

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Chapter Seven:

[SPECIAL CLASSES AND SERVICES FOR HANDICAPPED CHILDREN, STANDARDS FOR REIMBURSEMENT AID]

bill form (Standards and Procedures for the Provision of Special Education Instruction and Services for Children and Youth Who Are Handicapped

EDU 120 Policies and definitions.

[Application. Each year special application shall be filed with the commissioner of education by the administrative officer of the school district for the establishment or continuance of each type of special service or instruction coming within the provisions of M.S. 120.03, 120.17, 124.32, with the exception of classes to be held in hospitals, sanatoriums, or homes, which the district may wish to maintain. Applications for these later exceptions will be given consideration at any time in the order of filing.]

A. Policies.

1. Provision of full services. All children and youth who are handicapped and who are eligible for special education services shall have access to free appropriate public education, as that term is defined by applicable law, suited to each child's individual needs including the special education appropriate to his or her development. All school districts shall provide for such education suitable to students' individual needs regardless of the severity of the child's mental, physical or emotional disability, or other impairment or handicap. The responsibility of the school district is not diminished by the availability of nonpublic schools or other services which may be located within the district.

All b.f.

2. Least restrictive alternative. To the extent that there are no detrimental effects, children who are handicapped shall be <u>educated</u> with children who do not have handicaps and shall attend regular classes. A handicapped person shall be removed from a regular educational program only when the nature or severity of the handicap is such that education in a regular educational program cannot be accomplished satisfactorily. Furthermore, there must be an indication that the person will be better served outside of the regular program. The educational needs of the person shall determine the type and amount of services needed.

3. Individualized programs. All children who are handicapped must be afforded special education services based on an individual educational plan. Such programs need to include an assessment of the student's performance utilizing [[certified]] <u>licensed</u> personnel, a determination of the student's needs in a team process, an identification of appropriate goals and objectives, a selection of teaching strategies designed to enhance learning, delivery of services in an environment which is conducive to learning, and periodic review and evaluation of the performance of the student.

4. Procedural safeguards. When a change in the educational placement or special education service of a child is [[anticipated]] <u>proposed</u>, including the assessment and program planning processes, procedural safeguards must be assured by the school district. Parents and guardians, and students when appropriate, have the right to be informed of all significant educational decisions. When a child's parents or legal guardians are not available, the school district shall [[assure the appointment of a surrogate parent]] <u>contact the local county welfare department and request the public welfare system intervene on behalf of the child</u>.

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5. Parental involvement. Parents of handicapped children have a right to be involved by the school district in the education decision making process. Only by consistent and direct involvement of parents will the school receive sufficient input to design and implement an effective program for the handicapped student. Parents and schools are encouraged to cooperate in an open and objective manner, utilizing periodic conferences when possible so that formal hearings are necessary only when substantive disagreements exist between the parties.

6. Accountability for instruction and services. As provided in Minn. Stat. 120.17, subd. 2, the district of residence is responsible for maintaining an appropriate program for all eligible handicapped persons regardless of the method or location of instruction utilized. However, if the handicapped person lives outside of his district of residence under the provisions of Minn. Stat. 120.17, subd. 6 & 7, the district where the child lives is responsible for providing an appropriate program for the child as set forth in state statutes and these regulations including the notice and hearing provisions. In such cases the district of residence is responsible for assuming the cost of the educational program. If the districts do not agree on the tuition rate, either district may appeal to the commissioner as provided in Minn. Stat. 120.17, subd. 4. The district shall not purchase special educational services for a child from a public or private agency when such service is available or can be made available and can be more appropriately provided as the least restrictive alternative within the district. Whenever it is appropriate for a district to purchase special education service for children who are handicapped and who reside in the district, it continues to be the responsibility of the school district, consistent with the provisions of Minnesota statutes and these [[regulations]] rules, to assure and ascertain that such children and youth receive the education and related services and rights to which they are entitled.

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7. Exclusion and expulsion from school. If it is determined in a pupil fair dismissal act proceeding (Minn. Stat. 127.26) that the child, by reason of an emotional disturbance or a special behavior problem needs special instruction and services as defined in Minn. Stat. 120.03, subd. 3, these [[regulations]] rules shall apply.

8. Physical facilities. Physical aspects and specification of schools, classrooms, and other facilities [[for, or likely to]] which will be used by handicapped children, shall be designed to meet their special physical, educational and emotional needs. To this end, responsible school districts constructing, renovating, or repairing facilities which are intended for or are likely to be used by handicapped children, shall plan, locate, design, construct, equip, and maintain them with due regard for the special capabilities, handicaps, and requirements of the handicapped children to be accommodated therein.

B. Definitions.

The following terms used throughout these [[Regulations]] rules shall have the following meanings ascribed to them.

1. "Education" includes the terms "educational service", "educational program", "special education services", and "regular education program" as they are defined and used herein, and means any appropriate training, instruction, and aids and services designed to further the intellectual, academic, verbal, physical, emotional, cultural, adaptive behavior, sensory, or social development of the student.

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2. "Regular education program" means the normal elementary or secondary education environment, including the instruction, training, aids, and services in the classroom or other appropriate places.

3. "Special education services" means any specially designed instruction to meet the unique needs of a handicapped person, including classroom instruction or instruction in the home, hospital, institution, residential facility or other public or private facility providing special instruction and services pursuant to Minn. Stat. 120.17 and 124.32. This term includes, but not by way of limitation, the education, instruction, training, aids and services and/or ancillary or supplementary and supportive aids and services necessary for the education of handicapped persons. This term also includes, but not by way of limitation, related services such as transportation, and developmental, corrective, and other supportive services including medical and counseling services, except that such medical services shall be for diagnostic or assessment purposes only, as may be required to assist a handicapped person to benefit from special education services. For purposes of this [[regulation]] rule the term also means and includes a "primary placement in a special education program" as that term is defined and used herein; and "special instruction and services", "supplementary services", and "special education program" as those terms are defined and used in Minn. Stat. 120.17.

4. "Primary placement in a regular education program" means an educational program wherein a regular classroom teacher(s) has the primary responsibility for the student's daily program planning, for parent conferences, and for curriculum content; and where special education staff member(s) play no daily role in the education of the student or where they are providing part-time supporting instruction or services for the student.

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5. "Primary placement in a special education program" means an educational program wherein a special education staff member(s) has the primary responsibility for the student's daily program planning, for parent conferences, and for curriculum content; and where regular classroom teacher(s) play no role in the education of the student or where they are providing part-time supporting instruction or services for the student.

6. "Providing school district" means a school district as that term is defined and used under Minn. Stat. 120.02 which maintains an educational program for the handicapped person.

7. "Resident school district" means the district where the handicapped person's parent or guardian resides or the district designated by the commissioner as provided in Minn. Stat. 120. 17, subd. 8 and 8a.

8. "Special education facility" means a school or any portion thereof, supplemental facility, or any other building or structure or part thereof, intended for use of or likely to be used in meeting the educational and related needs of handicapped children.

9. "Handicapped persons" includes the term "student," and "child" or "person" and means those "handicapped children" as defined by Minn. Stat. 120.03 and amendments or supplements thereto. Determination of a handicapping condition shall be made by qualified personnel in accordance with recognized professional standards and consistent with the provisions of EDU 124 and 125. These [[regulations]] rules shall not apply to [[pregnant girls]] persons receiving home or hospital instruction unless they have a presenting handicapping condition as described above.

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10. "School age" means the age of four to twenty-one years for persons who are deaf, blind, crippled, or have speech defects and the ages of five to twenty-one years for other handicapped persons, in accordance with Minn. Stat. 120.17, subd. 1 and amendments or supplements thereto. As of August 15, 1977 school age shall mean ages four to twenty-one years for all handicapped persons.

11. "Lease restrictive alternative" means the principle that to the maximum extent appropriate, handicapped persons, including those in public or private institutions or other care facilities, are educated with persons who are not handicapped, and that special classes, separate schooling, or other removal of handicapped persons from the regular educational environment shall occur only when and to the extent that the nature or severity of the handicap is such that education in regular classes with the use of special education services cannot be achieved satisfactorily. Furthermore, there must be an indication that the person will be better served outside of the regular program. For the purposes set forth therein this principle shall include the following "Continuum of Placement Model."

"CONTINUUM OF PLACEMENT MODEL"

Level 1. Students in regular classrooms functioning appropriately without any special education services. This level includes assessment services, monitoring, observation and follow-up.

Level 2. Students with handicaps functioning appropriately in the regular education program with the assistance of special education supportive services being provided to the classroom teacher.

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Level 3. Students with handicaps functioning appropriately in a primary placement in a regular education program, but needing direct service assistance from special education personnel.

Level 4. Students with handicaps functioning appropriately with a primary placement in a special education program.

Level 5. Students with handicaps functioning appropriately in a primary placement in a special education program at a nonresidential school for children and youth who are handicapped.

Level 6. Students with handicaps functioning appropriately in a primary placement in a special education program at a residential facility for children and youth who are handicapped.

12. "Formal educational assessment," referred to in these [[regulations]] rules also as an "assessment," is defined as an individual evaluation, conducted in accordance with recognized professional standards and the provisions of EDU 124, of a person's performance and/or development for the purpose of determining the need for initiation or change in his or her educational program including special education services.

13. "Parent" or "parents" include a biological mother or father, an adoptive mother or father, a legally appointed guardian, or such agency or other person appointed pursuant to EDU 123. All rights and responsibilities as provided herein belong to a person when the person is 18 years of age, unless the person is under legal guardianship.

Art 6-8

14. "Recognized professional standards" means reasonable principles and concepts accepted by acknowledged experts that bear a direct relation to the particular needs of the student.

15. "Days" and "months" shall be construed to exclude Saturdays, Sundays, and days school is not in session unless otherwise provided herein.

16. Non-discrimination for purposes of this [[regulation]] rule means the requirement that school districts shall:

a. not discriminate in any manner in the full utilization of or benefit from any educational institution of the services rendered thereby because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, or disability and otherwise comply with the provisions of Minn. Stat. ch. 363.

b. provide procedures that insure that in accordance with recognized professional standards, testing and evaluation materials and procedures utilized for the purposes of identification, assessment, classification, educational program plan development, educational placement including special education services, program implementation, review and evaluation, notice and hearing are selected and administered so as not to be discriminatory including cultural discrimination. All such procedures and materials shall take into account the special limitations of handicapped persons and the racial or cultural differences presented by persons and must be justified on the basis of their usefulness in making educational program decisions which will serve the individual student.

17. "Proposed action" for purposes of this [[regulation]] rule shall be construed to mean a providing school district's proposed initiation or change or refusal to initiate or change a child's educational placement or special education services as set forth in EDU 125 E or an educational assessment or reassessment as set forth in EDU 124 B.

18. "Individual educational program plan" referred to in these [[regulations]] rules also as a "program plan," means a written statement for each handicapped person setting forth the person's educational needs and the educational program, including special education services, to be provided to such person. The program plan shall be developed in accordance with and contain the information required by EDU 125.

19. "Public, private or voluntary agencies" for purposes of this [[regulation]] rule includes organizations which provide services to preschool and/or school age children. Public schools are not included in this definition.

EDU 121 Application.

[Eligibility and Approval. The eligibility of each pupil for special services and instruction shall be determined by the administrative officer of the school district, prior to admission, on the basis of substantial and competent evidence of need for such service or instruction; and final approval of each pupil enrolled in the special education program shall be made by the commissioner of education based on an examination of the record of evidence for each pupil. These records shall be submitted by the school district to the commissioner by such date as he may set.]

Art b.l.

A. District special education plan.

On or before September 1, 1977, each district shall submit to the commissioner the district's plan for providing special instruction and services for all handicapped pupils as required by Minn. Stat. 120.17. The plan may represent the plan of a single district or a plan for all of the member districts of a formal special education cooperative. The plan shall be considered as part of the annual school district application for program review, but will not be required to be resubmitted annually. The plan shall include descriptions of:

1. the district's study procedures for the identification and assessment of handicapped pupils.

2. the district's methods of providing the special instruction and services for the identified handicapped pupils.

3. the district's administration and management plan to assure effective and efficient results of 1 and 2 above.

4. procedures to assure compliance with state statutes and [[regulations]] rules relating to the education of handicapped pupils.

B. On or before January 1, 1978, the commissioner shall approve or implement appropriate procedures for modification of the district plan. The commissioner may grant the district a reasonable period of time to make necessary modifications of the plan provided that the commissioner has satisfactory assurances of compliance with standards for the education of handicapped pupils.

C. Annual application for programs and budget.

1. Regular school term - On or before May 1 of each year school districts shall submit to the commissioner an annual application for program and budget approval necessary for determining the special education aids during the next school year. On or before July 1 the commissioner shall approve, disapprove, or modify each application and notify each applying district of his action and the estimated level of education aid to be paid.

2. Summer school term - On or before March 15 districts shall submit separate applications for program and budget approval for summer school. The commissioner shall approve, disapprove, or modify each application and notify the district of his action and the estimated level of special education aid by May 1.

3. Amendment to applications - School districts shall apply to amend applications as needed during the school term to reflect program and budget changes necessary to meet the changing needs of handicapped pupils in the district.

D. A district may request a variance from the standards provided in EDU 122 by submitting supportive rationale in the application. The commissioner shall review this request for variance from standards in accordance with recognized professional standards and shall inform the district of the decision.

EDU 122 [Standards for State Aid] Facilities, staff, and supervision.

A. Facilities.

1. Housing space. Housing space for each class shall be adequate.

REGULAR TYPE, (EXCEPT AS SPECIFIED)

2. Equipment and materials. Each special class and group shall be supplied with the necessary special equipment and instructional materials [[as approved by the Commissioner]].

B. Staff.

1. Teachers. Every teacher who teaches a special class must hold a special class [[Certificate]] license appropriate to the type of handicapped children she or he is teaching. b.f.

2. Administrators and supervisors. Every administrator and supervisor of any special education program shall hold appropriate [[certification]] licensure. b.f.

3. Other professional or essential personnel. The qualifications of other professional or essential personnel who are not [[certified]] licensed teachers, administrators or supervisors shall [be approved by the commissioner of education based upon a record of qualifications to be submitted by the school district by such date as the commissioner may set.] be based upon recognized professional standards and documented by the school district in their application as provided for in EDU 121. The commissioner or his designee shall review requests for approval of such personnel assigned to programs for handicapped children. b.f.

4. Special and vocational education. Staff responsible for vocational training of handicapped students shall meet the following criteria if the program is to qualify for special education approval.

ALC 16-6

a. Coordinator of special needs.

(1) [[Certification]] Licensure in special education.

(2) [[Certified]] Licensed as a coordinator of special needs in vocational education.

b. Support service manager.

(1) [[Certification]] Licensure in any special education disability area.

(2) [[Certified]] Licensed as a support service manager in vocational education.

c. Vocational instructor of special needs students.

(1) [[Certification]] Licensure in the appropriate disability area of special education or have a plan for working toward [[certification]] licensure.

(2) [[Certified]] Licensed as a vocational instructor of special needs students in vocational education.

d. Teacher/coordinator of work experience.

(1) A special education [[certificate]] license appropriate for the type of handicapped students being taught.

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(2) [[Certified]] Licensed as an instructor/coordinator for work experience in vocational education.

e. Teacher/coordinator of vocational education work experience.

(1) Must be coordinated with a special education director or coordinator/lead teacher [[certified]] licensed for the type of handicapped students being taught.

(2) Must be working cooperatively with a special education [[certified]] licensed teacher who is responsible for the nonvocational instruction.

(3) [[Certified]] Licensed as an instructor/coordinator for work experience in vocational education.

f. Vocational evaluator.

(1) [[Certified]] Licensed as a vocational evaluator in vocational education.

(2) Working cooperatively with special education [[certified]] licensed personnel to insure that special consideration is related to the students handicapped condition are included in the evaluation and program plan.

g. Vocational technical tutor.

(1) [[Certified]] Licensed as a technical tutor in vocational education.

(2) Working cooperatively with a special education [[certified]] licensed teacher who is responsible for the nonvocational academic area of instruction.

C. [Instruction] Staff to student ratios.

[(1) The courses, methods of instruction, and size of classes shall be consistent, in the commissioner's judgment, with good educational practices for each type of handicapped children.]

[(2) The most recent curriculum guides for elementary and secondary schools issued by the state department of education shall be used as a basis for materials of instruction insofar as these guides are appropriate and adaptable.]

1. When persons are in need of special education services in level 5 or 6 of the "Continuum of Placement" model where the primary placement is in a special education program such as a full time class, special station, special school or residential school, the staff to student ratio shall not exceed:

a. one teacher for each 8 handicapped persons for all categories except as provided in b.

b. one teacher for 6 handicapped persons who are autistic or who are deaf/blind providing that two management aides are employed to assist the teacher.

2. When persons are in need of special education services in level 4 of the "Continuum of Placement" model where the primary placement is in a special

See b.f.

education program such as a resource room or part-time special class the staff to student ratio shall not exceed:

a. one teacher for every 15 handicapped persons for all categories except as provided in b.

b. one teacher for every 8 handicapped persons who are trainable mentally retarded or visually impaired.

3. When persons are in need of special education services in level 3 of the "Continuum of Placement" model where the primary placement is in a regular education program, such as a resource room or special class, the staff to student ratio shall not exceed:

a. one teacher for every 15 persons for all categories except as provided in b.

Each person must receive special education service for a minimum of one hour per day. When the needs of the student warrants such action, persons may receive less than one hour per day during the initial or phase out stages.

b. one teacher for every 40 persons who are speech and/or language impaired.

4. When persons are in need of special education services in level 1 or 2 of the "Continuum of Placement" model where the student is full time in a regular education program and the special education teacher provides consultation and indirect service to the regular classroom teacher and/or assessment, monitoring or follow-up of the student, the staff to student ratio shall not exceed:

a. one teacher for every 30 persons who are handicapped except as provided in b.

b. one teacher for every 60 persons who are speech impaired.

5. Whenever a professional is serving children representing a range of severity of problems, is providing more than one level of service, or is providing service at more than one site, the staff to student ratios shall be adjusted accordingly.

6. When persons are receiving services from vocational staff involved in "special and vocational" programs except as provided in EDU 122 B. 4. d, the staff to student ratios of the "Continuum of Placement" model do not apply to that staff.

D. Supervision.

Supervision consistent with the commissioner's recommendations and meeting the following standards shall be provided for each type of special education program.

1. Overall supervision.

a. Full time supervision. The school board in every district with an enrollment of 15,000 or more pupils, and in every district in which 20 or more full time professional personnel are employed in the special education program, shall employ or designate a qualified person, under an appropriate title, to devote full time to directing the special education program.

REG. TYPE (EXCEPT AS SPECIFIED)

b. Part time supervision. The school board shall employ or designate a qualified person to devote part time to directing the special education program when (a) the enrollment in the school district is 7,500 or more pupils but less than 15,000 pupils; or (b) the number of full time personnel employed in the special education program is at least 10 but less than 20.

This position shall be reimbursable when the person directing the program on a part time basis spends the remainder of his time in some area of special education.

School authorities of districts that are required to meet the standard for part time supervision shall consult periodically with the special education section in regard to full time supervision.

c. Other. School boards of districts not required to have full time or part time supervision as outlined above shall study the feasibility of cooperative interdistrict sharing of special education supervisory personnel or some other approach aimed at providing direction to the program. See item 4 following.

2. Individual program supervision.

a. For the following disability categories or areas: (1) deaf and hard of hearing, (2) crippled, (3) visually impaired, (4) emotional[ly disturbed] disturbance, learning disability, or special behavior problems.

b.f.

The board of every school district in which 15 or more full time professional personnel are employed in any one of the above disability areas shall employ or designate a full time person to supervise the program in that area.

Reg. Type (Except As Specified)

The board of every school district in which less than 15 but 5 or more professional personnel are employed in any one of the above disability areas shall consult with the special education section and make provisions for supervision of the program in that area.

b. For the mentally retarded.

The school board in every district in which 30 or more full time professional personnel are employed in the above disability area shall employ or designate a full time supervisor of the program in that area.

The school board in every district in which less than 30 but 10 or more professional personnel are employed in the above disability areas shall consult with the special education section and make provisions for supervisions of the program.

c. The school board in every district in which speech therapists are employed in the special education program shall submit a plan which will describe and provide appropriate amounts of time for program development, program coordination, program evaluation, in-service training, and individual supervision.

d. For the following service areas: (1) school social work, and (2) school psychology:

(1) The school board in every district in which Level 1 personnel in either the social work or psychology program are employed for special education programs shall submit a plan which will describe and provide appropriate amounts of time for each Level 1 person for individual observation, performance evaluation, consultation, and in-service training by a [[certified]] licensed Level 2 person from the respective field.

6.6.

REG. TYPE

(2) The school board in every school district in which Level 2 personnel in either the social work or psychology area are employed in the special education program shall submit a plan which will describe and provide appropriate amounts of time for program development, program coordination, program evaluation, in-service training, and individual supervision.

e. The school boards of two or more districts may cooperatively employ and share supervisory personnel. See item 4 following.

f. Supervision of programs in any of the aforementioned disability areas shall be provided at both the elementary and secondary level.

3. Cooperative inter-district agreements.

a. Two or more school districts may enter into an agreement to provide supervision of programs for handicapped children, provided that none of the participating districts is required, as outlined in items 1 and 2 above, to employ such supervisory personnel on a full time basis.

b. When a group of districts enter into such cooperative agreement, one of the participating districts shall serve as the employing unit.

Each participating district shall pay to the employing district a prorata amount of the net cost of providing such supervisory services. The net cost to be prorated shall be the actual cost less state reimbursement.

State reimbursement for the cost of such services shall be paid to the employing district.

4. The school board of any district unable to comply with the above [[regulations]] rules shall consult with the special education section.

[(e) Extent of services. The extent of services provided by special education personnel shall be determined by the kind and and severity of the handicaps of the pupils, and shall be consistent with the commissioner's recommendations for each type of handicapped children.]

[(f) Records and reports. A complete pupil record of each child consistent with the commissioner's recommendations shall be kept in the office of the administrative officer of the school. This information shall be available for interpretation to the professional school personnel, to the state supervisory staff, and to the parents or guardian of the pupil.]

[(g) Parent consultation. Provision shall be made for offering early parent consultation in all cases of handicapped children requiring any evaluation which goes beyond the routine individual intelligence test and group surveys and screening procedures. Extreme care is to be exercised in the selection and use of instruments and procedures.]

E. [(h)] School day.

Deviations from the normal school day for any type of handicapped children shall be approved by the commissioner of education.

EDU 123 [State Aid or Reimbursement

(a) State aid or reimbursement to school districts which have established special classes in accordance with required standards shall be paid in accordance

REG. TIME

with the applicable provisions of Minn. Stat. 124.32, and all claims submitted shall be postmarked no later than June 30 after the close of the school term in order to qualify for payment at the regular time.

(b) Reimbursement shall be granted only for approved items of equipment and supplies needed in classes or programs for handicapped children.

(c) Summer programs for handicapped children for which reimbursement aid is to be claimed shall meet the approval of the commissioner of education.]

D. Surrogate parents.

When a child is the ward of the commissioner of public welfare, when the parent or guardian is unknown or unavailable, or when parental rights have been terminated, the district shall insure that the rights of the child to a free and appropriate education are protected by contacting the local county welfare department and requesting that the public welfare system intervene on behalf of the child. The district shall suggest to the local county welfare system that a contact with the county attorneys office be made to determine whether a guardian ad litem should be appointed.

EDU 124 Identification and assessment procedures.

A. Identification of handicapped children.

1. School districts shall develop systems for locating all children residing within their jurisdiction who may be handicapped. Those systems shall be designed to identify:

ALL lf.

a. preschool age handicapped children;

b. handicapped persons attending school;

c. handicapped persons of school age who are not attending any school.

2. The districts identification system shall be developed in accordance with the requirement of non-discrimination.

B. Formal educational assessment.

1. An assessment:

a. must be conducted when because of a person's performance in the present educational placement or presenting handicapping conditions, he or she is thought by the school district to be in need of possible initiation or change in the student's educational placement or program or special education services as set forth in EDU 125 E which will provide an educational program, including special education services appropriately suited to the person's needs.

b. must be conducted at least every two years as required by EDU 126 B.

c. may be conducted if the parent requests.

2. Prior to conducting an assessment the district shall:

a. review the screening, referral or other data about the person and select [[certified]] <u>licensed</u> special education personnel and others as appropriate to conduct the assessment.

All b-f.

b. include on the assessment team [[certified]] licensed special education personnel and others who may have the responsibility for implementing the educational program for the person.

c. conduct the educational assessment preferably at the school which the person attends. When the district determines that the assessment or a portion of the assessment cannot be performed utilizing the personnel resources of the district, the district shall make arrangements elsewhere for that portion of the assessment and shall assume all costs for such assessment.

d. conduct the assessment within a reasonable period of time not to exceed 30 days after the need for an assessment is determined by the district unless a conciliation conference or hearing is requested by the parent.

4. The assessment must reflect the person's current level of performance and shall:

a. be appropriate to the presenting problem and may include observation, evaluation, and testing of the persons intellectual, academic, verbal, emotional, adaptive behavior, sensory, physical, and social development.

b. include a review of the person's learning environment and learning modes. When the team determines it to be necessary because of racial, cultural, or other differences presented by the person or due to the nature of the student's presenting handicapping condition they shall make reasonable efforts to obtain information from the parents relating to the student's functioning in his or her total environment.

All b.b.

c. be provided and administered in the person's primary language or mode of communication unless it clearly is not feasible to do so.

d. be performed in accordance with recognized professional standards which include recognition or accommodation for persons whose differences or conditions cause standardized instruments to be invalid and otherwise in accordance with the requirements of non-discrimination.

5. Notice before assessment:

a. must be provided in accordance with the provisions of 127 B prior to conducting a formal educational assessment or reassessment or when the district refuses a parents request to conduct a formal educational assessment or reassessment. In case of refusal the notice shall be served within ten days after the refusal.

b. is not required for actions which are components of the districts identification system including large group screening, individual student observation within the regular classroom, informal inventories, and consultation between regular and special education personnel.

EDU 125 Team determination and program needs determination. Development and content of the individual education program plan.

A. Team and program needs determination.

Following the assessment, in order to determine if the person is in need of special education services, the district shall:

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1. designate a team of persons responsible for determining the educational needs of the student which, at a minimum, shall include a school administrator or designee, the student's regular classroom teacher, appropriate special education personnel, other support personnel, the parent, and when appropriate, the student.

2. organize the assessment data and other relevant information and reports, including information supplied by the parents, review that data and determine the student's educational needs.

3. interpret the data consistent with the requirement of non-discrimination.

4. upon request of the parent, determine whether it is appropriate to involve additional staff or other persons on the team including someone who is a member of the same minority, as that term is defined in Minn. Stat. 126.021, or cultural background or who is knowledgeable concerning the racial, cultural, or handicapping differences of the student.

5. schedule the student staffing at a time and place that is mutually acceptable to the school and parents; the district shall proceed if the parents do not respond to the request to participate.

B. Development and content of the individual education program plan.

The development of the program plan must:

1. be prepared, in writing, by the providing district for each person in need of special education services. When the providing district is not the resident district, a copy of the program plan shall be sent to the resident district.

2. be developed in accordance with the requirement of non-discrimination, the principle of the least restrictive alternative, and recognized progressional standards.

3. be based on the assessment data and other relevant reports and information.

4. be prepared, in writing, by the resident district when contracting for special education services from a public, private or voluntary agency.

C. Content of the individual educational program plan.

The program plan must be based on the assessment data and other information and be consistent with the requirement of non-discrimination and the principle of least restrictive alternative and must include:

1. a description of the special education service needs of the student as determined by the staffing team and the names of the persons on the team.

2. a statement of annual goals and periodic review objectives for the special education services including the criteria for attainment.

3. the plan for, location of, and frequency of periodic review of the progress in reaching the prescribed educational goals and objectives.

4. the reasons for the type of education placement and program including type of special education services to be provided, the location, amount of time, starting date, anticipated special education service duration, names and school telephone numbers of those personnel responsible for providing the special education services. In accordance with the principle of least restrictive alternatives, substantiate

why the proposed action is the most appropriate in terms of the persons educational needs.

5. the changes in staffing, transportation, facilities, curriculum, methods, materials, and equipment and other educational services that will be made to permit successful accommodation and education of the student in the least restrictive alternative.

6. a description of the educational activities in which the student will participate in environments which include non-handicapped students. This provision must be included in the plan only when the student's primary placement will be in a special education program.

D. At the request of the parent, the district shall schedule an individual conference with a knowledgeable school employee for the purpose of receiving interpretations of the assessment or reassessment data or procedures or for the purpose of explaining the individual educational plan or its development.

E. Notice to parents after completion of the program plan and prior to placement.

Notice in accordance with the provisions of EDU 127 C is required whenever the providing school district purposes to initiate or change or refuses to initiate or change the level of educational placement [[or]] as defined in the Continuum of Placement Model, or proposes to initiate or significantly change or refuses to initiate or significantly change the special education services for the child. For the purposes of this [[regulation]] rule the terms initiate or change shall be construed to include the proposals set forth in Minn. Stat. 120.17, subd. 3b (c) (2), (3), (4), and (5). The notice shall be served prior to the initiation or change or

refusal to initiate or change the educational placement or special education services for the child. The notice shall be served within ten days after completion of the program plan and/or the refusal to initate or change.

EDU 125 Periodic reviews, reassessment and follow-up.

A. Periodic reviews.

1. The providing school district shall conduct periodic reviews of the program plan and shall determine:

a. the degree to which the periodic review objectives as identified in the educational program plan are being achieved.

b. the appropriateness of the educational program plan as it relates to the student's current needs.

c. what modifications, if any, need to be made in the program plan.

2. The initial review shall be made at the time specified in the program plan, but at least twice a year following placement.

3. These periodic reviews shall be made by those persons directly responsible for implementing the educational program and by other school district agents as may be needed to insure an informed and adequate review.

4. The results of such periodic reviews shall be included in the student's school records and a copy sent to the parent and to the resident district if different from the providing district. This copy shall inform the parents or the

resident district that they may request a conference to review the student's program plan at any time and the procedure to do so.

5. The reviews shall be made in accordance with the requirements for non-discrimination and recognized professional standards.

B. Requirements for reassessment.

When a student is continued in his or her primary placement in a special education program, the providing district shall conduct an educational reassessment according to the procedures specified in EDU 124 B, at least once every two years.

C. Requirements for follow-up review.

The responsible school district shall conduct a follow-up review of the student's current performance no later than twelve calendar months after special education services are discontinued to determine if progress is satisfactory.

EDU 127 Formal notice to parents.

A. General notice provisions.

1. The notice shall be in writing and shall be served on the parent.

2. Every effort shall be made by the providing school district to assure that no person's rights are denied for lack of a parent, or surrogate parent, or duly appointed guardian.

3. The notice shall be written in the primary language of the home and in English, and the district shall make reasonable provisions for such notice to non-readers and non-English speaking persons necessary to insure that the information contained in the notice is understood.

4. For parents who are handicapped persons because of a hearing, speech, or other communication disorder, or because of the inability to speak or comprehend the English language as provided in Minn. Stat. 546.42 the school district shall cause all pertinent proceedings, including but not limited to the conciliation conference, the pre-hearing review, the hearing, and any appeal to be interpreted in a language the handicapped person understands by a qualified interpreter as provided in Minn. Stat. 546.42.

5. The notice must be sufficiently detailed and precise to constitute adequate notice for hearing of the proposed action.

6. The resident school district, if different from the providing school district, shall receive notice of and may be a party to any hearings or appeals provided herein if the district notifies the parent and the providing school district of its intention to be a party within seven days of receipt of notice of the hearing from the providing school district.

B. Prior to the performance of or refusal to perform a formal educational assessment or reassessment as provided for in EDU 124 B, the providing school district shall prepare and serve a notice which shall:

1. Include the reasons for assessment or the refusal to assess and how the results may be used;

2. Include a general description of the procedures to be used;

3. State where and by whom the assessment will be conducted;

4. Inform the parents of their right to review and receive copies of all records or other written information [[related to the assessment;]] regarding their child in the school's possession;

5. Inform the parents of their right and the procedure and time for them to participate as a team member in developing and determining their child's educational program, including special education services and/or to provide information relative to his or her assessment and the development of the program plan;

6. Inform the parents of their right and the procedure and time to receive interpretations of assessment or reassessment procedures, instruments and data or results and of the program plan from a knowledgeable school [[district]] employee and for that conference to be held in private;

7. Inform the parents of their right and the procedure and time to have included on the team that interprets the assessment data and/or develops the individual program plans, such person(s) described in EDU 125 A including a person who is a member of the same minority (as defined in Minn. Stat. 126.021) or cultural background or who is knowledgeable concerning the racial, cultural, or handicapping differences of the student;

8. Inform the parents that they may obtain an independent assessment at their own expense.

9. Inform the parents that the district will proceed with the proposed action unless the parent objects on the enclosed "response form" or otherwise in writing within ten days after receipt of the notice;

10. Inform the parents that if they object to the proposed action in writing a conciliation conference will be held at a mutually convenient time and place, but that if the parent refuses to attend the conference the school district will proceed with the proposed action;

11. Inform the parents that if the parent still objects to the proposed action after the final conciliation conference they have a right to voice that objection at an informal due process hearing.

12. Inform the parents that they have the right to be represented by counsel or another person of their choosing at the conciliation conference or the informal due process hearing.

13. A statement assuring that their child's educational program will not be changed as long as the parent objects to the proposed action, in the manner prescribed by these [[regulations]] rules.

14. [[(13)]] Include a "response form" on which the parent may indicate their approval of or objection to the proposed action and identify the district employee to whom the "response form" should be mailed or given and to whom questions may be directed;

C. Prior to the initiation or change or the refusal to initate or change a child's educational placement or special education services, as set forth in EDU 125 E the providing school district shall prepare and serve a notice which shall:

1. Include a copy of the individual educational program plan as described in EDU 125 C;

2. Inform the parents of their right and time and procedure to request and to receive interpretations of assessment or reassessment procedures, instruments and data and of the program plan from a knowledgeable school district employee and for that conference to be held in private;

3. Inform the parents that they may obtain an independent educational assessment at their own expense.

4. Inform the parents that the school district will proceed with the proposed action unless the parent objects in writing on the enclosed "response form" or otherwise to the proposed action within ten days after receipt of the notice;

5. Inform the parents that if they object to the proposed action, a conciliation conference will be held at a mutually convenient time and place but that if the parent refuses to attend the conciliation conference the school district will proceed with the proposed action;

6. Inform the parents that if they still object to the proposed action after the final conciliation conference that they have a right to voice that objection at an informal due process hearing.

7. Include a statement assuring that the student's educational program will not be changed as long as the parents object to the proposed action in the manner prescribed by these [[regulations]] rules;

8. Include a "response form" on which the parent may indicate their approval of or objection to the proposed action and identify the district employee to whom the "response form" should be mailed or given and to whom questions may be directed.

EDU 128 Conciliation conference.

A. When a conciliation conference must occur:

If the parent does not object in writing, to a proposed action as set forth in EDU 124 B or EDU 125 E, within ten days after receipt of the notice, the proposed action shall take place. If such written objection is made, the providing school district shall arrange for a conference with the parent for the purpose of reviewing the reasons for the proposed action and conciliating the matter. The conference shall be held at a time and place mutually convenient to the parent and the school district representatives and shall be held within ten days after receipt of the written objection. There may be more than one such conference and the parent may not request a hearing under EDU 129 A until at least one conciliation conference has been held.

B. Memorandum.

Within seven days of the final conciliation conference the providing district shall serve the parent with a written memorandum which shall inform the parent:

1. of the school districts proposed action following the conference;

2. that if they continue to object to the proposed action they have a right to object to the proposed action at an informal due process hearing and the procedure and time in which to do so, including a "request form" on which the parent may request the hearing, and the identification of the district employee to whom the written request form or other written request for hearing should be mailed, and to whom questions and legal documents or requests relating to the hearing may be directed;

3. that if they do not request a hearing on the written "request form" or otherwise in writing pursuant to EDU 129 A within seven days after receipt of the notice, the district will proceed with the proposed action;

4. that if they request a hearing on the written "request form" or otherwise in writing that they will receive a notice describing the rights and procedures available to them relative to the hearing;

C. If no such written request is made after the final conciliation meeting, the proposed action shall take place.

EDU 129 The hearing.

A. When a hearing must be held.

A hearing regarding a proposed action as set forth in EDU 124 B, or EDU 125 E shall be held not later than thirty (30) days, unless continued pursuant to the mutual agreement of the parent and school district(s) after the providing district receives the parents' request for a hearing. This request must be in writing and must be made within seven days after the parents' receipt of the written memorandum pursuant to EDU 128 B. Provided however, that no parent

shall have a right to request a hearing unless at least one conciliation conference has been held pursuant to EDU 128 A.

B. Notice.

1. Written notice of the time, date and place of all hearings shall be given to all parties by the providing district at least ten days in advance of such hearings; and the hearing shall be held at a time, date, and place mutually convenient to all parties.

2. Within five days of receipt of the parent's written request for a hearing the providing school district shall serve the parent with a written notice of rights and procedures relative to the hearing which shall inform the parent:

a. that at the option of the school board, the hearing shall take place: (1) before the school board or its designee; (2) a person mutually agreed to by the school board and the parent; or (3) a person appointed by the commissioner;

b. that they will receive notice of the time, date and place of the hearing at least ten days in advance of the hearing which will be held within thirty days after the written request;

c. inform the parent of their right or responsibility:

(1) to be represented in preparation of and at the hearing by legal counsel or other representative of their choice.

(2) in accordance with laws relating to confidentiality to examine and receive copies of the child's school records before the hearing, including

tests, assessments, reports, or other information concerning the educational assessment or reassessment upon which the proposed action may be based;

(3) to call their own witnesses and to present evidence, including expert medical, psychological, and educational testimony and relevant records, tests, assessments, reports, or other information;

(4) to request the attendance of any official or employee of the providing or resident school district or any other person, who may have evidence relating to the proposed action and the manner and time in which to do so;

(5) to cross examine any employee of the school district(s) or other persons who present evidence at the hearing;

(6) within five days after written request to receive from either the school district(s) a list of persons who will testify on behalf of the district concerning the proposed action;

(7) within five days after written request by the school district(s) to provide to the district(s) a list of persons who will testify on the parent's behalf concerning the proposed action;

(8) at least [[3]] five days prior to the hearing, to receive from the providing or resident school district, a brief resume of "additional material allegations" referring to conduct, situations, or conditions which are discovered to be relevant and which were not contained in the original notice or memorandum; and that if such material allegations [[may not be considered at the hearing if they]] are not so disclosed, it shall be left to the discretion of the person conducting the hearing to determine if those material allegations may be introduced or considered.

d. that at the hearing the burden of proof is on the school district to show that the proposed action is justified on the basis of the child's educational needs or his or her current educational performance, or presenting handicapping conditions taking into account the presumption that placement in a regular public school class with special education services is preferable to removal from the regular classroom;

e. that a record will be kept of the hearing and will be made available at cost to the parent if the decision is appealed by the parent;

f. that the person conducting the hearing will make a written decision based only on evidence received and introduced into the record at the hearing within five days following the hearing and that the proposed action will be upheld only upon showing by the school district by a preponderance of the evidence. A proposed action that would result in the child being removed from regular education program may be sustained only when, and to the extent the nature or severity of the handicap is such that a regular education program would not be satisfactory and the child would be better served in an alternative program. Consideration of alternative educational programs must also be given.

g. that the decision of the person conducting the hearing may be reviewed by the school board, at its option, within ten days following [[the hearing;]] the hearing officer's decision;

h. that the written review decision of the school board must occur within five days of the review and must be based on the standards set forth in d and f;

i. that the decision of the hearing officer may be appealed to the commissioner;

j. that the student's education program will not be changed, as long as the parents object to the proposed action in the manner prescribed by these [[regulations]] rules, or until after the decision is finally made at the hearing; or an appeal.

C. Hearing officers.

At the option of the school board, the hearing shall take place either before the school board; or (1) its designee, (2) a person mutually agreed to by the school board and the parents; or (3) a person appointed by the commissioner. The school board shall exercise its option and a person to conduct the hearing must be selected at least [[five (5) days]] ten days prior to the hearing. The parties by agreement may continue the time and date of the hearing for not more than ten days for the purpose of mutually agreeing to a person to conduct the hearing. All expenses of the hearing, except for the parents' and resident school district's attorney's fees or other expenses incidental to the parents or resident school district participation in the hearing, shall be paid by the providing school district.

D. Prehearing review by the hearing officer.

1. Five days prior to the hearing, the person(s) conducting the hearing shall receive copies of:

a. the providing school district's notice(s) and memorandum prepared pursuant to EDU 128 B to the parents;

b. written information concerning the providing school district's educational assessment or reassessment and copies of any parties' tests, evaluations, or other admissible reports or written information relating to such assessment or reassessment, or the proposed action;

c. a copy of the student's current and proposed individual educational program plan; and

d. such other information from the school district(s) or parent as the hearing officer may have requested at a prior date provided that a copy of such information is provided to all parties, and further provided that such information is made a part of the hearing record.

e. the provisions of b and c need not apply when the hearing concerns a proposed action as set forth in EDU 124 B.

2. Upon receipt of the information set forth in 1 above, the person conducting the hearing;

a. shall review the same for compliance with these [[regulations]] rules;

b. may at his or her discretion, meet with the parties together prior to the hearing;

c. may require the providing school district to perform an additional educational assessment or reassessment;

d. may require the providing school district to propose an alternative individual educational program plan;

e. may require the providing school district to send additional notice to the parents;

f. may do such additional things necessary to achieve compliance with these [[regulations]] rules;

g. may postpone the hearing for up to 15 days to achieve the purposes of this paragraph.

E. Hearing rights of the respective parties.

1. The hearing shall be closed unless the parent requests an open hearing or if the hearing takes place before the school board.

2. The parties shall have the right to representatives of their own choosing, including legal counsel.

3. At a reasonable time prior to the hearing, the parent or their representative(s), as the case may be, shall be given access to all of the providing and resident school districts' records and such other records pertaining to the child that are authorized by law to be disclosed, including but not limited to all tests, evaluations, assessments, reports, and other written information concerning the educational assessment or reassessment, conducted pursuant to EDU 124 B upon which the proposed action may be based.

4. At least [[three (3)]] five days prior to the hearing the parents shall receive from the school districts, who are parties of the hearing, a brief resume of

"additional material allegations" referring to conduct, situations or conditions which are discovered and found to be relevant to the issues to be contested at the hearing and which are not contained in the original notice or memorandum provided pursuant to EDU 127 B or C or 128 B[[. Any]] and that if such material allegation or information relating thereto[[, which is]] are not so disclosed, [[shall not be introduced or considered at the hearing.]] it shall be left to the person conducting the hearing to determine if those material allegations may be introduced or considered.

5. Within five days after written request any party shall receive from the other parties a list of witnesses who may be called to testify at the hearing. Such list must be filed with the person(s) conducting the hearing. Such lists may be modified at any time but each party should be notified immediately if possible.

6. All parties or their representatives, as the case may be, shall have the right to request the attendance of any employee of the school district(s), or any other person who may have evidence relating to the proposed action, and to confront, and to cross examine any such witness. Any such request must be made to the appropriate school district or to the person whose attendance is requested at least [[three (3)]] five days in advance of the hearing. Such written requests shall also be filed with the person(s) conducting the hearing at the time of hearing.

7. Evidentiary standards[[, rules and regulations]] regarding contested cases as specified pursuant to Minn. Stat. ch. 15 shall apply.

8. If the person conducting the hearing determines at the conclusion of the hearing that there remain disputes of fact which, in the interest of fairness and the child's educational needs, require the testimony of additional witnesses, or if the hearing officer concludes that alternative educational programs and opportunities have not been sufficiently considered, he or she may continue the hearing for not

more than ten days, for the purpose of obtaining the attendance of such witnesses or considering such alternative programs and opportunities. The parties' right to cross examination and confrontation and other applicable rights and procedures set forth herein shall continue and be given full force and effect.

F. Hearing procedures.

1. The person conducting the hearing shall preside over and conduct the hearing and shall rule on procedural and evidentiary matters, and his or her decision shall be based solely upon the evidence introduced and received into the record.

2. The school district(s) shall bear the burden of proof as to all facts and as to grounds for the proposed action.

3. One purpose of the hearing is to develop evidence of specific facts concerning the educational needs, current educational performance, or presenting handicapping conditions of the person as it relates to the need for the proposed action. Consistent with the rights and procedures set forth herein, nothing in these [[regulations]] rules shall limit the right of the person conducting the hearing to question witnesses or request information.

4. A [[verbatim stenographic]] tape recording, stenographic record, or other record of the hearing shall be made, and if an appeal is filed pursuant to EDU 129 H, the hearing shall be transcribed by the providing school district and shall be accessible to the parties involved within five days of the filing of the appeal. Provided however, for appeals of local decisions issued by school boards or their designees concerning proposed actions as set forth in EDU 129 H. 2. a, no written transcript shall be made if the parent requests a Chapter 15 due

process hearing pursuant to EDU 129 H. The record or transcription, as the case may be shall, upon request, be made available to the parent or their representative.

G. The local decision. Within five days after the hearing, the person(s) conducting the hearing shall prepare a written decision. Such decision shall address itself to the following:

1. Decisions regarding assessment or reassessment.

a. The person conducting the hearing may sustain a proposed assessment or reassessment of the person as set forth in EDU 124 B upon a showing by the school district(s) by a preponderance of the evidence which demonstrates that there are facts, relating to the person's performance in his or her present education placement or presenting handicapping conditions, which indicate reasonable grounds to believe that the educational assessment or reassessment procedures are justified, as a step toward the possible initiation of or change in the person's educational placement or program, including special education services, which will provide an educational program, including special education services, appropriately suited to the person's needs.

b. Consistent with the standards, requirements, and principles set forth in statute and these [[regulations]] rules, the person conducting the hearing shall have the authority, based on all the evidence received at the hearing, to modify the proposed assessment or reassessment instruments or procedures in order to insure compliance with the requirement of non-discrimination.

2. Decisions regarding educational placement.

a. Based on an application of the standards, requirements and principles set forth in Minn. Stat. 120.17, subd. 3a, and in these [[regulations]] rules, the proposed action regarding the person's educational placement or special education services as set forth in EDU 125 C shall be sustained in whole or in part by the person conducting the hearing only upon a showing of need by the school district(s) by a preponderance of the evidence.

b. In deciding if the proposed action is to be sustained, in whole or part, the educational needs of the child shall be determinative. However, there shall be a presumption that among alternative programs of education, that to the maximum extent appropriate, a primary placement in a regular public school class and program with appropriate special education services, is preferable to removal from the regular classroom.

c. The person(s) conducting the hearing may sustain a proposed action that would result in the child being removed from a regular education program only when, and to the extent that the nature or severity of the handicap is such that education in the program with the use of special education services cannot be accomplished satisfactorily, and there is indication that the child will be better served with an alternative program or services. This decision shall be made in accordance with the principle of least restrictive alternatives.

d. The person conducting the hearing shall also determine whether the school district(s) sufficiently considered alternative educational programs including special education services and opportunities and at the hearing, may receive any additional evidence presented by any interested party or person as to the availability and suitability of reasonable and viable educational alternatives. If the person conducting the hearing concludes that there are no reasonable or viable educational alternatives the findings shall so state.

3. Except when the hearing is conducted by the school board, the local decision of the person conducting the hearing may be reviewed by the school board at its option within ten days after receipt of the proposed decision. Within five days of the review the school board shall issue a local written decision.

4. All local decisions shall:

a. contain written findings of fact, and conclusions of law, including a statement of the controlling facts upon which the decision is made in sufficient detail to appraise the parties and the commissioner of the basis and reason for the decision;

b. state whether the special education services appropriate to the child's needs can be reasonably provided within the resources available to the providing district;

c. state the amount and source of any additional district expenditures necessary to implement the decision; and

d. be based on the standards and principles set forth in Minn. Stat. 120.17, subd. 3a, and EDU 129 G. 1 and 2.

5. All decisions shall be filed with the commissioner of education and shall be sent by mail to the parties. The decision of the person conducting the hearing shall not be served until after expiration of the time for school board review. The decision(s) shall also include information detailing the right to appeal the decision, the procedure and time in which to do so, and an appeal form on which the parent may identify which appeal option, as set forth in EDU 129 H. 2, they request.

H. Effective date of the action and appeals.

1. The decision of the person(s) conducting the hearing, or in case of school board review, the board's decision, shall be binding on all parties and shall become effective 15 days after service of the decision unless the decision is appealed.

2. The binding local decision issued pursuant to EDU 129 G. 1, 2, or 3, may be appealed by the parent to the commissioner of education within 15 days of receipt of that written decision(s) in the following manner:

a. If the parent is appealing a local decision of the school board or their designee regarding a proposed education assessment or reassessment as set forth in EDU 124 B; or a proposed action regarding the placement of their child in, transfer to, or the proposed provision or addition of special education program or services as set forth in Minn. Stat. 120.17, subd. 3b (c) (2) and (4) the appeal decision, at the option of the parent may:

(1) be based on a review of the local decision(s) and the entire record; or

(2) be based, after a new due process hearing conducted pursuant to the provisions of Minn. Stat. ch. 15 on the report of the impartial hearing examiner, and not on the local decision(s) or record. Provided however, if the parent wants a Chapter 15 due process hearing, the parent must make this request as part of the written appeal notice, or the appeal decision will be based solely on a review of the local decision(s) and the entire record.

b. If the parent is appealing any other local decision(s) the appeal decision shall be based on a review of the local decision(s) and the entire record.

c. All notices of appeal shall be on the appeal form or otherwise in writing and shall be sent by the parent by mail to all parties to the hearing at the time the appeal is filed.

3. The school board shall be a party to any appeal. The commissioner shall issue a final decision based on a review of the local decision(s) and the entire records within 30 days after receipt of the local decision(s) and the transcript. However, in appeals of local decisions wherein the parent has properly requested a Chapter 15 due process hearing, the commissioner shall issue a final decision within 30 days after that hearing and the final decision shall be based on the report of the hearing examiner.

4. The commissioner's final decision shall:

a. be in writing;

b. include findings and conclusions; and

c. be based on the standards set forth in Minn. Stat. 120.17, subd. 3a and the standards, requirements, and principles set forth in EDU 129 G. 1 and 2 and these [[regulations]] rules.

5. The decision of the commissioner shall be final unless appealed by the parent or the school board to the district court of the county in which the

providing school districts, in whole or part, is located. The scope of judicial review shall be as provded in Chapter 15.

6. Except in case of school board decision pursuant to EDU 129 E if the providing school district fails to implement the person conducting the hearing's local decision, the parent shall have the right to bring such failure to the attention of the commissioner. In accordance with the provisions of Minn. Stat. 124.15, the state board of education may impose such sanctions necessary to correct any such failure.

APPROVED AS TO FORM AND LEGALITY
JAN 13 1977 19
WARREN SPANNAUS, ATTORNEY GENERAL
BY /s/ Michael B. Miller
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
JAN 17 1977 - 3:00 pm
Joan Anderson Growe
Secretary of State

State of Minnesota

Department of Education
Capitol Square, 550 Cedar Street
St. Paul, Minnesota 55101

STATE OF MINNESOTA
County of Ramsey

IN THE MATTER OF: The proposed adoption of rules of the state board of education amending "Minnesota Administration Rules and Regulations --- Rules and Regulations of the State Board of Education," 1973 Edition and as amended in 1974.

NOTICE OF PUBLIC HEARING

Notice is hereby given that a public hearing will be held pursuant to M.S. 1974 Section 15.0412, Subdivision 4, on the above entitled matter in the State Office Building, Room 83, St. Paul, Minnesota 55155, on Tuesday, July 13th, 1976, commencing at 9:00 a.m. and continuing until all representatives of school districts, associations or other interested persons have had an opportunity to be heard concerning adoption of the proposed rules captioned above by submitting either oral or written data, statements or arguments. Statments or briefs may be submitted without appearing at the hearing; such statement must be submitted within twenty (20) days after the public hearing ends.

The commissioner proposes to adopt rules relating to the following matters:

> This notice proposes to amend the Rules and Regulations of the State Board of Education, Chapter Seven, by amending existing standards and adding New regulations to provide for due process in assigning handicapped students as mandated by the 1976 Legislature.

These rules are being proposed pursuant to statutory authority contained within Minnesota Statutes 1974, Section 121.07 and Section 121.86.

Under M.S. 1974, Section 10A.01, Subd. 11, any individual engaged for pay or other consideration for the purpose of representing persons or associations attempting to influence administrative action, such as the promulgation of these rules, must register with the State Ethics Commission as a lobbyist within five days of the commencement of such activity by the individual.

A copy of the proposed rules, Edu 120 - 139, is attached hereto. Additional copies will be available at the door on the date of the hearing.

STATE OF MINNESOTA
Department of Education

Commissioner of Education

Minnesota Administrative Rules and Regulations

Rules and Regulations of

THE STATE BOARD OF EDUCATION

PROPOSED AMENDMENTS TO:
REGULATIONS OF THE BOARD OF EDUCATION
OF THE STATE OF MINNESOTA

To Be Submitted At A

PUBLIC HEARING

July 13, 1976

A Public Hearing on Proposed New and Amended Regulations will be held on Tuesday, July 13, 1976, beginning at 9:00 a.m., in the State Office Building, Room 83, St. Paul, Minnesota 55155.

* * * * * * * *

The official rules and regulations of the State Board of Education are contained in the 1973 Edition and as amended in 1974: "Minnesota Administrative Rules and Regulations," one copy of which has been sent to school heads of districts maintaining graded elementary and secondary schools and additional copies made available for purchase by the Documents Section, Department of Administration, 140 Centennial Building, St. Paul, Minnesota 55101.

Proposed amendments and proposed new regulations, "Minnesota Administrative Rules and Regulations: (EDUCATION) are contained herein.

STATE OF MINNESOTA -- DEPARTMENT OF EDUCATION

ST. PAUL, MINNESOTA 55101

MINNESOTA RULES AND REGULATIONS: EDUCATION

Proposed Amendments, State Board of Education

Rules for Public Hearing: July 13, 1976, St. Paul, Minn.

C O N T E N T S

Edu Section Number	
120 - 139	Amends standards and provides for due process in assigning handicapped children.

CHAPTER SEVEN: EDU 120-139

~~SPECIAL CLASSES AND SERVICES FOR HANDICAPPED CHILDREN; STANDARDS FOR REIMBURSEMENT AID~~

STANDARDS AND PROCEDURES FOR THE PROVISION OF SPECIAL EDUCATION INSTRUCTION AND SERVICES FOR CHILDREN AND YOUTH WHO ARE HANDICAPPED

EDU 120 ~~Application. Each year special application shall be filed with the commissioner of education by the administrative officer of the school district for the establishment or continuance of each type of special service or instruction coming within the provisions of M.S. 120.03, 120.17, 124.32, with the exception of classes to be held in hospitals, sanatoriums, or homes, which the district may wish to maintain. Applications for these later exceptions will be given consideration at any time in the order of filing.~~

Policies and Definitions

(a) Policies

(1) Provision of Full Services. All children and youth who are handicapped and who are eligible for special education services shall have access to a free appropriate public education, as that term is defined by applicable law, suited to each child's individual needs including the special education appropriate to his or her development. All school districts shall provide for such education suitable to students individual needs regardless of the severity of the child's mental, physical or emotional disability, or other impairment or handicap. The responsibility of the school district is not diminished by the availability of nonpublic schools or other services which may be located within the district.

(2) Least Restrictive Alternative. To the extent that there are no detrimental effects, children who are handicapped shall be education with children who do not have handicaps and shall attend regular classes. A handicapped person shall be removed from a regular educational program only when the nature or severity of the handicap is such that education in a regular educational program cannot be accomplished satisfactorily. Furthermore, there must be an indication that the person will be better served outside of the regular program. The educational needs of the person shall determine the type and amount of services needed.

(3) Individualized Programs. All children who are handicapped must be afforded special education services based on an individual educational plan. Such programs need to include an assessment of the student's performance utilizing certified personnel, a determination of the student's

needs in a team process, an identification of appropriate goals and objectives, a selection of teaching strategies designed to enhance learning, delivery of services in an environment which is conducive to learning, and periodic review and evaluation of the performance of the student.

(4) Procedural Safeguards. When a change in the educational placement or special education service of a child is anticipated, including the assessment and program planning processes, procedural safeguards must be assured by the school district. Parents and guardians, and students when appropriate, have the right to be informed of all significant educational decisions. When a child's parents or legal guardians are not available, the school district shall assure the appointment of a surrogate parent.

(5) Parental Involvement. Parents of handicapped children have a right to be involved by the school district in the education decision making process. Only by consistent and discrete involvement of parents will the school receive sufficient input to design and implement an effective program for the handicapped student. Parents and schools are encouraged to cooperate in an open and objective manner, utilizing periodic conferences when possible so that formal hearings are necessary only when substantive disagreements exist between the parties.

(6) Accountability for Instruction and Services. As provided in Minn. Stat. 120.17 Subd. 2, the district of residence is responsible for maintaining an appropriate program for all eligible handicapped persons regardless of the method or location of instruction utilized. However, if the handicapped person lives outside of his district of residence under the provisions of Minn. Stat. Subd. 6 & 7, the district where the child lives is responsible for providing an appropriate program for the child as set forth in state statutes and these regulations including the notice and hearing provisions. In such cases the district of residence is responsible for assuming the cost of the educational program. If the districts do not agree on the tuition rate, either district may appeal to the Commissioner as provided in Minn. Stat. 120.17 Subd. 4. The district shall not purchase special educational services for a child from a public or private agency when such service is available or can be made available and can be more appropriately provided as the least restrictive alternative within the district. Whenever it is appropriate for a district to purchase special education service for children who are handicapped and who reside in the district, it continues to be the responsibility of the school district, consistent with the provisions of Minnesota statutes and these regulations, to assure and ascertain that such children and youth receive the education and related services and rights to which they are entitled.

(7) Exclusion and Expulsion From School. If it is determined in a Pupil Fair Dismissal Act proceeding (Minn. Stat. 127.26) that the child, by reason of an emotional disturbance or a special behavior problem, needs special instruction and services as defined in Minn. Stat. 120.03 Subd. 3 these regulations shall apply.

(8) Physical Facilities. Physical aspects and specification of schools, classrooms, and other facilities for, or likely to be used by handicapped children, shall be designed to meet their special physical, educational and emotional needs.

To this end, responsible school districts constructing, renovating, or repairing facilities, which are intended for or are likely to be used by handicapped children, shall plan, locate, design, construct, equip, and maintain them with due regard for the special capabilities, handicaps, and requirements of the handicapped children to be accommodated therein.

(b) Definitions

The following terms used throughout these Regulations shall have the following meanings ascribed to them.

(1) "Education" includes the terms "educational service"; "educational program"; "special education services" and "regular education program" as they are defined and used herein, and means any appropriate training, instruction, and aids and services designed to further the intellectual, academic, verbal, physical, emotional, cultural, adaptive behavior, sensory or social development of the student.

(2) "Regular education program" means the normal elementary or secondary education environment including the instruction, training, aids and services in the classroom or other appropriate places.

(3) "Special education services" means any specially designed instruction to meet the unique needs of a handicapped person, including classroom instruction, or instruction in the home, hospital, institution, residential facility or other public or private facility providing special instruction and services pursuant to Minn. Stat. 120.17 and 124.32. This term includes but not by way of limitation, the education, instruction, training, aids and services and/or ancillary or supplementary and supportive aids and services necessary for the education of handicapped persons. This term also includes but not by way of limitation related services such as transportation, and developmental, corrective, and other supportive services including medical and counseling services, except that such medical services shall be for diagnostic or assessment purposes only, as may be required to assist a handicapped person to benefit from special education services. For purposes of this regulation the term also means and includes a "primary placement in a special education program" as that term is defined and used herein and "special instruction and services"; "supplementary services" and "special education program" as those terms are defined and used in Minn. Stat. 120.17.

(4) "Primary placement in a regular education program" means an educational program wherein a regular classroom teacher(s) has the primary responsibility for the student's daily program planning, for parent conferences, and for curriculum content; and where special education staff member(s) play no daily role in the education of the student or where they are providing part-time supporting instruction or services for the student.

(5) "Primary placement in a special "education Program" means an educational program wherein a special education staff member(s) has the primary responsibility for the student's daily program planning, for parent conferences, and for curriculum content; and where regular classroom teacher(s) play no role in the education of the student or where they are providing part-time supporting instruction or services for the student.

(6) "Providing school district" means a school district as that term is defined and used under Minn. Stat. 120.02 which maintains an educational program for the handicapped person.

(7) "Resident school district" means the district where the handicapped person's parent or guardian resides or the district designated by the Commissioner as provided in Minn. Stat. 120.17 Subd. 8 and 8a.

(8) "Special education facility" means a school or any portion thereof, supplemental facility or any other building or structure or part thereof, intended for use of or likely to be used in meeting the educational and related needs of handicapped children.

(9) "Handicapped persons" includes the term "student," and "child" or "person" and means those "handicapped children" as defined by Minn. Stat. 120.03 and amendments or supplements thereto. Determination of a handicapping condition shall be made by qualified personnel in accordance with recognized professional standards and consistent with the provisions of Edu 124 and 125. These regulations shall not apply to pregnant girls unless they have a presenting handicapping condition as described above.

(10) "School age" means the age of four (4) to twenty-one (21) years for persons who are deaf, blind, crippled, or have speech defects and the ages of five (5) to twenty-one years for other handicapped persons, in accordance with Minn. Stat. 120.17, Subd. 1 and amendments or supplements thereto. As of August 15, 1977 school age shall mean ages four (4) to twenty-one (21) years for all handicapped persons.

(11) "Least restrictive alternative" means the principle that to the maximum extent appropriate, handicapped persons, including those in public or private institutions or other care facilities, are educated with persons who are not handicapped, and that special classes, separate schooling, or other removal of handicapped persons from the regular educational environment shall occur only when and to the extent that the nature or severity of the handicap is such that education in regular classes with the use of special education services cannot be achieved satisfactorily. Furthermore, there must be an indication that the person will be better served outside of the regular program. For the purposes set forth therein this principle shall include the following "Continuum of Placement Model."

"CONTINUUM OF PLACEMENT MODEL"

Level 1 Students in regular classrooms functioning appropriately without any special education services. This level includes assessment services, monitoring, observation and followup.

Level 2 Students with handicaps functioning appropriately in the regular education program with the assistance of special education supportive services being provided to the classroom teacher.

Level 3 Students with handicaps functioning appropriately in a primary placement in a regular education program, but needing direct service assistance from special education personnel.

Level 4 Students with handicaps functioning appropriately with a primary placement in a special education program.

Level 5 Students with handicaps functioning appropriately in a primary placement in a special education program at a non-residential school for children and youth who are handicapped.

Level 6 Students with handicaps functioning appropriately in a primary placement in a special education program at a residential facility for children and youth who are handicapped.

(12) "Formal educational assessment," referred to in these regulations also as an "assessment," is defined as an individual evaluation conducted in accordance with recognized professional standards, and the provisions of Edu 124 of a person's performance and/or development for the purpose of determining the need for initiation or change in his or her educational program including special education services.

(13) "Parent" or "parents" include a biological mother or father, an adoptive mother or father, a legally appointed guardian, or such agency or other person appointed pursuant to Edu 123. All rights and responsibilities as provided herein belong to a person when the person is 18 years of age, unless the person is under legal guardian ship.

(14) "Recognized professional standards" means reasonable principles and concepts accepted by acknowledged experts that bear a direct relation to the particular needs of the student.

(15) "Days" and "months" shall be construed to exclude Saturdays, Sundays, and days school is not in session unless otherwise provided herein.

(16) Non-Discrimination for purposes of this regulation means the requirement that school districts shall:

(aa) not discriminate in any manner in the full utilization of or benefit from any educational institution of the services rendered thereby because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance or disability and otherwise comply with the provisions of Minn. Stat. Chapt. 363.

(bb) provide procedures that insure that in accordance with recognized professional standards, testing and evaluation materials and procedures utilized for the purposes of identification, assessment, classification, educational program plan development, educational placement including special education services, program implementation, review and evaluation, notice and hearing are selected and administered so as not to be discriminatory including cultural discrimination. All such procedures and materials shall take into account the special limitations of handicapped persons and the racial or cultural differences presented by persons and must be justified on the basis of their usefulness in making educational program decisions which will serve the individual student.

(17) "Proposed action" for purposes of this regulation shall be construed to mean a providing school district's proposed initiation or change or refusal to initiate or change a child's educational placement or special education services as set forth in Edu 125(e) or an educational assessment or re-assessment as set forth in Edu 124(b).

(18) "Individual educational program plan" referred to in these regulations also as a "program plan," means a written statement for each handicapped person setting forth the person's educational needs and the educational program, including special education services, to be provided to such person. The program plan shall be developed in accordance with and contain the information required by Edu 125.

(19) "Public, Private or Voluntary Agencies" for purposes of this regulation includes organizations which provide services to preschool and/or school age children. Public schools are not included in this definition.

DU 121 ~~Eligibility and Approval.--The eligibility of each pupil for special services and instruction shall be determined by the administrative officer of the school district, prior to admission, on the basis of substantial and competent evidence of need for such service or instruction; and final approval of each pupil enrolled in the special education program shall be made by the commissioner of education based on an examination of the record of evidence for each pupil.--These records shall be submitted by the school district to the commissioner by such date as he may set.~~

Application

(a) District Special Education Plan

On or before September 1, 1977, each district shall submit to the commissioner the district's plan for providing special instruction and services for all handicapped pupils as required by Minn. Stat. 120.17. The plan may represent the plan of a single district or a plan for all of the member districts of a formal special education cooperative. The plan shall be considered as part of the annual school district application for program review, but will not be required to be resubmitted annually. The plan shall include descriptions of:

(1) the district's study procedures for the identification and assessment of handicapped pupils.

(2) the district's methods of providing the special instruction and services for the identified handicapped pupils.

(3) the district's administration and management plan to assure effective and efficient results of 1 and 2 above.

(4) procedures to assure compliance with state statutes and regulations relating to the education of handicapped pupils.

(b) On or before January 1, 1978, the commissioner shall approve or implement appropriate procedures for modification of the district plan. The commissioner may grant the district a reasonable period of time to make necessary modifications of the plan provided that the commissioner has satisfactory assurances of compliance with standards for the education of handicapped pupils.

(c) Annual Application for Programs and Budget

(1) Regular School Term - On or before May 1 of each year school districts shall submit to the commissioner an annual application for program and budget approval necessary for determining the special education aids during the next school year. On or before July 1 the commissioner shall approve, disapprove, or modify each application and notify each applying district of his action and the estimated level of education aid to be paid.

(2) Summer School Term - On or before March 15 districts shall submit separate applications for program and budget approval for summer school. The commissioner shall approve, disapprove, or modify each application and notify the district of his action and the estimated level of special education aid by May 1.

(3) Amendment to Applications - School districts shall apply to amend applications as needed during the school term to reflect program and budget changes necessary to meet the changing needs of handicapped pupils in the district.

(d) A district may request a variance from the standards provided in Edu 122 by submitting supportive rationale in the application. The commissioner shall review this request for variance from standards in accordance with recognized professional standards and shall inform the district of the decision.

EDU 122 ~~Standards for State Aid~~ Facilities, Staff, and Supervision

(a) Facilities

(1) Housing space. Housing space for each class shall be adequate.

(2) Equipment and materials. Each special class and group shall be supplied with the necessary special equipment and instructional materials as approved by the Commissioner.

(b) Staff

(1) Teachers. Every teacher who teaches a special class must hold a Special Class Certificate appropriate to the type of handicapped children she is teaching.

(2) Administrators and supervisors. Every administrator and supervisor of any special education program shall hold appropriate certification.

(3) Other professional or essential personnel. The qualifications of other professional or essential personnel who are not certified teachers, administrators or supervisors shall ~~be approved by the commissioner of education based upon a record of qualifications to be submitted by the school district by such date as the commissioner may set.~~ be based upon recognized professional standards and documented by the school district in their application as provided for in Edu 121. The commissioner or his designee shall review requests for approval of such personnel assigned to programs for handicapped children.

(4) Special and Vocational education. Staff responsible for vocational training of handicapped students shall meet the following criteria if the program is to qualify for special education approval.

(aa) Coordinator of Special Needs.

.1 Certification in Special Education.

.2 Certified as a coordinator of special needs in vocational education.

(bb) Support Service Manager.

.1 Certification in any special education disability area.

.2 Certified as a support service manager in vocational education.

(cc) Vocational Instructor of Special Needs students.

.1 Certification in the appropriate disability area of special education or have a plan for working toward certification.

.2 Certified as a vocational instructor of special needs students in vocational education.

(dd) Teacher/Coordinator of Work Experience.

.1 A special education certificate appropriate for the type of handicapped students being taught.

.2 Certified as an instructor/coordinator for work experience in vocational education.

(ee) Teacher/Coordinator of Vocational Education Work Experience.

.1 Must be coordinated with a special education director or coordinator/lead teacher certified for the type of handicapped students being taught.

.2 Must be working cooperatively with a special education certified teacher who is responsible for the nonvocational instruction.

.3 Certified as an instructor/coordinator for work experience in vocational education.

(ff) Vocational Evaluator

.1 Certified as a vocational evaluator in vocational education.

.2 Working cooperatively with special education certified personnel to insure that special consideration is related to the students handicapped condition are included in the evaluation and program plan.

(gg) Vocational Technical Tutor.

.1 Certified as a technical tutor in vocational education.

.2 Working cooperatively with a special education certified teacher who is responsible for the nonvocational academic area of instruction.

(c) ~~Instruction~~ Staff to Student Ratios

~~(1) The courses, methods of instruction, and size of classes shall be consistent, in the commissioner's judgment, with good educational practices for each type of handicapped children.~~

~~(2) The most recent curriculum guides for elementary and secondary schools issued by the state department of education shall be used as a basis for materials of instruction insofar as these guides are appropriate and adaptable.~~

(1) When persons are in need of special education services in level 5 or 6 of the "Continuum of Placement" model where the primary placement is in a special education program such as a full time class, special station, special school or residential school, the staff to student ratio shall not exceed:

(aa) one teacher for each 8 handicapped persons for all categories except as provided in (bb).

(bb) one teacher for 6 handicapped persons who are autistic or who are deaf/blind providing that two management aides are employed to assist the teacher.

(2) When persons are in need of special education services in level 4 of the "Continuum of Placement" model where the primary placement is in a special education program such as a resource room or part-time special class the staff to student ratio shall not exceed:

(aa) one teacher for every 15 handicapped persons for all categories except as provided in (bb).

(bb) one teacher for every 8 handicapped persons who are trainable mentally retarded or visually impaired.

(3) When persons are in need of special education services in level 3 of the "Continuum of Placement" model where the primary placement is in a regular education program, such as a resource room or special class, the staff to student ratio shall not exceed:

(aa) one teacher for every 15 persons for all categories except as provided in (bb).

Each person must receive special education service for a minimum of one hour per day. When the needs of the student warrants such action, persons may receive less than one hour per day during the initial or phase out stages.

(bb) one teacher for every 40 persons who are speech and/or language impaired.

(4) When persons are in need of special education services in level 1 or 2 of the "Continuum of Placement" model where the student is full time in a regular education program and the special education teacher provides consultation and indirect service to the regular classroom teacher and/or assessment, monitoring or follow-up of the student, the staff to student ratio shall not exceed:

(aa) one teacher for every 30 persons who are handicapped except as provided in (bb).

(bb) one teacher for every 60 persons who are speech impaired.

(5) Whenever a professional is serving children representing a range of severity of problems, is providing more than one level of service, or is providing service at more than one site, the staff to student ratios shall be adjusted accordingly.

(6) When persons are receiving services from vocational staff involved in "special and vocational" programs except as provided in Edu 122(b) (4) (dd), the staff to student ratios of the "Continuum of Placement" model do not apply to that staff.

(d) Supervision.

Supervision consistent with the commissioner's recommendations and meeting the following standards shall be provided for each type of special education program.

(1) Overall supervision

(aa) Full time supervision. The school board in every district with an enrollment of 15,000 or more pupils, and in every district in which 20 or more full time professional personnel are employed in the special education program, shall employ or designate a qualified person, under an appropriate title, to devote full time to directing the special education program.

(bb) Part time supervision. The school board shall employ or designate a qualified person to devote part time to directing the special education program when (a) the enrollment in the school district is 7,500 or more pupils but less than 15,000 pupils; or (b) the number of full time personnel employed in the special education program is at least 10 but less than 20.

This position shall be reimbursable when the person directing the program on a part time basis spends the remainder of his time in some area of special education.

School authorities of districts that are required to meet the standard for part time supervision shall consult periodically with the Special Education Section in regard to full time supervision.

(cc) Other. School Boards of districts not required to have full time or part time supervision as outlined above shall study the feasibility of cooperative interdistrict sharing of special education supervisory personnel or some other approach aimed at providing direction to the program. See item (4) following.

(2) Individual Program Supervision

(aa) For the following disability categories or areas: (1) deaf and hard of hearing, (2) crippled, (3) visually impaired, (4) emotionally ~~disturbed~~ disturbance, learning disability, or special behavior problems.

The board of every school district in which 15 or more full time professional personnel are employed in any one of the above disability areas shall employ or designate a full time person to supervise the program in that area.

The board of every school district in which less than 15 but 5 or more professional personnel are employed in any one of the above disability areas shall consult with the Special Education Section and make provisions for supervision of the program in that area.

(bb) For the mentally retarded.

The school board in every district in which 30 or more full time professional personnel are employed in the above disability area shall employ or designate a full time supervisor of the program in that area.

The school board in every district in which less than 30 but 10 or more professional personnel are employed in the above disability areas shall consult with the Special Education Section and make provisions for supervisions of the program.

(cc) The school board in every district in which speech therapists are employed in the special education program shall submit a plan which will describe and provide appropriate amounts of time for program development, program coordination, program evaluation, in-service training, and individual supervision.

(dd) For the following service areas: (1) school social work and (2) school psychology:

.1 The school board in every district in which Level I personnel in either the social work or psychology program are employed for special education programs shall submit a plan which will describe and provide appropriate amounts of time for each Level I person for individual observation, performance evaluation, consultation, and inservice training by a certified Level II person from the respective field.

.2 The school board in every school district in which Level II personnel in either the social work or psychology area are employed in the special education program shall submit a plan which will describe and provide appropriate amounts of time for program development, program coordination, program evaluation, inservice training, and individual supervision.

(ee) The school boards of two or more districts may cooperatively employ and share supervisory personnel. See item (4) following.

(ff) Supervision of programs in any of the aforementioned disability areas shall be provided at both the elementary and secondary level.

(3) Cooperative inter-district agreements.

(aa) Two or more school districts may enter into an agreement to provide supervision of programs for handicapped children, provided that none of the participating districts is required, as outlined in items (1) and (2) above, to employ such supervisory personnel on a full time basis.

(bb) When a group of districts enters into such cooperative agreement, one of the participating districts shall serve as the employing unit.

Each participating district shall pay to the employing district a prorata amount of the net cost of providing such supervisory services. The net cost to be prorated shall be the actual cost less state reimbursement.

State reimbursement for the cost of such services shall be paid to the employing district.

(4) The school board of any district unable to comply with the above regulations shall consult with the Special Education Section.

~~(e) Extent of services.--The extent of services provided by special education personnel shall be determined by the kind and severity of the handicaps of the pupils, and shall be consistent with the commissioner's recommendations for each type of handicapped children.~~

~~(f) Records and reports.--A complete pupil record of each child consistent with the commissioner's recommendations shall be kept in the office of the administrative officer of the school.--This information shall be available for interpretation to the professional school personnel, to the state supervisory staff, and to the parents or guardian of the pupil.~~

~~(g) Parent-consultation.--Provision shall be made for offering early parent-consultation in all cases of handicapped children requiring any evaluation which goes beyond the routine individual intelligence test and group surveys and screening procedures. Extreme care is to be exercised in the selection and use of instruments and procedures.~~

(e) (h) School day.

Deviations from the normal school day for any type of handicapped children shall be approved by the commissioner of education.

EDU 123 ~~State Aid or Reimbursement~~

~~(a) State aid or reimbursement to school districts which has established special classes in accordance with required standards shall be paid in accordance with the applicable provisions of Minn. Stat. 124.32, and all claims submitted shall be postmarked no later than June 30 after the close of the school term in order to qualify for payment at the regular time.~~

~~(b) Reimbursement shall be granted only for approved items of equipment and supplies needed in classes or programs for handicapped children.~~

~~(c) Summer programs for handicapped children for which reimbursement aid is to be claimed shall meet the approval of the commissioner of education.~~

(All new material from here to end)

Surrogate Parents

When a child is the ward of the Commissioner of Public Welfare, when the parent or guardian is unknown or unavailable, or when parental rights have been terminated, the district shall insure that the rights of the child to a free and appropriate education are protected by contacting the local county welfare department and requesting that the public welfare system intervene on behalf of the child. The district shall suggest to the local county welfare system that a contact with the county attorneys office be made to determine whether a guardian ad litem should be appointed.

EDU 124 Identification and Assessment Procedures

(a) Identification of Handicapped Children

(1) School districts shall develop systems for locating all children residing within their jurisdiction who may be handicapped. Those systems shall be designed to identify:

(aa) preschool age handicapped children;

(bb) handicapped persons attending school;

(cc) handicapped persons of school age who are not attending any school.

(2) The districts identification system shall be developed in accordance with the requirement of non-discrimination.

(b) Formal Educational Assessment

(1) An assessment:

(aa) must be conducted when because of a person's performance in the present educational placement or presenting handicapping conditions, he or she is thought by the school district to be in need of possible initiation or change in the student's educational placement or program or special education services as set forth in Edu 125(e) which will provide an educational program, including special education services appropriately suited to the person's needs.

(bb) must be conducted at least every two years as required by Edu 126(b).

(cc) may be conducted if the parent requests.

(2) Prior to conducting an assessment the district shall:

(aa) review the screening, referral or other data about the person and select certified special education personnel and others as appropriate to conduct the assessment.

(bb) include on the assessment team certified special education personnel and others who may have the responsibility for implementing the educational program for the person.

(cc) conduct the educational assessment preferably at the school which the person attends. When the district determines that the assessment or a portion of the assessment cannot be performed utilizing the personnel resources of the district, the district shall make arrangements elsewhere for that portion of the assessment and shall assume all costs for such assessment.

(dd) conduct the assessment within a reasonable period of time not to exceed 30 days after the need for an assessment is determined by the district unless a conciliation conference or hearing is requested by the parent.

(3) The assessment must reflect the person's current level of performance and shall:

(aa) be appropriate to the presenting problem and may include observation, evaluation and testing of the persons intellectual, academic, verbal, emotional, adaptive behavior, sensory, physical and social development.

(bb) include a review of the person's learning environment and learning modes. When the team determines it to be necessary because of racial, cultural or other differences presented by the person or due to the nature of the student's presenting handicapping condition they shall make reasonable efforts to obtain information from the parents relating to the student's functioning in his or her total environment.

(cc) be provided and administered in the person's primary language or mode of communication unless it clearly is not feasible to do so.

(dd) be performed in accordance with recognized professional standards which include recognition or accommodation for persons whose differences or conditions cause standardized instruments to be invalid and otherwise in accordance with the requirements of non-discrimination.

(4) Notice before assessment:

(aa) must be provided in accordance with the provisions of 127(b) prior to conducting a formal educational assessment or reassessment or when the district refuses a parents request to conduct a formal educational assessment or reassessment. In case of refusal the notice shall be served within ten (10) days after the refusal.

(bb) is not required for actions which are components of the districts identification system including large group screening, individual student observation within the regular classroom, informal inventories, and consultation between regular and special education personnel.

EDU 125 Team Determination and Program Needs Determination. Development and Content of the Individual Education Program Plan.

(a) Team and program needs determination

Following the assessment, in order to determine if the person is in need of special education services, the district shall:

(1) designate a team of persons responsible for determining the educational needs of the student which, at a minimum, shall include a school administrator or designee, the student's regular classroom teacher, appropriate special education personnel, other support personnel, the parent, and when appropriate, the student.

(2) organize the assessment data and other relevant information and reports, including information supplied by the parents, review that data and determine the student's educational needs.

(3) interpret the data consistent with the requirement of non-discrimination.

(4) upon request of the parent, determine whether it is appropriate to involve additional staff or other persons on the team including someone who is a member of the same minority, as that term is defined in Minn. Stat. 126.021, or cultural background or who is knowledgeable concerning the racial, cultural, or handicapping differences of the student.

(5) schedule the student staffing at a time and place that is mutually acceptable to the school and parents; the district shall proceed if the parents do not respond to the request to participate.

(b) Development and Content of the Individual Education Program Plan

The development of the program plan must:

(1) be prepared, in writing, by the providing district for each person in need of special education services. When the providing district is not the resident district, a copy of the program plan shall be sent to the resident district.

(2) be developed in accordance with the requirement of non-discrimination, the principle of the least restrictive alternative, and recognized progressional standards.

(3) be based on the assessment data and other relevant reports and information.

(4) be prepared, in writing, by the resident district when contracting for special education services from a public, private or voluntary agency.

(c) Content of the Individual Educational Program Plan

The program plan must be based on the assessment data and other information and be consistent with the requirement of non-discrination and the principle of least restrictive alternative and must include:

(1) a description of the special education service needs of the student as determined by the staffing team and the names of the persons on the team.

(2) a statement of annual goals and periodic review objectives for the special education services including the criteria for attainment.

(3) the plan for, location of, and frequency of periodic review of the progress in reaching the prescribed educational goals and objectives.

(4) the reasons for and type of education placement and program including type of special education services to be provided, the location, amount of time, starting date, anticipated special education service duration, names and school telephone numbers of those personnel responsible for providing the special education services. In accordance with the principle of least restrictive alternatives, substantiate why the proposed action is the most appropriate in terms of the persons educational needs.

(5) the changes in staffing, transportation, facilities, curriculum, methods, materials, and equipment and other educational services that will be made to permit successful accommodation and education of the student in the least restrictive alternative.

(6) a description of the educational activities in which the student will participate in environments which include non-handicapped students. This provision must be included in the plan only when the student's primary placement will be in a special education program.

(d) At the request of the parent, the district shall schedule an individual conference with a knowledgeable school employee for the purpose of receiving interpretations of the assessment or reassessment data or procedures or for the purpose of explaining the individual educational plan or its development.

(e) Notice to Parents After Completion of the Program Plan and Prior to Placement

Notice in accordance with the provisions of Edu 127(c) is required whenever the providing school district proposes to initiate or change or refuses to initiate or change the educational placement or special education services for the child. For purposes of this

regulation the terms initiate or change shall be construed to include the proposals set forth in Minn. Stat. 120.17, Subd. 3b (c) (2), (3), (4), and (5). The notice shall be served prior to the initiation or change or refusal to initiate or change the educational placement or special education services for the child. The notice shall be served within ten (10) days after completion of the program plan and/or the refusal to initiate or change.

EDU 126 Periodic Reviews, Reassessment and Follow-up

(a) Periodic Reviews.

(1) The providing school district shall conduct periodic reviews of the program plan and shall determine:

(aa) the degree to which the periodic review objectives as identified in the educational program plan are being achieved.

(bb) the appropriateness of the educational program plan as it relates to the student's current needs.

(cc) what modifications, if any, need to be made in the program plan.

(2) The initial review shall be made at the time specified in the program plan, but at least twice a year following placement.

(3) These periodic reviews shall be made by those persons directly responsible for implementing the educational program and by other school district agents as may be needed to insure an informed and adequate review.

(4) The results of such periodic reviews shall be included in the student's school records and a copy sent to the parent and to the resident district if different from the providing district. This copy shall inform the parents or the resident district that they may request a conference to review the student's program plan at any time and the procedure to do so.

(5) The reviews shall be made in accordance with the requirements for non-discrimination and recognized professional standards.

(b) Requirements for Reassessment.

When a student is continued in his or her primary placement in a special education program, the providing district shall conduct an educational reassessment according to the procedures specified in Edu 124(b), at least once every two years.

(c) Requirements for Follow-Up Review.

The responsible school district shall conduct a follow-up review of the student's current performance no later than twelve calendar months after special education services are discontinued to determine if progress is satisfactory.

EDU 127 Formal Notice to Parents

(a) General Notice Provisions

(1) The notice shall be in writing and shall be served on the parent.

(2) Every effort shall be made by the providing school district to assure that no person's rights are denied for lack of a parent, or surrogate parent, or duly appointed guardian.

(3) The notice shall be written in the primary language of the home and in English, and the district shall make reasonable provisions for such notice to non-readers and non-English speaking persons necessary to insure that the information contained in the notice is understood.

(4) For parents who are handicapped persons because of a hearing, speech or other communication disorder, or because of the inability to speak or comprehend the English language as provided in Minn. Stat. 546.42 the school district shall cause all pertinent proceedings, including but not limited to the conciliation conference; the pre-hearing review; the hearing; and any appeal to be interpreted in a language the handicapped person understands by a qualified interpreter as provided in Minn. Stat. 546.42.

(5) The notice must be sufficiently detailed and precise to constitute adequate notice for hearing of the proposed action.

(6) The resident school district, if different from the providing school district, shall receive notice of and may be a party to any hearings or appeals provided herein if the district notifies the parent and the providing school district of its intention to be a party within seven (7) days of receipt of notice of the hearing from the providing school district.

(b) Prior to the performance of or refusal to perform a formal educational assessment or reassessment as provided for in Edu 124(b), the providing school district shall prepare and serve a notice which shall:

(1) Include the reasons for assessment or the refusal to assess and how the results may be used;

(2) Include a general description of the procedures to be used;

(3) State where, and by whom the assessment will be conducted;

(4) Inform the parents of their right to review and receive copies of all records or other written information related to the assessment;

(5) Inform the parents of their right and the procedure and time for them to participate as a team member in developing and determining their child's educational program, including special education services and/or to provide information relative to his or her assessment and the development of the program plan;

(6) Inform the parents of their right and the procedure and time to receive interpretations of assessment or reassessment procedures, instruments and data or results and of the program plan from a knowledgeable school district and for that conference to be held in private;

(7) Inform the parents of their right and the procedure and time to have included on the team, that interprets the assessment data and/or develops the individual program plans, such person(s) described in Edu 125(a) including a person who is a member of the same minority (as defined in Minn. Stat. 126.021) or cultural background or who is knowledgeable concerning the racial, cultural, or handicapping differences of the student;

(8) Inform the parents that they may obtain an independent assessment at their own expense.

(9) Inform the parents that the district will proceed with the proposed action unless the parent objects on the enclosed "response form" or otherwise in writing within ten (10) days after receipt of the notice;

(10) Inform the parents that if they object to the proposed action in writing a conciliation conference will be held at a mutually convenient time and place, but that if the parent refuses to attend the conference the school district will proceed with the proposed action;

(11) Inform the parents that if the parent still objects to the proposed action after the final conciliation conference they have a right to voice that objection at an informal due process hearing.

(12) A statement assuring that their child's educational program will not be changed as long as the parent objects to the proposed action, in the manner prescribed by these regulations.

(13) Include a "response form" on which the parent may indicate their approval of or objection to the proposed action and identify the district employee to whom the "response form" should be mailed or given and to whom questions may be directed;

(c) Prior to the initiation or change or the refusal to initiate or change a child's educational placement or special education services, as set forth in Edu 125(e) the providing school district shall prepare and serve a notice which shall:

(1) Include a copy of the individual educational program plan as described in Edu 125(c);

(2) Inform the parents of their right and time and procedure to request and to receive interpretations of assessment or reassessment procedures, instruments and data and of the program plan from a knowledgeable school district employee and for that conference to be held in private;

(3) Inform the parents that they may obtain an independent educational assessment at their own expense.

(4) Inform the parents that the school district will proceed with the proposed action unless the parent objects in writing on the enclosed "response form" or otherwise to the proposed action within ten (10) days after receipt of the notice;

(5) Inform the parents that if they object to the proposed action, a conciliation conference will be held at a mutually convenient time and place but that if the parent refuses to attend the conciliation conference the school district will proceed with the proposed action;

(6) Inform the parents that if they still object to the proposed action after the final conciliation conference that they have a right to voice that objection at an informal due process hearing.

(7) Include a statement assuring that the student's educational program will not be changed as long as the parents object to the proposed action in the manner prescribed by these regulations;

(8) Include a "response form" on which the parent may indicate their approval of or objection to the proposed action and identify the district employee to whom the "response form" should be mailed or given and to whom questions may be directed.

Edu 128 Conciliation Conference

(a) When a conciliation conference must occur:

If the parent does not object in writing, to a proposed action as set forth in Edu 124 (b) or Edu 125 (e), within ten (10) days after receipt of the notice, the proposed action shall take place. If such written objection is made, the providing school district shall arrange for a conference with the parent for the purpose of reviewing the reasons for the proposed action and conciliating the matter. The conference shall be held at a time and place mutually convenient to the parent and the school district representatives and shall be held within ten (10) days after receipt of the written objection. There may be more than one such conference and the parent may not request a hearing under Edu 129 (a) until at least one conciliation conference has been held.

(b) Memorandum

Within seven (7) days of the final conciliation conference the providing district shall serve the parent with a written memorandum which shall inform the parent:

(1) of the school districts proposed action following the conference;

(2) that if they continue to object to the proposed action they have a right to object to the proposed action at a informal due process hearing and the procedure and time in which to do so, including a "request form" on which the parent may request the hearing and the identification of the district employee to whom the written request form or other written request for hearing should be mailed, and to whom questions and legal documents or requests relating to the hearing may be directed:

(3) that if they do not request a hearing on the written "request form" or otherwise in writing pursuant to Edu 129 (a) within seven (7) days after receipt of the notice, the district will proceed with the proposed action;

(4) that if they request a hearing on the written "request form" or other-wise in writing that they will receive a notice describing the rights and procedures available to them relative to the hearing;

(c) If no such written request is made after the final conciliation meeting, the proposed action shall take place.

Edu 129 The Hearing

(a) When a hearing must be held.

A hearing regarding a proposed action as set forth in Edu 124 (b), or Edu 125 (e) shall be held not later than thirty (30) days, unless continued pursuant to the mutual agreement of the parent and school district(s) after the providing district receives the parents' request for a hearing. This request must be in writing and must be made within seven (7) days after the parents' receipt of the written memorandum pursuant to Edu 128 (b). Provided however, that no parent shall have a right to request a hearing unless at least one conciliation conference has been held pursuant to Edu 128 (a).

(b) Notice

(1) Written notice of the time, date and place of all hearings shall be given to all parties by the providing district at least ten (10) days in advance of such hearings; and the hearing shall be held at a time, date and place mutually convenient to all parties.

(2) Within five (5) days of receipt of the parent's written request for a hearing the providing school district shall serve the parent with a written notice of rights and procedures relative to the hearing which shall inform the parent:

(aa) that at the option of the school board, the hearing shall take place: (.1) before the school board or its designee; (.2) a person mutually agreed to by the school board and the parent; or (.3) a person appointed by the commissioner;

(bb) that they will receive notice of the time, date and place of the hearing at least ten (10) days in advance of the hearing will be held within thirty (30) days after the written request;

(cc) inform the parent of their right or responsibility:

.1 to be represented in preparation of and at the hearing by legal counsel or other representative of their choice.

.2 in accordance with laws relating to confidentiality to examine and receive copies of the child's school records before the hearing, including tests, assessments, reports or other information concerning the educational assessment or reassessment, upon which the proposed action may be based;

.3 to call their own witnesses and to present evidence, including expert medical, psychological and educational testimony and relevant records, tests, assessments, reports or other information;

.4 to request the attendance of any official, or employee of the providing or resident school district or any other person, who may have evidence relating to the proposed action and the manner and time in which to do so;

.5 to cross examine any employee of the school district(s) or other persons who present evidence at the hearing;

.6 within 5 days after written request to receive from either the school district(s) a list of persons who will testify on behalf of the district concerning the proposed action;

.7 within 5 days after written request by the school district(s) to provide to the district(s) a list of persons who will testify on the parent's behalf concerning the proposed action;

.8 at least 3 days prior to the hearing, to receive from the providing or resident school district, a brief Resume of "addional material allegations" referring to conduct, situations or conditions which are discovered to be relevant and which were not contained in the original notice or memorandum; and that such material allegations may not be considered at the hearing if they are not so disclosed.

(dd) that at the hearing the burden of proof is on the school district to show that the proposed action is justified on the basis of the child's educational needs or his or her current educational performance, or presenting handicapping conditions taking into account the presumption that placement in a regular public school class with special education services is preferable to removal from the regular classroom;

(ee) that a record will be kept of the hearing and will be made available at cost to the parent if the decision is appealed by the parent;

(ff) that the person conducting the hearing will make a written decision based only on evidence received and introduced into the record at the hearing within five (5) days following the hearing and that the proposed action will be upheld only upon showing by the school district by a preponderance of the evidence. A proposed action that would result in the child being removed from regular education program may be sustained only when, and to the extent the nature or severity of the handicap is such that a regular education program would not be satisfactory and

the child would be better served in an alternative program. Consideration of alternative educational programs must also be given. ~~and the person conducting the hearing.~~

(gg) that the decision of the person conducting the hearing may be reviewed by the school board, at its option, within ten (10) days following the hearing;

(hh) that the written review decision of the school board must occur within five (5) days of the review and must be based on the standards set forth in (dd) and (ff);

(ii) that the decision of the hearing officer may be appealed to the commissioner;

(jj) that the student's education program will not be changed, as long as the parents object to the proposed action in the manner prescribed by these regulations, or until after the decision is finally made at the hearing; or an appeal.

(c) Hearing Officers.

At the option of the school board, the hearing shall take place either before the school board; or (i) its designee, (ii) a person mutally agreed to by the school board and the parents; or (iii) a person appointed by the commissioner. The school board shall exercise its option and a person to conduct the hearing must be selected at least five (5) days prior to the hearing. The parties by agreement may continue the time and date of the hearing for not more than ten (10) days for the purpose of mutually agreeing to a person to conduct the hearing. All expenses of the hearing, except for the parents' and resident school districts attorney's fees or other expenses incidential to the parents or resident school district participation in the hearing, shall be paid by the providing school district.

(d) Prehearing Review by the Hearing Officer.

(1) Five (5) days prior to the hearing, the person(s) conducting the hearing shall receive copies of:

(aa) the providing school district's notice(s) and memorandum prepared pursuant to Edu 128(b) to the parents;

(bb) written information concerning the providing school districts's educational assessment or reassessment and copies of any parties' tests, evaluations, or other admissible reports or written information relating to such assessment or reassessment, or the proposed action;

(cc) a copy of the student's individual educational program plan; and

(dd) such other information from the school district(s) or parent as the hearing officer may have requested at a prior date.

(ee) the provisions of (bb) and (cc) need not apply when the hearing concerns a proposed action as set forth in Edu 124(b).

(2) Upon receipt of the information set forth in (1) above, the person conducting the hearing;

(aa) shall review the same for compliance with these regulations;

(bb) may at his or her discretion, meet with the parties together prior to the hearing;

(cc) may require the providing school district to perform an additional educational assessment or reassessment;

(dd) may require the providing school district to propose an alternative individual educational program plan;

(ee) may require the providing school district to send additional notice to the parents;

(ff) may do such additional things necessary to achieve compliance with these regulations;

(gg) may postpone the hearing for up to fifteen (15) days to achieve the purposes of this paragraph.

(e) Hearing Rights of the Respective Parties.

(1) The hearing shall be closed unless the parent requests an open hearing or if the hearing takes place before the school board.

(2) The parties shall have the right to representatives of their own choosing, including legal counsel.

(3) At a reasonable time prior to the hearing, the parent or their representative(s), as the case may be, shall be given access to all of the providing and resident school districts' records and such other records pertaining to the child that are authorized by law to be disclosed, including but not limited to all tests, evaluations, assessments, reports, and other written information concerning the educational assessment or reassessment, conducted pursuant to Edu 124(b) upon which the proposed action may be based.

(4) At least three (3) days prior to the hearing the parents shall receive from the school districts, who are parties of the hearing, a brief Resume of "additional material allegations" referring to conduct, situations or conditions which are discovered and found to be relevant to the issues to be contested at the hearing and which are not contained in the original notice or memorandum provided pursuant to Edu 127(b) or (c) or 128(b). Any such material allegation or information relating thereto, which is not so disclosed, shall not be introduced or considered at the hearing.

(5) Within five (5) days after written request any party shall receive from the other parties a list of witnesses who may be called to testify at the hearing. Such list must be filed with the person(s) conducting the hearing. Such lists may be modified at any time but each party should be notified immediately if possible.

(6) All parties or their representatives, as the case may be, shall have the right to request the attendance of any employee of the school district(s), or any other person who may have evidence relating to the proposed action, and to confront, and to cross examine any such witness. Any such request must be made to the appropriate school district or to the person whose attendance is requested at least three (3) days in advance of the hearing. Such written requests shall also be filed with the person(s) conducting the hearing at the time of hearing.

(7) Standards, rules and regulations regarding contested cases as specified pursuant to Minn. Stat. Chapter 15 shall apply.

(8) If the person conducting the hearing determines at the conclusion of the hearing that there remains disputes of fact which, in the interest of fairness and the child's educational needs, requires the testimony of additional witnesses, or if the hearing officer concludes that alternative educational programs and opportunities have not been sufficiently considered, he or she may continue the hearing for not more than ten (10) days, for the purpose of obtaining the attendance of such witnesses or considering such alternative programs and opportunities. The parties right to cross examination and confrontation and other applicable rights and procedures set forth herein shall continue and be given full force and effect.

(f) Hearing Procedures.

(1) The person conducting the hearing shall preside over and conduct the hearing and shall rule on procedural and evidentiary matters, and his or her decision shall be based solely upon the evidence introduced and received into the record.

(2) The school district(s) shall bear the burden of proof as to all facts and as to grounds for the proposed action.

(3) One purpose of the hearing is to develop evidence of specific facts concerning the educational needs, current educational performance, or presenting handicapping conditions of the person as it relates to the need for the proposed action. Consistent with the rights and procedures set forth herein, nothing in these regulations shall limit the right of the person conducting the hearing to question witnesses or request information.

(4) A verbatim stenographic record, of the hearing shall be made, and if an appeal is filed pursuant to Edu 129 (h) the hearing shall be transcribed by the providing school district and shall be accessible to the parties involved within five (5) days of the filing of the appeal. Provided however, for appeals of local decisions issued by school boards or their designees concerning proposed actions as set forth in Edu 129 (h) (2) (aa), no written transcript shall be made if the parent requests a Chapter 15 due process hearing pursuant to Edu 129(h). The record or transcription, as the case may be shall, upon request, be made available to the parent or their representative.

(g) The Local Decision. Within five (5) days after the hearing, the person(s) conducting the hearing shall prepare a written decision. Such decision shall address itself to the following:

(1) Decisions regarding assessment or reassessment.

(aa) The person conducting the hearing may sustain a proposed assessment or reassessment of the person as set forth in Edu 124(b) upon a showing by the school district(s) by a preponderance of the evidence which demonstrates that there are facts, relating to the person's performance in his or her present education placement or presenting handicapping conditions, which indicate reasonable grounds to believe that the educational assessment or reassessment procedures are justified, as a step toward the possible initiation of or change in the person's educational placement, or program including special education services, which will provide an educational program including special education services, appropriately suited to the person's needs.

(bb) Consistent with the standards, requirements and principles set forth in statute and these regulations, the person conducting the hearing shall have the authority, based on all the evidence received at the hearing, to modify the proposed assessment or reassessment instruments or procedures in order to insure compliance with the requirement of non-discrimination.

(2) Decisions regarding educational placement

(aa) Based on an application of the standards, requirements and principles set forth in Minn. Stat. 120.17, Subd. 3a, and in these regulations, the proposed action regarding the person's educational placement or special education services as set forth in Edu 125(c) shall be sustained in whole or in part by the person conducting the hearing only upon a showing of need by the school district(s) by a preponderance of the evidence.

(bb) In deciding if the proposed action is to be sustained, in whole or part, the educational needs of the child shall be determinative. However, there shall be a presumption that among alternative programs of education, that to the maximum extent appropriate, a primary placement in a regular public school class and program with appropriate special education services, is preferable to removal from the regular classroom.

(cc) The person(s) conducting the hearing may sustain a proposed action that would result in the child being removed from a regular education program only when, and to the extent that the nature or severity of the handicap is such that education in the program with the use of special education services cannot be accomplished satisfactorily, and there is indication that the child will be better served with an alternative program or services. This decision shall be made in accordance with the principle of least restrictive alternatives.

(dd) The person conducting the hearing shall also determine whether the school district(s) sufficiently considered alternative educational programs including special education services and opportunities and at the hearing, may receive any additional evidence presented by any interested party or person as to the availability and suitability of reasonable and viable educational alternatives. If the person conducting the hearing concludes that there are no reasonable or viabled educational alternatives the findings shall so state.

(3) Except when the hearing is conducted by the school board, the local decision of the person conducting the hearing may be reviewed by the school board at its option within ten (10) days after receipt of the proposed decision. Within five (5) days of the review the school board shall issue a local written decision.

(4) All local decisions shall:

(aa) contain written findings of fact, and conclusions of law; including a statement of the controlling facts upon which the decision is made in sufficient detail to appraise the parties and the commissioner of the basis and reason for the decision;

(bb) state whether the special education services appropriate to the child's needs can be reasonably provided within the resources available to the providing district;

(cc) state the amount and source of any additional district expenditures necessary to implement the decision; and

(dd) be based on the standards and principles set forth in Minn. Stat. 120.17, (3a) and Edu 129 g(1) and (2).

(5) All decisions shall be filed with the Commissioner of Education and shall be sent by mail to the parties. The decision of the person conducting the hearing shall not be served until after expiration of the time for school board review. The decision(s) shall also include information detailing the right to appeal the decision; the procedure and time in which to do so; and an appeal form on which the parent may identify which appeal option, as set forth in Edu 129 h(2), they request.

(h) Effective Date of the Action and Appeals.

(1) The decision of the person(s) conducting the hearing, or in case of school board review, the board's decision, shall be binding on all parties and shall become effective fifteen (15) days after service of the decision unless the decision is appealed.

(2) The binding local decision issued pursuant to Edu 129(g) (1) (2) or (3) may be appealed by the parent to the Commissioner of Education within fifteen (15) days of receipt of that written decision(s) in the following manner:

(aa) If the parent is appealing a local decision of the school board or their designee regarding a proposed education assessment or reassessment as set forth in Edu 124(b); or a proposed action regarding the placement of their child in, transfer to, or the proposed provision or addition of special education program or services as set forth in Minn. Stat. 120.17 Subd. 3b (c) (2) and (4) the appeal decision, at the option of the parent may:

.1 be based on a review of the local decision(s) and the entire record; or

.2 be based, after a new due process hearing conducted pursuant to the provisions of Minnesota Statute Chapter 15, on the report of the impartial hearing examiner, and not on the local decision(s) or record. Provided however, if the parent wants a Chapter 15 due process hearing, the parent must make this request as part of the written appeal notice, or the appeal decision will be based solely on a review of the local decision(s) and the entire record.

(bb) If the parent is appealing any other local decision(s) the appeal decision shall be based on a review of the local decision(s) and the entire record.

(cc) All notices of appeal shall be on the appeal form or otherwise in writing and shall be sent by the parent by mail to all parties to the hearing at the time the appeal is filed.

(3) The school board shall be a party to any appeal. The commissioner shall issue a final decision based on a review of the local decision(s) and the entire records within thirty (30) days after receipt of the local decision(s) and the transcript. However, in appeals of local decisions wherein the parent has properly requested a Chapter 15 due process hearing, the commissioner shall issue a final decision within thirty (30) days after that hearing and the final decision shall be based on the report of the hearing examiner.

(4) The commissioner's final decision shall:

(aa) be in writing;

(bb) include findings and conclusions; and

(cc) be based on the standards set forth in Minn. Stat. 120.17, Subd. 3a and the standards requirements and principles set forth in Edu 129 (g) (1) and (2) and these regulations.

(5) The decision of the commissioner shall be final unless appealed by the parent or the school board to the district court of the county in which the providing school districts, in whole or part, is located. The scope of judicial review shall be as provided in Chapter 15.

(6) Except in case of school board decision pursuant to Edu 129 (e) if the providing school district fails to implement the person conducting the hearing's local decision, the parent shall have the right, to bring such failure to the attention of the commissioner. In accordance with the provisions of Minn. Stat. 124.15, the State Board of Education may impose such sanctions necessary to correct any such failure.

STATE OF MINNESOTA
County of Ramsey

IN THE MATTER OF: The proposed adoption of rules of the state board of education amending "Minnesota Administrative Rules and Regulations— Rules and Regulations of the State Board of Education" 1973 Edition and the 1974 Supplement.

ORDER FOR HEARING

To effectively implement the rules and regulations of the Minnesota State Board of Education, the board deems it necessary to consider adoption of the proposed rules captioned above pursuant to the authority vested in it by M.S. 1974.

NOW, THEREFORE, IT IS ORDERED this 4th day of June, 1976, that a public hearing on the proposed rules captioned above be held at Room 83 State Office Building, St. Paul, Minnesota 55155 on Tuesday, July 13, 1976, commencing at 9:00 a.m. and continuing until all representatives of school districts, associations or other interested persons have had an opportunity to be heard.

IT IS FURTHER ORDERED, that notice of said hearing be given to all representatives of associations or other interested groups of persons who have registered their names with the Secretary of State for that purpose and all persons who are presently members of the Minnesota legislature.

STATE OF MINNESOTA
Department of Education

Commissioner of Education

CERTIFICATE

STATE OF MINNESOTA
County of Ramsey

In the matter of the proposed adoption of rules of the state board of education amending and supplementing MINNESOTA ADMINISTRATIVE RULES AND REGULATIONS -- Rules and Regulations of the State Board of Education, 1973 Edition and as amended in 1974.

I hereby certify that the attached 486 labels and 9 sheets which constitute the complete list of persons, associations, and other interested groups who as of 10:45, o'clock a.m., this 16th day of June, 1976, have requested pursuant to M.S. 1967 Section 15.0412 Subd. 4, that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearing on proposad rules on the subject captioned above.

Joan Anderson Growe
Secretary of State

By Ceil Dion

AFFIDAVIT OF MAILING

In the matter of the proposed adoption of rules of the state board of education amending and supplementing MINNESOTA ADMINISTRATIVE RULES AND REGULATIONS -- Rules and Regulations of the State Board of Education, 1973 Edition as amended in 1974:

I, Doris Sweeney, being first duly sworn, deposes and says: That on the 11th day of June, 1976, at the City of Saint Paul, County of Ramsey, State of Minnesota, he served the attached Notice of Hearing by depositing in the United States mail at said City of Saint Paul, a true and correct copy thereof, properly enveloped, with postage prepaid, to all persons and associations at the addresses listed on the attached Certificate of the Secretary of State.

Doris Sweeney
Doris Sweeney
Research, State Aids & Statistics

Subscribed and sworn to before me this 11th day of June 1976

Beatrice Schlesser
BEATRICE SCHLESSER
Notary Public, Ramsey Co., Minn.
My Commission Expires
May 11, 1983

State of Minnesota

County of Ramsey

Before the State
Board of Education

In the matter of the Proposed Adoption of
Rules of the State Board of Education re-
lating to Edu 120-139

STATEMENT OF NEED

INTRODUCTION

Minnesota Status 1976, Chapter 211 charges the State Board of Education with the responsibility to promulgate rules relating to the education of handicapped children. Minnesota Stat. 120.17 Subd. 3a requires that all school districts insure that: (a) all handicapped children are provided the special education instruction and services appropriate to their needs, (b) handicapped children and their parents are afforded procedural safeguards and the right to participate in decisions regarding identification, assessment and placement of handicapped children, (c) that to the maximum extent appropriate, handicapped children will be educated with children who are not handicapped and that children will be removed from the regular educational environment only when and to the extent that education in regular classes with the use of supplementary services cannot be achieved satisfactorily, (d) that testing and evaluation materials utilized for the assessment and placement procedures will be selected and administered so as not to be racially or culturally discriminatory, and (e) that the rights of the child are protected when the parent is not known. Minn. Stat. 120.17 Subd. 3b provides that districts will afford procedural safeguards to parents or guardians of handicapped children including: (a) written notice prior to conducting formal educational assessments, prior to placing a child in, transfer from or to or denial of placement in a special education program, or prior to the proposed provision, addition, denial or removal of special education services; (b) an opportunity for parents to have at least one conciliation conference with the district; (c) the opportunity to obtain an informal due process hearing initiated and conducted at the local level; (d) the opportunity to appeal that decision to the Commissioner; and (e) the opportunity to appeal the Commissioner's decision to the courts. Minn. Stat. 120.17 Subd. 3 directs the State Board to promulgate rules which shall provide standards and procedures appropriate for the implementation of and within the limitations of subdivisions 3a and 3b.

In preparing for the implementation of this act and the preparation of these proposed rules, the Department of Education, Division of Special and Compensatory Education has studied the laws and rules of numerous states, has examined in detail P.L. 93-380 and P.L. 94-142, has conducted a careful study of the case law relating to handicapped children, has

sought advice and input from school officials in Minnesota's public schools, has sought advice from the Attorney General's office, and has sought advice and input from parent advocate groups both at the state and national level.

In an effort to gain a broad base of input, the Department conducted 22 regional workshops during March 1976. The purposes of the workshops were to: (1) provide uniform information to people about the need for regulations regarding the education of handicapped children; (2) provide an opportunity to examine the content of the proposed regulations; and (3) gather informed response for the purpose of final modification prior to presentation to the State Board. The 22 workshops were planned with the advice of a strategy committee composed of representatives from the major professional education associations. Of the 1,675 persons who participated in the workshops, 1,209 completed a reactor-response sheet. Based on a compilation and an analysis of the data generated, the proposed regulations were finalized. Three papers, in addition to the regulation have been finalized and distributed widely around the state. Those papers include: (1) Summary Report of Regional Workshops on Proposed Regulations for the Education of Handicapped Children," which is a 13 page report describing the planning and implementation components of the workshop as well as a data summary; (2) "Special Education Proposed Regulations: Identification of Changes as a Result of the Regional Meetings Conducted in March 1976," which is an 8 page report which lists the revisions made; and, (3) "An Analysis of the Narrative Responses made at the Regional Workshops Regarding the Special Education Proposed Regulations Including the Revisions which have been made," which is a 35 page report identifying the rational for the changes which were made or were not made.

Most states are responding to the need for more comprehensive laws and regulations relating to programs for handicapped children. The states of Michigan, Wisconsin, Massachusetts, Pennsylvania, Iowa, Washington and others have already begun the implementation of rules similar to those being proposed. Other states are in the process of enacting new laws and regulations. Therefore, the passage of Chapter 211 and the development of these proposed regulations reflects a trend which is widespread in state governments around the country.

However, setting aside the fact that Minnesota is acting in accordance with many states around the country, several basic issues can be cited as the underlying need for the proposed regulations.

The first issue is that the 1976 Legislature has directed the State Board to promulgate rules to assure that handicapped children are afforded an appropriate education. The Legislature also, by identifying five policy areas which were cited earlier, specified the global areas to which the regulations must address and also required that the rules provide standards and procedures appropriate for the implementation of the Act. Therefore, the Legislature has clearly directed that rules be developed and has also provided direction as to the tone of those rules.

While the first issue is by far the most significant reason for promulgating these rules, the second issue relates to the need to set comprehensive standards so that both the schools and the parents can identify what is expected. Although Minnesota has not had litigation in education, this should not be recognized as a valid argument for inaction in this state until a large number of citizens have been treated inappropriately. Such an approach would not only constitute poor policy and planning but might also be construed as encouragement for marginal activities only minimally concerned with providing an appropriate education.

The third issue relates to P.L. 94-142. The federal act has served, to a degree, as an impetus for the development of more comprehensive rules. Currently, Minnesota is not in full compliance with the federal act. If the state remains in noncompliance, the Department and local school districts could be deprived of in excess of 10 million dollars annually in revenue by 1982. The state has a responsibility to assure that its citizens are not deprived of this revenue and the programs and services which it can generate.

In summary, these regulations provide a basis from which Minnesota public schools will need to deliver special education services to handicapped children. It is the state's purpose to assure that all handicapped children are provided the education to which they are entitled.

In developing these regulations, the staff has adopted certain language from the Act, federal statutes, and court decisions where the intent of such language was judged as parallel to the functions and activities required by Chapter 211.

I. Edu 120 Policies and Definitions

Edu 120 (a) (1), Provision of Full Services, is needed to clarify the responsibility of school districts to provide special education services to all eligible children. The first two sentences of this policy are supported by the following information.

Article VIII Section 1 of the Minnesota Constitution states, "The stability of a republican form of government depending mainly upon the intelligence of the people, it shall be the duty of the legislature to establish a general and uniform system of public schools." The 1957 legislature enacted Minnesota Statute 120.17 which stated that the public schools were mandated to provide special education instruction and services to school age handicapped children. Trainable mentally retarded children were not included in this mandate, however, the 1971 legislature amended the 1957 law to include TMR children in this mandate. In 1975, learning disabilities was also inserted into the law. The 1976 legislature further expanded Minn. Stat. 120.17 Subd. 3 by requiring the state board of education to promulgate rules which would provide standards and procedures appropriate for the implementation of Minn. Stat. 120.17. One of the responsibiiities of school districts included in Subd. 3a. of that act is: "Every district shall insure that (a): All handicapped children are provided the special instruction and services which are appropriate to their needs.

This provision of all children receiving an education is referred to as, "The zero reject philosophy," meaning that "zero children" may be "rejected" by the school. One legal basis for zero reject education is to be found in the 1954 decision of the United States Supreme Court in, "Brown vs. Board of Education". The U.S. Supreme Court unanimously wrote as follows:

> "Education is required in the performance of our most basic public responsibilities. It is the very foundation of good citizenship. It is the principal instrument for awakening the child to cultural values, in preparing him for later training, in helping him to adjust normally to his environment. It is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education when a state has undertaken to provide it is a right which must be made available to all on equal terms."

While the Brown case was actually a case dealing with the "separate but equal" argument relating to the education of black children, its implications have been extended to native Americans, the Chicano and to women. It also has implications for the mental, physical, communicative, and social handicaps of children. Perhaps even more so than the "normal child", the handicapped child without an education is in jeopardy "of success" as identified by the Supreme Court.

The Minnesota Constitution, as cited above, provides that the State of Minnesota is responsible for providing a uniform system of public schools. The Supreme Court of North Dakota in the case, "In re G.H." ruled that such language guaranties equality of educational opportunities for handicapped children. The court stated:

"We are satisfied that all children in North Dakota have the right, under the State Constitution, to a public school education. Handicapped children are certainly entitled to no less than unhandicapped children under the explicit provisions of the Constitution."

The right to a free appropriate public education was also upheld in the case of "Pennsylvania Association for Retarded Children vs. Commonwealth of Pennsylvania" (PARC) in 1972. In the consent decree order, the court stated:

"Having undertaken to provide a free public education to all of its children, including its exceptional children, the Commonwealth of Pennsylvania may not deny any mentally retarded child access to a free public program of education training."

The PARC case was followed shortly by the case of "Mills vs. Board of Education of the District of Columbia." The Mills case upheld that the same principles espoused in the PARC decision also applied to the handicapped children in the District of Columbia. However, the court added a very important comment regarding the distribution of financial resources within the educational system. The school had claimed, in court, that they could not do what was being requested because the funds were not available. The court declared:

"If sufficient funds are not available to finance all of the services and programs that are needed and desirable in the system, then the available funds must be expended equitably in such a manner that no child is entirely excluded from a public supported education."

The court continued:

"The inadequacies of the District of Columbia Public School System whether occasioned by insufficient funding or administrative inefficiency, certainly cannot be permitted to bear more heavily on the "exceptional" or handicapped child than on the normal child."

Decisions similar to the PARC and Mills cases were delivered by the courts in, "Wolf vs. Legislature of the State of Utah", in 1969 and, "LeBanks vs. Spears", in New Orleans in 1974. In the 1970 case, "John Doe vs. Board of School Directors, Milwaukee, Wisconsin," a Wisconsin state trial court judge acted on similar grounds to require the immediate placement of all children on waiting lists for special education programs.

The third sentence of this policy is necessary to clarify the school districts responsibility. Minn. Stat. 120.17 Subd. 2 reads:

"The primary responsibility for the education of a handicapped child shall remain with the district of the child's residence regardless of which method of providing special instruction or training and services is used."

As stated above, the district is responsible for providing a free public program of education to all. While the district may utilize other services within the district, it remains the district's responsibility to assure that the services which are provided are appropriate and that the

district assumes the fiscal responsibility for educational actions which it initiates.

Edu 120 (a) (2), Least Restrictive Alternative, clarifies the statutory requirement. The principle is provided for in Minn. Stat. 120.17 Subd. 3 a (c). It has also been applied by the courts in noneducation related civil cases, and has recently been applied and upheld as a defense against arbitrary and capricious placement practices as applied to handicapped children and youth. The four sentences of this policy are supported by the following.

Minn. Stat. 120.17 Subd 3 a (c) provides that every school district shall insure that:

> "To the maximum extent appropriate, handicapped children, including those in public or private institutions or other care facilities, are educated with children who are not handicapped, and that special classes, separate schooling, or other removal of handicapped children from the regular educational environment occurs only when and to the extent that education in regular classes with the use of supplementary services cannot be achieved satisfactorily."

In essence, the principle of the least restrictive alternative provides that, when the state pursues a legitimate goal that involves restricting normal patterns of individual lives, it must do so using the least restrictive alternative available. Applied to education, courts have ruled in principle that special education systems which inappropriately separate children from their expanded peer group constitute second class educational programs, and, therefore, placement in special environments for educational purposes becomes a restriction of fundamental liberties.

The policy requires that substantive efforts be made by educators to keep handicapped children with their peers in a regular education setting, and that the district, bear the burden of proof when making placements which involve partial or full removal of handicapped children from their normal peers. In keeping with this principal and with state law, the district, when the child is removed from his peer group, must be able to justify that the alternative selected is more appropriate than a program which is less restrictive.

The least restrictive alternative principle applies to educational decision making about placement of handicapped students regardless of the type of placement, administrative arrangements for delivery of service within the district or other method, financing levels or patterns, or current availability of alternatives. In other words, this principle represents for handicapped children, the right to be educated with their normal peers, unless evidence is available that partial or full removal is appropriate.

The least restrictive alternative principle has been a primary reference in court decisions involving the right of handicapped children to both treatment and to education. The courts have recognized that the practice of segregation is not appropriate from an educational point of view. This was first cited in the, "Brown vs. Board of Education," when the United States Supreme Court stated in its conclusion:

> "We conclude that in the field of public education the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment."

In 1969, the Utah Supreme Court made a very important decision applying the principal of the least restrictive alternative to handicapped children. Expanding on the language of "Brown vs. The Board of Education," the Utah Court in the case of, "Wolf vs. Legislature of the State of Utah," declared:

> "Today it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. In the instant case the segregation of the plaintiff children from the public school system has detrimental effects upon the children as well as their parents. The impact is greater when it has the apparent sanction of the law for the policy of placing these children under the Department of Welfare and segregating them from the educational system can be and probably is usually interpreted as devoting their inferiority, unusualness, uselessness, and incompetency. A sense of inferiority and not belonging affects the motivation of a child to learn. Segregation, even though perhaps well intentioned, under the apparent sanction of law and state authority has a tendency to retard the educational emotional, and mental development of the children."

Additional cases supporting the principle of the least restrictive alternative include, "Mills v. Board of Education", "Pennsylvania Association for Retarded Children vs. Commonwealth of Pennsylvania", "Wyatt vs. Stickney", "Lebanks vs. Spears", "Lake vs. Cameron", and Minnesota case of, "Welsch vs. Likins". Representative language from these cases include (Wyatt vs. Stickney):

> No person shall be admitted to the institution unless a prior determination shall have been made that residence in the institution is the least restrictive habilitation setting feasible for that person. No mentally retarded person shall be admitted to the institution if services in the community can afford adequate habilitation to such person. Residents shall have a right to the least restrictive conditions necessary to achieve the purposes of habilitation. To this end, the institution shall make every attempt to move residents from (1) more to less structured living; (2) larger to smaller facilities; (3) larger to smaller living units; (4) group to individual residence; (5) segregated from the community to integrated into the community living; (6) dependent to independent living.

In, "Mills vs. Board of Education", the court declared:

> Each member of the plaintiff class is to be provided with a publicly supported educational program suited to his needs, within the context of a presumption that among the alternative programs of education, placement in a regular public school class with appropriate ancillary services is preferrable to placement in a special school class.

In, "Pennsylvania Association for Retarded Children vs. Commonwealth of Pennsylvania", the court declared:

> It is the Commonwealth's obligation to place each mentally retarded child in a free, public program of education and training appropriate to the child's capacity, within the context of a presumption that, among the alternative programs of education and training required by statute to be available, placement in a regular public school class is preferrable to placement in a special public school class and placement in a special public school class is preferrable to placement in any other type of program of education and training.

Many states, including Pennsylvania, Massachusetts, Iowa, Wisconsin, and Michigan, in addition to Minnesota, have enacted legislation on education of the handicapped, in recognition of the least restrictive alternative principle. This legislation has begun to incorporate appropriate safeguards which require application of this principle.

Edu 120 (a) (3), Individualized Programs, is necessary in order to clarify what constitutes, "... special instruction and services which are appropriate to their needs". (Minn. Stat. 120.17 Subd. 3a.) The two sentences of this policy are supported by the following.

Appropriate education, based on needs, is interpreted to mean that a thorough educational assessment must be conducted to determine what those needs are. Upon identifying those needs, an "appropriate program" must be provided. If a program is appropriate and based on need it must be developed by licensed personnel who are qualified to conduct assessments, general educators, and by the parent who is familiar with the child's behavior in the home environment. In order to be appropriate, it must contain goals and objectives which are based on the identified needs. The "appropriate program" includes teaching strategies and materials designed to enhance the achievement of the goals and objectives, is delivered by qualified personnel who provide appropriate time implementing the program, and is provided an environment which is stimulating to the child. Finally, the "appropriate program" contains a periodic review component where the goals and objectives and the child's performance are reviewed in order to determine whether appropriate gains are being made. Without these key provisions, a program cannot be perceived as being "appropriate".

Minn. Stat. 120.17 Subd. 3a. uses the terminology, "...appropriate to their (handicapped children's) needs." The courts have consistently utilized this terminology as well. In the PARC case, the decree stated:

> It is the Commonwealth's obligation to place each mentally retarded child in a free, public program of education and training appropriate to the child's capacity ... (underlining added)

In the Mills case, the court declared:

> Each member of the plaintiff class is to be provided with a publicly-supported educational program suited to his needs ... (underlining added)

The individualized program policy, which this regulation will require, is one of the most critical provisions of the regulation for if the program is not "suited to the individual needs of the child", one can hardly imply that the child is receiving an "appropriate" program. The individualization of programs will also be of benefit in terms of parent understanding of what is to occur.

Edu 120 (a) (4), Procedural Safeguards, is necessary to summarize the intent of the legislature. The first two sentences of this policy are supported by the following.

Minn. Stat. 120.17 Subd. 3a. (b) reads:

> Handicapped children and their parents or guardians are guaranteed procedural safeguards ...

Minn. Stat. 120.17 Subd. 3b. provides that:

> Every district shall utilize at least the following procedure for decisions involving identification, assessment and educational placement of handicapped children.

The statute continues by identifying the basic provisions of due process procedures including notice before assessment, placement or denial of placement, conciliation conference with the school, hearing at the local level, appeal of the local decision to the Commissioner and appeal of the Commissioner's decision to the courts.

The assignment of a child to an educational program other than that which is normally provided to peers and the decision to classify a child as handicapped by a public education agency are decisions which have consequences for these children. In order to reduce the potential for these decisions to be made carelessly, unfairly, arbitrarily, capriciously, or with bias, this regulation calls for the invoking of procedural safeguards.

In the PARC Case, the court, as part of the order, included a 23 step procedure guaranteeing due process, including a hearing. The PARC case required only that mentally retarded children be granted due process procedures. In the case of, "Mills vs. Board of Education of Washington, D.C.", the court ordered implementation of due process procedures closely comparable to the PARC requirements, but included all handicapped children.

The last sentence of Edu 120 (a) (4) regarding surrogate parents is supported by Minn. Stat. 120.17 Subd. 3a. (c):

The rights of the child are protected when the parents or guardians are not known or not available, or the child is a ward of the state.

Edu 120 (a) (5), Parental Involvement, is needed to clarify the intent of the legislature relating to the manner in which districts and parents should communicate.

The first two sentences are supported by the rationale included in the "Procedural Safeguards", section. The third sentence is needed to emphasize that the district and the parent should work together in a positive and open but objective manner. Parents and schools need to communicate not only when problems arise, but also to better assure that problems will not develop. However, when areas of concern do arise, conferences need to be arranged in an attempt to resolve those differences. Minn. Stat. 120.17 Subd. 3b. (b) provides that conciliation conferences must be scheduled when differences or concerns exist. The legislature also provided that a hearing could not occur unless at least one conciliation conference was held. The policy adds that by having the district and the parent work together in a cooperative effort, hearings will be necessary only when major disagreements exist and resolutions cannot be achieved at the case conferences or conciliation.

Edu 120 (a) (6), Accountability for Instruction and Services, is needed to clarify who is ultimately responsible for assuring that the handicapped person receives an appropriate program. The first four sentences are supported by the following.

Minn. Stat. 120.17 Subd. 1 provides that the district of the child's residence is responsible for providing special education services for eligible handicapped persons except in cases provided under Minn. Stat. 120.17 Subd. 6 & 7 where the district in which the child lives is responsible for providing an appropriate program.

The last two sentences are necessary because they identify the district's responsibility in relation to the least restrictive alternative principle. Edu 120 (a) (2) above provided documentation relating to the least restrictive alternative principle which is, basically, that handicapped children have a right to be educated with their normal peers unless a program which removes the child from the regular classroom will be better for him. When removal from the regular classroom program into a program operated by another public or private agency is warranted by the needs of the child, the district continues to be responsible to assure that the children receive the education which they need and that their rights are protected. This is provided for in Minn. Stat. 120.17 Subd. 2 which indentifies that regardless of the method of instruction utilized, the district is responsible for assuring that the child receives the special education services which he needs and to which he is entitled.

A decision rendered by the North Dakota Supreme Court in the case, "In re G.H.", discussed above, the court ruled that when a child is educated outside of the school district, the school district continues to be responsible. The policy which the court was addressing was that the system must not allow children to "fall between the cracks."

Edu 120 (a) (7), Exclusion and Expulsion From School, is needed to reiterate the interrelationship of Minn. Stat. 127.26-39 with Minn. Stat. 120.03 Subd. 3. The latter provision provides as follows:

> Every child who by reason of an emotional disturbance or a learning disability, or a special behavior problem needs special instruction and services, but who is educable, as determined by the standards of the state board is a handicapped child.

This statute, along with the "full services" provision of Minn. Stat. 120.17 Subd. 3a (a), will assure that handicapped children will not be excluded or expelled from school for actions relating to their handicapping conditions.

Edu 120 (a) (8), Physical Facilities, is needed to assure that handicapped children will be provided an education based on their individual needs in physical facilities which are appropriate. Other education regulations, statutes and court decisions have addressed to this.

Edu 2(a) provides that districts must have facilities which, "... are safe and healthful, adequate in size...."

Edu 2(b) provides that districts, "shall remedy physical plant deficiencies resulting from...(3) change in educational program or services..." Edu 122(a) provides that "Housing space for each (special education) class shall be adequate". Edu 423 provides that provision for instructional areas which are adequate and sufficient shall be made to carry out the educational requirements mandated by statute or regulations.

The "Structural Barriers Act", provides that when a public building is constructed or renovated, accommodations for handicapped persons must be provided. In the welfare case of, "Welsch vs. Likins," Judge Earl Larson ruled that the State of Minnesota must provide appropriate facilities at the Cambridge State Hospital as well as at the other state hospitals.

Edu 120(b) Definitions

Edu 120(b)(1) Education, is needed to identify that education must be interpreted as a range of services, programs and experiences, conducted in a variety of locations which are designed to have an effect of change across a span of learning areas. A global definition of education is also needed so that the special education provisions addressed to in the regulations can be viewed as a part of the total educational environment. The definition is also consistent with that in P.L. 94-142. Also, in the Mills case in Washington, D. C., the question whether "training" is different from education was resolved by the court's decision that they are, in essence, synonymous.

Edu 120(b)(2), Regular Education Program. A definition of regular education is necessary to distinguish between those and special education programs for purposes of description, funding and evaluation.

Edu 120(b)(3), Special Education Services. A definition of special education services is justified in (2) above and gives scope to the range of programming that may legitimately come under that label. Since the current funding formula, defined in Minn. Stat. 124.32, provides differential aid patterns according to type of placement such placements should be named.

Edu 120(b)(4), Primary Placement in a Regular Education Program. Differentiation of the placements named in (3) needs to be nonambiguous enough to allow identification of childrens' placements to be made reliably.

Edu 120(b)(5), Primary Placement in a Special Education Program. The rationale is covered in (4).

Edu 120(b)(6), Providing school district. This definition is established by law and reiterated for clarification of the regulations.

Edu 120(b)(7), Resident school district. This definition is established by law and reiterated for clarification of the regulations.

Edu 120(b)(8), Special education facility. This definition is established by law and reiterated for clarification of the regulations.

Edu 120(b)(9), Handicapped persons. The definition of "handicapped persons" is established by law and reiterated for clarification of the regulations. Pregnant girls are excluded from these regulations because while special education aids are paid to districts for staff who provide home and hospital instruction for them or an in-school teenage parent program, the girls are not considered to be handicapped per se as defined in Minn. Stat. 120.03.

Edu 120(b)(10), School age. This definition is established by law and reiterated for clarification of the regulations.

Edu 120(b)(11), Least Restrictive Alternative. Minn. Stat. 120.17 Subd. 3a requires this principle. The "continuum model" provides a process that allows any concerned party to judge any program's distance from the regular program. Further, it provides a sequence of programming that allows any concerned party to determine the direction, to or from regular classroom placement. It is also needed for Minn. Stat. 124.32 for special state aid purposes and for Minn. Stat. 120.17 Subd. 2 so that the "methods" are more clearly defined.

Edu 120(b)(12), Formal Educational Assessment. This definition assures a level of assessment minimum level of assessment for every handicapped child prior to placement in a special education service to assure that an appropriate program based on the individual child's needs will be provided as required by Minn. Stat. 120.17 Subd. 3a. The definition is also needed to identify when parents must be afforded procedural safeguards as required by Minn. Stat. 120.17 Subd. 3b.

Edu 120(b)(13), Parent. This definition is needed to clarify who should be included in the assessment and program planning provisions. It is also needed to clarify to whom the notices should be sent.

Edu 120(b)(14), Recognized professional standards. This definition is needed to identify that while the regulation does not itemize tests, implementation practices, etc., such components must comply with procedures and concepts currently recognized by acknowledged experts.

Edu 120(b)(15), Days and Months. These definitions are needed to identify the time constraints placed on districts and parents throughout the document so that timelines will be followed consistently across the state and so that no child will wait for services, unduly, because of varying interpretations of the terms.

Edu 120(b)(16)(a), Nondiscrimination. This definition is required by law and established for clarification of the regulations.

Edu 120(b)(16)(b), Nondiscrimination. This definition is consistent with Minn. Stat. 120.17 Subd. 3a and P.L. 94-142 and assures that the principle of nondiscrimination in its broadest sense, will underlie all decision making and the procedures that accrue.

Edu 120(b)(17), Proposed action. This definition is needed to alert decision making bodies to the requirements of parental participation and parental rights prior to final decisions and to preclude the assumption that notification of decisions satisfies those requirements.

Edu 120(b)(18), Individual educational program plan. This definition is needed to clearly specify that in order to meet the individual needs of each child, a plan which is written and addressed to a given child's predetermined needs is required. Without such this definition, unwritten plans or plans which list courses of general intention or action could be substituted for a plan designed to meet the objectives.

Edu 120(b)(19), Public, Private or Voluntary Agencies. This definition is needed to identify that public schools are not included in Minn. Stat. 120.17 Subd. 2(h).

Edu 121 Application

Edu 121(a), District Special Education Plan, is needed in order to determine if a district is in compliance with the requirements of Minn. Stat. 120.17 and appropriate regulations.

Edu 121(a)(1) is needed in order to determine if a district is in compliance with the requirements of Minn. Stat. 120.095 Subd. 5 and Minn. Stat. 120.17 Subd. 3a (d).

Edu 121(a)(2) is needed in order to determine if a district is in compliance with the requirements of Minn. Stat. 120.17 Subd. 3a(a).

Edu 121(a)(3) is needed in order to determine if the district's administrative personnel meets the requirements which will enable them to earn state special education aids as provided for in Minn. Stat. 124.32.

Edu 121(a)(4) is necessary in order for the Department to require a statement of assurances be submitted by the districts relating to compliance with the laws and regulations concerning handicapped children.

Edu 121(b) The first sentence is needed so that districts will be informed as to when their program will be reviewed. The second sentence is required by Minn. Stat. 124.32 Subd. 7.

Edu 121(c)(1), Regular School Term, is required by Minn. Stat. 124.32 Subd. 7.

Edu 121(c)(2), Summer School Term, is required by Minn. Stat. 124.32 Subd. 10.

Edu 121(c)(3), Amendment to Applicators, is required by Minn. Stat. 124.32 Subd. 7.

Edu 121(d), the variance from standards provision, is needed to approve programs which are innovative or experimental or for programs where other factors such as a high ratio of support staff are being provided.

Edu 122 Facilities, Staff and Supervision establishes in regulation "qualifications of essential personnel, ... size of classes, rooms, equipment, supervision ... for instruction of handicapped children." as required by M.S. 120.17 subd. 3. These qualifications for essential personnel are in addition to those enumerated in Edu 287, Teaching Certificates, Special Classes, Handicapped.

Edu 122 (a)(2), Equipment and Materials. This addition transfers the authority of the Commissioner to approve materials and equipment from Edu 123 which is being deleted.

Edu 122 (b)(3) Other professional or essential personnel, allows for approval of ancillary or other personnel which a school district may wish to employ as part of their study procedures as called for in Edu 121 (a)(1) or of their method of providing special instruction and services as called for in Edu 121 (a)(2). This provision allows a school district to request use of personnel, not certified in education, who are an essential part of their study procedures or special instruction and services. Such requests must be made in their application and be based on recognized professional standards. This provision allows for the payment of special education aids upon review of such requests by the commissioner or his designee.

Edu 122 (b)(4) Special and Vocational education, places in regulation the current standards used to approve vocational education components of special education programs for state special education aid. Certification requirements are those stated in Edu 287 and in the Minnesota State Plan for Vocational Education.

Edu 122 (b)(4)(dd) Teacher/Coordinator of Work Experience, defines the difference from the next section (ee). This section describes a full time special education teacher whose duties also include on the job supervision of those special students enrolled in their special instruction and services. This section permits special education personnel who also are vocationally certified to provide out of school supervision as called for in Edu 44.

Edu 122 (b)(4)(ee) Teacher/Coordinator of Vocational Education Work Experience, defines the difference from the preceding section (dd). This section describes an Instructor/Coordinator for work experience who is vocationally certified and who is only responsible for the work experience component for handicapped children. This section calls for cooperation between special and vocational education when the district elects to provide work coordination through vocationally certified staff only.

Edu 122 (c) Staff to Student Ratios, establishes in regulation staff to student ratios which insure the appropriateness of the special instruction and service according to the level of individual need, type and severity of handicapping condition. The rationale of reduced class size as a desirable component of special instruction and service has been a recognized professional standard in Minnesota since at least 1957 when special education became mandatory. Staff to handicapped student ratios have been established in all 50 states. Methods of

computing this ratio vary from a direct class size or caseload method as is done in Minnesota, Wisconsin, Iowa, North Dakota, South Dakota, Illinois and a majority of the other states to an incidence figure or percentage of handicapped people expected in the school age population, as in Texas and a few other states. The method of class size or caseload has been historically used in Minnesota to emphasize the direct needs of each child and in recognition that incidence percentages are not accurate in every school district.

The establishment of staff to handicapped person ratios has also been established in professional standards such as the American Speech and Hearing Association and the Accreditation Council for Facilities for the Mentally Retarded. Court orders and Consent Agreements have further established staff to handicapped person ratios. A few of these are Welsch vs. Likins, Wyatt vs. Stickney and PARC vs. Pennsylvania.

The State Board's authority to set class size for handicapped children is provided in Minn. Stat. 120.17 Subd. 3, "The state board shall promulgate rules relative to ... size of classes ..." An additional basis for establishing class size for handicapped children are current regulations including Edu 23 (b)(1) and (2) which sets the acceptable maximum class size for instruction in any elementary classroom and kindergarten session at 30 pupils; Edu 46 (c)(3) which sets the total pupil load of a secondary teacher at 160 pupil load of a secondary teacher at 160 pupils per day; and Edu 64 (a)(5) which sets the maximum number of pupils per teacher per class at 20 pupils.

The following ratios are generally consistent with recognized professional standards both in the immediate neighboring states and nationally.

Edu 122 (c)(1) establishes regulation minimum staff to student ratios for the most severely handicapped persons who need full time service in special education. Such children are generally multihandicapped including trainable mentally retarded/physically handicapped or emotionally disturbed/retarded; such children would also include the most severely handicapped in any disability area.

Edu 122 (c)(1)(aa) is the current recognized professional standard in each respective disability area. The need for the low ratio can best be illustrated by examining the responsibilities of the teacher in this type of situation. A significant percentage of time will be spent in managing the students' physical safety and well-being, in activities including toilet training, elimination of self-abusive behavior, and physical assistance for many tasks such as eating or movement from place to place. The wide range of handicapping conditions and levels of need dictate that much time must be spent in planning for each individual so that activities will be both appropriate and beneficial.

Children in need of this type of service will generally also need more time to attain their educational objectives than less handicapped children. The teacher must spend a majority of time in one to one and small group teaching. Data keeping and progress reporting is most essential with this group since educational gains are not rapid and

regression is a critical problem without consistent direction. Also the methods used in instruction need to be adapted more regularly.

The teacher must also be continuously evaluating each child for movement towards a less restrictive alternative, directing teaching efforts toward this goal, and coordinating programs with staff in the less restrictive alternative.

The teacher in this type of educational program usually has total responsibility for each child's entire educational program and must plan and implement programs across a wide divergence of handicapping needs and across a wide spectrum of educational subjects. Since the handicapping conditions of children in need of these services are such that they extend across the educational boundaries, a great deal of time must be spent coordinating with the parents or child's residence staff in order to maintain progress made during the school day.

An example of current professional standards which have been in effect for many years for this level of service is the following quote from the Elementary and Secondary State Guidelines for Special Learning and Behavior Problem Services. (1973).

> "The teacher who staffs ... a full-time self-contained class will be responsible not only for assisting in the psycho-educational assessment, translating its findings into appropriate educational and management objectives and the planning, implementation and evaluation of the appropriate instructional procedures necessary to achieve these objectives, but also for total curriculum planning of the student's school life. In order to insure the student an opportunity to return to the regular instructional program which is equal to that of students in other services, it is important that a thorough system of referral, assessment, programming and termination procedures be developed. Communication with the regular instructional program, particularly the regular classroom teacher, is very important and often difficult to achieve unless carefully planned..
>
> To accomplish these objectives, it is recommended that the teacher be assigned a classroom suitable to his/her needs and be responsible for a total caseload of no more than 8 students."

Edu 122 (c)(1)(bb) is the proposed staff to student ratio based on a task force consisting of experts from the public schools, training institutions and parents. These severely handicapped children have disabilities in which appropriate delivery systems are just emerging. In addition to the statements in (aa) above the teacher of deaf/blind or autistic children are even more in the management of physical safety, well-being and mobility. In order for these children to benefit from education virtually all instruction must take place on a 1:1 or 1:2 basis.

Edu 122 (c)(2) establishes in regulation minimum staff to student ratios for handicapped persons whose primary placement is in special education but who can also benefit from having some part of their program in regular education. Such children will generally be

moderately handicapped, in need of a significant amount of direct special instruction, both individually and in small groups, but who can appropriately take part in some offerings in regular education.

Edu 122 (c)(2)(aa) is the current recognized professional standard in most disability areas. The teacher in this setting must: assist in the psycho-educational assessment; participate in team decision making; assist in translating assessment findings into educational and management objectives; plan lessons and prepare materials; provide direct instruction and services; keep daily records of progress; provide consultation to regular teachers; provide follow-up on children no longer in this level of service; coordinate with regular educators and other special educators for systematic transition between programs; and communicate with parents concerning present and future educational plans.

An example of program standards which have been in existence since at least 1966 is illustrated in the following quote from A Resource Guide for Teachers of Educable Mentally Retarded Children in Minnesota Public Schools - 1966.

"a. The enrollment in the special class is usually restricted to less than half that of most regular classes. By keeping the classes small it is possible for the teacher to give considerably more attention and assistance to individual children than would be possible in the regular classroom.

b. The special teacher may find it necessary to use varieties of instructional approaches beyond the range which can feasibly be employed in the regular classroom.

c. ... Decisions concerning inclusion or exclusion of curriculum content or choice of method to be used must be ... based on the learning objectives established for each case ...

d. ... This means that more time should be spent on developing readiness for skill acquisition."

In order to allow time for direct service, in small groups and individually, the staff to student ratio must be no more than half of the regular ratio. Existing EMR and SLBP ratios for resource rooms or part time special classes have been 1:15 since at least 1966 for EMR and 1970 for SLBP. Both standards were developed by experts in their respective fields and have been updated regularly.

Edu 122 (c)(2)(bb) is the current recognized professional standard in the areas of trainable mentally retarded (TMR) and visually impaired. The needs of the handicapped children are such that the teachers must spend more time in individual and small group teaching and in preparation for and consultation with the regular education program which may be appropriate for each individual. Visually impaired and TMR students require much individual assistance, through the preparation of materials, directions to aides and consultation to the regular teacher in order to benefit from regular programs.

The physical safety of such children also indicate the need for this low ratio.

Edu 122 (c)(3) establishes in regulation staff to student ratios for handicapped persons who need some part of their program in special education but whose primary placement is in regular education. Such children will generally be mildly handicapped, in need of some direct special instruction and services, but who can appropriately take part in most regular education programs.

Edu 122 (c)(3)(aa) is the current recognized professional standard in most disability areas. The teacher in this setting must: assist in the psycho-educational assessment; participate in team decision making; assist in translating assessment findings into educational and management objectives; plan lessons and prepare materials; provide direct instruction and services; keep daily records of progress; provide consultation to regular teachers; provide follow-up on children no longer in this level of service; coordinate with regular educators and other special educators for systematic transition between programs; and communicate with parents concerning present and future educational plans. This level of service requires a "... teacher who is available to provide direct service to children from the regular instructional program on an individual or small group basis throughout the school day. Secondly, and equally important, the resource teacher is responsible for constant consultation and communication with the child's regular classroom teacher(s) regarding specific needs and recommendations of material, instructional procedures and information for parent conferencing. The regular instructional staff's expertise should be systematically and regularly used by SLBP personnel."

"In order for the resource teacher to accomplish these primary responsibilities, she/he will need to be ... responsible for a total caseload of no more than 15 students." Elementary and Secondary State Guidelines for Special Learning and Behavior Problem Services - (Rev. 1973).

This level of service differs from that described in Edu 122 (c)(2)(aa) in that the primary placement of the student is in regular classes and the major emphasis for the special education teacher shifts from direct service to students to equal emphasis on direct teaching and consultation with regular classroom teachers. Since this communication, consultation and resource help to the regular teachers is essential to keeping students in the least restrictive alternative, and since the more time that is spent by each handicapped student in a regular classroom requires that much more time be spent by the special education teacher with the regular teacher, the ratio must be kept low.

The current recognized professional standard in use since at least 1966 defines the minimum amount of time necessary for a student to benefit from direct special instruction. It also allows for transition periods of less duration.

"... the pupil attends most of his regular classes but receives individual instruction from a supplemental teacher in another room for approximately one hour per day." A Resource Guide for Teachers of Educable Mentally Retarded Children in Minnesota Public Schools - 1966.

"... each child should receive direct/other service for a minimum of 60 minutes per day until he/she is terminated from the teacher's caseload." Elementary and Secondary State Guidelines for Special Learning and Behavior Problem Services - (Rev. 1973).

Edu 122 (c)(3)(bb) is the current recognized professional standard for speech and language impaired services which allow a speech clinician the minimum amount of time necessary to allow handicapped children to benefit from direct service.

"Historically, language, speech, and hearing specialists too often have managed excessive staff:pupil ratios which resulted from inadequate numbers of trained specialists, inflated state and/or local required caseload maximums, and staff desire to provide some level of service for all pupils in need. Pupils with severe language, speech, and hearing disorders affecting their social and learning behavior often failed to receive the quality of service required because of limited contact with the specialists.

Staff:pupil ratios established by state departments of education have varied from 1:1000 pupils in a district to 1:3000. If a prevalence figure of 5% is used for children with communicative disorders, the first ratio would give each staff member 50 pupils to serve and the second one would result in 150. In reality, any generalized ratio is inappropriate.

School districts, in meeting pupil needs, have found it necessary to assign some specialists to fewer than six pupils (preschool deaf or language-impaired class). The average caseload for specialists providing quality support services for hearing-impaired pupils who are integrated full time into regular classes in some districts is 12. Another specialist may provide language, speech, and hearing services to 25 pupils with cerebral palsy. Some specialists with caseloads composed of pupils having varying types and degrees of communicative impairment may be able to manage 50-60. The nature of service required and all other program variables should be evaluated carefully before staff:pupil ratios are determined. Within the continuum concept, the staff:pupil ratios will vary with each program component. In any component, for each staff member required to serve too many pupils, there will be several pupils who cannot compensate for the loss in service quality and, indeed, will not achieve to their fullest potential in school." Standards and Guidelines for Comprehensive Language, Speech, and Hearing Programs in the Schools. The American Speech and Hearing Association, 1973-74.

In Minnesota we have a true "zero reject" philosophy which means that caseloads of speech clinicians will have more severe language impaired children than could be expected nationally. We therefore have been using a ratio somewhat lower than indicated above when speaking to direct service caseloads.

Edu 122 (c)(4) establishes in regulation staff to student ratios for mildly handicapped persons who are receiving no regular direct service from a special educator, but whose success or appropriateness of enrollment in regular classes depends on the consultation and assistance which the special education teacher provides to the regular classroom teacher. This level of service allows the special educator the time not only to consult with and assist the regular classroom teacher but also to monitor progress of each handicapped person. Such monitoring is necessary in order to gather objective data about the suitability of the placement and for use in possible decisions concerning the need for more direct special instruction and services.

Edu 122 (c)(4)(aa) establishes in regulation a standard which allows school districts to assign case management and follow-up duties to a single special educator in a disability area. The increased staff to student ratio would encourage mainstreaming while providing assistance for the regular classroom teachers. This section allows the special educator assigned totally to this role direct teaching contact with handicapped children only on a non-scheduled basis. The special teacher should be free to consult or assist any of the regular teachers of the 30 handicapped children when the need arises.

Edu 122 (c)(4)(bb) is the current recognized professional standard for speech and language impaired services which allows the speech clinician appropriate time to provide follow-up and assistance to the regular or special class teachers. This standard assumes that the speech clinician has no regularly scheduled direct service caseload and is assigned only on a follow-up and monitoring basis.

Edu 122 (c)(5) establishes in regulation the current recognized professional standard which allows school districts to provide services to a group of handicapped students whose needs vary across the levels of the "Continuum of Placement Model" through employment of one special teacher in each disability area when a handicapped population exists. This section also mandates that the staff to student ratios be reduced accordingly when the range of severity of handicaps is extreme or when more than one site is served by any given teacher.

The following quotes from the Elementary and Secondary State Guidelines for Special Learning and Behavior Problem Services, (Rev. 1973) will serve to illustrate the standards that have been used in this area in the past.

> "A resource teacher with a number of children exhibiting serious learning-behavior problems should not be assigned a full caseload of fifteen."

"The total caseload is recommended to be no more than 15 students; however, when travel time is excessive, this recommended caseload may be too large."

"Utilization of this type of service may limit the total effectiveness of the teacher and diminish the desired flexibility of the program because the teacher must travel from building to building, or district to district. The opportunity and time for communication with the regular instructional program will be more difficult to achieve."

As previously quoted: "The nature of service required and all other program variables should be evaluated carefully before staff:pupil ratios are determined. Within the continuum concept, the staff:pupil ratios will vary with each program component. In any component, for each staff member required to serve too many pupils, there will be several pupils who cannot compensate for the loss in service quality and, indeed, will not achieve to their fullest potential in school." Standards and Guidelines for Comprehensive Language, Speech, and Hearing Programs in the Schools. The American Speech and Hearing Association, 1973-74.

Edu 122 (c)(6) establishes in regulation all of the vocational positions mentioned in Edu 122 (b)(4) as ancillary personnel to a special education teacher, except for the Instructor/coordinator as defined in Edu 122 (b)(4)(dd), and as such are not restricted to the staff to student ratios established in Edu 122 (c)(3). The ratios for these staff shall be the same as those established in the Vocational Education State Plan.

Edu 122 (d)(2)(aa). The 1976 Legislature amended Minn. Stat. 120.03 Subd. 3 to include learning disabilities in the category with emotionally disturbed and behavior problems. This addition in the regulation simply reflects the statutory revision.

Edu 123 SURROGATE PARENTS

Edu 123 assures implementation of M.S. 120.17 (3a)(e); assures that a child without a parent or guardian is provided the same rights as a child with a parent or guardian; and assures that appointment of a guardian is attained through and/or is consistent with county welfare systems.

Edu 124 IDENTIFICATION AND ASSESSMENT PROCEDURES

Edu 124 (a) (1) is needed to meet the requirements of census law M.S. 120.095 (1) and (5) and M.S. 120.17 (3a) (d) which require identification of all persons under age 21 and those children requiring special education.

Edu 124 (a) (1) (aa) - (cc) are needed to meet the requirements for securing and utilizing Title VI, part 8, federal funds.

Edu 124 (a) (2) is in accordance with M.S. 120.17 (3a) (d) and is supported by decisions in Diana vs. State Board of Education, Larry P. vs. Riles, Guadalupe Organization vs. Tempe Elementary School District No. 3 and other cases that have provided the bases for state and federal mandates that assure that children will not be stigmatized and/or harmed by being identified through biased identification systems.

Edu 124 (b) (1) (aa) is required to meet M.S. 120.17 (1) (3a) (a) and is consistent with Edu 160 (a) and (b) which address general standards of assessment and with Edu 4 (c) (1) which requires a testing program for the purpose of measuring pupil growth and for curriculum evaluation.

Edu 124 (b) (1) (bb) is needed to provide minimal assurance that inappropriately placed children will not remain in such a placement ad infinitum. When a placement has a salubrious effect it will assure movement to a less restrictive setting in accordance with the related policy statement of this regulation. The two year period was selected to allow adequate time to establish growth probability, to allow thorough diagnostic teaching and to explore implementation of various program components, so that reevaluation can occur when relevant data have been collected and at a frequency that will not impose undue costs on school districts.

Edu 124 (b) (1) (cc) is required by M.S. 120.17 (3a) (b) and provides the procedural safeguards that assure parent involvement in identification, assessment and placement of handicapped children.

Edu 124 (b) (2) (aa) requires districts to utilize appropriately trained persons to conduct the assessment. Regulations in the states of Massachusetts, Wisconsin, Iowa, Pennsylvania and others, recognize that evaluation and placement of children on the basis of single tests or by the decision of a single professional is fundamentally unfair. Frequently, school psychologists are given the responsibility to determine the educational placement for students. This portion of the regulation is needed to assure that such limited procedures will not occur.

Edu 124 (b) (2) (bb) can be viewed as an extension of (aa) and is supported by Minnesota certification regulations regarding the qualifications of persons who may make educational decisions as proscribed both in Edu 287 and in recognized state licensure rules.

Edu 124 (b) (2) (cc) relates to the concern that school districts conduct their own diagnostic and assessment procedures prior to placement, and request and pay for studies by clinics and other non-school agencies only when additional information is required to determine appropriate placement.

Edu 124 (b) (2) (dd) is a figure selected to allow districts a reasonable amount of time to make resources available without penalizing the child through undue waiting. Such a time period is recommended by the Council for Exceptional Children, A Primer on Due Process, p. 25.

Edu 124 (b) (3) (aa) assures that assessment of educational potential will be based on a broad scope of data in order to arrive at realistic expectations of a child. The field has long been aware that remediation strategies should be based on adaptive behavior as well as general intellectual functioning. Such adaptive behavior is related to the variables of maturation, learning and social adjustment. This portion of the regulation expands upon those variables.

Edu 124 (b) (3) (bb) relates to M.S. 120.17 (3a) (d) and is supported in the decision of Diana vs. State Board of Education (Calif.) which required the development of tests normed on an appropriate population -- Spanish in this case. The involvement of parents is an extension of M.S. 120.17 (3a) (b).

Edu 124 (b) (3) (cc) extends administration of appropriately normed tests to foreign speaking and handicapped persons and assures that they will not be penalized by use of materials they cannot comprehend or respond to. This is supported in Diana vs. State Board of Education and Guadalupe Organization vs. Tempe Elementary School District.

Edu 124 (b) (3) (dd) is supported by evidence cited in Edu 124 (a) (2) regarding non-discrimination and by the definition of recognized professional standards within these regulations, M.S. 120.17 (3a) (d).

Edu 124 (b) (4) (aa) is required in M.S. 120.17 (3b) (a) (1) in accordance with provisions of Edu 127 (c).

Edu 124 (b) (4) (bb) establishes reasonable procedures that may be excluded from formal notice constraints because they do not identify a child as different or handicapped or otherwise classify him as being distinct from his peers. Such procedures are outside the definition of formal educational assessment inferred in statute.

Edu 125 TEAM DETERMINATION & PROGRAM DETERMINATION: DEVELOPMENT AND CONTENT OF THE INDIVIDUAL EDUCATION PROGRAM PLAN

Edu 125 (a) (1) is supported by 120.17 (3a) (b) which requires the involvement of handicapped children and their parents in decision processes. The presence of other team members is supported in Edu 124 (b) (2) (aa) and (bb). To insure that a decision regarding the proposed action will be made, a school administrator or designee is also a required team member.

Edu 125 (a) (2) is supported by Edu 7 which requires that schools keep efficient and accessible systems for filing records and reports, and that such records and reports will be accurate, complete, individual, permanent and cumulative. Support is also found in M.S. 120.17 (3a) (a).

Edu 125 (a) (3) is supported by M.S. 120.17 (3a) (d).

Edu 125 (a) (4) is supported by the statute cited in the regulation. It is well established that classification strategies tend to disproportionately single out minorities and violate Title VI of the Civil Rights Act. Further, Edu 620 establishes the State Board's duty to eliminate racial segregation in the public schools.

Edu 125 (a) (5) establishes the logic that if parties are required to meet it is reasonable to do so at a mutually convenient time. The second clause, which allows districts to proceed with program initiation when parents do not respond, is intended to allow a child to receive needed service. This enables the district to meet its legal responsibility to educate a child if a parent does not exercise his/her right to object to such service.

Edu 125 (b) (1) is supported by a decision from Lebank vs. Spears (La.) wherein it was established that a written individualized plan was required for the training and education of each exceptional child. Such a requirement has also been established in cases dealing with right to treatment, e.g. NYSARC vs. Rockefeller (N.Y.) and PARC vs. Penn. M.S. 120.17 (2) places responsibility for education of a handicapped child on the district of the child's residence therefore justifying the requirement that a copy of the educational plan sent to such district.

Edu 125 (b) (2) is supported by regulations and laws related to nondiscrimination. The principle of least restrictive alternative is found in M.S. 120.17 (3a) (c) as well as in other state laws such as Wisconsin Chapt. 89 and is supported in the Lebank vs. Spears decision that "All evaluations and educational plans, hearings and determinations of appropriate programs of education and training . . . shall be made in the context of a presumption that among alternative programs and plans, placement in a regular public school class with appropriate support services is preferrable to placement in special public school classes and so on".

Edu 125 (b) (3) is supported in (a) (2) above.

Edu 125 (b) (4) is supported by 120.17 (2), and by rules regarding the responsibilities of resident districts as outlined in 125 (b) (1).

Edu 125 (c) (1) is supported in the decision of Hobson vs. Hansen which established that tracking systems are discriminatory and do not address to the individual needs of children. P.L. 94-142 describes an "individualized education program" as a written plan complete with the components required by this regulation. Further support is found in Edu 4 which deals with curriculum and requires ". . . suitable special education for exceptional children," in the PARC vs. Pennsylvania decision which required detailed descriptions of the action proposed for any given child and by the Mills vs. Board of Education decision that extended such requirements to all handicapped children, not just the retarded.

Edu 125 (c) (2) and (3) are justified in 125 (b) (1) and (c) (1) above. Further, the decision from Lebanks vs. Spears resulted in the requirements that a detailed scheme for evaluations, educational plans, hearings and determination of appropriate programs of education and training be set forth with timetables for implementation and reporting.

Edu 125 (c) (4) is a requirement to assure that proposed programs are in fact implemented and that parents can determine that this has occurred. If programs are to be based on the principle of least restrictive alternatives it is reasonable to require documentation and justification of that component.

Edu 125 (c) (5) is supported in Edu 122 (a) and by transportation regulations. Decisions in the PARC vs. Pennsylvania, Lebank vs. Spears and Lau vs. Nichols cases refer to appropriate environments and justify constraints on materials and sites as well as on services.

Edu 125 (c) (6) expands upon all of the previous requirements for least restrictive placement and normalization discussed in Lebank vs. Spears, Hobson vs. Hansen and others. Further, several other cases, Lake vs. Cameron, Kyatt vs. Stickney and Welsch vs. Likins agree in substance that no person shall be admitted to an institution unless it has been determined that such placement is the least restrictive alternative.

Edu 125 (d) assures that an underlying philosophy of the state law, that parents should not only be made aware of a child's program, but should also understand the nature and the intent of the program, will be implemented. P.L. 94-142 requires that the individualized program plan be developed by someone qualified to provide or supervise such a program. This regulation extends that requirement to the interpretation of the program to a parent.

Edu 125 (e) is self-explanatory and is justified by the Minnesota statute stated in the content.

Edu 126 PERIODIC REVIEWS, ASSESSMENT & FOLLOW-UP

Edu 126 (a) (1) (aa) - (cc), (a) (2) and (a) (3) meet the need for districts to document the evaluation, individual planning and period review components that assure maintenance of children in programs that are as close to normal classrooms as is possible. Further, they guarantee appropriateness of program, protect against the continuation of inappropriate programs and are consistent with many classroom performance reporting systems. The time constraints are consistent with Edu 125 (c) (2) and (3). All are consistent with the requirements of P.L. 94-142.

Edu 126 (a) (4) is required by M.S. 120.17 (3a) (b). Further, M.S. 120.17 (2) supports any process throughout the document that keeps the resident district informed and responsible.

Edu 126 (a) (5) is supported by M.S. 120.17 (3a) (d) and the definition of recognized professional standards.

Edu 126 (b) is supported by the Diana vs. California State Board of Education, Hobson vs. Hansen, and Stewart vs. Phillips cases which yielded guidelines for placement procedures, emphasizing that due process procedures for children and their parents should include the right to a hearing and to frequent reevaluation. If the purpose of any classification is to benefit a child, a fair procedure requires that initial assignments be reviewed to determine effectiveness. Then the child can be reassigned to an appropriate program to make the purposes of classification real. The two year period was established in PARC vs. Pennsylvania, which requires automatic reevaluation every two years of any educational assignment other than to a regular class.

Edu 126 (c) suggests that if the purpose of education is to benefit children there must be requirements for schools to evaluate the outcomes of special education assignments, the effectiveness of grouping methods and the need for alternative approaches. This assures that future programs will reduce the numbers of children who are misclassified or who fail, and will lead to the development of services that are increasingly appropriate for all types of handicapped children. It assures accountability of special education systems to those children presumed to have benefited from such services.

Edu 127 Formal Notice to Parents, establishes in regulation the minimum notice provision of due process as mandated by M.S. 120.17 Subd. 3a (b) and 3b (a).

Edu 127 (a) General Notice Provisions, establishes notice provisions which are general to all formal notices called for by these regulations as required by M.S. 120.17 Subd. 3b.

Edu 127 (a)(1) assures that the notice must be written to establish a common understanding of the proposed action and that the parent has received the written notice, either delivered by authorized school personnel or by mail.

Edu 127 (a)(2) assures that each handicapped person will have someone outside of the school district who is informed of the proposed educational decisions to represent them, and that school districts must comply with the provisions of Edu 123 as required by M.S. 120.17 Subd. 3a (c).

Edu 127 (a)(3) complies with the intent of M.S. 120.17 Subd. 3a (b). To better assure that the parent will understand the provisions of the notice, it is necessary that it be written in the primary language of the home.

Edu 127 (a)(4) complies with the intent of M.S. 120.17 Subd. 3a (b), and the requirements of M.S. 546.42 and M.S. 546.43 Subd. 2.

Edu 127 (a)(5) assures a basis for informed decisions by parents as intended by M.S. 120.17 Subd. 3a (b) and 3b (a). This rule also infers the level of detail in which the notice must be prepared.

Edu 127 (a)(6) is required by M.S. 120.17 Subd. 3b (g).

Edu 127 (b)(1) through (13) Content of notice prior to assessment, establishes the minimum provisions of the notice prior to the performance of or refusal to perform an educational assessment or reassessment so that the parents have an understanding of the purpose of the proposed action in order to make an informed decision as is the intent of M.S. 120.17 Subd. 3a (b) and 3b (a)(1).

Edu 127 (c)(1) through (8) Content of notice prior to placement, establishes the minimum provisions of the notice prior to the initiation or change or the refusal to initiate or change a child's educational placement or special education services so that the parents have an understanding of the purpose of the proposed action in order to make an informed decision as is the intent of M.S. 120.17 Subd. 3a (b), 3b (a)(2) and 3b (a)(3).

Edu 128 is needed to establish a procedure for the conciliation conference and subsequent memorandum which will serve as the formal record of the conference. This section is required by M.S. 120.17 Subd. 3b (b) and (c).

Edu 129, The Hearing.

Minnesota Session Laws, 1976 Chapter 211 (Minn. Stat. 120.17. Subd. 3a and 3b) provide that:

"Every District shall insure that:

(b) Handicapped children and their parents or guardians are guaranteed procedural safeguards . . . . in decisions involving identification, assessment and educational placement . . . . (emphasis added) (Subd. 3a) and,

Every district shall utilize at least the following procedures for decisions involving identification, assessment and educational placement of handicapped children; (Subd. 3b)

(c) Parents and guardians shall have an opportunity to obtain an informal due process hearing (emphasis added) . . . . if after at least one conciliation conference the parent or guardian continues to object to:

(1) a proposed formal educational assessment of their child;

(2) the proposed placement of their child in, or transfer of their child to a special education program;

(3) the proposed denial of placement of their child in a special education program or the transfer of their child from a special education program;

(4) the proposed provision or addition of special education services for their child; or

(5) the proposed denial or removal of special education services for their child."

Pursuant to the mandate of Minn. Stat. 120.17, Subd. 3, the standards and procedures set forth in Edu 129 are intended to give meaning to and implement the above cited "procedural safeguards" and "informal due process" requirements of Minn. Stat. 120.17, Subd. 3a and 3b. However, before discussing the need and justification for these standards and procedures it should be noted that in addition to the above cited statutory rights which entitle handicap children to due process, there is likely an independent constitutional basis for the application of due process. This independent constitutional basis finds its source in the fact that as was set forth by analogy in the leading school discipline case, Goss vs. Lopez, handicapped children have a substantial interest, within the meaning of the due process clause, in receiving an equal education appropriate to their needs. Moreover, as was set forth by analogy in Goss and implied in Pennsylvania Association for Retarded Children vs. Commonwealth of Pennsylvania (PARC) the due process clause forbids arbitrary deprivations of basic rights. Therefore, while these regulations and particularly this section are premised on the requirements of Chapter 211, as was stated in Mills vs. Board of Education of the District of Columbia:

"Due process of law requires a hearing prior to exclusion, termination of classification into a special program."

The need and justification for the various standards and procedures of Edu 129, these provisions are based on several legal and other considerations.

First, the provisions of Chapter 211 specifically provide for certain standards and procedures which relate to "procedural safeguards" and "informal due process hearings". These statutory requirements are fully set forth in Edu 129.

Second, as discussed more fully below, the fundamental meaning and requirements of the expressions "procedural safeguards" and "due process hearings" have been fully described in a series of U.S. Supreme Court cases. These fundamental requirements serve as the basis and foundation of Edu 129.

Third, as was well described in the leading due process case of Morrissey vs. Brewer, once "it has been determined that due process applies the question remains what process is due." In this regard and as set forth in Morrissey, "due process is flexible and calls for such procedural safeguards as the situations demands" and within the fundamental limits or requirements mentioned above and below is the responsibility of the State to determine. These regulations and particularly the procedures and standards in Edu 129 are based on the Department's determination (after a careful consideration of an enormous amount of information and input provided by a large number of persons and groups who would be impacted by these regulations), that these procedures and standards are best suited and called for in the context of the education of handicapped children.

Fourth, there are several cases in other jurisdictions which consider the issue of what process is due in the context of evaluation, classification, placement and education of handicapped children. The two leading cases are the above mentioned Mills and PARC cases. While as mentioned, these cases are from other jurisdictions and are not binding they provide guidance in determining what procedures and standards are necessary and appropriate for the implementation of Chapter 211. The procedures set forth in Edu 129 are based in part on these cases.

Fifth, two local federal court due process decisions concerning problems not directly related to the education of handicapped children, namely Anderson vs. Likins, and Norlander vs. Schleck, were considered in determining what specific procedures are appropriate for implementation of Minn. Stat. 120.17, Subd. 3a and 3b. Also, the provisions regarding the implementation of Minnesota Statutes, Chapter 15, The Administrative Procedure Act, were fully considered and in part drawn from.

Finally, the provisions of Edu 129 are based on legislative intent as reflected at the various legislative committee hearings and in the floor debate concerning Chapter 211.

Specifically, in response to questions by committee members about the meaning of the words "informal due process hearing", as set forth in Chapter 211, sponsors of the bill informed the legislature that the reason for the use of the word "informal" was to characterize the tone,

but not the substance, of due process hearings. In short, the use of the word "informal" was to connote or encourage an open atmosphere for the conduct of such hearings, instead of a "courtlike" atmosphere. However, in response to committee questions it was also made clear that the use of the word "informal" was not for the purpose of detracting from or diminishing the procedural or substantive due process safeguards which normally accompany a due process hearing.

Also, on the issue of legislative intent, it appeared to be legislative sentiment that, "due process hearings" should include the fundamental safeguards normally available at a due process hearing, but that the specific implementing provisions concerning due process hearings should be left to the State Board. This sentiment is borne out in the amendments to Minn. Stat. 120.17, Subd. 3 and the rationale for this approach that the State Board would be in a better position to adopt specific standards and procedures best suited to the education of handicapped children.

Before discussing the specific provisions of Edu 129 two other matters should be briefly mentioned. First of all and as mentioned above, the fundamental or minimum requirements or safeguards concerning due process hearings have been mandated in several recent Supreme Court decisions. Summarizing the leading cases of Morrissey and Goldberg vs. Kelly the following "basic due process rights or procedures" apply to "due process hearings" and serve as a primary basis for the provisions of Edu 129:

1. the opportunity to be heard;
2. timely and adequate notice detailing the reasons for the proposed action;
3. the opportunity to present evidence;
4. the right to confrontation and cross-examination of adverse witnesses;
5. the right to be represented;
6. the right to an independent hearing body or official;
7. a complete and accurate record of the proceedings;
8. a written decision based on legal rules and on evidence presented at the hearing and specifying the reasons for the decision; and
9. a decision based on applicable law and standards.

In addition, as was stated in Goldberg, the opportunity to be heard, or the character of due process procedures and hearings must be tailored to the capacities and circumstances of those to be heard. This is an additional reason for providing the procedural safeguards contained in Edu 129, while at the same time keeping the hearings as "informal" as possible.

The second point which should be briefly addressed is the issue of standards. The amendments to Minn. Stat. 120.17, Subd. 3 require the State Board to provide standards appropriate to the implementation of Minn. Stat. 120.17, Subd. 3a and 3b. Subdivision 3a itself sets forth certain standards, which as provided in Subdivision 3b must, along with the rules of the State Board, serve as the basis for all decisions resulting from informal due process hearings. The standards set forth in Subd. 3a are included in the regulations and serve as the basis for the decisions resulting from informal due process hearings and appeals held pursuant to Edu 129. In addition, pursuant to the above cited authority the State Board has included additional standards appropriate to the hearing decisions that must be made.

In summary, the need and justification for the standards and procedures contained in Edu 129 are based on the above cited statutory provisions, court cases, legislative intent, and on the proposed policy decisions of the State Board concerning standards and procedures appropriate for implementation of Minn. Stat. 120.17, Subd. 3a and 3b. Moreover, the specific basis, authority, or reason for each of the provisions contained in Edu 129 is set forth below. Also, when referring to a basic or minimum due process right or procedure as set forth in Morrissey and Goldberg, for purposes of convenience we will refer to such as a "basic due process righ or minimum" instead of repeating the case.

The following relates to the justification and need for the various provisions of Edu 129.

Edu 129 (a), When a hearing must be held, is required by Minn. Stat. 120.17, Subd. 3b (c). Times are necessary for implementation purposes. Edu 129 (b)(1) and (2), Notice, are required by Minn. Stat. 120.17, Subd. 3b (a). Time is added for implementation purposes. Also, some of the notice requirements such as information concerning the reason for the proposed action are provided in earlier notices, (see Edu 127) and thus there is no need to repeat these requirements in the context of the hearing notice. Also, the primary purpose of the notice requirements set forth under Edu 129 (b)(2) is to fully inform the parent or guardian of their important rights and the pertinent procedures and standards which relate to a due process hearing. Information concerning these rights, standards and procedures is essential if a parent or guardian is to have the ability to exercise their opportunity for a due process hearing in a meaningful fashion. Moreover, information such as this is the essence of due process and thus is justified as one of the above mentioned basic or minimum due process requirements.

Finally because the provisions of Edu 129 (b)(2) merely contain information relating to rights and procedures, their justification and need is based on informational consideration. The need or justification for the due process right, standard or procedure will be discussed in the context of the applicable provision.

Edu 129 (b)(2)(aa) is taken directly from Minn. Stat. 120.17, Subd. 3b (c).

Edu 129 (b)(2)(bb) is necessary for implementation purposes. It is also consistent with PARC and Mills.

Edu 129 (b)(2)(cc)(.1)-(.5) are required to inform parents of their basic due process rights. It is also consistent with PARC and Mills.

Edu 129 (b)(2)(cc)(.6) and (.7) are included so that both parties will be informed as to who will be testifying and is necessary for the parties to prepare for the hearing. These provisions are based on Anderson vs Likins, PARC and Mills.

Edu 129 (b)(2)(cc)(.8) is necessary to assure that the parent will be informed of changes or additions regarding the case. It is required as part of adequate notice and is consistent with Goldberg, Morrissey, PARC and Mills. The language is based on Anderson vs. Likins.

Edu 129 (b)(2)(dd) is needed so that the parent is aware that the burden of proof is on the governmental agency, the school district, and that the district must be able to justify its proposed action based on the needs of the student as provided in Minn. Stat. 120.17, Subd. 3a (a). The last sentence relating to the least restrictive alternative is supported by Minn. Stat. 120.17, Subd. 3a (c).

Edu 129 (b)(2)(ee) is provided for in Minn. Stat. 120.17, Subd 3b (c) and is needed so that the parent will know a record of the hearing will be made but that it will be available to them at cost.

Edu 129 (b)(2)(ff) is needed so that the parent will be informed of the standards on which the decision must be based.

Edu 129 (b)(2)(gg)-(ii) are provided for in Minn. Stat. 120.17, Subd. 3b (c) and are included in the notice so that the parent will be informed of those provisions.

Edu 129 (b)(2)(jj) is a basic due process procedure. The current status of a person is not changed until the parent has an opportunity to be heard. It is consistent with Goldberg, PARC and Mills.

Edu 129 (c)(1), Hearing Officers. The first sentence is verbatim from Minn. Stat. 120.17, Subd. 3b (c). The last sentence is necessary because if the parent were required to pay for the hearing, there would be a "chilling effect" in that the parent, especially the poor parent, would be unable to challenge the schools decisions even though they disagree with them. The provision does require the parent to pay for their own council if they choose to be represented. It is consistent with Goldberg, Mills, PARC and Morrissey which contemplate the governmental agency will provide the hearing.

Edu 129 (d)(2) is necessary to insure that the school district has complied with previous provisions of the regulations, to resolve questions concerning the hearing, to settle entire matter if possible, and to avoid unnecessary hearings particularly where the district has not complied with other provisions of the regulations.

Edu 129 (e)(1) gives the parent the option of having an open or closed hearing unless the hearing is before the board in which case, because of the open meeting law, the hearing would be open. Inasmuch as a hearing on the rights of a handicapped child involves very sensitive issues, a closed hearing should be allowed where permitted by law. This section is consistent with Mills and PARC.

Edu 129 (e)(2) is a basic due process right and is consistent with Mills and PARC.

Edu 129 (e)(3) is a basic due process right and is also provided for in the Minnesota Data Primary Act, P.L. 94-142, the Minn. Stat. Chapter 15, PARC and Mills.

Edu 129 (e)(4) is needed to assure that the parent will be fully informed of what will be reviewed at the hearing. It is necessary as a basic due process right concerning full information regarding all of the reasons for the proposed action.

Edu 129 (e)(5) is necessary so that both parties will be informed regarding who will be providing testimony and so the parties may prepare for the hearing. This provision is consistent with Anderson vs. Likins. The last sentence does allow the list to be modified at any time which allows for flexibility.

Edu 129 (e)(6). This is a basic due process right. Furthermore, employees of the school district may have relevant information which should be made available to the hearing examiner. This rule attempts to assist in the gathering of such testimony.

Edu 129 (e)(7). Relates to the provision of evidentiary evidence as provided for in Minn. Stat. Chapter 15.

Edu 129 (e)(8). This provision is needed to better assure a fair decision. The hearing officer does not have subpoena power and cannot therefore require the attendance of witnesses. It may be necessary to consider other alternatives or programs or listen to additional testimony before making a decision. It also is necessary because under the provisions concerning the conduct of Chapter 15 hearings, hearsay evidence is admissible at the hearing. Without subpoena power, the right to cross-examination has limited meaning unless the hearing officer or parties have an additional opportunity to bring in necessary witnesses. The last sentence provides that all rights and procedures governing the hearing remain in effect.

Edu 129 (f)(1) is necessary to identify how the hearing officer shall preside over the hearing and that the decision will be based on information supplied at the hearing or introduced into the record. This is consistent with PARC, Goldberg and Mills.

Edu 129 (f)(2) identifies that the district must justify the proposed action at the hearing. This is consistent with PARC and Mills.

Edu 129 (f)(3) is needed to set the tone for the hearing which is that the hearing is conducted to determine whether there are facts which support this proposed action. This language is drawn from Anderson vs. Likins and is also consistent with Morrissey.

Edu 129 (f)(4) is provided for in Minn. Stat. 120.17, Subd. 3b (c) and (e).

Edu 129 (g). The local decision, is verbatim from Minn. Stat. 120.17, Subd. 3c (d). This section is a critical component in that it provides the standards which shall serve as the basis for decisions regarding assessment or reassessment.

Edu 129 (g)(1)(aa) is needed to identify that in decisions regarding assessment or reassessment, the hearing officer may sustain the proposed action when there are reasonable grounds to believe that an assessment or reassessment is justified as a possible step toward a change in the educational placement which will be necessary in order for an appropriate program to be provided as required by Minn. Stat. 120.17, Subd. 3a (a). The standards for when an assessment or reassessment should be ordered are contained in this paragraph and the decision should be based on evidence or facts demonstrating that the assessment or reassessment is necessary.

Edu 129 (g)(1)(bb) is necessary to assure that the standards of Minn. Stat. 120.17, Subd. 3a (c) are followed including the requirement of non-discrimination as provided in Edu 120 (b)(16).

Edu 129 (g)(2)(aa) is needed to assure that the decision is based on the needs of the student as required by Minn. Stat. 120.17, Subd. 3a. The second part is needed to authorize the hearing officer to sustain all or a part of the decision providing that the district is able to support its position by a preponderance of the evidence. It is consistent with provisions relating to Chapter 15, PARC and Mills.

Edu 129 (g)(2)(bb). The first sentence relating to the program based on the individual needs is authorized by Minn. Stat. 120.17, Subd. 3a (a) and the policy of individualized programming. The second sentence relating to the least restrictive alternative principle is supported by the standards set forth in Minn. Stat. 120.17, Subd. 3a (c) and the principle of the least restrictive alternative as set forth in Edu 120 (b)(11).

Edu 129 (g)(2)(cc) is needed so that students will be educated with their nonhandicapped peers and is supported by Minn. Stat. 120.17, Subd. 3a (c) and the principle of the least restrictive alternative as set forth in Edu 120 (b)(11).

Edu 129 (g)(2)(dd) is needed to authorize the person conducting the hearing to determine whether the district considered other alternatives in an effort to determine what educational programs and services are appropriate for the student. This provision better assures that the decision will meet the requirements of Minn. Stat. 120.17, Subd. 3a (a) and (c). This provision is consistent with PARC and Mills.

Edu 129 (g)(3) is provided for by Minn. Stat. 120.17, Subd. 3b (c).

Edu 129 (g)(4) is verbatim from Minn. Stat. 120.17, Subd. 3b (d).

Edu 129 (g)(5) is needed so that the Commissioner will be appraised of the decision. This information will be a key component of the report which the Commissioner must provide the legislature as required by Minn. Stat. 120.17, Subd. 3c. This section also provides information concerning appeal provisions and therefore must be considered consistent with the provisions concerning adequate notice.

Edu 129 (h)(1) and (2) are provided for and are consistent with Minn. Stat. 120.17, Subd. 3b (e).

Edu 129 (h)(3). This entire provision is taken verbatim from Minn. Stat. 120.17, Subd. 3b (e).

Edu 129 (h)(4). This entire provision is taken verbatim from Minn. Stat. 120.17, Subd. 3b (e).

Edu 129 (h)(5). This entire provision is taken verbatim from Minn. Stat. 120.17, Subd. 3b (f).

Edu 129 (h)(6) is needed to provide the parent a process for informing the Commissioner in the event the decision of a hearing officer is not implemented by the school district.

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE PETER ERICKSON
HEARING EXAMINER
OFFICE OF HEARING EXAMINER

In the matter of the proposed adoption and amendment of Rules of the State Board of Education amending "Minnesota Administration Rules and Regulations of the State Board of Education," 1973 Edition and as amended in 1974.

FINDING OF FACT

The above-entitled matter came on for hearing before Peter Erickson, Hearing Examiner of the Office of Hearing Examiner of the State of Minnesota on the 13th and 14th days of July, 1976, in the State Office Building, St. Paul, Minnesota 55101 after proper notice required by Minn. Stat., Section 15.0412 was served upon all person, associations and other interested groups registered with the Secretary of State for that purpose.

After affording interested persons an opportunity to present written and oral data, statements, and arguments, having reviewed all of the testimony, having considered all of the evidence adduced, having considered the Report of the Hearing Examiner, and upon all of the testimony and proceedings herein, and applicable statutory standards or criteria, having withheld action on the proposed Rules for the required period of time after receipt of the Hearing Examiner's Findings and having confirmed the need for the above-captioned rules I find the following:

1. That the findings of fact of the Hearing Examiner accurately reflect the facts in the record.

2. That the recommended changes made by the Hearing Examiner, with the exception of the recommendation regarding Edu 129(e)(4), will result in the proposed rules being clearer and less subject to misinterpretation.

3. That Edu 129(e)(4) provides that "additional material allegations" identified by the school district which were not contained in the original notice or memorandum to the parents must be provided to the parents at least three days prior to the hearing and that if such material allegations or related information is not so disclosed it shall not be introduced or considered at the hearing. The Hearing Examiner has recommended that the provision which would prohibit the introduction or consideration of such material allegations which are not disclosed at least three days before the hearing should be deleted. While the Hearing Examiner suggests that such a determination should be left to the discretion of the person conducting the hearing, a recommendation to insert that authority was not presented.

3. cont.

The Department believes that the regulation should not remain silent on this issue. To do so would leave the person conducting the hearing without clear authority to act on a matter which may have a significant effect on the outcome of the hearing. The amendment proposed by the Department, which is consistent with the Hearing Examiner's statement in the Finding of Fact, would provide the person conducting the hearing the authority to determine if the material allegations not disclosed should be introduced or considered at the hearing.

4. That although not identified in the Report of Hearing Examiner, the arguments made in 3 above should also be applied to Edu 129(b)(2)(cc).8.

5. That the Department's proposed amendment to Edu 122 (a)(2) which requires the Commissioner of Education to approve special equipment and instructional materials which are required to be supplied to all special classes and groups of handicapped children may be misinterpreted. The intent of that amendment was to provide the Commissioner authority to review purchases of materials and equipment made by school districts for special state aid reimbursement purposes. The intent was not to require prior approval of the Commissioner for such purposes. In as much as the Commissioner already has the authority to review such purchases pursuant to Minn. Stat. 124.15; and because the proposed amendment to Edu 122 (a)(2) is subject to a misinterpretation, that proposed amendment should be deleted.

6. The recommended revision in 3,4 and 5 above and the revisions recommended by the Hearing Examiner will serve to clarify the proposed rules and do not change the meaning of any portion of the regulations.

STATE OF MINNESOTA
STATE BOARD OF EDUCATION

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Howard B. Casmey
Commissioner
State Department of
Education

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF EDUCATION

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE STATE BOARD OF EDUCATION AMENDING "MINNESOTA ADMINISTRATION RULES AND REGULATIONS - RULES AND REGULATIONS OF THE STATE BOARD OF EDUCATION", 1973 EDITION AND AS AMENDED IN 1974.	REPORT OF THE CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on July 13 and 14, 1976, before Peter C. Erickson, a Hearing Examiner of the State Office of Hearing Examiners, on the above-entitled matter in compliance with Minn. Stat. §15.0412, Subd. 4; and

WHEREAS, the Report of Hearing Examiner made pursuant to Minn. Stat. §15.052, Subd. 3, was issued to the Department of Education on September 17, 1976; and

WHEREAS, the Department of Education has now determined to adopt rules pursuant to Minn. Stat. §15.0412,Subd. 4; and

WHEREAS, the Department of Education has submitted said rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. §15.052, Subd. 4, and Rule HE 107; and

WHEREAS, the Chief Hearing Examiner finds that there are no substantial changes in said rules as originally proposed;

NOW, THEREFORE, upon receipt of this Report, the Department of Education has the responsibility of submitting the complete hearing record and the rules as adopted by the Department to the Attorney General and to publish in the State Register, all pursuant to Minn. Stat. §15.0412, Subd. 4.

Dated this 7th day
of December, 1976.

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE PETER ERICKSON
HEARING EXAMINER
OFFICE OF HEARING EXAMINER

In the matter of the proposed adoption and amendment of Rules of the State Board of Education amending "Minnesota Administration Rules and Regulations of the State Board of Education," 1973 Edition and as amended in 1974.

ORDER ADOPTING RECOMMENDATION OF HEARING EXAMINER AND RULES

The above-entitled matter came on for hearing before Peter Erickson, Hearing Examiner of the Office of Hearing Examiner of the State of Minnesota on the 13th and 14th days of July, 1976, in the State Office Building, St. Paul, Minnesota 55101 after proper notice required by Minn. Stat., Section 15.0412 was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose.

After affording interested persons an opportunity to present written and oral data, statements, and arguments, having reviewed all of the testimony, having considered all of the evidence adduced, having considered the Report of the Hearing Examiner, and upon all of the testimony and proceedings herein, and applicable statutory standards or criteria, having withheld action on the proposed Rules for the required period of time after receipt of the Hearing Examiner's Findings and having confirmed the need for the above-captioned rules

NOW THEREFORE, BE IT RESOLVED that the State Board of Education hereby adopts and incorporates herein the Report of Hearing Examiner dated September 17, 1976 relative to the above-entitled matters to wit:

1. Edu 120 (a) (2) Least Restrictive Alternative. To the extent that there are no detrimental effects, children who are handicapped shall be ~~education~~ *educated* with children who do not have handicaps and shall attend regular classes. A handicapped person shall be removed from a regular educational program only when the nature or severity of the handicap is such that education in a regular educational program cannot be accomplished satisfactorily. Furthermore, there must be an indication that the person will be better served outside of the regular program. The educational needs of the person shall determine the type and amount of services needed.

2. Edu 120 (a) (4) Procedural Safeguards. When a change in the educational placement or special education service of a child is ~~anticipated~~ *proposed* including the assessment and program planning processes, procedural safeguards must be assured by the school district. Parents and guardians, and students when appropriate, have the right to be informed of all significant educational decisions. When a child's parents or legal guardians are not available, the school district shall ~~assure the appointment of a surrogate parent~~ *contact the local county welfare department and request the public welfare system intervene on behalf of the child*

3. Edu 120 (a) (6) Accountability for Instruction and Services. As provided in Minn. Stat. 120.17 Subd. 2, the district of residence is responsible for maintaining an appropriate program for all eligible handicapped persons regardless of the method or location of instruction utilized. However, if the handicapped person lives outside of his district of residence under the provisions of Minn. Stat. *120.17* Subd. 6 & 7, the district where the child lives is responsible for providing an appropriate program for the child as set forth in state statutes and these regulations including the notice and hearing provisions. In such cases the district of residence is responsible for assuming the cost of the educational program. If the districts do not agree on the tuition rate, either district may appeal to the Commissioner as provided in Minn. Stat. 120.17 Subd. 4. The district shall not purchase special educational services for a child from a public or private agency when such service is available or can be made available and can be more appropriately provided as the least restrictive alternative within the district. Whenever it is appropriate for a district to purchase special education service for children who are handicapped and who reside in the district, it continues to be the responsibility of the school district, consistent with the provisions of Minnesota statutes and these regulations, to assure and ascertain that such children and youth receive the education and related services and rights to which they are entitled.

4. Edu 120 (a) (8) Physical Facilities. Physical aspects and specifications of schools, classrooms, and other facilities ~~for or likely~~ *to which will* be used by handicapped children, shall be designed to meet their special physical, educational and emotional needs.

5. Edu 120 (b) (9) "Handicapped persons" includes the term "student," and "child" or "person" and means those "handicapped children" as defined by Minn. Stat. 120.03 and amendments or supplements thereto. Determination of a handicapping condition shall be made by qualified personnel in accordance with recognized professional standards and consistent with the provisions of Edu 124 and 125. These regulations shall not apply to ~~pregnant girls~~ *persons receiving home or hospital instruction unless they have a presenting handicapping condition as described above.*

6. Edu 122 (b) (1) Teachers. Every teacher who teaches a special class must hold a Special Class Certificate appropriate to the type of handicapped children she *or he* is teaching.

7. Edu 125 (e) Notice to Parents After Completion of the Program Plan Prior to Placement. Notice in accordance with the provisions of Edu 127 (c) is required whenever the providing school district proposes to initiate or change or refuses to initiate or change the *level of* educational placement *as defined in the continuum of placement model, or proposes to initiate or significantly change or refuses to initiate or significantly change the* special education services for the child. For the purposes of this regulation the terms initiate or change shall be construed to include the proposals set forth in Minn. Stat. 120.17 Subd. 3b (c), (2), (3), (4), and (5). The notice shall be served prior to the initiation or change or refusal to initiate or change the educational placement or special education services for the child. The notice shall be served within ten (10) days after completion of the program plan and/or the refusal to initiate or change.

8. Edu 129 (b) (2) (bb) that they will receive notice of the time, date and place of the hearing at least ten (10) days in advance of the hearing *which* will be held within thirty (30) days after the written request;

9. Edu 127 (b) (4) Inform the parents of their right to review and receive copies of all records or other written information ~~related to the assessment;~~ *regarding their child in the school's possession.*

10. Edu 127 (b) (6) Inform the parents of their right and the procedure and time to receive interpretations of assessment or reassessment procedures, instruments and data or results and of the program plan from a knowledgeable school ~~district~~ *employee* and for that conference to be held in private;

11. Edu 127 (b) (12) *Inform the parents that they have the right to be represented by counsel or another person of their choosing at the conciliation conference or the informal due process hearing.*

12. Edu 127 (b) ~~(12)~~ *(13)* A statement assuring that their child's educational program will not be changed as long as the parent objects to the proposed action, in the manner prescribed by these regulations.

13. Edu 127 (b) ~~(13)~~ *(14)* Include a "response form" on which the parent may indicate their approval of or objection to the proposed action and identify the district employee to whom the "response form" should be mailed or given and to whom questions may be directed;

14. Edu 129 (b) (2) (cc) .8 at least 3~~.~~ 5 days prior to the hearing, to receive from the providing or resident school district, a brief Resume of "additional material allegations" referring to conduct, situations or conditions which are discovered to be relevant and which were not contained in the original notice or memorandum; and that such material allegations may not be considered at the hearing if they are not so disclosed.

15. Edu 129 (b) (gg) That the decision of the person conducting the hearing may be reviewed by the school board, at its option, within ten (10) days following ~~the hearing;~~ *the hearing officer's decision.*

16. Edu 129 (c) Hearing Officers. At the option of the school board, the hearing shall take place either before the school board; or (i) its designee, (ii) a person mutually agreed to by the school board and the parents, or (iii) a person appointed by the commissioner. The school board shall exercise its option and a person to conduct the hearing must be selected at least ~~five (5)~~ *ten (10)* days prior to the hearing. The parties by agreement may continue the time and date of the hearing for not more than ten (10) days for the purpose of mutually agreeing to a person to conduct the hearing. All expenses of the hearing, except for the parents' and resident school districts attorney's fees or other expenses incidental to the parents or resident school district participation in the hearing, shall be paid by the providing school district.

17. Edu 129 (c) (6) All parties or their representatives, as the case may be, shall have the right to request the attendance of any employee of the school district(s), or any other person who may have evidence relating to the proposed action, and to confront, and to cross examine any such witness. Any such request must be made to the appropriate school district or to the person whose attendance is requested at least ~~three~~ *five* ~~(3)~~ (5) days in advance of the hearing. Such written requests shall also be filed with the person(s) conducting the hearing at the time of hearing.

18. Edu 129 (d) (1) (cc) a copy of the student's *current and proposed* individual educational program plan; and

19. Edu 129 (d) (1) (dd) such other information from the school district(s) or parent as the hearing officer may have requested at a prior date, *provided that a copy of such information is provided to all parties, and further provided that such information is made a part of the hearing record.*

20. Edu 129 (e) (4) At least ~~three (3)~~ *five* (5) days prior to the hearing the parents shall receive from the school districts, who are parties of the hearing, a brief Resume of "additional material allegations" referring to conduct, situations or conditions which are discovered and found to be relevant to the issues to be contested at the hearing and which are not contained in the original notice or memorandum provided pursuant to Edu 127 (b) or (c) or 128 (b). Any such material allegation or information relating thereto, which is not so disclosed, shall not be introduced or considered at the hearing.

21. Edu 129 (e) (7) *Evidentiary* standards ~~rules and regulations regarding~~ contested cases as specified pursuant to Minn. Stat. Chapter 15 shall apply.

22. Edu 129 (f) (4) A ~~verbatim stenographic~~ *tape recording, stenographic record, or other* record of the hearing shall be made, and if an appeal is filed pursuant to Edu 129 (h), the hearing shall be transcribed by the providing school district and shall be accessible to the parties involved within five (5) days of the filing of the appeal. Provided however, for appeals of local decisions issued by school boards or their designees concerning proposed actions as set forth in Edu 129 (h) (2) (aa), no written transcript shall be made if the parent requests a Chapter 15 due process hearing pursuant to Edu 129 (h). The record or transcription, as the case may be shall, upon request, be made available to the parent or their representative.

In addition to the above changes which have been recommended by the Hearing Examiner, the following changes are being made:

1. Edu 129 (e) (4) At least three (3) days prior to the hearing the parents shall receive from the school districts, who are parties of the hearing, a brief Resume of "additional material allegations" referring to conduct, situations or conditions which are discovered and found to be relevant to the issues to be contested at the hearing and which are not contained in the original notice or memorandum provided pursuant to Edu 127 (b) or (c) or 128 (b)x *and that if* Any such material allegation or information relating theretox ~~which is~~ *are* not so disclosed, ~~shall not be introduced or considered at the hearingx~~ *it shall be left to the discretion of the person conducting the hearing to*

determine if those material allegations may be introduced or considered.

2. Edu 129 (bX2) (cc) .8 at least 3 5 days prior to the hearing, to receive from the providing or resident school district, a brief Resume of "additional material allegations" referring to conduct, situations or conditions which are discovered to be relevant and which were not contained in the original notice or memorandum; and that *if* such material allegations ~~may-not-be-considered-at-the hearing-if-they~~ are not so disclosed~~x~~ , *it shall be left to the discretion of the person conducting the hearing to determine if those material allegations may be introduced or considered.*

3. Edu 122 (a) (2) Equipment and materials. Each special class and group shall be supplied with the necessary special equipment and instructional materials ~~as-approved-by-the-Commissioner~~

THEREFORE, IT IS ORDERED that these Rules, identified as Edu 120-129 are adopted this 18th day of October, 1976, pursuant to authority vested in us by Minn. Stat., Ch. 121.07.

STATE OF MINNESOTA
STATE BOARD OF EDUCATION

By Lorin A. Lindeland
President, State Board of Education

Exhibit H-3

STATEMENT OF COMPLIANCE WITH

MANUAL OF RULE MAKING PROCEDURES

I, Special Assistant Attorney General Michael J. Bradley, do hereby declare that I have examined the proposed rules and all related documents and that, based on them and my personal familiarity with the applicable procedures, the Manual of Rule Making Procedures has been followed. Any exceptions are noted below.

Michael J Bradley

Special Assistant Attorney General

Dated: Dec 17, 1976

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Michael J. Bradley
Special Assistant
Attorney General

January 18, 1977

- Special Education 120-139 Special Classes
and services for handicapped children.