

Summary of 2009 Legislative Changes to Minnesota Statutes

Discipline:

Pupil Fair Dismissal Act (PFDA) –

121A.41 –

PFDA applies to general ed students under age 21 or to a special ed student “under 21 years old who has not received a regular high school diploma or for a child with a disability who becomes 21 years old during the school year but has not received a regular high school diploma, until the end of that school year.” [Previously law said PFDA applied to special ed students until September 1 after the child turns 22.] This change should not be confused with the requirement in Minn. Stat. § 125A.03(6) that states a child is entitled to special ed services until he/she graduates with a regular ed diploma or until July 1 after the student turns 21. That law is still in place.

121A.41 –

In cases of recommendations for expulsion or where the student will create an immediate and substantial danger to self or to surrounding persons or property, a suspension may be extended for up to a total of 15 school days. **Note** that federal regulation (34 C.F.R. § 300.500(b)) still limits the maximum time a special ed student may be suspended to 10 consecutive school days.

Deleted the state law requirement that a **manifestation determination meeting** be held if a parent requests a meeting, the student is removed for five or more consecutive days, or a student is removed for more than ten cumulative days. **Note** the federal law (34 C.F.R. § 300.530(e)) in this area now applies which requires a manifestation determination meeting within ten school days of any decision to *change the placement of the student because of a violation of a code of student conduct*. The federal law does not define what exactly constitutes a “change of placement” in such situations. To give schools a standard that is easier to understand and meets the intent of the federal regulation, schools will continue to hold a manifestation determination meeting if a student has more than 10 cumulative days of suspension in a school year and every time a student is removed after hitting that 10-day threshold. Also, if a school is recommending a student for expulsion or exclusion (clearly a change in placement) a manifestation determination meeting would be required before the district could proceed with the expulsion or exclusion. This requirement is in federal law and in § 121A.43(d) in state law. **Manifestation determination meetings will no longer be required if a student is removed for five consecutive days IF the school is not recommending the student for expulsion AND the student has not surpassed the 10 cumulative school days of removal threshold.**

121A.43 –

The **alternative educational services** for a student removed 6 or more consecutive school days or 11 or more cumulative days in a school year was removed from § 121A.41 and moved to this section. The requirement now states that if a student with a disability is suspended more than five consecutive days or 10 cumulative days and the suspension does not involve a recommendation for expulsion or other change in placement, “relevant members of the child’s individualized education program team, including at least one of the child’s teachers, shall meet and determine the extent to which the child needs services in order to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals in the child’s” IEP. This meeting must occur “as soon as possible, but no more than 10 days after the sixth consecutive day of suspension or the tenth cumulative day of suspension has elapsed.” **The section does continue the requirement that alternative educational services must be provided to a student if a suspension exceeds five consecutive school days.**

Clarifies that a **removal of one school day or less** is a day or partial day of suspension though the suspension notice requirements to parents not apply to such removals. Practical effect of this is that such one-day removals now need to be included in the district’s suspension statistics but we can start counting removals of less than a full day as partial days, rather than rounding them up to full days.

Continues the requirement (also found in federal law) that even if the student’s conduct is not a manifestation of his/her disability and the student is expelled or excluded, the district has the obligation to provide the student with special education and related services during the expulsion or exclusion.

Definitions:

125A.02 –

Amended language attempts to clean up the definition of “**child with a disability**” to make it clear that to qualify for special education not only does the child have to meet the special ed disability criteria of state and federal law, the student must also need special education and related services as determined by the rules of the commissioner.

IEPs:

125A.08(a) –

Added language that says for each child with a disability (i.e. a child who has had a special education evaluation and it has been determined that the child meets disability criteria and the evaluation also states that the child needs special education and related services) must have in effect an IEP at the beginning of the school year. **This language could come into play for students who had initial evaluations completed at the end of the school year and there has not yet been a proposed IEP offered to the parent prior to the start of the next school year.**

125A.08(b)(1) –

Old statutory language in Minn. Stat. § 125A.08(a)(1):

By grade 9 or age 14, the [individual education] plan 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.

New language in Minn. Stat. § 125A.08(b)(1):

During Grade 9, the [individual education] plan 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.

This new language becomes effective 8/1/09 and would supersede any conflicting language in Minn. Rule 3525.2900, subp. 4:

Transition planning.

During Grade 9, the IEP plan shall address the pupil's needs for transition from secondary services to postsecondary education and training, employment, and community living.

A. For each pupil, the district shall conduct an evaluation of secondary transition needs and plan appropriate services to meet the pupil's transition needs. The areas of evaluation and planning must be relevant to the pupil's needs and may include work, recreation and leisure, home living, community participation, and postsecondary training and learning opportunities. To appropriately evaluate and plan for a pupil's secondary transition, additional IEP team members may be necessary and may include vocational education staff members and other community agency representatives as appropriate.

B. Secondary transition evaluation results must be documented as part of an evaluation report. Current and secondary transition needs, goals, and instructional and related services to meet the pupil's secondary transition needs must be considered by the team with annual needs, goals, objectives, and services documented on the pupil's IEP.

What this means is that transition evaluations now need to be completed in time to allow a transition IEP to be drafted and in place during a student's 9th grade year.

Prior Written Notice:

125A.091, subd. 3a –

Deletes the state statutory language regarding the contents of the **prior written notice** and instead states that the prior written notice must meet federal law requirements [34 C.F.R. § 300.503] PLUS the notice for annual IEPs must inform the parent that the district will

proceed with its proposed IEP unless the **parent notifies the district of an objection within 14 days of when the district sends the prior written notice to the parent** and state that a parent who objects to a proposed IEP or refusal of service may request a conciliation

conference or another alternative dispute resolution procedure. **Note the 14-day requirement no longer states within 14 days of the parent's receipt of the prior written notice, consequently the district no longer needs to add the 3 days for mailing to the consent period. Minn. Rule 3525.3600(B) still has the 14 days from receipt language but the new statutory language would supersede the rule language.**

Conciliation Conference:

125A.091, subd. 7

If a parent objects to a district's proposal or refusal, a district must hold a conciliation conference within ten calendar days from the date the district receives the parent's objection. **Note this is different from the previous requirement which was that the parent had to be given the opportunity to meet and if the parent refused the conciliation conference requirement was met. Now the conciliation conference needs to be scheduled and held within ten calendar days.** All discussions during a conciliation conference are confidential and 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.

Mediated Agreements:

125A.091, subd. 10

If the parties resolve all or part of the dispute through a mediated agreement, the mediator must ensure that the agreement is in writing and signed by the parties and that each party is given a copy. All discussions that occurred during a mediation are confidential and may not be used as evidence in any hearing or civil proceeding. The mediated agreement is legally binding upon the parties and is enforceable in the state or federal district court. A party may request another mediation to resolve a dispute over implementing the mediated agreement.

Changes to Due Process Hearing process:

125A.091, subd. 12

Parent and district entitled at state expense to a copy of the hearing transcript or recording and the hearing officer's findings of fact, conclusion of law and decision.

125A.091, subd. 13

The Commissioner must maintain a list of qualified hearing officers that includes the qualifications of each person listed. Hearing officers must be selected by the Commissioner from that list.

125A.091, subd. 16

There are other procedural changes to the due process hearing section of the law but the biggest is that the statute now provides the burden of proof at a due process hearing is on

the party seeking relief. This is consistent with what the 8th Circuit held in the Anoka-Hennepin *Renoullet* case and the MPS case of *MM*.

Restrictive Procedures:

New law – Minn. Stat. §§ 125A.094 – .0942 Restrictive Procedures for Children with Disabilities

This law will replace the old laws regarding regulated procedures. This law is effective August 1, 2011 and will be the topic of a separate training at a later date.

Placement of Students for Care & Treatment:

125A.15 (Students with disabilities)

125A.51 (Students without disabilities)

Participation of resident district in placement decision –

If a district other than the resident district places a student for care and treatment, the placing district must notify the resident district and give it an opportunity to participate in the placement decision. If there is an immediate emergency placement and time constraints foreclose a resident district from participating in the emergency placement decision, the district in which the student is temporarily placed must notify the resident district of the emergency placement within 15 days. The resident district has up to five business days after receiving notice of the emergency placement to request an opportunity to participate in the placement decision, which the placing district must then provide.

Transportation –

The resident district may establish reasonable restrictions on transportation, except if a Minnesota court or agency orders the child placed at a day care and treatment program and the resident district receives a copy of the order, then the resident must provide transportation to and from the program unless the court or agency orders otherwise. Transportation shall only be provided by the resident district during regular operating hours of the resident district.

Educational services –

For day programs the resident district may provide the educational services to the student at a school within the resident district, at the child's residence, or in the district in which the day treatment center is located by paying tuition to that district.

Cochlear Implants:

125A.57

Clarifies that “assistive technology device” as defined by the state special education law does not include “a medical device that is surgically implanted or a replacement of such a device.”

Third Party Billing:

125A.744, subd. 3

Five percent administrative costs that MDE can retain from MA reimbursement increased from a cap of \$350,000 to \$450,000.

Special Education Revenue:

125A.76, subd. 1

Deleted the “direct” service requirement from the “essential personnel” definition making staff providing indirect services eligible for reimbursement and students who receive only indirect services eligible for child count.

127A.47, subd. 5

Clarifies that districts educating nonresident students must notify that student’s resident district within 60 days of the date the student is determined to be a nonresident but not later than 8/1 following that school year.