



KEY: ~~stricken~~ = old language to be removed

underscored = new language to be added

H.F No. 478, 1st Engrossment: 82nd Legislative Session (2001-2002) Posted on Mar 1, 2001

- 1.1 A bill for an act
- 1.2 relating to education; raising awareness of issues
- 1.3 related to student use of sympathomimetic medication;
- 1.4 clarifying the definition of educational neglect to
- 1.5 indicate that a parent's refusal to provide
- 1.6 sympathomimetic medications does not constitute
- 1.7 educational neglect; providing for a study to examine
- 1.8 student's Ritalin use; appropriating money; amending
- 1.9 Minnesota Statutes 2000, sections 121A.41, subdivision
- 1.10 10; 122A.18, by adding a subdivision; 122A.61,
- 1.11 subdivision 1; 125A.08; 125A.09, subdivision 3;
- 1.12 260A.01; 260C.163, subdivision 11; 626.556,
- 1.13 subdivision 2.
- 1.14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
- 1.15 Section 1. Minnesota Statutes 2000, section 121A.41,
- 1.16 subdivision 10, is amended to read:
- 1.17 Subd. 10. [SUSPENSION.] "Suspension" means an action by
- 1.18 the school administration, under rules promulgated by the school
- 1.19 board, prohibiting a pupil from attending school for a period of
- 1.20 no more than ten school days. If a suspension is longer than
- 1.21 five days, the suspending administrator must provide the
- 1.22 superintendent with a reason for the longer suspension. This
- 1.23 definition does not apply to dismissal from school for one
- 1.24 school day or less, except as provided in federal law for a
- 1.25 student with a disability. Each suspension action may include a
- 1.26 readmission plan. The readmission plan shall include, where
- 1.27 appropriate, a provision for implementing alternative

1.28 educational services upon readmission and may not be used to
1.29 extend the current suspension. Consistent with section 125A.09,
2.1 subdivision 3, the readmission plan must not obligate a parent
2.2 to provide a sympathomimetic medication for the parent's child
2.3 as a condition of readmission. The school administration may
2.4 not impose consecutive suspensions against the same pupil for
2.5 the same course of conduct, or incident of misconduct, except
2.6 where the pupil will create an immediate and substantial danger
2.7 to self or to surrounding persons or property, or where the
2.8 district is in the process of initiating an expulsion, in which
2.9 case the school administration may extend the suspension to a
2.10 total of 15 days. In the case of a student with a disability,
2.11 the student's individual education plan team must meet
2.12 immediately but not more than ten school days after the date on
2.13 which the decision to remove the student from the student's
2.14 current education placement is made. The individual education
2.15 plan team shall at that meeting: conduct a review of the
2.16 relationship between the child's disability and the behavior
2.17 subject to disciplinary action; and determine the
2.18 appropriateness of the child's education plan.
2.19 The requirements of the individual education plan team
2.20 meeting apply when:
2.21 (1) the parent requests a meeting;
2.22 (2) the student is removed from the student's current
2.23 placement for five or more consecutive days; or
2.24 (3) the student's total days of removal from the student's
2.25 placement during the school year exceed ten cumulative days in a
2.26 school year. The school administration shall implement
2.27 alternative educational services when the suspension exceeds
2.28 five days. A separate administrative conference is required for
2.29 each period of suspension.
2.30 **[EFFECTIVE DATE.]** This section is effective the day
2.31 following final enactment.
2.32 Sec. 2. Minnesota Statutes 2000, section 122A.18, is
2.33 amended by adding a subdivision to read:
2.34 Subd. 2b. [SPECIAL EDUCATION INFORMATION.] All colleges

2.35 and universities approved by the board of teaching to prepare
2.36 persons for classroom teacher licensure must include in their
3.1 teacher preparation programs information on special education
3.2 laws, teaching strategies, and positive behavior interventions.

3.3 [EFFECTIVE DATE.] This section is effective the day
3.4 following final enactment.

3.5 Sec. 3. Minnesota Statutes 2000, section 122A.61,
3.6 subdivision 1, is amended to read:

3.7 Subdivision 1. [STAFF DEVELOPMENT REVENUE.] A district is
3.8 required to reserve an amount equal to at least two percent of
3.9 the basic revenue under section 126C.10, subdivision 2, for
3.10 in-service education for programs under section 120B.22,
3.11 subdivision 2, for staff development plans, including plans for
3.12 challenging instructional activities and experiences under
3.13 section 122A.60, and for curriculum development and programs,
3.14 other in-service education, teachers' workshops, teacher
3.15 conferences, the cost of substitute teachers staff development
3.16 purposes, preservice and in-service education for special
3.17 education professionals and paraprofessionals, and other related
3.18 costs for staff development efforts. A district may annually
3.19 waive the requirement to reserve their basic revenue under this
3.20 section if a majority vote of the licensed teachers in the
3.21 district and a majority vote of the school board agree to a
3.22 resolution to waive the requirement. A district in statutory
3.23 operating debt is exempt from reserving basic revenue according
3.24 to this section. Districts may expend an additional amount of
3.25 unreserved revenue for staff development based on their needs.
3.26 With the exception of amounts reserved for staff development
3.27 from revenues allocated directly to school sites, the board must
3.28 initially allocate 50 percent of the reserved revenue to each
3.29 school site in the district on a per teacher basis, which must
3.30 be retained by the school site until used. The board may retain
3.31 25 percent to be used for district wide staff development
3.32 efforts. The remaining 25 percent of the revenue must be used
3.33 to make grants to school sites for best practices methods. A
3.34 grant may be used for any purpose authorized under section

3.35 120B.22, subdivision 2, 122A.60, or for the costs of curriculum
3.36 development and programs, other in-service education, teachers'
4.1 workshops, teacher conferences, substitute teachers for staff
4.2 development purposes, and other staff development efforts, and
4.3 determined by the site professional development team. The site
4.4 professional development team must demonstrate to the school
4.5 board the extent to which staff at the site have met the
4.6 outcomes of the program. The board may withhold a portion of
4.7 initial allocation of revenue if the staff development outcomes
4.8 are not being met.

4.9 **[EFFECTIVE DATE.]** This section is effective the day
4.10 following final enactment.

4.11 Sec. 4. Minnesota Statutes 2000, section 125A.08, is
4.12 amended to read:

4.13 125A.08 [SCHOOL DISTRICT OBLIGATIONS.]

4.14 (a) As defined in this section, every district must ensure
4.15 the following:

4.16 (1) all students with disabilities are provided the special
4.17 instruction and services which are appropriate to their needs.
4.18 Where the individual education plan team has determined
4.19 appropriate goals and objectives based on the student's needs,
4.20 including the extent to which the student can be included in the
4.21 least restrictive environment, and where there are essentially
4.22 equivalent and effective instruction, related services, or
4.23 assistive technology devices available to meet the student's
4.24 needs, cost to the district may be among the factors considered
4.25 by the team in choosing how to provide the appropriate services,
4.26 instruction, or devices that are to be made part of the
4.27 student's individual education plan. The individual education
4.28 plan team shall consider and may authorize services covered by
4.29 medical assistance according to section 256B.0625, subdivision
4.30 26. The student's needs and the special education instruction
4.31 and services to be provided must be agreed upon through the
4.32 development of an individual education plan. The plan must
4.33 address the student's need to develop skills to live and work as
4.34 independently as possible within the community. The individual

4.35 education plan team must consider positive behavioral
4.36 interventions, strategies, and supports that address behavior
5.1 for children with attention deficit disorder or attention
5.2 deficit hyperactivity disorder. By grade 9 or age 14, the plan
5.3 must address the student's needs for transition from secondary
5.4 services to post-secondary education and training, employment,
5.5 community participation, recreation, and leisure and home
5.6 living. In developing the plan, districts must inform parents
5.7 of the full range of transitional goals and related services
5.8 that should be considered. The plan must include a statement of
5.9 the needed transition services, including a statement of the
5.10 interagency responsibilities or linkages or both before
5.11 secondary services are concluded;
5.12 (2) children with a disability under age five and their
5.13 families are provided special instruction and services
5.14 appropriate to the child's level of functioning and needs;
5.15 (3) children with a disability and their parents or
5.16 guardians are guaranteed procedural safeguards and the right to
5.17 participate in decisions involving identification, assessment
5.18 including assistive technology assessment, and educational
5.19 placement of children with a disability;
5.20 (4) eligibility and needs of children with a disability are
5.21 determined by an initial assessment or reassessment, which may
5.22 be completed using existing data under United States Code, title
5.23 20, section 33, et seq.;

5.24 (5) to the maximum extent appropriate, children with a
5.25 disability, including those in public or private institutions or
5.26 other care facilities, are educated with children who are not
5.27 disabled, and that special classes, separate schooling, or other
5.28 removal of children with a disability from the regular
5.29 educational environment occurs only when and to the extent that
5.30 the nature or severity of the disability is such that education
5.31 in regular classes with the use of supplementary services cannot
5.32 be achieved satisfactorily;

5.33 (6) in accordance with recognized professional standards,
5.34 testing and evaluation materials, and procedures used for the

5.35 purposes of classification and placement of children with a
5.36 disability are selected and administered so as not to be
6.1 racially or culturally discriminatory; and
6.2 (7) the rights of the child are protected when the parents
6.3 or guardians are not known or not available, or the child is a
6.4 ward of the state.
6.5 (b) For paraprofessionals employed to work in programs for
6.6 students with disabilities, the school board in each district
6.7 shall ensure that:
6.8 (1) before or immediately upon employment, each
6.9 paraprofessional develops sufficient knowledge and skills in
6.10 emergency procedures, building orientation, roles and
6.11 responsibilities, confidentiality, vulnerability, and
6.12 reportability, among other things, to begin meeting the needs of
6.13 the students with whom the paraprofessional works;
6.14 (2) annual training opportunities are available to enable
6.15 the paraprofessional to continue to further develop the
6.16 knowledge and skills that are specific to the students with whom
6.17 the paraprofessional works, including understanding
6.18 disabilities, following lesson plans, and implementing follow-up
6.19 instructional procedures and activities; and
6.20 (3) a districtwide process obligates each paraprofessional
6.21 to work under the ongoing direction of a licensed teacher and,
6.22 where appropriate and possible, the supervision of a school
6.23 nurse.
6.24 **[EFFECTIVE DATE.]** This section is effective the day
6.25 following final enactment.
6.26 Sec. 5. Minnesota Statutes 2000, section 125A.09,
6.27 subdivision 3, is amended to read:
6.28 Subd. 3. [INITIAL ACTION; PARENT CONSENT.] (a) The
6.29 district must not proceed with the initial formal assessment of
6.30 a child, the initial placement of a child in a special education
6.31 program, or the initial provision of special education services
6.32 for a child without the prior written consent of the child's
6.33 parent or guardian. The refusal of a parent or guardian to
6.34 consent may be overridden by the decision in a hearing held

6.35 pursuant to subdivision 6 at the district's initiative.

6.36 (b) A parent, after consulting with health care, education,

7.1 or other professional providers, may agree or disagree to

7.2 provide the parent's child with sympathomimetic medications

7.3 unless section 144.344 applies.

7.4 **[EFFECTIVE DATE.]** This section is effective the day

7.5 following final enactment.

7.6 Sec. 6. Minnesota Statutes 2000, section 260A.01, is

7.7 amended to read:

7.8 260A.01 [TRUANCY PROGRAMS AND SERVICES.]

7.9 (a) The programs in this chapter are designed to provide a

7.10 continuum of intervention and services to support families and

7.11 children in keeping children in school and combating truancy and

7.12 educational neglect. School districts, county attorneys, and

7.13 law enforcement may establish the programs and coordinate them

7.14 with other community-based truancy services in order to provide

7.15 the necessary and most effective intervention for children and

7.16 their families. This continuum of intervention and services

7.17 involves progressively intrusive intervention, beginning with

7.18 strong service-oriented efforts at the school and community

7.19 level and involving the court's authority only when necessary.

7.20 (b) Consistent with section 125A.09, subdivision 3, a

7.21 parent's refusal to provide the parent's child with

7.22 sympathomimetic medications does not constitute educational

7.23 neglect.

7.24 **[EFFECTIVE DATE.]** This section is effective the day

7.25 following final enactment.

7.26 Sec. 7. Minnesota Statutes 2000, section 260C.163,

7.27 subdivision 11, is amended to read:

7.28 Subd. 11. [PRESUMPTIONS REGARDING TRUANCY OR EDUCATIONAL

7.29 NEGLECT.] (a) A child's absence from school is presumed to be

7.30 due to the parent's, guardian's, or custodian's failure to

7.31 comply with compulsory instruction laws if the child is under 12

7.32 years old and the school has made appropriate efforts to resolve

7.33 the child's attendance problems; this presumption may be

7.34 rebutted based on a showing by clear and convincing evidence

7.35 that the child is habitually truant. A child's absence from
7.36 school without lawful excuse, when the child is 12 years old or
8.1 older, is presumed to be due to the child's intent to be absent
8.2 from school; this presumption may be rebutted based on a showing
8.3 by clear and convincing evidence that the child's absence is due
8.4 to the failure of the child's parent, guardian, or custodian to
8.5 comply with compulsory instruction laws, sections 120A.22 and
8.6 120A.24.

8.7 (b) Consistent with section 125A.09, subdivision 3, a
8.8 parent's refusal to provide the parent's child with
8.9 sympathomimetic medications does not constitute educational
8.10 neglect.

8.11 **[EFFECTIVE DATE.]** This section is effective the day
8.12 following final enactment.

8.13 Sec. 8. Minnesota Statutes 2000, section 626.556,
8.14 subdivision 2, is amended to read:

8.15 Subd. 2. [DEFINITIONS.] As used in this section, the
8.16 following terms have the meanings given them unless the specific
8.17 content indicates otherwise:

8.18 (a) "Sexual abuse" means the subjection of a child by a
8.19 person responsible for the child's care, by a person who has a
8.20 significant relationship to the child, as defined in section
8.21 609.341, or by a person in a position of authority, as defined
8.22 in section 609.341, subdivision 10, to any act which constitutes
8.23 a violation of section 609.342 (criminal sexual conduct in the
8.24 first degree), 609.343 (criminal sexual conduct in the second
8.25 degree), 609.344 (criminal sexual conduct in the third degree),
8.26 609.345 (criminal sexual conduct in the fourth degree), or
8.27 609.3451 (criminal sexual conduct in the fifth degree). Sexual
8.28 abuse also includes any act which involves a minor which
8.29 constitutes a violation of prostitution offenses under sections
8.30 609.321 to 609.324 or 617.246. Sexual abuse includes threatened
8.31 sexual abuse.

8.32 (b) "Person responsible for the child's care" means (1) an
8.33 individual functioning within the family unit and having
8.34 responsibilities for the care of the child such as a parent,

8.35 guardian, or other person having similar care responsibilities,
8.36 or (2) an individual functioning outside the family unit and
9.1 having responsibilities for the care of the child such as a
9.2 teacher, school administrator, or other lawful custodian of a
9.3 child having either full-time or short-term care
9.4 responsibilities including, but not limited to, day care,
9.5 babysitting whether paid or unpaid, counseling, teaching, and
9.6 coaching.

9.7 (c) "Neglect" means:

9.8 (1) failure by a person responsible for a child's care to
9.9 supply a child with necessary food, clothing, shelter, health,
9.10 medical, or other care required for the child's physical or
9.11 mental health when reasonably able to do so;
9.12 (2) failure to protect a child from conditions or actions
9.13 which imminently and seriously endanger the child's physical or
9.14 mental health when reasonably able to do so;
9.15 (3) failure to provide for necessary supervision or child
9.16 care arrangements appropriate for a child after considering
9.17 factors as the child's age, mental ability, physical condition,
9.18 length of absence, or environment, when the child is unable to
9.19 care for the child's own basic needs or safety, or the basic
9.20 needs or safety of another child in their care;
9.21 (4) failure to ensure that the child is educated as defined
9.22 in sections 120A.22 and 260C.163, subdivision 11, which does not
9.23 include a parent's refusal to provide the parent's child with
9.24 sympathomimetic medications, consistent with section 125A.09,
9.25 subdivision 3;
9.26 (5) nothing in this section shall be construed to mean that
9.27 a child is neglected solely because the child's parent,
9.28 guardian, or other person responsible for the child's care in
9.29 good faith selects and depends upon spiritual means or prayer
9.30 for treatment or care of disease or remedial care of the child
9.31 in lieu of medical care; except that a parent, guardian, or
9.32 caretaker, or a person mandated to report pursuant to
9.33 subdivision 3, has a duty to report if a lack of medical care
9.34 may cause serious danger to the child's health. This section

9.35 does not impose upon persons, not otherwise legally responsible
9.36 for providing a child with necessary food, clothing, shelter,
10.1 education, or medical care, a duty to provide that care;
10.2 (6) prenatal exposure to a controlled substance, as defined
10.3 in section 253B.02, subdivision 2, used by the mother for a
10.4 nonmedical purpose, as evidenced by withdrawal symptoms in the
10.5 child at birth, results of a toxicology test performed on the
10.6 mother at delivery or the child at birth, or medical effects or
10.7 developmental delays during the child's first year of life that
10.8 medically indicate prenatal exposure to a controlled substance;
10.9 (7) "medical neglect" as defined in section 260C.007,
10.10 subdivision 4, clause (5);
10.11 (8) chronic and severe use of alcohol or a controlled
10.12 substance by a parent or person responsible for the care of the
10.13 child that adversely affects the child's basic needs and safety;
10.14 or
10.15 (9) emotional harm from a pattern of behavior which
10.16 contributes to impaired emotional functioning of the child which
10.17 may be demonstrated by a substantial and observable effect in
10.18 the child's behavior, emotional response, or cognition that is
10.19 not within the normal range for the child's age and stage of
10.20 development, with due regard to the child's culture.
10.21 (d) "Physical abuse" means any physical injury, mental
10.22 injury, or threatened injury, inflicted by a person responsible
10.23 for the child's care on a child other than by accidental means,
10.24 or any physical or mental injury that cannot reasonably be
10.25 explained by the child's history of injuries, or any aversive
10.26 and deprivation procedures that have not been authorized under
10.27 section 245.825. Abuse does not include reasonable and moderate
10.28 physical discipline of a child administered by a parent or legal
10.29 guardian which does not result in an injury. Actions which are
10.30 not reasonable and moderate include, but are not limited to, any
10.31 of the following that are done in anger or without regard to the
10.32 safety of the child:
10.33 (1) throwing, kicking, burning, biting, or cutting a child;
10.34 (2) striking a child with a closed fist;

10.35 (3) shaking a child under age three;

10.36 (4) striking or other actions which result in any

11.1 nonaccidental injury to a child under 18 months of age;

11.2 (5) unreasonable interference with a child's breathing;

11.3 (6) threatening a child with a weapon, as defined in

11.4 section 609.02, subdivision 6;

11.5 (7) striking a child under age one on the face or head;

11.6 (8) purposely giving a child poison, alcohol, or dangerous,

11.7 harmful, or controlled substances which were not prescribed for

11.8 the child by a practitioner, in order to control or punish the

11.9 child; or other substances that substantially affect the child's

11.10 behavior, motor coordination, or judgment or that results in

11.11 sickness or internal injury, or subjects the child to medical

11.12 procedures that would be unnecessary if the child were not

11.13 exposed to the substances; or

11.14 (9) unreasonable physical confinement or restraint not

11.15 permitted under section 609.379, including but not limited to

11.16 tying, caging, or chaining.

11.17 (e) "Report" means any report received by the local welfare

11.18 agency, police department, or county sheriff pursuant to this

11.19 section.

11.20 (f) "Facility" means a licensed or unlicensed day care

11.21 facility, residential facility, agency, hospital, sanitarium, or

11.22 other facility or institution required to be licensed under

11.23 sections 144.50 to 144.58, 241.021, or 245A.01 to 245A.16, or

11.24 chapter 245B; or a school as defined in sections 120A.05,

11.25 subdivisions 9, 11, and 13; and 124D.10; or a nonlicensed

11.26 personal care provider organization as defined in sections

11.27 256B.04, subdivision 16, and 256B.0625, subdivision 19a.

11.28 (g) "Operator" means an operator or agency as defined in

11.29 section 245A.02.

11.30 (h) "Commissioner" means the commissioner of human services.

11.31 (i) "Assessment" includes authority to interview the child,

11.32 the person or persons responsible for the child's care, the

11.33 alleged perpetrator, and any other person with knowledge of the

11.34 abuse or neglect for the purpose of gathering the facts,

11.35 assessing the risk to the child, and formulating a plan.

11.36 (j) "Practice of social services," for the purposes of

12.1 subdivision 3, includes but is not limited to employee

12.2 assistance counseling and the provision of guardian ad litem and

12.3 parenting time expeditor services.

12.4 (k) "Mental injury" means an injury to the psychological

12.5 capacity or emotional stability of a child as evidenced by an

12.6 observable or substantial impairment in the child's ability to

12.7 function within a normal range of performance and behavior with

12.8 due regard to the child's culture.

12.9 (l) "Threatened injury" means a statement, overt act,

12.10 condition, or status that represents a substantial risk of

12.11 physical or sexual abuse or mental injury.

12.12 (m) Persons who conduct assessments or investigations under

12.13 this section shall take into account accepted child-rearing

12.14 practices of the culture in which a child participates, which

12.15 are not injurious to the child's health, welfare, and safety.

12.16 **[EFFECTIVE DATE.]** This section is effective the day

12.17 following final enactment.

12.18 Sec. 9. [STUDY; APPROPRIATION.]

12.19 \$50,000 is appropriated from the general fund in fiscal

12.20 year 2002 to the commissioner of children, families, and

12.21 learning for the purpose of contracting with a qualified expert

12.22 to determine and report, consistent with Minnesota Statutes,

12.23 chapter 13, the number and overall incidence rate of Minnesota

12.24 children ages three to 18, by age, grade level, gender, and

12.25 race, diagnosed with attention deficit disorder (ADD) or

12.26 attention deficit hyperactivity disorder (ADHD) currently taking

12.27 sympathomimetic medications such as Ritalin. In preparing the

12.28 report, the contractor also must determine the number and

12.29 overall incidence rate of children not identified with ADD or

12.30 ADHD currently taking sympathomimetic medications such as

12.31 Ritalin. The contractor is encouraged to examine the number of

12.32 children who take sympathomimetic medications at home and not at

12.33 school, the previous interventions tried with children taking

12.34 sympathomimetic medications, the types of practitioners who

- 12.35 prescribe the sympathomimetic medications, and what pressures
12.36 families have experienced in terms of providing their children
13.1 with sympathomimetic medications. The commissioner must submit
13.2 the report to the education committees of the legislature by
13.3 February 15, 2002.
13.4 **[EFFECTIVE DATE.]** This section is effective July 1, 2001.
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