

# **RECOMMENDATIONS FOR SPECIAL EDUCATION CASE LOAD AND RULE ALIGNMENT**

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Report of the  
Special Education Case Load Task Force  
**Minnesota Department of Education**

**February 15, 2014**

**Fiscal Year 2013**

**Report**

**To the**

**Legislature**

**As required by  
Chapter 116 Article 5: Sec. 28**

**COMMISSIONER:**

**Brenda Cassellius, Ed. D.**

**Recommendations for Special Education**

**Case load and Rule Alignment**

**February 15, 2014**

**FOR MORE INFORMATION CONTACT:**

**Rose Hermodson**

**Assistant to the Commissioner**

**(651) 582-8742**

**Rose.hermodson@state.mn.us**

**2013**

**Report to the Legislature**

**As required by  
Minnesota  
Statutes**

**Chapter 116 Article 5: Sec. 28**

## **Cost of Report Preparation**

The total cost for the Minnesota Department of Education (MDE) to prepare this report was approximately \$ add cost here. Most of these costs involved staff time in analyzing data from surveys and preparing the written report. Incidental costs include paper, copying and other office supplies.

Estimated costs are provided in accordance with Minnesota Statutes 2011, section 3.197, which requires that at the beginning of a report to the Legislature, the cost of preparing the report must be provided.

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## **Executive Summary**

It is necessary to balance flexibility in managing resources with consistency in special education staff provided to meet student needs. Minnesota Rule 3525.2340 CASE LOADS should remain in place to provide direction on how to maintain this balance. Specifically, language will be incorporated to guide districts when determining case loads for pupils receiving special education services less than 60 percent or less of the instructional day. The rule shall also be amended to align with federal setting requirements and consistency in the usage of the term paraprofessional.

The Minnesota Department of Education shall engage the necessary processes to align the special education rules and statutes.

MORE TO COME

## **Introduction**

According to the 2013 Office of the Legislative Auditor (OLA) report, the number of students receiving special education has increased steadily since the 1999–2000 school year, while the number of K-12 public school students statewide has decreased. The proportion of all K–12 students receiving special education increased from 11.9 percent in the 1999–2000 school year to 13.6 percent in 2010–2011. The 13.6% has stayed the same for three years.

As the demand for special education services continues to grow and the ability of schools to meet the resource needs becomes more difficult, it is important to consider the current Minnesota rule 3525.2340 CASE LOADS (Appendix A), for how services are provided in the classroom. Subpart A. currently provides the maximum number of school-age pupils that may be assigned to a teacher for pupils who receive direct special instruction from a teacher 50 percent or more of the instructional day. This provision establishes specific staffing guidance based on the special education needs of the pupil.

Subpart B. addresses pupils who receive direct special education services less than 50 percent of the instructional day. This provision states that case loads are to be determined by the local district's policy based on the amount of time and services required by pupils' Individualized Education Program (IEP) plans. Due to the nature of this provision, flexibility is allotted to the district for how to meet the needs of pupils.

There is an inherent tension built into the case load rule. This tension is flexibility in process and consistency of special education staff provided to meet student needs. This tension is experienced differently depending on the stakeholder. The school administrator experiences this tension in the shifting and/or reduced resources and the ability to fund the pupil's special education needs. The special education educator experiences this tension in the form of workload. The parent and student may experience this by the quality and delivery of instruction and services.

Although Minnesota has a rule outlining case loads, there is no working definition of what case load means. In addition, there is the concept of workload that differs from a staff's assigned case load. Workload is the sum of all the services and related work activities needed to meet the multiple needs of students as identified by an IEP.

The ultimate goal is to balance the need for flexibility while also providing consistency in student services and outcomes.

## **Charge to the Task Force**

The duties of the Special Education Case Loads Task Force were to: 1) develop recommendations for the appropriate numbers of students with disabilities that may be assigned to a teacher, both with and without paraprofessional support in the classroom, and for cost-effective and efficient strategies and structures for improving student outcomes; 2) identify state rules that should be revised to align with state statute; and 3) submit a report by February 15, 2014, to the education policy and finance committees of the legislature recommending appropriate case loads for teachers of school-age children in all federal settings, including educational service alternatives and proposed state rule revisions. (See Appendix B for the statutory language establishing the task force and charge).

## **Task Force Membership and Activities**

The task force consisted of 16 members as designed in statute. The commissioner of education was to appoint representatives from the specific organizations to provide equal representation from:

- School districts, including special education teachers.
- Advocacy organizations, including parents of children with disabilities.

(See Appendix C for task force membership).

The task force held seven meetings between September 24, 2013 and February 11, 2014.

In preparation for providing recommendations, the task force reviewed the following subject areas:

- Special education funding
- History of the case load rule
- Other state case load approaches
- Current case load ratios
- State special education funding changes FY2014–FY 2016
- IEP Paperwork reduction Project
- Workload analysis
- Office of the Legislative Auditor’s Special Education Report

Two subgroups were formed to address the charge of the task force. One developed recommendations for statute and rule alignment while the other took the lead on developing case load recommendations. The subgroups reported to the full task force, which adopted the final recommendations in this report.

## **Task Force Discussion Points**

As task force discussions evolved, it became apparent that a major factor affecting both case loads and workload considerations involve paperwork and other issues. Members pointed to the multiple activities needing coordination and documentation and the resulting paperwork as a major contributor to workload. Examples of these activities are coordinating team meetings, communication with parents, and managing electronic record systems. These activities provide logistical and operational support to the IEP process but detract from the amount of direct instructional time for students. Coupled with the amount of documentation necessary to meet federal, state and local education agency (LEA) process requirements, a major portion of an educator’s time is spent on IEP process administration and not working with students.

Another variable is the unintended consequences of LEA’s response to MDE compliance monitoring. The LEA may create additional processes to reduce the possibility of noncompliance thereby introducing more complexity into an already complex system.

Another challenge for special education educators is their ability to stay current with IEP process improvements or other changes. There was an expressed lack of understanding as to why certain forms were required and educators wanted a direct connection to a specific statute or federal requirement. This highlighted the need for additional staff development. Staying current with statutory changes, new teaching approaches and the latest technology is difficult when it requires time that competes with workload activities.

As a way to organize their discussions, the committee identified the following issue areas and developed recommendations for each:

1. Paperwork
2. Case loads
3. Licensure/teacher supply
4. Other time requirements
5. Professional development
6. How to increase student time
7. Ways classroom/other teachers could help
8. Resource needs
9. Decision making
10. OLA recommendations

### **Other State's Approach to Case Load/Workload**

In the spring and summer of 2013, State Directors of Special Education were surveyed by MDE to learn how their state manages special education case load. Thirty-one of 53 directors responded. The survey responses can be separated into two main categories.

- About half (47%) of the state agency representatives indicated that they have statutes or policy regulating special education case loads or workloads. Some of these policies are very prescriptive.
- Fifty-three percent of the survey respondents indicated their states either defer to local districts for case load/workload decisions or case load/workload limits are not mentioned in policy.

If survey participants commented on a trend in their states, it was toward deferring case load decisions to local authorities or removing them from policy.

The task force was unable to locate a similar survey from the perspective of teachers and paraprofessionals.

## The Task Force Recommendations: Case Load

This portion of the report contains the recommendations of the task force regarding possible amendments to Minnesota Rule 3525.2340 CASE LOADS and cost-effective and efficient strategies and structures for improving student outcomes. It contains two sections: 1) Recommendations for Minnesota Rule 3525.2340 CASE LOADS; and 2) Strategies and Structures for Improving Student Outcomes. Combined, the two sections contain ( ) overall recommendations represented by recommendations 1 through \_\_\_.

### Recommendations for Minnesota Rule 3525.2340 CASE LOADS

#### Keep Case Load Rule

##### ***Recommendation 1***

Keep the current case load rule—Minnesota Rule 3525.2340 CASE LOADS.

#### Amend Case Load Rule

##### ***Recommendation 2***

Amend Minnesota Rule 3525.2340 CASE LOADS, Subp. 4A(1) by deleting “50 percent or more” and inserting “more than 60 percent” to align with federal settings definition.

Amend to read as follows:

*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 ~~50 percent or more~~ more than 60 percent of the instructional day, but less than a full school day:*

##### ***Recommendation 3***

Amend Minnesota Rule 3525.2340 CASE LOADS, Subp. 4B by deleting “less than 50 percent” and inserting “60 percent or less”.

Amend to read as follows:

*B. For pupils who receive direct special education ~~less than 50 percent~~ 60 percent or less of the instructional day, case loads are to be determined by the local district's policy based on the amount of time and services required by pupils' IEP plans.*

##### ***Recommendation 4***

Under Subp. 4 insert “paraprofessional” in place of “program support assistant.” Further recommend this change throughout the Special Education Rule.

**Rationale:** Paraprofessional is defined in Minnesota’s rule but “program support assistant” is not and is an outdated term that is no longer used.

##### ***Recommendation 5***

Amend Minnesota Rule 3525.2340 CASE LOADS, Subp. 4B to read as follows:

*B. The school district must establish a board approved policy for determining workload limits based on contact minutes, evaluation time, indirect services, IEPs managed, travel time and services in the IEPs of eligible students receiving direct special education services for 60 percent or less of the instructional day.*

**Suggested substitute language:**

*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 time, indirect services, IEP's managed, travel time and other services required in the IEPs of eligible students.*

**Recommendation 6**

Amend Minnesota Rule 3525.2340 CASE LOADS Subp. 4A by adding a new clause that reads

TBD

**Recommendation 7**

Define Case load as follows:

**Recommendation 8**

OTHER TBD

**Strategies and Structures for Improving Student Outcomes**

## The Task Force Recommendations: Rule Alignment

Minnesota statutes have undergone revisions while the administrative rules have remained unchanged since the 1990s. Several of Minnesota's administrative rules pertaining to special education contain information that is inconsistent with Minnesota statutes.

This portion of the report contains the recommendations of the task force regarding possible amendments to Minnesota Rules and Minnesota Statutes to remove inconsistencies, correct outdated legal references, and clarify confusing language. It contains three sections: 1) Recommendations to Amend Existing Rules; 2) Recommendations to Make No Changes to Existing Rules; and 3) Recommendations to Amend Existing Statutes. Combined, the three sections contain 20 overall recommendations represented by recommendations 9 through 29.

### Recommendations to Amend Existing Rules

#### Definition of Days

##### ***Recommendation 9***

The task force recommends amending Minnesota Rule 3525.0210, Subp. 11, to correct the federal provision that is referenced in the rule. An outdated federal provision is referenced in the current rule.

**Rationale:** Minnesota Rule 3525.0210, Subp. 11, defines "days" as meaning "business day, calendar day or school day as defined in Code of Federal Regulations, title 34, section 300.9." The Code of Federal Regulations, title 34 has been renumbered and the federal definition of days is now in section 300.11, not 300.9. The rule language should be amended to reflect the correct federal citation.

**Rule:** Minnesota Rule 3525.0210, Definitions

**Statute:** No corollary state statute.

#### Diagnoses for ADD/ADHD for a Child with a Disability

##### ***Recommendation 10***

The task force recommends amending Minnesota Rule 3525.1335, Subp. 2(A)(2), to be consistent with Minnesota Statutes § 125A.02, Subd. 1, to allow a wider variety of professional individuals to make a diagnosis of ADD/ADHD for a child with a disability. The task force recommends adding the language currently in statute, which permits a diagnosis of ADD or ADHD by a licensed physician, an advanced practice nurse or a licensed psychologist, to the rule.

**Rationale:** Minnesota Statutes § 125A.02, Subd. 1, permits a licensed physician, an advanced practice nurse, or a licensed psychologist to make a diagnosis of ADHD or ADD for purposes of identifying a child with a disability. In contrast, Minnesota Rule 3525.1335, Subp. 2(A)(2) sets forth a much narrower diagnosis pathway for a child with a disability, by requiring a medical diagnosis by a licensed physician for ADD or ADHD. Minnesota statute permits a much wider variety of health professionals to make a diagnosis of ADD or ADHD for a child with a disability, which makes it easier for children to be appropriately identified and receive necessary services.

**Rule:** Minnesota Rule 3525.1335, Subp. 2(A)(2), Other Health Disabilities

**Statute:** Minnesota Statutes § 125A.02, Subd. 1, Child with a Disability Defined: Child with a disability

## Other Health Disabilities

### ***Recommendation 11***

The task force recommends amending Minnesota Rule 3525.1335, Subp. 2(A)(2), to remove referencing criteria in a particular edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM) and instead include a general reference to appropriate DSM criteria.

**Rationale:** Minnesota Rule 3525.1335, Subp. 2(A)(2), references the DSM-IV criteria. The DSM-IV has now been replaced with the DSM-V. Referencing criteria from a particular edition of the DSM renders this rule out of date every time a new edition of the DSM is released. The task force recommends generally referencing appropriate DSM criteria rather than criteria in a specific edition of the DSM. The current rule language states “the diagnosis of ADD or ADHD must include documentation that DSM-IV criteria in items A to E has been met.” The task force recommends changing the rule language to read “the diagnosis of ADD or ADHD must include appropriate documentation using DSM criteria that items A to E have been met.”

**Rule:** Minnesota Rule 3525.1335, Subp. 2(A)(2), Other Health Disabilities

**Statute:** No corollary state statute.

## Initial Evaluation and Initial Provision of Services-Written Refusal

### ***Recommendation 12***

The task force recommends amending Minnesota Rule 3525.2710, Subp. 1, to be consistent with Minnesota Statutes § 125A.091, Subd. 5, which prohibits a district from overriding a parent’s refusal to provide consent for an initial evaluation.

**Rationale:** Minnesota Rule 3525.2710, Subp. 1, permits a district to override a parent’s refusal to provide consent for an initial evaluation. In contrast, Minnesota Statutes § 125A.091, Subd. 5, prohibits a district from overriding a parent’s written refusal for an initial evaluation. These opposing standards for conducting an initial evaluation cause confusion in the field. The rule language should be amended to reflect the statutory standard that prohibits a district from overriding a parent’s written refusal to consent to an initial evaluation or reevaluation of a child for special education eligibility.

**Rule:** Minnesota Rule 3525.2710, Subp. 1, Initial Evaluations

**Statute:** Minnesota Statutes § 125A.091, Subd. 5, Alternative Dispute Resolution and Due Process Hearings: Initial Action; parent consent

## Restrictive Procedures

### ***Recommendation 13***

The task force recommends amending Minnesota Rule 3525.2710, Subp. 4(F), to replace the term “conditional procedure” with “restrictive procedure” to make the rule language consistent with Minnesota Statutes § 125A.0942.

**Rationale:** Minnesota Rule 3525.2710, Subp. 4(F), uses the term “conditional procedure” which is no longer used in Minnesota statutes which relate to restrictive procedures. The restrictive procedures statutes, including Minnesota Statutes § 125A.0942, were changed in 2009, and these changes went into effect on August 1, 2011. The rules that related to conditional procedures were repealed when the statutory changes went into effect, thus any references to the term “conditional procedure” should be removed and replaced with the term “restrictive procedure(s).” The term “restrictive procedures” is still used in Minnesota statutes. The MDE Restrictive

Procedures Task Force may also make recommendations related to changes to this rule.

**Rule:** Minnesota Rule 3525.2710, Subp. 4(F), Evaluations and Reevaluations: Additional requirements for evaluations and reevaluations

**Statute:** Minnesota Statutes § 125A.0942, Standards for Restrictive Procedures

## Hearing Officer Requirements

### *Recommendation 14*

**To be decided at the 2/11/14 meeting.** The task force recommends repealing Minn. R. 3525.4010 in its entirety and moving one section of the rule, Subp. 3, Evaluation, which deals with collecting data about the hearing system, to Minnesota Statutes § 125A.091. This language should be added as a new stand-alone section following Subd. 13, labeled Subd. 13(a).

**Rationale:** Different requirements for hearing officer qualifications are set out in state statute and rule. In addition, 34 C.F.R. 300.511(c)(1), also sets forth impartial hearing officer requirements. The multiple standards for hearing officer requirements are confusing to the field. Feedback from the field supports repealing Minn. R. 3525.4010 in its entirety and moving the language in Subpart 3 into Minnesota Statutes § 125A.091, thereby eliminating the existence of state standards for hearing officers in both statute and rule. Overall, the task force recommends using the statutory language for hearing officer requirements. The task force recommends the following specific changes to this rule:

- Minnesota Rule 3525.4010, Subp. 1(A) and (B), Criteria for selection, and Subp. 2, Standards of Conduct, should be repealed. Subparts 1(A) and (B) require that hearing officers “have at least five years of experience practicing law and hold a current license to practice law in the state of Minnesota” and have “litigation experience and an understanding of administrative law,” respectively. Subpart 2 requires hearing officers to follow the “Professionalism Aspirations for Judges, Referees, and Administrative Law Judges to Lawyers and Parties, as promulgated by the Minnesota Supreme Court, January 2001.” The taskforce sought feedback from the legal and education community about repealing these subparts. The feedback received supported repealing these subparts because these requirements are not necessary and the requirements for hearing officers set out in Minnesota Statutes § 125A.091, Subd. 13 are sufficient.
- Minnesota Rule 3525.4010, Subp. 3, requires the department to maintain data on the hearing system. This subpart should be repealed from the rule and added to Minnesota Statutes § 125A.091, as a new stand-alone subdivision, Subd. 13(a), titled ‘Hearing System Data.’

**Rule:** Minn. R. 3525.4010, Subp. 1-3

**Statute:** Minn. Stat. § 125A.091, Subd. 13, Alternative Dispute Resolution and Due Process Hearings: Hearing Officer Qualifications

## Transition

### **Recommendation 15**

The task force recommends amending Minnesota Rule 3525.2900, Subp. 4, to be consistent with Minnesota Statutes § 125A.08(a)(1), by removing the reference to “or age 14” in rule and leave the language requiring transition during grade 9. This rule also requires a transition evaluation document in the evaluation report and the task force recommends maintaining the rule provisions that relate to the transition evaluation in the rule.

**Rationale:** Minnesota Statutes § 125A.08(a)(1), provides that transition should happen “during grade nine.” Whereas, Minnesota Rule 3525.2900 provides that transition should occur “by grade nine or age 14, whichever comes first.” This inconsistency results in confusion about when transition should happen for a student receiving special education services. The language relating to the evaluation document in the transition process should be kept in the rule because this is an important aspect of transition for students receiving special education services.

**Rule:** Minnesota Rule 3525.2900, Subp. 4, Transition Planning; Minnesota Rule 3525.2810, Development of Individualized Education Program Plan

**Statute:** Minnesota Statutes § 125A.08(a)(1), Individualized Education Programs

## Educational Placement

### **Recommendation 16**

The task force recommends amending Minnesota Rule 3525.3010, Subp. 2, to remove the references to the repealed section of Minnesota rules and renumbered federal regulation provisions and replace these references with the current citations.

**Rationale:** Minnesota Rule 3525.3010, Subp. 2, includes references to outdated provisions in both Minnesota Rules and the federal regulations. This rule references Minnesota Rule 3525.3400 which was repealed in 2009. The reference to this rule provision should be removed. Minn. R. 3525.2010, Subp. 2, also references an outdated federal provision, 34 C.F.R. § 300.552, which was renumbered to 34 C.F.R. § 300.114. This federal reference should be updated.

**Rule:** Minnesota Rule 3525.3010, Subp. 2, Educational Placement: General least restrictive environment requirements

**Statute:** No statutory corollary

## Prior Written Notice

### **Recommendation 17**

The task force recommends amending Minnesota Rule 3525.3600(B) to be consistent with Minnesota Statutes § 125A.091, Subd. 3a(1), regarding when the timeline following the provision of a prior written notice to a parent is triggered.

**Rationale:** Minnesota Statutes § 125A.091, Subd. 3a(1), provides that a district will proceed with the provision of special education services to a child 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.*” In contrast, Minnesota Rule 3525.3600(B) provides that a district will proceed to provide special education services to a child unless a child’s parent objects “*within 14 calendar days after the receipt of the notice.*” These two provisions are inconsistent and cause confusion in the field about when the 14-day timeline begins. The statutory provision is consistent with the “mail box” rule, which starts the 14-day timeline as soon as the prior written notice is sent to the parent. This

timeframe will provide the district with a clear date to begin implementing the child's IEP if they do not receive an objection from the child's parents. Task force members also discussed that as a best practice the prior written notice sent to the parent should state the date when it was sent, so the start of the timeline is clear.

**Rule:** Minnesota Rule 3525.3600(B), Part B Prior Written Notice

**Statute:** Minnesota Statutes § 125A.091, Subd. 3a(1), Alternative Dispute Resolution and Due Process Hearings: Additional requirements for prior written notice

## **Conciliation Conference: Timelines**

### ***Recommendation 18***

The task force recommends amending Minnesota Rule 3700, Subp. 1a(A), to be consistent with Minnesota Statutes § 125A.091, Subd. 7, regarding when a conciliation conference timeline begins.

**Rationale:** Minnesota Statutes § 125A.091, Subd. 7, states that “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 (emphasis added).” In contrast, Minnesota Rule 3525.3700, Subp. 1a(A), states that “a conciliation conference must be held within ten calendar days *from the district’s receipt of the parent’s agreement or request to participate in a conciliation conference* (emphasis added).” These differing standards cause confusion in the field. The rule language should be amended to reflect the statutory language “from the date the district receives a parent’s objection” to ensure consistent language between state statute and rule so it is clear when the timeline affecting a conciliation conference is triggered.

**Rule:** Minnesota Rule 3525.3700, Subp. 1a(A), Conciliation Conference: When and where held; results

**Statute:** Minnesota Statutes § 125A.091, Subd. 7, Alternative Dispute Resolution and Due Process Hearings: Conciliation conference

## **Conciliation Conference: Definition of Days**

### ***Recommendation 19***

The task force recommends amending Minnesota Rule 3525.3700, Subp. 1a(D), to reflect the language in Minnesota Statutes § 125A.091, Subd. 7, by changing the word “business” to “school.”

**Rationale:** Minnesota Statutes § 125A.091, Subd. 7, uses the term “school days” when stating when the memorandum must be sent to a parent following a conciliation conference. In contrast Minnesota Rule 3525.3700, Subp. 1a(D), uses the term “business days” when stating when the memorandum must be sent to a parent following a conciliation conference. Minnesota Rule 3535.3700, Subp. 1a(D), should be amended by changing the word “business” to “school” to reflect the statutory language.

**Rule:** Minnesota Rule 3525.3700, Subp. 1a(D), Conciliation Conference: When and where held; results

**Statute:** Minnesota Statutes § 125A.091, Subd. 7, Alternative Dispute Resolution and Due Process Hearings: Conciliation conference

## Initial Provision of Services

### **Recommendation 20**

The task force recommends amending Minnesota Rule 3525.3700, Subp. 1E, to be consistent with the Minnesota Statutes § 125A.091, Subd. 5, by adding the language “initial provision of special education services” to the rule. In addition, Minnesota Rule 3525.3700, Subp. 1E, should be amended by changing the word “served” to “provided” to be consistent with Minnesota Statutes § 125A.091, Subd. 7.

**Rationale:** Minnesota Statutes § 125A.091, Subd. 5, states that “a 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 (emphasis added).” In contrast, Minnesota Rule 3525.3700, Subp. 1a(E), states that “if the proposed action is an initial evaluation or initial placement, the district must not proceed until the parents give written informed consent.” The rule language does not include “initial provision” in the list of actions that a district cannot take unless written parental consent has been given. The phrase “initial provision” should be added to the rule language to reflect statutory language and to ensure consistency between statute and rule regarding what actions a district cannot proceed with until written parental consent has been obtained. Ultimately, the rule should read “if the proposed action is an initial evaluation, initial placement, or the initial provision of special education, the district must not proceed until the parents give written informed consent.” Furthermore, Minnesota Rule 3525.3600(c) uses the “initial evaluation, initial placement and initial provision of services” language as well so this amendment would ensure greater consistency throughout Minnesota rules.

Additionally, Minnesota Rule 3525.3700, Subp. 1a(E), states that the parents must be “served” with the memorandum following the conciliation conference. Whereas, Minnesota Statutes § 125A.091, Subd. 7, states that the memorandum following the conciliation conference is “provid[ed]” to the parent. Thus, the task force also recommends amending the rule by changing the word “served” to “provided” to be consistent with the action verb used in state statute.

**Rule:** Minnesota Rule 3525.3700, Subp. 1(E), Conciliation Conference

**Statute:** Minnesota Statutes § 125A.091, Subd. 5, Alternative Dispute Resolution and Due process Hearings: Initial Action; parent consent; and Subd. 7, Conciliation Conference

## Burden of Proof

### **Recommendation 21**

The task force recommends amending Minnesota Rule 3525.3900, Subp. 4(F), to reflect the burden of proof set out in Minnesota Statutes § 125A.091, Subd. 16.

**Rationale:** Minnesota Statutes § 125A.091, Subd. 16, states that the burden of proof at a due process hearing “is on the party seeking relief.” In contrast, Minnesota Rule 3525.3900, Subp. 4(F), states that the burden of proof at a due process hearing “is on the district.” These contrasting standards for the burden of proof are confusing to the field and should be reconciled. The burden of proof set out in the rule is wrong, thus the rule should be amended to reflect the burden of proof set out in the statute.

**Rule:** Minnesota Rule 3525.3900, Subp. 4(F), Initiating a Due Process Hearing: Requirements of basic procedures and safeguards notice

**Statute:** Minnesota Statutes § 125A.091, Subd. 16, Alternative Dispute Resolution and Due Process Hearings: Burden of Proof

## Expedited Due Process Hearing Timeframe

### ***Recommendation 22***

The task force recommends amending Minnesota Rule 3525.4770, Subp. 8, to be consistent with Minnesota Statute § 125A.091, Subd. 19, by changing the word “calendar” in the rule where it says “ten calendar days” to read “school days.” Furthermore, the task force recommends leaving the use of the phrase “calendar days” in the rule language in reference to an extension in an expedited due process hearing due to the purpose of an extension in the hearing process.

**Rationale:** Minnesota Rule 3525.4770, Subp. 8, uses the phrase “calendar days” in reference to when the decision shall be made in an expedited hearing. Minnesota Statutes § 125A.091, Subd. 19, uses the phrase “school days” when referring to when the hearing must be held. The use of both “calendar days” and “school days” regarding the timelines for expedited hearings causes confusion in the field. The phrase “ten calendar days” in the rule should be changed to read “ten school days” to be consistent with statutory language. The task force recognizes that the rule language does use the phrase “calendar days” in reference to an extension and believes this use of “calendar days” is appropriate and should not be changed.

**Rule:** Minnesota Rule 3525.4770, Subp. 8, Expedited Hearing Timelines: Decision

**Statute:** Minnesota Statutes § 125A.091, Subd. 19, Alternative Dispute Resolution and Due Process Hearings: Expedited due process hearings

## Recommendations to Make No Changes to Existing Rules

### Visual Impairment

#### ***Recommendation 23***

The task force recommends making no changes to Minnesota Rule 3525.1345 at this time because changes to this rule will be controversial and more discussion is needed with interested parties.

**Rationale:** Definitions related to visual impairment are found in federal law as well as state statute and rule. The Code of Federal Regulations sets out a definition of “visual impairment including blindness” in 34 C.F.R. § 300.8(c)(13). There are also definitions set out in Minnesota Rule 3525.1345 and Minnesota Statutes § 125A.06, however definitions set out in state statute and rule are different from one another. Despite these inconsistencies, these changes are likely to be controversial in the field and further discussion is needed with interested parties.

**Rule:** Minnesota Rule 3525.1345, Visually Impaired

**Statute:** Minnesota Statutes § 125A.06, Blind Persons’ Literacy Rights

### Care & Treatment

#### ***Recommendation 24***

The task force recommends making no changes to the state rule and statutory provisions that relate to care and treatment, Minnesota Rule 3525.2325 and Minnesota Statutes §§ 125A.15, 125A.51, and 125A.515, at this time due to the complex and controversial nature of these topics.

**Rationale:** Minnesota Rule 3525.2325 and Minnesota Statutes §§ 125A.15, 125A.51, and 125A.515 address the care and treatment of students and are quite complex. The task force considered amending the rule to address students in non-residential treatment

but ultimately decided that changes to these rule and statutory provisions would be controversial and require a more in-depth discussion. Although the care and treatment statutes supersede the majority of the current rule language and the remaining effective sections of the rule address students not in residential treatment facilities, the task force believes more discussion is necessary before any changes are made.

**Rule:** Minnesota Rule 3525.2325, Education Programs for K-12 Pupils and Regular Students Placed in Centers for Care and Treatment

**Statute:** Minnesota Statutes §§ 125A.15, Placement In Another District; Responsibility; 125A.51, Placement of Children Without Disabilities; Education and Transportation; and 125A.515, Placement of Students; Approval of Education Program

## Request for Hearing

### *Recommendation 25*

The task force recommends making no changes to Minnesota Rule 3525.3900 at this time.

**Rationale:** Minnesota Rule 3525.3900 includes additional requirements that must be provided when a parent submits a request for a hearing then those set out in statute. The rule and statute must be read together. No changes are needed at this time.

**Rule:** Minnesota Rule 3525.3900, Subp. 2, Initiating a Due Process Hearing: Parent request for hearing

**Statute:** Minnesota Statutes § 125A.091, Subd. 14, Alternative Dispute Resolution and Due Process Hearings: Request for hearing

## Recommendations to Amend Existing Statutes

### Student Discipline

#### *Recommendation 26*

**To be decided at the 2/11/14 task force meeting.** The task force recommends amending Minnesota Statutes § 121A.582, Subd. 1(c), which sets forth specific student discipline statutes that prohibit certain conduct and cannot be trumped by the reasonable force standard. Specifically, the task force recommends amending Minnesota Statutes § 121A.582 by adding a reference to Minnesota Statutes § 121A.0942, Standards for Restrictive Procedures. Minnesota Statutes § 121A.582, Subd. 1(c) currently references other statutes related to Corporal Punishment, Minnesota Statutes § 121A.58 and Aversive and Deprivation Procedures, Minnesota Statutes § 121A.67, but it does not reference the existing statute governing Standards for Restrictive Procedures, Minnesota Statutes § 125A.0942. A reference to Minnesota Statutes § 125A.0942 should be added to ensure conduct prohibited under this statute is affirmatively prohibited similar to the other student discipline statutes listed.

**Rationale:** In 2000, Minnesota Statutes § 121A.582, Subd. 1(c) was created. This section specifically states that paragraphs (a) and (b) of Minnesota Statutes § 121A.582 “do not authorize conduct prohibited under sections § 121A.58 (Corporal Punishment) and § 121A.67 (Aversive and Deprivation Procedures).” (Parentheticals added). Minnesota Statutes § 121A.582, Subd. 1(c) does not reference Minnesota Statutes § 125A.0942, Standards for Restrictive Procedures, which was created in 2009 and went into effect in 2011. A reference to Minnesota Statutes § 125A.0942 should be added to ensure conduct prohibited under this statute is affirmatively prohibited. The Restrictive Procedures task force may put forth recommendations about this statute.

**Rule:** No rule corollary

**Statute:** Minn. Stat. § 121A.581, Subd. 1(c), Student Discipline: Reasonable Force

## Aversive and Deprivation Procedures

### ***Recommendation 27***

The task force recommends amending the language in Minnesota Statutes § 121A.67 to replace the term “aversive and deprivation procedures” with the term “restrictive procedures” because the term “aversive and deprivation procedures” is no longer used in Minnesota statutes or rule.

**Rationale:** Minnesota Statutes § 121A.67 currently uses the term “aversive and deprivation procedures,” however, this term is no longer used in education statutes, other than as the heading of this statute (however this term is still used in some Department of Human Services statutes and rules and in the Uniform Probate Code). The restrictive procedures statutes, including Minnesota Statutes § 121A.67, were changed in 2009, and these changes went into effect on August 1, 2011. The rules that related to aversive and deprivation procedures were repealed when the statutory changes went into effect, thus any references to the term “aversive and deprivation procedure” should be removed and replaced with the term “restrictive procedure,” including the title of this statute. The term “restrictive procedure” is still used in Minnesota law. The MDE Restrictive Procedures Task Force may also make recommendations related to changes to this statute.

**Rule:** No rule corollary

**Statute:** Minnesota Statutes § 121A.67

## Standards for Restrictive Procedures

### ***Recommendation 28***

The task force recommends submitting a Form A during the 2014 legislative session to fix a technical error in Minnesota Statutes § 125A.0942, Subd. 2(b).

**Rationale:** There is a technical error in Minnesota Statutes § 125A.0942, Subd. 2(b). This subdivision states: “A school shall... as indicated by the child’s parent under paragraph (d).” This provision should read: “A school shall... as indicated by the child’s parent under paragraph (f).” The reference to paragraph (d) should be changed to paragraph (f).

**Rule:** No rule corollary

**Statute:** Minnesota Statutes § 125A.0942, Subd. 2(b), Restrictive procedures

## Evaluations vs. Assessments

### ***Recommendation 29***

The task force recommends changing Minnesota Statutes § 125A.08(b)(4) by replacing the phrase “assessment or reassessment” with “evaluation and reevaluation” to reflect the language in both federal law, 34 C.F.R. §§ 300.301-306 and Minnesota Rule 3525.2710 and 3525.2550.

**Rationale:** Minnesota Statutes § 125A.08(b)(4) uses the language “assessment or reassessment” in reference to an evaluation or reevaluation for special education. Minnesota Rule 3525.2550 uses the language “evaluation” in reference to a special education evaluation. The Code of Federal Regulations, Title 34, §§ 300.301-306, refers to “evaluations and reevaluations” not assessment or reassessment. The use of the

terms “assessment” and “evaluation” in statute and rule, respectively, causes confusion in the field and thus the language used in the rule should be amended to ensure consistency.

**Rule:** Minnesota Rule 3525.2550, Conduct Before Evaluation and Minnesota Rule 3525.2710, Evaluations and Reevaluations

**Statute:** Minnesota Statutes § 125A.08(b)(4), Individualized Education Programs

## **Appendix A: Minnesota Case Loads Rule**

### **MINNESOTA RULE 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 50 percent or more 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 program support assistant, 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 program support assistant, 15 pupils;
    - (e) all other disabilities with one program support assistant, ten pupils; and
    - (f) all other disabilities with two program support assistants, 12 pupils; 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 program support assistant, four pupils;
    - (b) deaf-blind, autism spectrum disorders, developmental cognitive disability: severe-profound range, or severely multiply impaired with two program support assistants, six pupils; and
    - (c) all other disabilities with one program support assistant, eight pupils.
- B. For pupils who receive direct special education less than 50 percent of the instructional day, case loads are to be determined by the local district's policy based on the amount of time and services required by pupils' IEP plans.

## **Appendix B: Statutory Language Establishing Task Force and Charge**

### **Sec. 28. SPECIAL EDUCATION CASE LOADS TASK FORCE.**

Subdivision 1. **Members.** The commissioner shall establish and appoint a special education case loads task force consisting of at least ten members who will provide equal representation from school districts, including special education teachers, and advocacy organizations, including parents of children with disabilities.

Subd. 2. **Duties.** The Special Education Case Loads Task Force shall develop recommendations for the appropriate numbers of students with disabilities that may be assigned to a teacher both with and without paraprofessional support in the classroom and for cost-effective and efficient strategies and structures for improving student outcomes. The task force must also identify state rules that should be revised to align with state statute.

Subd. 3. **Report.** The task force must submit a report by February 15, 2014, to the education policy and finance committees of the legislature recommending appropriate case loads for teachers of school-age children in all federal settings, including educational service alternatives and proposed state rule revisions.

Subd. 4. **Expiration.** The task force expires February 16, 2014.

## **Appendix C: Advisory Task Force Membership**

**Donald McNeil, Co- Chair**, Managing Partner  
Heley, Duncan Law Firm

**Todd Travis, Co-Chair**, Director of Special Education  
Midwest Special Education Cooperative

**Sue Abderholden**, Executive Director  
NAMI Minnesota

**Michaele Caron**

**Dana Flanders-Turman**, -Truman Special Education Teacher  
Centennial High School

**Kim Kang**

**Debra Kittlesen**, LD Teacher  
Faribault Middle School

**Mary Kreger**, Director of Special Education  
ISD 196 Rosemount-Apple Valley-Eagan

**Jacqueline McCormack**, Senior Advocate  
The Arc Greater Twin Cities

**Edna McKenzie**, Special Education Teacher  
West Metro Education Program

**Cindy Ralston**, Special Education Teacher  
Education Minnesota

**Valerie Rolstad**, Special Education Educational Assistant  
Columbia Heights School District

**Kirk Schneidawind**  
Minnesota School Boards Association

**Leslie Sieleni**

**M. Shannon Tenner**, Intern Assistant Principal  
Harding High School

**Barb Ziemke**, Parent Advocate and Trainer  
PACER Center

### **Ex-Officio Members**

**Representative Mary Sawatzky**

## **MDE Staff**

**Rose Hermodson**, Assistant to the Commissioner  
Minnesota Department of Education

**Daron Korte**, Government Relations Director  
Minnesota Department of Education

**Barbara Troolin**, Director, Special Education  
Minnesota Department of Education

**Joan Breslin-Larson**, Low Incidence and Work Force Supervisor  
Minnesota Department of Education

**Marikay Canaga Litzau**, Due Process Supervisor  
Minnesota Department of Education

**Kerstin Forsythe-Hahn**, Rulemaking Coordinator  
Minnesota Department of Education

**Mary Lindell**, Work Force Specialist  
Minnesota Department of Education

**Robyn Widley**, Interagency Partnerships Supervisor  
Minnesota Department of Education

**Kris Van Amber**, Management Consultant  
Minnesota Management and Budget