

1.1 moves to amend H. F. No. 1701 as follows:

1.2 Delete everything after the enacting clause and insert:

1.3 "Section 1. Minnesota Statutes 2008, section 121A.41, is amended to read:

1.4 **121A.41 DEFINITIONS.**

1.5 Subdivision 1. **Applicability.** As used in sections 121A.40 to 121A.56, the terms
1.6 defined in this section shall have the meanings assigned them.

1.7 Subd. 2. **Dismissal.** "Dismissal" means the denial of the current educational
1.8 program to any pupil, including exclusion, expulsion, and suspension. It does not include
1.9 removal from class.

1.10 Subd. 3. **District.** "District" means any school district.

1.11 Subd. 4. **Exclusion.** "Exclusion" means an action taken by the school board to
1.12 prevent enrollment or reenrollment of a pupil for a period that shall not extend beyond
1.13 the school year.

1.14 Subd. 5. **Expulsion.** "Expulsion" means a school board action to prohibit an enrolled
1.15 pupil from further attendance for up to 12 months from the date the pupil is expelled.

1.16 Subd. 6. **Parent.** "Parent" means (a) one of the pupil's parents, (b) in the case
1.17 of divorce or legal separation, the parent or parents with physical custody of the pupil,
1.18 including a noncustodial parent with legal custody who has provided the district with a
1.19 current address and telephone number, or (c) a legally appointed guardian. In the case
1.20 of a pupil with a disability under the age of 18, parent may include a district-appointed
1.21 surrogate parent.

1.22 Subd. 7. **Pupil.** "Pupil" means any student-

1.23 (1) without a disability under 21 years of age; or

1.24 (2) with a disability until September 1 after the child with a disability becomes 22
1.25 years of age;

1.26 (3) and who remains eligible to attend a public elementary or secondary school.

2.1 Subd. 8. **School.** "School" means any school defined in section 120A.05,
2.2 subdivisions 9, 11, 13, and 17.

2.3 Subd. 9. **School board.** "School board" means the governing body of any school
2.4 district.

2.5 Subd. 10. **Suspension.** "Suspension" means an action by the school administration,
2.6 under rules promulgated by the school board, prohibiting a pupil from attending school
2.7 for a period of no more than ten school days. If a suspension is longer than five days,
2.8 the suspending administrator must provide the superintendent with a reason for the
2.9 longer suspension. This definition does not apply to dismissal from school for one school
2.10 day or less, except as provided in federal law for a student with a disability. Each
2.11 suspension action may include a readmission plan. The readmission plan shall include,
2.12 where appropriate, a provision for implementing alternative educational services upon
2.13 readmission and may not be used to extend the current suspension. Consistent with section
2.14 125A.091, subdivision 5, The readmission plan must not obligate a parent to provide a
2.15 sympathomimetic medication for the parent's child as a condition of readmission. The
2.16 school administration may not impose consecutive suspensions against the same pupil
2.17 for the same course of conduct, or incident of misconduct, except where the pupil will
2.18 create an immediate and substantial danger to self or to surrounding persons or property,
2.19 or where the district is in the process of initiating an expulsion, in which case the school
2.20 administration may extend the suspension to a total of 15 days. In the case of a student
2.21 with a disability, the student's individual education plan team must meet immediately
2.22 but not more than ten school days after the date on which the decision to remove the
2.23 student from the student's current education placement is made. The individual education
2.24 plan team and other qualified personnel shall at that meeting: conduct a review of the
2.25 relationship between the child's disability and the behavior subject to disciplinary action;
2.26 and determine the appropriateness of the child's education plan.

2.27 The requirements of the individual education plan team meeting apply when:

2.28 (1) the parent requests a meeting;

2.29 (2) the student is removed from the student's current placement for five or more
2.30 consecutive days; or

2.31 (3) the student's total days of removal from the student's placement during the
2.32 school year exceed ten cumulative days in a school year. The school administration shall
2.33 implement alternative educational services when the suspension exceeds five days. A
2.34 separate administrative conference is required for each period of suspension.

2.35 Subd. 11. **Alternative educational services.** "Alternative educational services"
2.36 may include, but are not limited to, special tutoring, modified curriculum, modified

3.1 instruction, other modifications or adaptations, instruction through electronic media,
 3.2 special education services as indicated by appropriate assessment, homebound instruction,
 3.3 supervised homework, or enrollment in another district or in an alternative learning center
 3.4 under section 123A.05 selected to allow the pupil to progress toward meeting graduation
 3.5 standards under section 120B.02, although in a different setting.

3.6 Sec. 2. Minnesota Statutes 2008, section 125A.02, is amended to read:

3.7 **125A.02 CHILD WITH A DISABILITY DEFINED.**

3.8 Subdivision 1. **Child with a disability.** ~~Every child who has~~ Child with a disability
 3.9 means a child evaluated in accordance with federal and state special education law as
 3.10 having a hearing impairment, blindness, visual disability, speech or language impairment,
 3.11 physical disability, other health impairment, mental disability, emotional/behavioral
 3.12 disorder, specific learning disability, autism, traumatic brain injury, multiple disabilities, or
 3.13 deaf/blind disability ~~and who, by reason thereof, needs special instruction and education~~
 3.14 and related services, as determined by the ~~standards~~ rules of the commissioner, is a
 3.15 child with a disability. A licensed physician, an advanced practice nurse, or a licensed
 3.16 psychologist is qualified to make a diagnosis and determination of attention deficit
 3.17 disorder or attention deficit hyperactivity disorder for purposes of identifying a child
 3.18 with a disability.

3.19 Subd. 1a. **Children ages three through seven experiencing developmental**
 3.20 delays. In addition, every child under age three, and at local district discretion from age
 3.21 three to age seven, who needs special instruction and services, as determined by the
 3.22 ~~standards~~ rules of the commissioner, because the child has a substantial delay or has
 3.23 an identifiable physical or mental condition known to hinder normal development is
 3.24 a child with a disability.

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

3.28 Sec. 3. **[125A.031] GENERAL SCHOOL DISTRICT OBLIGATIONS TO**
 3.29 **CHILDREN WITH DISABILITIES.**

3.30 (a) A school district must identify, locate, and evaluate every child with a disability
 3.31 who resides in the district and who is in need of special education and related services,
 3.32 including a child from birth to age 3.

3.33 (b) A school district must make available a free appropriate public education to:

4.1 (1) a child with a disability under 21 years old who resides in the district and who
4.2 has not received a regular high school diploma; and

4.3 (2) for the duration of the school year, a child with a disability who resides in the
4.4 district and who becomes 21 years old during that school year but has not received
4.5 a regular high school diploma.

4.6 (c) A school district must ensure that a child with a disability who resides in the
4.7 district and who is enrolled in a nonpublic school or facility is provided special education
4.8 and related services, consistent with the child's individualized education plan, at no cost to
4.9 the child's parent if the district places the child in the nonpublic school or facility to meet
4.10 the requirements of this section or applicable federal law.

4.11 (d) Consistent with the number of children with disabilities who reside in the district
4.12 and who are enrolled by their parents in nonpublic schools or facilities within the district,
4.13 the resident district must ensure that those children have an opportunity to participate in
4.14 special education and related services and that the amount the district spends to provide
4.15 such services must be at least equal to the proportionate amount of federal funds made
4.16 available under this chapter.

4.17 **EFFECTIVE DATE.** This section is effective the day following final enactment.

4.18 Sec. 4. Minnesota Statutes 2008, section 125A.07, is amended to read:

4.19 **125A.07 RULES OF COMMISSIONER RULEMAKING.**

4.20 (a) ~~As defined in Consistent with this paragraph section, the commissioner **must**~~
4.21 ~~**shall** adopt new rules and amend existing rules relative to qualifications of essential~~
4.22 ~~personnel, courses of study, methods of instruction, pupil eligibility, size of classes, rooms,~~
4.23 ~~equipment, supervision, parent consultation, and other necessary rules for instruction of~~
4.24 ~~children with a disability. These rules must provide standards and procedures appropriate~~
4.25 ~~for the implementation of and within the limitations of sections 125A.08 and 125A.091.~~
4.26 ~~These rules must also provide standards for the discipline, control, management, and~~
4.27 ~~protection of children with a disability. The commissioner must not adopt rules for pupils~~
4.28 ~~served primarily in the regular classroom establishing either case loads or the maximum~~
4.29 ~~number of pupils that may be assigned to special education teachers. The commissioner, in~~
4.30 ~~consultation with the Departments of Health and Human Services, must adopt permanent~~
4.31 ~~rules for instruction and services for children under age five and their families. These~~
4.32 ~~rules are binding on state and local education, health, and human services agencies. The~~
4.33 ~~commissioner must adopt rules to determine eligibility for special education services. The~~
4.34 ~~rules must include procedures and standards by which to grant variances for experimental~~
4.35 ~~eligibility criteria. The commissioner must, according to section 14.05, subdivision 4,~~

5.1 ~~notify a district applying for a variance from the rules within 45 calendar days of receiving~~
 5.2 ~~the request whether the request for the variance has been granted or denied. If a request is~~
 5.3 ~~denied, the commissioner must specify the program standards used to evaluate the request~~
 5.4 ~~and the reasons for denying the request~~ related to children with disabilities only under
 5.5 specific authority and consistent with the requirements of chapter 14.

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

5.9 (1) increased time available to teachers and, where appropriate, to support staff
 5.10 including school nurses for educating students through direct and indirect instruction;

5.11 (2) consistent and uniform access to effective education programs for students with
 5.12 disabilities throughout the state;

5.13 (3) reduced inequalities and conflict, appropriate due process hearing procedures
 5.14 and reduced court actions related to the delivery of special education instruction and
 5.15 services for students with disabilities;

5.16 (4) clear expectations for service providers and for students with disabilities;

5.17 (5) increased accountability for all individuals and agencies that provide instruction
 5.18 and other services to students with disabilities;

5.19 (6) greater focus for the state and local resources dedicated to educating students
 5.20 with disabilities; and

5.21 (7) clearer standards for evaluating the effectiveness of education and support
 5.22 services for students with disabilities.

5.23 (c) Subject to chapter 14, the commissioner may adopt, amend or rescind a rule
 5.24 related to children with disabilities if such action is specifically required by federal law.

5.25 Sec. 5. Minnesota Statutes 2008, section 125A.08, is amended to read:

5.26 **125A.08 SCHOOL DISTRICT OBLIGATIONS INDIVIDUALIZED**
 5.27 **EDUCATION PROGRAMS.**

5.28 (a) At the beginning of each school year, each school district shall have in effect, for
 5.29 each child with a disability, an individualized education program.

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

5.31 (1) all students with disabilities are provided the special instruction and services
 5.32 which are appropriate to their needs. Where the individual education plan team has
 5.33 determined appropriate goals and objectives based on the student's needs, including the
 5.34 extent to which the student can be included in the least restrictive environment, and Where
 5.35 there are essentially equivalent and effective instruction, related services, or assistive

6.1 technology devices available to meet the student's needs, cost to the district may be among
6.2 the factors considered by the team in choosing how to provide the appropriate services,
6.3 instruction, or devices that are to be made part of the student's individual education plan.
6.4 The individual education plan team shall consider and may authorize services covered
6.5 by medical assistance according to section 256B.0625, subdivision 26. The student's
6.6 needs and the special education instruction and services to be provided must be agreed
6.7 upon through the development of an individual education plan. The plan must address
6.8 the student's need to develop skills to live and work as independently as possible within
6.9 the community. The individual education plan team must consider positive behavioral
6.10 interventions, strategies, and supports that address behavior for children with attention
6.11 deficit disorder or attention deficit hyperactivity disorder. By grade 9 or age 14, the plan
6.12 must address the student's needs for transition from secondary services to postsecondary
6.13 education and training, employment, community participation, recreation, and leisure and
6.14 home living. In developing the plan, districts must inform parents of the full range of
6.15 transitional goals and related services that should be considered. The plan must include
6.16 a statement of the needed transition services, including a statement of the interagency
6.17 responsibilities or linkages or both before secondary services are concluded;

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

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

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

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

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

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

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

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

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

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

7.16 Sec. 6. Minnesota Statutes 2008, section 125A.091, is amended to read:

7.17 **125A.091 ALTERNATIVE DISPUTE RESOLUTION AND DUE PROCESS**
7.18 **HEARINGS.**

7.19 ~~Subdivision 1. **District obligation.** A school district must use the procedures in~~
7.20 ~~federal law and state law and rule to reach decisions about the identification, evaluation,~~
7.21 ~~educational placement, manifestation determination, interim alternative educational~~
7.22 ~~placement, or the provision of a free appropriate public education to a child with a~~
7.23 ~~disability.~~

7.24 ~~Subd. 2. **Prior written notice.** A parent must receive prior written notice~~
7.25 ~~a reasonable time before the district proposes or refuses to initiate or change the~~
7.26 ~~identification, evaluation, educational placement, or the provision of a free appropriate~~
7.27 ~~public education to a child with a disability.~~

7.28 ~~Subd. 3. **Content of notice.** The notice under subdivision 2 must:~~

7.29 ~~(1) describe the action the district proposes or refuses;~~

7.30 ~~(2) explain why the district proposes or refuses to take the action;~~

7.31 ~~(3) describe any other option the district considered and the reason why it rejected~~
7.32 ~~the option;~~

7.33 ~~(4) describe each evaluation procedure, test, record, or report the district used as a~~
7.34 ~~basis for the proposed or refused action;~~

8.1 ~~(5) describe any other factor affecting the proposal or refusal of the district to take~~
8.2 ~~the action;~~

8.3 ~~(6) state that the parent of a child with a disability is protected by procedural~~
8.4 ~~safeguards and, if this notice is not an initial referral for evaluation, how a parent can get a~~
8.5 ~~description of the procedural safeguards; and~~

8.6 ~~(7) identify where a parent can get help in understanding this law.~~

8.7 Subd. 3a. **Fourteen-day notice.**

8.8 ~~Subd. 4. **Understandable notice.** (a) The written notice under subdivision 2 must~~
8.9 ~~be understandable to the general public and available in the parent's native language or by~~
8.10 ~~another communication form, unless it is clearly not feasible to do so.~~

8.11 ~~(b) If the parent's native language or other communication form is not written,~~
8.12 ~~the district must take steps to ensure that:~~

8.13 ~~(1) the notice is translated orally or by other means to the parent in the parent's~~
8.14 ~~native language or other communication form;~~

8.15 ~~(2) the parent understands the notice; and~~

8.16 ~~(3) written evidence indicates the requirements in subdivision 2 are met.~~

8.17 **Subd. 5. Initial action; parent consent.** (a) The district must not proceed with the
8.18 initial evaluation of a child, the initial placement of a child in a special education program,
8.19 or the initial provision of special education services for a child without the prior written
8.20 consent of the child's parent. A district may not override the written refusal of a parent to
8.21 consent to an initial evaluation or reevaluation.

8.22 (b) A parent, after consulting with health care, education, or other professional
8.23 providers, may agree or disagree to provide the parent's child with sympathomimetic
8.24 medications unless section 144.344 applies.

8.25 **Subd. 6. Dispute resolution processes; generally.** Parties are encouraged to
8.26 resolve disputes over the identification, evaluation, educational placement, manifestation
8.27 determination, interim alternative educational placement, or the provision of a free
8.28 appropriate public education to a child with a disability through conciliation, mediation,
8.29 facilitated team meetings, or other alternative process. All dispute resolution options are
8.30 voluntary on the part of the parent and must not be used to deny or delay the right to a
8.31 due process hearing. All dispute resolution processes under this section are provided
8.32 at no cost to the parent.

8.33 **Subd. 7. Conciliation conference.** A parent must have an opportunity to meet with
8.34 appropriate district staff in at least one conciliation conference if the parent objects to any
8.35 proposal of which the parent receives notice under subdivision ~~2~~ 3a. If the parent refuses

9.1 district efforts to conciliate the dispute, the conciliation requirement is satisfied. ~~Following~~
9.2 ~~a conciliation conference~~ A district must hold a conciliation conference within ten calendar
9.3 days from the date the district receives a parent's written request or an agreement to
9.4 participate in a conciliation conference. Except as provided in this section, all discussions
9.5 held during a conciliation conference are confidential and are not admissible in a due
9.6 process hearing. Within five school days after the final conciliation conference, the district
9.7 must prepare and provide to the parent a conciliation conference memorandum that
9.8 describes the district's final proposed offer of service. This memorandum is admissible in
9.9 evidence in any subsequent proceeding.

9.10 Subd. 8. **Voluntary dispute resolution options.** In addition to offering at least
9.11 one conciliation conference, a district must inform a parent of other dispute resolution
9.12 processes, including at least mediation and facilitated team meetings. The fact that
9.13 an alternative dispute resolution process was used is admissible in evidence at any
9.14 subsequent proceeding. State-provided mediators and team meeting facilitators shall not
9.15 be subpoenaed to testify at a due process hearing or civil action under federal special
9.16 education law nor are any records of mediators or state-provided team meeting facilitators
9.17 accessible to the parties.

9.18 Subd. 9. **Mediation.** Mediation is a dispute resolution process that involves a
9.19 neutral party provided by the state to assist a parent and a district in resolving disputes
9.20 over the identification, evaluation, educational placement, manifestation determination,
9.21 interim alternative educational placement, or the provision of a free appropriate public
9.22 education to a child with a disability. A mediation process is available as an informal
9.23 alternative to a due process hearing but must not be used to deny or postpone the
9.24 opportunity of a parent or district to obtain a due process hearing. Mediation is voluntary
9.25 for all parties. All mediation discussions are confidential and inadmissible in evidence
9.26 ~~in any subsequent proceeding, unless the:~~

- 9.27 ~~(1) parties expressly agree otherwise;~~
9.28 ~~(2) evidence is otherwise available; or~~
9.29 ~~(3) evidence is offered to prove bias or prejudice of a witness.~~

9.30 Subd. 10. **Mediated agreements.** ~~Mediated agreements are not admissible unless~~
9.31 ~~the parties agree otherwise or a party to the agreement believes the agreement is not~~
9.32 ~~being implemented, in which case the aggrieved party may enter the agreement into~~
9.33 ~~evidence at a due process hearing. The parties may request another mediation to resolve~~
9.34 ~~a dispute over implementing the mediated agreement. After a due process hearing is~~
9.35 ~~requested, a party may request mediation and the commissioner must provide a mediator~~
9.36 ~~who conducts a mediation session no later than the third business day after the mediation~~

10.1 ~~request is made to the commissioner.~~ If the parties resolve all or a portion of the dispute,
10.2 or agree to use another procedure to resolve the dispute, the mediator shall ensure that the
10.3 resolution or agreement is in writing, signed by the parties, and a copy is given to each
10.4 party. The written resolution or agreement shall state that all discussions that occurred
10.5 during mediation are confidential and may not be used as evidence in any hearing or
10.6 civil proceeding. The resolution or agreement is legally binding upon the parties and is
10.7 enforceable in the state or federal district court. A party may request another mediation to
10.8 resolve a dispute over implementing the mediated agreement.

10.9 Subd. 11. **Facilitated team meeting.** A facilitated team meeting is an IEP, IFSP,
10.10 or IIP team meeting led by an impartial state-provided facilitator to promote effective
10.11 communication and assist a team in developing an individualized education plan.

10.12 Subd. 12. **Impartial due process hearing.** ~~(a)~~ A parent or a district is entitled to
10.13 an impartial due process hearing conducted by the state when a dispute arises over the
10.14 identification, evaluation, educational placement, manifestation determination, interim
10.15 alternative educational placement, or the provision of a free appropriate public education
10.16 to a child with a disability. The hearing must be held in the district responsible for
10.17 ensuring that a free appropriate public education is provided according to state and federal
10.18 law. The proceedings must be recorded and preserved, at state expense, pending ultimate
10.19 disposition of the action.

10.20 ~~(b) The due process hearing must be conducted according to the rules of the~~
10.21 ~~commissioner and federal law.~~

10.22 Subd. 13. **Hearing officer qualifications.** ~~The commissioner must appoint an~~
10.23 ~~individual who is qualified under this subdivision to serve as a hearing officer.~~ The
10.24 commissioner shall maintain a list of qualified hearing officers who are not employed
10.25 by or under contract with the department or the school district, and who do not have
10.26 a personal or professional interest that conflicts with their objectivity when serving as
10.27 hearing officers in hearings under this section. The list shall include a statement of the
10.28 qualifications of each person listed. A hearing officer must know and understand state and
10.29 federal special education laws, rules, and regulations, and legal interpretations by federal
10.30 and state courts. A hearing officer also must have the knowledge and ability to conduct
10.31 hearings and render and write decisions according to appropriate, standard legal practice.
10.32 Upon receipt of a written request for a hearing, the commissioner shall appoint a hearing
10.33 officer from the list. The hearing officer must:

10.34 (1) be knowledgeable and impartial;

10.35 (2) have no personal interest in or specific involvement with the student who is a
10.36 party to the hearing;

11.1 (3) not have been employed as an administrator by the district that is a party to
11.2 the hearing;

11.3 (4) not have been involved in selecting the district administrator who is a party
11.4 to the hearing;

11.5 (5) have no personal, economic, or professional interest in the outcome of the
11.6 hearing other than properly administering federal and state laws, rules, and policies;

11.7 (6) have no substantial involvement in developing state or local policies or
11.8 procedures challenged in the hearing;

11.9 (7) not be a current employee or board member of a Minnesota public school district,
11.10 education district, intermediate unit or regional education agency, or the department if
11.11 the department is the service provider; and

11.12 (8) not be a current employee or board member of a disability advocacy organization
11.13 or group.

11.14 Subd. 14. **Request for hearing.** ~~A request for a due process hearing must:~~

11.15 ~~(1) be in writing;~~

11.16 ~~(2) describe the nature of the dispute about providing special education services to~~
11.17 ~~the student including facts relating to the dispute; and~~

11.18 ~~(3) state, to the extent known, the relief sought.~~

11.19 ~~Any school district administrator receiving a request for a due process hearing~~
11.20 ~~must immediately forward the request to the commissioner. Within two business days of~~
11.21 ~~receiving a request for a due process hearing, the commissioner must appoint a hearing~~
11.22 ~~officer. The commissioner must not deny a request for hearing because the request~~
11.23 ~~is incomplete. A party may disqualify a hearing officer only by affirmatively showing~~
11.24 ~~prejudice or bias to the commissioner or to the chief administrative law judge if the hearing~~
11.25 ~~officer is an administrative law judge. If a party affirmatively shows prejudice against a~~
11.26 ~~hearing officer, the commissioner must assign another hearing officer to hear the matter. (a)~~
11.27 A parent or a school district may file a written request for a due process hearing regarding
11.28 a proposal or refusal to initiate or change that child's evaluation, individualized education
11.29 program, or educational placement, or to provide a free appropriate public education.

11.30 (b) The parent shall include in the hearing request the name of the child, the address
11.31 of the child's residence, the name of the school the child attends, a description of the
11.32 child's problem relating to the proposed or refused initiation or change, including facts
11.33 relating to the problem, and a proposed resolution of the problem to the extent known
11.34 and available to the parents at the time.

11.35 (c) A parent or a school district may file a written request for a hearing under United
11.36 States Code, title 20, section 1415, paragraph (k).

12.1 (d) A parent or school district filing a request for a hearing under this subdivision
12.2 must provide the request to the other party and a copy of the request to the department.
12.3 Upon receiving a request for a hearing, the department shall give to the child's parent a
12.4 copy of the procedural safeguards notice available to a parent under federal regulations.

12.5 (e) (1) If the parent of a child with a disability files a written request for a hearing,
12.6 and the school district has not previously sent a written notice to the parent under
12.7 subdivision 3, regarding the subject matter of the hearing request, the school district
12.8 shall, within ten days of receiving the hearing request, send to the child's parent a written
12.9 explanation of why the school district proposed or refused to take the action raised in the
12.10 hearing request, a description of other options that the individualized education program
12.11 team considered and the reason why those options were rejected, a description of each
12.12 evaluation procedure, assessment, record, or report that the school district used as the basis
12.13 for the proposed or refused action, and a description of the factors that are relevant to the
12.14 school district's proposal or refusal. A response by a school district under this subdivision
12.15 does not preclude the school district from asserting that the parent's request for a hearing
12.16 is insufficient under clause (2) of this paragraph.

12.17 (2) A hearing may not occur until the party requesting the hearing files a request that
12.18 meets the requirements of paragraph (b). The request under paragraph (b) is considered
12.19 sufficient unless the party receiving the request notifies the hearing officer and the other
12.20 party in writing within 15 days of receiving the request that the receiving party believes
12.21 the request does not meet the requirements of paragraph (b). Within five days of receiving
12.22 a notice under this subdivision, the hearing officer shall determine whether the request
12.23 meets the requirements under paragraph (b) and notify the parties.

12.24 (f) Except as provided in paragraph (e), clause (1), the party receiving a request for a
12.25 hearing shall send to the party requesting the hearing a written response that addresses the
12.26 issues raised in the hearing request within ten days of receiving the request.

12.27 Subd. 15. **Prehearing conference.** A prehearing conference must be held within
12.28 five business days of the date the commissioner appoints the hearing officer. The hearing
12.29 officer must initiate the prehearing conference which may be conducted in person, at a
12.30 location within the district, or by telephone. The hearing officer must create a written
12.31 verbatim record of the prehearing conference which is available to either party upon
12.32 request. At the prehearing conference, the hearing officer must:

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

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

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

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

13.5 Subd. 16. **Burden of proof.** The burden of proof at a due process hearing is on the
13.6 ~~district to demonstrate, by a preponderance of the evidence, that it is complying with the~~
13.7 ~~law and offered or provided a free appropriate public education to the child in the least~~
13.8 ~~restrictive environment. If the district has not offered or provided a free appropriate public~~
13.9 ~~education in the least restrictive environment and the parent wants the district to pay for a~~
13.10 ~~private placement, the burden of proof is on the parent to demonstrate, by a preponderance~~
13.11 ~~of the evidence, that the private placement is appropriate party seeking relief.~~

13.12 Subd. 17. **Admissible evidence.** The hearing officer may admit all evidence
13.13 that possesses probative value, including hearsay, if it is the type of evidence on which
13.14 reasonable, prudent persons are accustomed to rely in conducting their serious affairs. The
13.15 hearing officer must give effect to the rules of privilege recognized by law and exclude
13.16 evidence that is incompetent, irrelevant, immaterial, or unduly repetitious.

13.17 Subd. 18. **Hearing officer authority.** (a) A hearing officer must limit an impartial
13.18 due process hearing to the time sufficient for each party to present its case.

13.19 (b) A hearing officer must establish and maintain control and manage the hearing.
13.20 This authority includes, but is not limited to:

13.21 (1) requiring attorneys representing parties at the hearing, after notice and an
13.22 opportunity to be heard, to pay court reporting and hearing officer costs, or fines payable
13.23 to the state, for failing to: (i) obey scheduling or prehearing orders, (ii) appear, (iii) be
13.24 prepared, or (iv) participate in the hearing process in good faith;

13.25 (2) administering oaths and affirmations;

13.26 (3) issuing subpoenas;

13.27 (4) determining the responsible and providing districts and joining those districts, if
13.28 not already notified, in the proceedings;

13.29 (5) making decisions involving identification, evaluation, educational placement,
13.30 manifestation determination, interim alternative educational placement, or the provision of
13.31 a free appropriate public education to a child with a disability; ~~and~~

13.32 (6) ordering an independent educational evaluation of a child at district expense; and

13.33 (7) extending the hearing decision timeline for good cause shown.

13.34 (c) Good cause includes, but is not limited to, the time required for mediation or
13.35 other settlement discussions, independent educational evaluation, complexity and volume
13.36 of issues, or finding or changing counsel.

14.1 Subd. 19. **Expedited due process hearings.** A parent has the right to an expedited
 14.2 due process hearing when there is a dispute over a manifestation determination or a
 14.3 proposed or actual placement in an interim alternative educational setting. A district has
 14.4 the right to an expedited due process hearing when proposing or seeking to maintain
 14.5 placement in an interim alternative educational setting. A hearing officer must hold an
 14.6 expedited due process hearing and must issue a decision within ten calendar days of the
 14.7 request for a hearing. A hearing officer may extend by up to five additional calendar
 14.8 days the time for issuing a decision in an expedited due process hearing. All policies in
 14.9 this section apply to expedited due process hearings to the extent they do not conflict
 14.10 with federal law.

14.11 Subd. 20. **Hearing officer's decision; time period.** (a) The hearing officer must
 14.12 issue a decision within 45 calendar days of the date on which the commissioner receives
 14.13 the request for a due process hearing. A hearing officer is encouraged to accelerate the
 14.14 time line to 30 days for a child under the age of three whose needs change rapidly and
 14.15 who requires quick resolution of a dispute. A hearing officer may not extend the time
 14.16 beyond the 45-day period unless requested by either party for good cause shown on the
 14.17 record. Extensions of time must not exceed a total of 30 calendar days unless both parties
 14.18 and the hearing officer agree or time is needed to complete an independent educational
 14.19 evaluation. ~~Good cause includes, but is not limited to, the time required for mediation or~~
 14.20 ~~other settlement discussions, independent educational evaluation, complexity and volume~~
 14.21 ~~of issues, or finding or changing counsel.~~ The hearing officer's decision shall consist of
 14.22 written findings of fact and conclusions of law and shall be based upon a preponderance of
 14.23 the evidence. The findings of fact shall be based solely upon the evidence received at the
 14.24 hearing. The decision shall be made on substantive grounds based on a determination of
 14.25 whether the child has received a free appropriate public education.

14.26 (b) ~~The hearing officer's decision must:~~ In matters alleging a procedural violation, a
 14.27 hearing officer may find that a child did not receive a free appropriate public education
 14.28 only if the procedural inadequacies impeded the child's right to a free appropriate
 14.29 public education, significantly impeded the parents' opportunity to participate in the
 14.30 decision-making process regarding the provision of a free appropriate public education to
 14.31 the child, or caused a deprivation of educational benefits.

14.32 ~~(1) be in writing;~~

14.33 ~~(2) state the controlling and material facts upon which the decision is made in order~~
 14.34 ~~to apprise the reader of the basis and reason for the decision; and~~

14.35 ~~(3) be based on local standards, state statute, the rules of the commissioner, and~~
 14.36 ~~federal law.~~

15.1 (c) Once the hearing officer has issued a final decision, the hearing officer lacks
15.2 authority to amend the decision except for clerical or mathematical errors.

15.3 (d) Federal Law

15.4 Subd. 21. **Compensatory educational services.** The hearing officer may require
15.5 the resident or responsible district to provide compensatory educational services to the
15.6 child if the hearing officer finds that the district has not offered or made available to
15.7 the child a free appropriate public education in the least restrictive environment and the
15.8 child suffered a loss of educational benefit. Such services take the form of direct and
15.9 indirect special education and related services designed to address any loss of educational
15.10 benefit that may have occurred. The hearing officer's finding must be based on a present
15.11 determination of whether the child has suffered a loss of educational benefit.

15.12 ~~Subd. 22. **Child's educational placement during due process hearing.** (a) Until a~~
15.13 ~~due process hearing under this section is completed or the district and the parent agree~~
15.14 ~~otherwise, the child must remain in the child's current educational placement and must~~
15.15 ~~not be denied initial admission to school.~~

15.16 ~~(b) Until an expedited due process hearing challenging an interim alternative~~
15.17 ~~educational placement is completed, the child must remain in the interim alternative~~
15.18 ~~educational setting until the decision of the hearing officer or the expiration of the 45 days~~
15.19 ~~permitted for an interim alternative educational setting, whichever occurs first, unless the~~
15.20 ~~parent and district agree otherwise.~~

15.21 Subd. 23. **Implementation of hearing officer order.** (a) That portion of a hearing
15.22 officer's decision granting relief requested by the parent must be implemented upon
15.23 issuance.

15.24 (b) Except as provided under paragraph (a) or the district and parent agree otherwise,
15.25 following a hearing officer's decision granting relief requested by the district, the child
15.26 must remain in the current educational placement until the time to request judicial review
15.27 under subdivision 24 expires or, if judicial review is requested, at the time the Minnesota
15.28 Court of Appeals or the federal district court issues its decision, whichever is later.

15.29 Subd. 24. **Review of hearing officer decisions.** The parent or district may seek
15.30 review of the hearing officer's decision in the Minnesota Court of Appeals or in the federal
15.31 district court, consistent with federal law. A party must appeal to the Minnesota Court of
15.32 Appeals within 60 days of receiving the hearing officer's decision.

15.33 Subd. 25. **Enforcement of orders.** The commissioner must monitor final hearing
15.34 officer decisions and ensure enforcement of hearing officer ~~orders~~ decisions.

16.1 Subd. 26. **Hearing officer and person conducting alternative dispute resolution**
16.2 **are state employees.** A hearing officer or person conducting alternative dispute resolution
16.3 under this section is an employee of the state under section 3.732 for purposes of section
16.4 3.736 only.

16.5 Subd. 27. **Hearing officer training.** A hearing officer must participate in training
16.6 ~~and follow procedures established~~ offered by the commissioner.

16.7 Subd. 28. **District liability.** A district is not liable for harmless technical violations
16.8 ~~of this section or rules implementing this section~~ federal or state laws, rules or regulations
16.9 governing special education if the school district can demonstrate ~~on a case-by-case basis~~
16.10 that the violations did not harm a student's educational progress or the parent's right to
16.11 notice, participation, or due process. This subdivision is applicable to due process hearings
16.12 and special education complaints filed with the department.

16.13 Sec. 7. Minnesota Statutes 2008, section 125A.57, subdivision 2, is amended to read:

16.14 Subd. 2. **Assistive technology device.** "Assistive technology device" means any
16.15 item, piece of equipment, software, or product system, whether acquired commercially off
16.16 the shelf, modified, or customized, that is used to increase, maintain, or improve functional
16.17 capabilities of ~~children with disabilities~~ a child with a disability. The term does not include
16.18 a medical device that is surgically implanted or a replacement of such a device.

16.19 **EFFECTIVE DATE.** This section is effective the day following final enactment.

16.20 Sec. 8. **REPEALER.**

16.21 Minnesota Statutes 2008, sections 121A.43; 125A.03; 125A.05; and 125A.18, are
16.22 repealed.

16.23 Minnesota Rules, parts 3525.0210, subparts 34 and 43; 3525.0400; and 3525.2445,
16.24 are repealed."

16.25 Amend the title accordingly