



**Annual Report on Obsolete, Unnecessary or Duplicative Rules**

**Fiscal Year 2017**

**Report to the Legislature**

**As required by Minnesota Statutes,**

**section 14.05**

**COMMISSIONER:**

**Brenda Cassellius, Ed. D.**

**FOR MORE INFORMATION, CONTACT:**

**Daron Korte, J.D.**

**Assistant Commissioner**

**(651) 582-8215**

**[Daron.Korte@state.mn.us](mailto:Daron.Korte@state.mn.us)**

## **Cost of Report Preparation**

The total cost for the Minnesota Department of Education (MDE) to prepare this report was approximately \$1871. 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 2015, section 3.197, which requires that at the beginning of a report to the Legislature, the cost of preparing the report must be provided.

## Legislative Charge

Minnesota Statutes section 14.05, subd. 5, requires that:

By December 1 of each year, an agency must submit to the governor, the Legislative Coordinating Commission, the policy and funding committees and divisions with jurisdiction over the agency, and the revisor of statutes, a list of any rules or portions of rules that are obsolete, unnecessary, or duplicative of other state or federal statutes or rules. The list must also include an explanation of why the rule or portion of the rule is obsolete, unnecessary, or duplicative of other state or federal statutes or rules. By December 1, the agency must either report a timetable for repeal of the rule or portion of the rule, or must develop a bill for submission to the appropriate policy committee to repeal the obsolete, unnecessary, or duplicative rule. Such a bill must include proposed authorization to use the expedited procedures of section 14.389 to repeal or amend the obsolete, unnecessary, or duplicative rule. A report submitted under this subdivision must be signed by the person in the agency who is responsible for identifying and initiating repeal of obsolete rules. The report also must identify the status of any rules identified in the prior year's report as obsolete, unnecessary, or duplicative. If none of an agency's rules are obsolete, unnecessary, or duplicative, an agency's December 1 report must state that conclusion.<sup>1</sup>

## Introduction

This legislative report will discuss Minnesota rules that are currently obsolete, unnecessary or duplicative of other state or federal statutes or rules. Minnesota Rules that may be repealed due to being obsolete may be included in this legislative report. The majority of the rules included in this report are special education rules that are obsolete due to state and federal law changes.

## Analysis

### Minn. R. 3525.0210, Subp. 7. Community-based

Minnesota Rules part 3525.0210, Subp. 7, is the definition of “community-based.”<sup>2</sup> This definition is obsolete and unnecessary because it does not encompass the most common educational placement used in the field, school readiness programs. These programs are not covered by the existing definition of “community-based” in the rule because these programs are governed by the district and located within the district. This definition also does not encompass the newest educational placement option available in Minnesota, voluntary Pre-K. Furthermore, this definition is obsolete because federal language that used the term “community-based” no longer exists.<sup>3</sup> The department is recommending that the definition of “early childhood

---

<sup>1</sup> [Minn. Stat. § 14.05, Subp. 5.](#)

<sup>2</sup> [Minn. R. 3525.0210, Subp. 7.](#)

<sup>3</sup> [IDEA Data Center and Early Childhood Technical Assistance \(ECTA\) Center, B6 Data Reporting Tools: Educational Environments, Ages 3-5](#), p. 3 (See definitions of regular early childhood program and special ed program provided in technical assistance guidance document MDE relies on); [20 U.S.C. 1418, Sec. 618](#); and see also [U.S. Department of Health and Human Services and U.S. Department of Education, Policy Statement on Inclusion of Children with Disabilities in Early Childhood Programs \(September 14, 2015\)](#).

programs” also be repealed (see Minn. R. 3525.2335 below). Minn. R. 3525.2335 is the only other place in Minnesota Rules that the term “community-based is used,” therefore if Minn. R. 3525.2335 is repealed a definition of “community-based” would be unnecessary. The term “community-based” is best left undefined as the parent or district can determine what programs are available within the appropriate community. Therefore, the department recommends repealing Minn. R. 3525.0210, Subp 7, in its entirety in the upcoming year.

#### Minn. R. 3525.0210, Subp. 20. Facilitated IEP meeting

Minnesota Rules part 3525.0210, Subp. 20, is the definition of a “facilitated IEP meeting.”<sup>4</sup> This definition uses the term “IIP” that has been removed from state statutes.<sup>5</sup> The only remaining use of the term “IIP” in Minnesota law is in Minn. R. 3525.0210, Subp. 20. This term is now obsolete due to being removed from state statutes and rule and it is no longer used in the field. The appropriate term now used is “standardized written plan,” which has been incorporated into special education related state statutes.<sup>6</sup> Furthermore, Minnesota Statutes section 125A.091, Subd. 11, already includes a definition of a “facilitated IEP meeting” that is nearly identical to the definition found in the rule.<sup>7</sup> To be consistent with state statute and rule the term “IIP” should be removed from Minn. R. 3525, Subp. 20. The department recommends repealing the references to “IIP” in Subpart 20 in the upcoming year.

#### Minn. R. 3525.0210, Subp. 28. Individualized family service plan

Minnesota Rules part 3525.0210, Subp. 28, defines an “Individualized Family Service Plan or IFSP.”<sup>8</sup> The definition in Minnesota Rules does not match the definition of the same term found in current federal law.<sup>9</sup> Furthermore, the second sentence of this rule provides that “procedural and program requirements for the IEP also apply to the educational components of the IFSP.”<sup>10</sup> This language is inconsistent with the recently revised Minnesota Statutes section 125A.03 when read with 34 C.F.R. 303.344(d)(4).<sup>11</sup> Federal law states “for children who are at least three years of age, the IFSP must include an educational component that promotes school readiness and incorporates preliteracy, language and numeracy skills.”<sup>12</sup> Federal law also allows states to elect to provide for a continuation of Part C services after a child turns three.<sup>13</sup> Minnesota Statutes section 125A.03 provides that for children ages 3-21 services will be provided through an IEP that meets the requirements of Part B of the federal regulations and that for children birth-3 services will be provided through an IFSP that meets the requirements of Part C of the federal regulations.<sup>14</sup> Part C IFSPs do not include educational components (which is a Part B

---

<sup>4</sup> [Minn. R. 3525.0210, Subp. 20.](#)

<sup>5</sup> [2016 Minnesota Session Law, Ch. 189, Art. 29, Sect. 1.](#)

<sup>6</sup> See Minn. Stat. §§ [120B.125](#), [124D.15](#), [125A.023](#), [125A.027](#); and [2016 Minnesota Session Law, Ch. 189, Art. 29, Sect. 1.](#)

<sup>7</sup> [Minn. Stat. 125A.091, Subd. 11.](#)

<sup>8</sup> [Minn. R. 3525.0210, Subp. 28.](#)

<sup>9</sup> [34 C.F.R. § 303.20.](#)

<sup>10</sup> [Minn. R. 3525.0210, Subp. 28.](#)

<sup>11</sup> [Minn. Stat. §125A.03](#); and [34 C.F.R. 303.344 \(d\)\(4\).](#)

<sup>12</sup> [34 C.F.R. § 303.344 \(d\)\(4\).](#)

<sup>13</sup> [34 C.F.R. § 303.211.](#)

<sup>14</sup> [Minn. Stat. § 125A.03.](#)

requirement) and Part C has procedural requirements for IFSPs that are not consistent with Part B IEP requirements. In summary, the second sentence of the Minnesota Rules definition of “IFSP” is now obsolete and unnecessary due to the revision of Minnesota Statutes section 125A.03, which clarified that no child under the age of three in Minnesota will be subject to Part B requirements. Thus, this second sentence in the definition of IFSP” should be repealed in the upcoming year. However, because two additional Minnesota Rules do include a reference to an “IFSP,” the first sentence of the definition of an “IFSP” should be maintained.

#### Minn. R. 3525.0210, Subp. 41. Significant change in program or placement

Minnesota Rules, part 3525.0210, Subp. 41, is the definition for “significant change in program or placement.” This definition is obsolete and should be repealed because this term is not found in current rule or statute, except in this definition section.<sup>15</sup> The existing federal regulations and state statutes incorporate the changes in a special education program or placement that are included in this rule provision therefore making this rule provision duplicative and obsolete.<sup>16</sup> The department recommends repealing this rule subpart in its entirety in the upcoming year.

#### Minn. R. 3525.0800, Subp. 1. Responsibility for Ensuring Provision of Instruction and Services; Pupil’s district of residence

Minnesota Rules part 3525.0800 is about the responsibility for ensuring provision of instruction and services.<sup>17</sup> Subpart 1 of this rule provides that a pupil’s district of residence is responsible for assuring that an appropriate programs is provided. This subpart references Minnesota Statutes section 125A.05, which was repealed in 2009.<sup>18</sup> Thus, the reference to this repealed statute is obsolete and should be repealed in the upcoming year. The remainder of the rule language in this subpart should be maintained.

#### Minn. R. 3525.2335. Early Childhood Program Services, Alternatives, and Settings

Minnesota Rule part 3525.2335 sets out early childhood program services, alternatives and settings.<sup>19</sup> This rule also specifically lists two types of special education services and three types of settings. The language in Subparts A and B(1-3) relates to types of special education services and settings and no longer matches current placement options such as school readiness programs and voluntary pre-K.<sup>20</sup> Furthermore, this language is not aligned with the current federal guidance on inclusion.<sup>21</sup> For these reasons, the language found in subparts A and B(1-3) is outdated and obsolete and should be repealed. The department recommends

---

<sup>15</sup> The language of “significant change in program or placement” was removed from Minn. R. 3525.3600 in 2005.

<sup>16</sup> See generally [34 C.F.R. Part 300](#).

<sup>17</sup> [Minn. R. 3525.0800, Subp. 1](#).

<sup>18</sup> [Minn. Stat. § 125A.05 \(repealed 2009\)](#).

<sup>19</sup> [Minn. R. 3525.2335](#).

<sup>20</sup> School readiness programs ([Minn. Stat. § 124D.15](#)) are the number one district educational placement and did not exist when the original rule language was written. Voluntary Pre-K ([Minn. Stat.124D.151](#)) is the newest educational placement option available in Minnesota.

<sup>21</sup> See [U.S. Department of Health and Human Services and U.S. Department of Education, Policy Statement on Inclusion of Children with Disabilities in Early Childhood Programs \(September 14, 2015\)](#).

repealing subparts A and B(1-3) in the upcoming year and maintaining the initial paragraph language found in Subp. 2.

#### Minn. R. 3525.2435. Effort to Locate Parent; and Minn. R. 3525.2440. Surrogate Parent Appointment

Minnesota Rules part 3525.2435 covers reasonable efforts to locate a parent.<sup>22</sup> Minnesota Rules part 3525.2440 covers appointing a surrogate parent. The rule language in both of these provisions is unnecessary as the requirements for reasonable efforts to locate a parent and to appoint a surrogate parent are both better and more broadly defined in Part C and Part B of the federal regulations.<sup>23</sup> Therefore, the department recommends that these rule provisions be entirely repealed in the upcoming year.

#### Minn. R. 3525.4770, Subp. 8. Decision

Minnesota Rules part 3525.4770 relates to expedited hearings and timelines. Subp. 8 of this rule provision sets forth timelines for written expedited hearing decisions. These timelines are also set out in state law, in Minnesota Statutes section 125A.091, and in federal law, in 34 C.F.R. 300.532(c)(2). Thus, Minn. R. 3525.4770, Subp. 8, is obsolete and duplicative. The department recommends repealing Subp. 8 in the upcoming year.

#### Rulemaking Update

The rulemaking proceeding for the achievement and integration rules ended in 2016. The achievement and integration rules proposed by the department were withdrawn.

## **Conclusion**

Several provisions of the Minnesota Department of Education's rules are now duplicative or obsolete due to existing language in state or federal law or amendments to state and federal law. The recommendations in this report suggest possible repeal actions for state rules that will improve and clean up rules that are contradictory or duplicative of other state and federal statutes. These changes will result in reducing confusion for parents and students, better rule implementation throughout the state and improved educational services for Minnesota students.

---

<sup>22</sup> [Minn. R. 3525.2435.](#)

<sup>23</sup> The definition of surrogate parent is also better defined in federal law. See [34 C.F.R. § 303.27](#), [34 C.F.R. § 300.30](#), [34 C.F.R. § 303.422](#), and [34 C.F.R. § 300.519](#).

## **Bibliography**

### Minnesota Session Law

2016 Minnesota Session Law, Chapter 189, Article 29, Sec. 4

### Minnesota Statutes

Minn. Stat. § 120B.125

Minn. Stat. § 125A.027

Minn. Stat. § 125A.03

Minn. Stat. § 125A.08

Minn. Stat § 125A.05 (repealed 2009)

Minn. Stat. § 125A.091

Minn. Stat. § 124D.15

Minn. Stat. § 124D.151

### Minnesota Rules

Minn. R. 3525.0210

Minn. R. 3525.0800

Minn. R. 3525.2335

Minn. R. 3525.2435

Minn. R. 3525.2440

Minn. R. 3525.4770

### Federal Law

34 C.F.R. Part 300

34 C.F.R. § 300.107

34 C.F.R. § 300.117

34 C.F.R. § 300.519

34 C.F.R. § 300.532(c)(2)

34 C.F.R. § 303.20

34 C.F.R. § 303.27

34 C.F.R. § 303.30

34 C.F.R. § 303.211

34 C.F.R. § 303.344 (d)(4)

34 C.F.R. § 303.422

20 U.S.C. 1418, Sec. 618.

Federal Guidance

U.S. Department of Health and Human Services and U.S. Department of Education, *Policy Statement on Inclusion of Children with Disabilities in Early Childhood Programs* (September 14, 2015).

IDEA Data Center and Early Childhood Technical Assistance (ECTA) Center, *B6 Reporting Tools: Educational Environments, Ages 3-5* (August 2014; Minor Revision March 2015).