

# MINNESOTA STATUTES 2023

## CHAPTER 123B\*

### SCHOOL DISTRICT POWERS AND DUTIES

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\*Edited for clarity and relevance to homeschooling parents by Dr. R. Floyd Lindquist on March 19, 2024  
The full, unedited law is available here: <https://www.revisor.mn.gov/statutes/cite/123B/pdf>

## AID TO NONPUBLIC STUDENTS

### 123B.40 DECLARATION OF POLICY.

It is the intent of the legislature to provide for distribution of educational aids such as textbooks, standardized tests and pupil support services so that every school pupil in the state will share equitably in education benefits and therefore further assure all Minnesota pupils and their parents freedom of choice in education.

### 123B.41 DEFINITIONS.

Subdivision 1. **Application.** As used in sections 123B.40 to 123B.48, the terms defined in this section shall have the meanings ascribed to them.

Subd. 2. **Textbook.** (a) "Textbook" means any book or book substitute, including electronic books as well as other printed materials delivered electronically, which a pupil uses as a text or text substitute in a particular class or program in the school regularly attended and a copy of which is expected to be available for the individual use of each pupil in this class or program. Textbook includes an online book with an annual subscription cost. Textbook includes a teacher's edition, teacher's guide, or other materials that accompany a textbook that a pupil uses when the teacher's edition, teacher's guide, or other teacher materials are packaged physically or electronically with textbooks for student use.

(b) For purposes of calculating the annual nonpublic pupil aid entitlement for textbooks, the term shall be limited to books, workbooks, or manuals, whether bound or in loose-leaf form, as well as electronic books and other printed materials delivered electronically, intended for use as a principal source of study material for a given class or a group of students.

(c) For purposes of sections 123B.40 to 123B.48, the terms "textbook" and "software or other educational technology" include only such secular, neutral, and nonideological materials as are available, used by, or of benefit to Minnesota public school pupils.

Subd. 3. **Standardized tests.** "Standardized tests" means standardized tests and scoring services which are provided by commercial publishing organizations or the state and which are in use in the public schools of Minnesota to measure the progress of pupils in secular subjects.

Subd. 4. **Pupil support services.** "Pupil support services" means guidance and counseling services and health services.

Subd. 5. **Individualized instructional or cooperative learning materials.** (a) "Individualized instructional or cooperative learning materials" means educational materials which:

(1) are designed primarily for individual pupil use or use by pupils in a cooperative learning group in a particular class or program in the school the pupil regularly attends, including teacher materials that accompany materials that a pupil uses;

(2) are secular, neutral, nonideological and not capable of diversion for religious use; and

(3) are available, used by, or of benefit to Minnesota public school pupils.

(b) Subject to the requirements in paragraph (a), "individualized instructional or cooperative learning materials" include, but are not limited to, the following if they do not fall within the definition of "textbook" in subdivision 2: published materials; periodicals; documents; pamphlets; photographs; reproductions; pictorial or graphic works; prerecorded video programs; prerecorded tapes, cassettes and other sound recordings; manipulative materials; desk charts; games; study prints and pictures; desk maps; models; learning kits; blocks or cubes; flash cards; individualized multimedia systems; prepared instructional computer software programs; choral and band sheet music; electronic books and other printed materials delivered electronically; and CD-Rom.

(c) "Individualized instructional or cooperative learning materials" do not include instructional equipment, instructional hardware, or ordinary daily consumable classroom supplies.

Subd. 5a. **Software or other educational technology.** For purposes of sections 123B.42 and 123B.43, "software or other educational technology" includes software, programs, applications, hardware, and any other electronic educational technology. Software or other educational technology includes course registration fees for advanced placement courses delivered online.

Subd. 6. **Pupils.** "Pupils" means elementary and secondary pupils.

Subd. 7. **Elementary pupils.** "Elementary pupils" means pupils in grades kindergarten through 6; provided, each kindergarten pupil in a half-day program shall be counted as one-half pupil for all computations pursuant to sections 123B.40 to 123B.42, and 123B.44 to 123B.48.

Subd. 8. **Secondary pupils.** "Secondary pupils" means pupils in grades 7 through 12.

Subd. 9. **Nonpublic school defined.** "Nonpublic school" means any school, church or religious organization, or home school wherein a resident of Minnesota may legally fulfill the compulsory instruction requirements of section 120A.22, which is located within the state, and which meets the requirements of Title VI of the Civil Rights Act of 1964 (Public Law 88-352). It does not mean a public school.

Subd. 10. **Nonsectarian nonpublic school.** "Nonsectarian nonpublic school" means any nonpublic school as defined in subdivision 9, which is not church related, is not controlled by a church, and does not promote a religious belief.

Subd. 11. **Pupil; student.** "Pupil" or "student" means a child enrolled in a school and is limited to children who are residents, or children of residents, of Minnesota.

Subd. 12. **Intermediary service area.** "Intermediary service area" means a school administrative unit approved by the commissioner, other than a single school district, including but not limited to the following:

- (a) a service cooperative;
- (b) a cooperative of two or more school districts;
- (c) learning centers; or
- (d) an association of schools or school districts.

Subd. 13. **Neutral site.** "Neutral site" means a public center, a nonsectarian nonpublic school, a mobile unit located off the nonpublic school premises, or any other location off the nonpublic school premises which is neither physically nor educationally identified with the functions of the nonpublic school.

Subd. 14. **Guidance and counseling services.** "Guidance and counseling services" means all activities of a licensed counselor in counseling pupils and parents, providing counseling on learning problems, evaluating the abilities of pupils, assisting pupils in personal and social development and providing referral assistance.

Subd. 15. **Health services.** "Health services" means physician, dental, nursing or optometric services and health supplies brought to the site by the health professional for pupil usage in the field of physical or mental health; provided the term does not include direct educational instruction, services which are required pursuant to sections 125A.03 to 125A.24, and 125A.65, and 125A.26 to 125A.48, or services which are eligible to receive special education aid pursuant to section 125A.75.

## **123B.42 TEXTBOOKS; INDIVIDUAL INSTRUCTION OR COOPERATIVE LEARNING MATERIAL; STANDARD TESTS.**

Subdivision 1. **Providing education materials and tests.** The commissioner of education shall promulgate rules under the provisions of chapter 14 requiring that in each school year, based upon formal requests by or on behalf of nonpublic school pupils in a nonpublic school, the local districts or intermediary service areas must purchase or otherwise acquire textbooks, individualized instructional or cooperative learning materials, software or other educational technology, and standardized tests and loan or provide them for use by children enrolled in that nonpublic school. These textbooks, individualized instructional or cooperative learning materials, software or other educational technology, and standardized tests must be loaned or provided free to the children for the school year for which requested. The loan or provision of the textbooks, individualized instructional or cooperative learning materials, and standardized tests shall be subject to rules prescribed by the commissioner of education.

Subd. 1a. **Curriculum; electronic components.** A school district that provides curriculum to resident students that has both physical and electronic components must make the electronic component accessible to a resident student in a home school in compliance with sections 120A.22 and 120A.24 at the request of the student or the student's parent or guardian, provided that the district does not incur more than an incidental cost as a result of providing access electronically.

Subd. 2. **Title to education materials and tests.** The title to textbooks, individualized instructional or cooperative learning materials, software or other educational technology, and standardized testing materials must remain in the servicing school district or intermediary service area, and possession or custody may be granted or charged to administrators of the nonpublic school attended by the nonpublic school pupil or pupils to whom the textbooks, individualized instructional or cooperative learning materials, or standardized tests are loaned or provided.

Subd. 3. **Cost; limitation.** (a) The cost per pupil of the textbooks, individualized instructional or cooperative learning materials, software or other educational technology, and standardized tests provided for in this section for each school year must not exceed the statewide average expenditure per pupil, adjusted pursuant to paragraph (b), by the Minnesota public elementary and secondary schools for textbooks, individualized instructional materials and standardized tests as computed and established by the department by February 1 of the preceding school year from the most recent public school year data then available.

(b) The cost computed in paragraph (a) shall be increased by an inflation adjustment equal to the percent of increase in the formula allowance, pursuant to section 126C.10, subdivision 2, from the second preceding school year to the current school year.

(c) The commissioner shall allot to the districts or intermediary service areas the total cost for each school year of providing or loaning the textbooks, individualized instructional or cooperative learning materials, software or other educational technology, and standardized tests for the pupils in each nonpublic school. The allotment shall not exceed the product of the statewide average expenditure per pupil, according to paragraph (a), adjusted pursuant to paragraph (b), multiplied by the number of nonpublic school pupils who make requests pursuant to this section and who are enrolled as of September 15 of the current school year.

## **123B.43 USE OF INDIVIDUALIZED INSTRUCTIONAL MATERIALS.**

(a) The commissioner shall assure that textbooks and individualized instructional materials loaned to nonpublic school pupils are secular, neutral, nonideological and that they are incapable of diversion for religious use.

(b) Textbooks, individualized instructional materials, software or other educational technology must not be used in religious courses, devotional exercises, religious training or any other religious activity.

(c) Textbooks and individualized instructional materials must be loaned only to individual pupils upon the request of a parent or guardian or the pupil on a form designated for this use by the commissioner. The request forms shall provide for verification by the parent or guardian or pupil that the requested textbooks and individualized instructional materials are for the use of the individual pupil in connection with a program of instruction in the pupil's elementary or secondary school.

(d) The servicing school district or the intermediary service area must take adequate measures to ensure an accurate and periodic inventory of all textbooks, individualized instructional materials, software or other educational technology loaned to elementary and secondary school pupils attending nonpublic schools. The commissioner of education shall promulgate rules under the provisions of chapter 14 to terminate the eligibility of any nonpublic school pupil if the commissioner determines, after notice and opportunity for hearing, that the textbooks, individualized instructional materials, or software or other educational technology, have been used in a manner contrary to the provisions of section 123B.41, subdivision 5, 123B.42, or this section or any rules promulgated by the commissioner of education.

(e) Nothing contained in section 123B.41, subdivision 5, 123B.42, or this section shall be construed to authorize the making of any payments to a nonpublic school or its faculty, staff or administrators for religious worship or instruction or for any other purpose.

#### **123B.44 PROVISION OF PUPIL SUPPORT SERVICES.**

Subdivision 1. **Provided services.** The commissioner of education shall promulgate rules under the provisions of chapter 14 requiring each district or other intermediary service area: (a) to provide each year upon formal request by a specific date by or on behalf of a nonpublic school pupil enrolled in a nonpublic school located in that district or area, the same specific health services as are provided for public school pupils by the district where the nonpublic school is located; and (b) to provide each year upon formal request by a specific date by or on behalf of a nonpublic school secondary pupil enrolled in a nonpublic school located in that district or area, the same specific guidance and counseling services as are provided for public school secondary pupils by the district where the nonpublic school is located. The district where the nonpublic school is located must provide the necessary transportation within the district boundaries between the nonpublic school and a public school or neutral site for nonpublic school pupils who are provided pupil support services under this section if the district elects to provide pupil support services at a site other than the nonpublic school. Each request for pupil support services must set forth the guidance and counseling or health services requested by or on behalf of all eligible nonpublic school pupils enrolled in a given nonpublic school. No district or intermediary service area must not expend an amount for these pupil support services which exceeds the amount allotted to it under this section.

Subd. 2. **Location of services.** Health and guidance and counseling services may be provided to nonpublic school pupils under this section at a public school, a neutral site, the nonpublic school or any other suitable location. District or intermediary service area personnel and representatives of the nonpublic school pupils receiving pupil support services must hold an annual consultation regarding the type of services, provider of services, and the location of the provision of these services. The district board or intermediary service area governing board must make the final decision on the location of the provision of these services.

Subd. 3. **Guidance and counseling; exclusions.** Guidance and counseling services provided to nonpublic school pupils pursuant to this section shall not include the planning or selection of particular courses or classroom activities of the nonpublic school.

Subd. 4. **Health services; allotment.** Each school year the commissioner shall allot to the school districts or other intermediary service areas for the provision of health services pursuant to this section the actual cost of the services provided for the pupils in each respective nonpublic school for that school year. The allotment must not exceed the average expenditure per public school pupil for these services by those Minnesota public elementary and secondary schools which provide health services to public school pupils, multiplied by the number of pupils in that particular nonpublic school who request these health services and who are enrolled as of September 15 of the current school year.

Subd. 5. **Guidance and counseling services; allotment.** Each school year the commissioner shall allot to the school districts or intermediary service areas for the provision of guidance and counseling services pursuant to this section the actual cost of the services provided for the pupils in each respective nonpublic school for that school year. The allotment for guidance and counseling services for the secondary pupils in each nonpublic school must not exceed the average expenditure per public school secondary pupil for these services by those Minnesota public schools which provide these services to their secondary pupils, multiplied by the number of secondary pupils in that particular nonpublic school who request these services and who are enrolled as of September 15 of the current school year.

Subd. 6. **Computation of maximum allotments.** For purposes of computing maximum allotments for each school year pursuant to this section, the average public school expenditure per pupil for health services and the average public school expenditure per secondary pupil for guidance and counseling services shall be computed and established by the department by February 1 of the preceding school year from the most recent public school year data then available.

#### **123B.445 NONPUBLIC EDUCATION COUNCIL.**

(a) The commissioner shall appoint a 15-member Council on Nonpublic Education. The 15 members shall represent various areas of the state, represent various methods of providing nonpublic education, and shall be knowledgeable about nonpublic education. The compensation, removal of members, filling of vacancies, and terms are governed by section 15.0575. The council shall not expire. The council shall advise the commissioner on issues affecting nonpublic education and nonpublic schools. The council may recognize educational accrediting agencies, for the sole purpose of sections 120A.22, 120A.24, and 120A.26.

(b) A parent or guardian of a nonpublic school pupil or a nonpublic school may file a complaint about services provided under sections 123B.40 to 123B.42, and 123B.44 to 123B.48 with the Nonpublic Education Council. The council may review the complaint and make a recommendation for resolution to the commissioner.

### **COCURRICULAR AND EXTRACURRICULAR ACTIVITIES**

#### **123B.49 EXTRACURRICULAR ACTIVITIES**

Subd. 4. **Board control of extracurricular activities.** (a) The board must take charge of and control all extracurricular activities of the teachers and children of the public schools in the district. Extracurricular activities means all direct and personal services for pupils for their enjoyment that are managed and operated under the guidance of an adult or staff member. The board shall allow all resident pupils receiving instruction in a home school as defined in section 123B.36, subdivision 1, paragraph (a), to be eligible to fully participate in extracurricular activities on the same basis as public school students.

(b) Extracurricular activities have all of the following characteristics:

- (1) they are not offered for school credit nor required for graduation;
- (2) they are generally conducted outside school hours, or if partly during school hours, at times agreed by the participants, and approved by school authorities;
- (3) the content of the activities is determined primarily by the pupil participants under the guidance of a staff member or other adult.