURCHASE AGREEMENT; PRICE FORMULA

The commissioner must develop guidelines for the sale of used assistive technology including a purchase agreement, a formula for establishing the sale price, and other terms and conditions of the sale.

This state requirement exceeds minimal federal requirements.

125A.63 RESOURCES; DEAF OR HARD-OF-HEARING AND BLIND OR VISUALLY IMPAIRED

A state deaf or hard of hearing and blind or visually impaired advisory committee is not required by federal law and constitutes a state-imposed requirement.

125A.75 SPECIAL EDUCATION PROGRAMS; APPROVAL; AID PAYMENTS; TRAVEL AID; LITIGATION COSTS

The requirement that districts submit litigation costs to MDE and that MDE reports those costs annually to the state legislature is beyond the minimal federal requirements.

121A.43 EXCLUSION AND EXPULSION OF PUPILS WITH A DISABILITY

Federal law requires that a school administrator consult with a teacher to determine appropriate educational services when a student has been removed from school for disciplinary reasons for more than 10 cumulative days in a school year. 34 C.F.R. § 300.530 (d) (4). Under state law, if a student is suspended for more than five consecutive school days or ten cumulative school days in a school year, (and is not a change of placement under federal law) relevant members of the student's IEP team must meet to determine the appropriate amount of educational services.

121A.67 REMOVAL BY PEACE OFFICER

Subd. 2. ***Removal by peace officer.***

If a pupil who has an individualized education program is restrained or removed from a classroom, school building, or school grounds by a peace officer at the request of a school administrator or a school staff person during the school day twice in a 30-day period, the pupil's individualized education program team must meet to determine if the pupil's individualized education program is adequate or if additional evaluation is needed.

Under federal law, a student's IEP team should consider the use of positive behavioral interventions and support, and other strategies to address behavior that impedes the child's learning of that of others. 34 C.F.R. § 300.324. In addition, an IEP should be reviewed and revised to address specific factors. Federal law does not contain the specific IEP meeting requirement set forth in the statute. This requirement exceeds minimal federal requirements.

MINNESOTA RULES THAT IMPOSE A REQUIREMENT NOT REQUIRED BY THE FEDERAL LAWS OR REGULATIONS

3525.0210 DEFINITIONS

Subp. 2. ***Administrator or administrative designee.***

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

The state rule defines the representative of the district with the additional requirement that the person may not be a teacher of the student, which is not a requirement in federal regulation.

3525.0550 PUPIL IEP MANAGER

The district shall assign a teacher or licensed related service staff who is a member of the pupil's IEP team as the pupil's IEP manager to coordinate the instruction and related services for the pupil. The IEP manager's responsibility shall be to coordinate the delivery of special education services in the pupil's IEP and to serve as the primary contact for the parent. A district may assign the following responsibilities to the pupil's IEP manager: assuring compliance with procedural requirements; communicating and coordinating among home, school, and other agencies; coordinating regular and special education programs; facilitating placement; and scheduling team meetings.

Federal rules do not require that a single staff person be assigned to coordinate the delivery of special education and related services and serve as the primary point of contact for the student's parent.

3525.0800 RESPONSIBILITY FOR ENSURING PROVISION OF INSTRUCTION AND SERVICES

Subp. 2. ***Purchased services.*** *The district shall not purchase special educational services for a pupil from a public or private agency when the service is available or can be made available and can be more appropriately provided as the least restrictive alternative within the district. Whenever it is appropriate for a district to purchase special education service for pupils with disabilities who reside in the district, it continues to be the responsibility of the school district, consistent with Minnesota Statutes and parts 3525.0210 to 3525.4770, to assure and ascertain*

that such pupils and youth receive the education and related services and rights to which they are entitled.

The state rule requires the district to determine if it can provide appropriate services to a student with a disability within its district prior to contracting with another public or private agency to provide services to a student with a disability. While this language is not specifically found in federal statutes or regulations, it is consistent with the least restrictive environment requirements in federal law. *See* IDEA 2004, § 612(a)(5) and 34 C.F.R. § 300.114. This language does not preclude districts from contracting for services to purchase appropriate technology for recordkeeping, data collection, and case management activities. *See* IDEA 2004, § 613(a)(4)(B).

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

The TSES plan is how districts assure that they are complying with federal requirements, in accordance with federal law. The requirement that the TSES include an administration and management plan exceeds minimal federal requirements.

3525.1400 FACILITIES, EQUIPMENT AND MATERIALS

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

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

Federal law requires that students with disabilities, to the maximum extent appropriate, are educated with students with their nondisabled peers. The rule language goes beyond the minimal federal requirements of IDEA. Under Section 504, students with disabilities must not be discriminated against based upon their disability.

3525.2340 CASE LOADS

Subp. 4. ***Case loads for school-age educational service alternatives.***

A. The maximum number of school-age pupils that may be assigned to a teacher:

(1) for pupils who receive direct special instruction from a teacher more than 60 percent of the instructional day, but less than a full school day:

(a) deaf-blind, autism spectrum disorders, developmental cognitive disability: severe-profound range, or severely multiply impaired, three pupils;

(b) deaf-blind, autism spectrum disorders, developmental cognitive disability: severe-profound range, or severely multiply impaired with one paraprofessional, six pupils;

(c) developmental cognitive disability: mild-moderate range or specific learning disabled, 12 pupils;

(d) developmental cognitive disability: mild-moderate range or specific learning disabled with one paraprofessional, 15 pupils;

(e) all other disabilities with one paraprofessional, ten pupils;

(f) all other disabilities with two paraprofessionals, 12 pupils; and

(g) under special circumstances, for children who receive special education services for 60 percent or more of the instructional day, that are highly disruptive or create an unsafe environment due to the high behavioral or mental health needs of the students, districts have the option of lowering the number of such students in the classroom, so that both students and staff are safe; and

(2) for pupils who receive direct special education for a full day:

(a) deaf-blind, autism spectrum disorders, developmental cognitive disability: severe-profound range, or severely multiply impaired with one paraprofessional, four pupils;

(b) deaf-blind, autism spectrum disorders, developmental cognitive disability: severe-profound range, or severely multiply impaired with two paraprofessionals, six pupils; and

(c) all other disabilities with one paraprofessional, eight pupils.

B. For pupils who receive direct special education 60 percent or less of the instructional day, the school district must establish a board-approved policy for determining workload limits for special education staff based on student contact minutes, evaluation and reevaluation time, indirect services, IEPs managed, travel time, and other services required in the IEPs of eligible students.

Subp. 5. ***Case loads for early childhood program alternatives.***

A teacher's case load must be adjusted downward based on pupils' severity of disability or delay, travel time necessary to serve pupils in more than one program alternative, and if the pupils on the teacher's case loads are receiving services in more than one program alternative or the pupils are involved with other agencies. The maximum number of pupils that can be assigned to a teacher in any early childhood program alternative is:

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

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

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

District early childhood special education (ECSE) classes must have at least one paraprofessional employed while pupils are in attendance. The maximum number of pupils in an ECSE classroom

at any one time with a teacher and a paraprofessional is eight. The maximum number of pupils in an ECSE classroom at any one time with an early childhood team is 16.

Minnesota provides explicit caseload levels for some special education students. Specific caseload standards are not required by federal law.

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

This rule is a corollary with Minnesota Statutes, section 125A.515. It sets forth specific requirements related to the provision of services for students with disabilities who are in "care and treatment" as defined in the rule. Some of these requirements exceed minimal federal requirements.

3525.2405 DIRECTORS

The school board in every district shall employ, either singly or cooperatively, a director of special education to be responsible for program development, coordination, and evaluation; in-service training; and general special education supervision and administration in the district's total special education system. Cooperative employment of a director may be through a host district, joint powers agreement, or a service cooperative. A director may not be assigned direct instructional duties.

Minnesota requires each LEA to employ, singly or cooperatively, a special education director. While the federal regulations do not use a specific rule or portion of the statute to require a special education director at the local level, at least one statutory section and its corollary rule contemplate the existence of a local-level special education director. In IDEA 2004, § 615(k)(5)(B)(iii), in the context of discussing whether a district can be considered to have knowledge that a child is a child with a disability, the statute notes that knowledge will be presumed if concerns are reported directly to "the director of special education at such agency." This language is echoed in the corresponding federal rule, found at 34 C.F.R. § 300.534(b) (3). Though the federal structure contemplates a local-level special education director, the requirement for a district special education director is a state-imposed requirement.

3525.2550 CONDUCT BEFORE EVALUATION

Subp. 2. ***Team duties.***

The team shall conduct an evaluation for special education purposes within a reasonable time not to exceed 30 school days from the date the district receives parental permission to conduct the evaluation or the expiration of the 14-calendar day parental response time in cases other than initial evaluation, unless a conciliation conference or hearing is requested.

Federal regulations require that an initial evaluation be conducted within 60 days of receiving parental consent. There is no such requirement for reevaluations. Federal regulations permit states to establish a timeframe within which an evaluation must be conducted. Minnesota has established a 30 school day timeline for

evaluations, which in some cases results in timelines that is less than 60 calendar days, and in other instances results in timelines that exceed 60 calendar days (e.g. summer break).

3525.2710 EVALUATIONS AND REEVALUATIONS

Subd. 3. ***Evaluation procedures.***

C. Each district shall ensure that:

(6) if an evaluation is not conducted under standard conditions, a description of the extent to which it varied from standard conditions must be included in the evaluation report.

This requirement exceeds minimal federal requirements.

Subd. 4. ***Additional requirements for evaluations and reevaluations.***

F. Prior to using any restrictive procedures, the IEP team must conduct a functional behavioral assessment (FBA) as defined in part 3525.0210, subpart 22. The team must also document that it has ruled out any other treatable cause for the behavior, for example, a medical or health condition, for the interfering behavior.

Under federal law, a functional behavior assessment is only required when there is a disciplinary change of placement. As stated above, there is federal guidance, but no federal law specific to the use of restrictive procedures. This requirement exceeds minimal federal requirements.

3525.2810 DEVELOPMENT OF INDIVIDUALIZED EDUCATION PROGRAM PLAN

The current rule substantially reflects the requirements of federal law. A few provisions of the rule are remnants of the previous federal requirements. Specifically, the need for benchmarks or short-term objectives, with the exception of students with disabilities who take alternate assessments aligned to alternate academic achievement standards, has been removed from the IDEA. The Minnesota requirement for these progress markers for students with disabilities who take the regular academic achievement standards exceeds federal law.

Minnesota exceeds federal law regarding the provision of transition services as set forth at subpart 1, section 7, of this rule. The Minnesota legislature directed that the IEP must address the student's transition needs during grade 9. Minn. Stat. § 125A.08(a).

3525.2900 TRANSITION AND BEHAVIORAL INTERVENTION PLANNING

Subp. 4. ***Transition planning.***

During grade nine the IEP plan shall address the pupil's needs for transition from secondary services to postsecondary education and training, employment, and community living.

Minnesota's transition planning rule is based on the 1997 IDEA regulations, which allowed for a two-tiered transition planning option, beginning at either age 14 or age 16, as appropriate. *See* 34 C.F.R. § 300.347. The

IDEA 2004, however, begins transition planning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP team. *See* § 614(d) (1) (A)(i)(VIII)(aa) and 34 C.F.R. § 300.320(b). This rule is consistent with Minnesota Statutes, section 125A.08, and constitutes a state-imposed requirement.

3525.3100 FOLLOW-UP REVIEW REQUIREMENTS

Pupils who are discontinued from all special education services may be reinstated within 12 months. If data on the pupil's present levels of performance are available and an evaluation had been conducted within three years pursuant to part 3525.2710, the district is not required to document two prereferral interventions or conduct a new evaluation.

This is a state-imposed requirement and does not have a corollary in federal law.

3525.3600 PRIOR WRITTEN NOTICE

When a district proposes or refuses to initiate or change the identification, evaluation, or educational placement of a pupil, or the provision of FAPE to the pupil, the district must serve prior written notice on the parent. The district must serve the notice on the parent within a reasonable time, and in no case less than 14 calendar days before the proposed effective date of change or evaluation. If the notice only includes a refusal of a request, it must be served on the parent within 14 calendar days of the date the request was made.

The notice must meet the requirements of Minnesota Statutes, section 125A.091, subdivisions 3 and 4. The notice must also:

A. inform the parents that the school district will not proceed with the initial placement and provision of services as defined in part 3525.0210 without prior written consent of the pupil's parents;

B. inform the parents that except for the initial placement and provision of services, the district will proceed with the proposed placement and provision of services unless the parents object in writing on the enclosed response form or otherwise in writing within 14 calendar days of when the district sends the prior written notice to the parent; and

C. inform the parents that if they refuse to provide prior written consent for initial evaluation or initial placement or object in writing to any proposal, or if the district refuses to initiate or change the identification, evaluation, or educational placement or the provision of a free appropriate public education to the pupil, the parent may request a conciliation conference.

The district must provide the parents with a copy of the proposed individual educational program plan as described in part 3525.2810, subpart 1, item A, whenever the district proposes to initiate or change the content of the IEP.

Federal regulations require that a public agency provide a copy of the prior written to a parent within a reasonable time before the agency proposes or refuses an action as set forth in the regulations. Minnesota has defined a reasonable time as 14 calendar days. In addition, federal law requires school districts to provide a parent with the proposed IEP upon request, while it is required under state law to be sent with the prior written notice.

3525.3700 CONCILIATION CONFERENCE

The conciliation conference is a dispute resolution option unique to Minnesota although the 2004 IDEA mandates a similar pre-hearing procedure termed a "resolution session." The Minnesota legislature requires that districts provide a conciliation conference if requested by parents. The district must participate in the conciliation conference if requested by the parents. This provision is not required by federal law.

3525.3900 INITIATING A DUE PROCESS HEARING

Minnesota requires a district to provide parents who have requested a due process hearing with the basic procedures and safeguards to which they are entitled. While a procedural safeguards notice is required, this additional notice, which summarizes just that information that might be required for a party requesting a hearing, is a requirement not imposed by federal law.

3525.4110 PREHEARING CONFERENCE

Subpart 1. ***Generally.***

A prehearing conference must be held within five business days of the date the department appoints the hearing officer. The hearing officer will initiate the prehearing conference which may be conducted by telephone or in person at a location within the district. The hearing officer will have a written verbatim record of the prehearing conference created which must be made available to both parties if either party requests the record.

Subp. 2. ***Purpose.***

The hearing officer has the following duties at a prehearing conference:

A. The hearing officer must establish the management, control, and location of the hearing to ensure its fair, efficient, and effective disposition including, but not limited to:

(1) informing the parties of their rights should the dispute proceed;

(2) ensuring parents have been provided access to or copies of all education records and ensuring all required notices, information on the pupil's educational progress, and any information requested by the hearing officer has been shared between the parties with copies provided to the hearing officer;

(3) determining the necessity for participation of appropriate districts, issuing orders to join agencies not already participating and consolidating cases pursuant to part 3525.4350;

(4) determining the amount of time parties will have to present their cases by balancing the due process rights of the parties with the need for administrative efficiency and limited public resources; and

(5) requiring and assisting the parties in establishing lists of written exhibits and witnesses necessary for each party to make its case, such as responding to requests to hearing officers to compel the attendance of witnesses, determining the necessity of telephone testimony, and stipulating to undisputed facts. A hearing officer may permit a witness to testify via telephone if such a procedure would not prejudice either party.

B. The hearing officer must clearly identify the questions the hearing officer must answer to resolve the dispute and eliminate claims and complaints that are frivolous or beyond a statute of limitations period. If necessary, the hearing officer must assist the parties in identifying the issues for hearing.

C. The hearing officer must set a scheduling order for the hearing and for any additional prehearing activities including requests for extensions to the 45-day timeline in which to dispose of the matter. A hearing officer may only grant an extension for a period of up to 30 calendar days if the requesting party shows good cause on the record. Extensions may last longer than 30 calendar days if both parties agree and the hearing officer approves. All written orders granting or denying motions must be filed with the department. All orders granting or denying motions to extend the 45-day timeline must be in writing. The hearing officer may require an independent education evaluation be conducted at district expense.

D. The hearing officer must determine if the hearing may be disposed of without an evidentiary hearing and set the schedule and procedure accordingly. The hearing officer may dispose of any issue without an evidentiary hearing if there are no material facts in dispute. The hearing officer may facilitate a settlement, if possible, including suggesting the parties participate in mediation or another alternative dispute resolution option.

Subp. 3. ***Hearing officer authority.***

The hearing officer has the authority to take any actions necessary to ensure the compliance with all requirements of law and may dismiss the matter, with or without prejudice, if the party requesting the hearing fails to provide information required or ordered by the hearing officer.

Subp. 4. ***Subpoenas.***

Parties may request subpoenas for witnesses from the hearing officer. A subpoena must include a statement that federal law gives parties to a special education due process hearing the right to compel the attendance of witnesses. A hearing officer may refuse to issue a subpoena for a proposed witness who is to offer evidence the hearing officer determines will be incompetent, irrelevant, immaterial, or unduly repetitious.

Federal regulations do not require a prehearing conference prior to a due process hearing. This rule provides additional guidance beyond Minnesota Statutes, section 125A.091, discussed above, to independent hearing officers and the parties involved as to the Minnesota requirements for special education due process hearings.

CONCLUSION

This document serves as a comprehensive and definitive report of Minnesota's requirements under Section 608 of the federal law.