

Minnesota Attorney General: Administrative Rules Proceedings

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304

Michael J. Bradley
Special Assistant
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April 19, 1977

- Equality of Educational Opportunity and School Desegregation EDU 660-679

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Attorney General

Michael J. Bradley
Special Assistant
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April 4, 1977

296-4692

Michael B. Miller
Special Assistant
Attorney General

Education Rule 663(c)

As we discussed on the telephone, the above-captioned rule is returned herewith for the correction you wish to make. The language is taken conclusion #3, page 8 of the Hearing Examiner's Report.

MBM:mb

Enclosure

ADMIN 1000

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : MIKE MILLER
Special Assistant Attorney General
G19-K Administration Bldg.

DATE: April 5, 1977

FROM : MICHAEL J. BRADLEY
Special Assistant Attorney General

PHONE: 3301

SUBJECT: Rules as Adopted Relating to Equality of Educational Opportunity and School Desegregation

Attached, pursuant to your request, are original and four copies of the above rules, with a new page 4 in each set. The new page 4 contains the wording that you requested. Also enclosed is report of the Hearing Examiner.

MJB:li

Attach.

Rules as Adopted

Chapter Thirty-One: [Regulations Relating to] Equality of Educational Opportunity and School Desegregation

EDU 623 Submission of data.

A. Each local board shall submit to the commissioner [within 60 days of the effective date of these regulations and annually thereafter] by November 15[,] of each year[,] such data as are required by subsection B of this section[, to determine the existing racial composition of the enrollment of each school in the district]. If a local board fails to submit such data by November 15[,] annually, the [C]commissioner shall notify the [B]board of noncompliance. A reasonable time of 15 days[,] shall be allowed for compliance.

B. Each local board shall submit a report showing the number of students enrolled which belong to each race [and the number of certificated personnel employed which belong to each race] for each of the schools under its jurisdiction. The information required to be submitted may be based upon sight count or any other method determined by the local board to be accurate. The clerk of the local board of education shall certify the accuracy of the report.

Chapter Thirty-Three: Prohibition of Discriminatory Practices in Education

EDU 660 Policy.

The policy of the state board of education is to assure compliance with state and federal law prohibiting discrimination because of age, race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, or disability, and to promote the elimination of these discriminatory practices in public schools and public educational agencies under its general supervision.

EDU 661 Duties of local boards, penalty for failure to comply.

A. Each local board shall submit to the commissioner such data as specified in EDU 662 for purposes of determining that the educational program is meeting provisions of state and federal law prohibiting discrimination on the grounds listed in EDU 660.

B. Each local board shall comply with all state and federal law prohibiting discrimination on the grounds listed in EDU 660.

C. Each local board shall direct the superintendent to coordinate, implement, and report to the local board the district's efforts to comply with these rules.

D. Each local school board shall, pursuant to Title IX of the Educational Amendments of 1972 (P.L. 92-318), disseminate on a continuing basis its policy of nondiscrimination on the basis of sex.

E. The penalty for noncompliance with this chapter shall be the reduction of state aids pursuant to Minn. Stat. § 124.15.

EDU 662 Compliance reports and submission of data.

A. Annually, on November 15, each school board shall submit to the commissioner a statement of compliance with state and federal law prohibiting discrimination on the grounds specified in EDU 660 and, in support of that statement, shall complete the form contained in EDU 662 C, and submit a report as required by 29 CFR 1602.41 (EEO-5 report), showing the number of certificated and noncertificated personnel employed which belong to each race and sex for each of the schools under its jurisdiction.

B. The statement of compliance required by Minn. Stat. § 124.15, subd. 2a, shall be as specified in Exhibit A.

C. The form to be completed in support of the assurance statement shall be as specified in Exhibit B.

EDU 663 Notices.

A. The content of any notice of noncompliance shall be such as is specified in Minn. Stat. § 124.15, subd. 3.

B. Any notice to a local board which is required by this chapter shall be written and shall be sent by certified mail to the superintendent and to the clerk of the local board of the district at their respective business addresses. For the purposes of this chapter, the business address of the clerk of the local board is deemed to be the main administrative office of the district.

C. The Commissioner shall provide to each school district in the state of Minnesota the documents specified in Exhibit B, number 1, and shall update the material as needed to insure compliance.

EDU 664 [[Appearance before the state board.]] Appeal of commissioner's determination.

Any school district aggrieved by a decision required of the commissioner under this chapter may [[serve a written request on the state board of education, within 30 days of any such decision, to appear before said board.]] dispute that decision pursuant to Minn. Stat. § 124.15, subd. 4.

[[The appearance shall be made at the next regular state board meeting following receipt of such request. Following such appearance the board may, in writing, support, modify, or reject the commissioner's decision. Any such notice served by a school district shall stay any proceeding pursuant to Minn. Stat. § 124.15, to reduce state aids for noncompliance with this chapter until a determination by the board.]]

EDU 665 Duties of the commissioner.

[[A.]] Upon receipt of the school board's assurance of compliance and the supporting data, the commissioner shall: [[process the data and forward it to the commissioner of human rights, pursuant to Minn. Stat. § 124.15, subd. 2a.]]

A. In order to determine whether special state aid shall be withheld, process the data and forward it to the commissioner of human rights, pursuant to Minn. Stat. § 124.15, subd. 5a.

B. In order to determine whether a violation of federal laws prohibiting discrimination has occurred:

1. [[B.]] Within 90 days of the receipt of the data, the commissioner of education shall review it to determine whether a school district is in compliance with federal law prohibiting discrimination.

2. [[C.]] If, after review of the data, it appears to the commissioner that a violation of federal law exists, he shall make a prompt investigation.

3. [[D.]] If the investigation indicates noncompliance with federal law, the commissioner shall inform the school district.

[[E.]] If the noncompliance cannot be resolved by informal means, the commissioner may proceed to suspend or terminate federal assistance.

EDU 666

No district shall be exempt from this chapter.

EDU 667-679 Reserved for future use.

Exhibit A

Assurance of Compliance with State and Federal Law

Prohibiting Discrimination

_____

Name of School District

The undersigned hereby affirm that the above named school district is in compliance with the following state and federal laws prohibiting discrimination:

1. Minn. Stat. § 363.03, Minnesota Human Rights Act, which prohibits discrimination in education programs and activities on grounds of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, or disability.

2. Title VI of the Civil Rights Act of 1964 (P.L. 88-352), which provides that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the district receives federal financial assistance.

3. Title VII of the Civil Rights Act of 1964 (P.L. 88-352), as amended by the Equal Employment Opportunity Act of 1972 (P.L. 92-261), which prohibits discrimination in employment because of an individual's race, color, religion, sex, or national origin.

4. Title IX of the Education Amendments of 1972 (P.L. 92-318), which prohibits discrimination on the basis of sex in education programs and activities receiving or benefiting from federal financial assistance.

5. The Age Discrimination in Employment Act of 1967 (P.L. 90-202), which prohibits discrimination on the basis of age (40 through 64).

6. Minn. Stat. § 126.21, which prohibits sex discrimination in athletic programs.

7. EDU 4, curriculum, which provides that "No school shall provide any course or activity on the basis of sex. This includes health, physical education, home economics, and industrial education."

8. EDU 620-639, relating to equality of educational opportunity and school desegregation.

This assurance is given in consideration of and for the purpose of obtaining any and all federal grants, loans, contracts, property, discount, or other federal and state financial assistance extended after the date hereof to the district by the Department of Health, Education, and Welfare and the State Department of Education, including installment payments after such date on applications for federal financial assistance and state aid allotments which were approved before such date. The district recognizes and agrees that such federal and state financial assistance will be extended in reliance on the representations, supporting information required by Minn. Stat. & 124.15, subd. 2a, and agreements made in this assurance. This assurance is binding on the district and the person or persons whose signatures appear below and who are authorized to sign this assurance on behalf of the district.

The attached form, Information Needed to Evidence Compliance, with this assurance statement is made a part thereof.

Dated _____ By _____

(School Superintendent)

By _____

(President or Chairman of School Board)

By _____

(Clerk of School Board)

Exhibit B

In support of its "Assurance of Compliance with State and Federal Law Prohibiting Discrimination", each school board shall affirm annually that it has as reference all documents listed in 1 (a-l) and that it has complied with all items 2-19.

Yes No 1. Does the district have a copy of the following documents available for references?

a. Minn. Stat. § 363.03, Minnesota Human Rights Act.

b. Minn. Stat. § 126.21, relating to sex discrimination in athletic programs.

Yes No

c. Minn. Stat. § 124.15, relating to reduction of state aid for noncompliance with state and federal law prohibiting discrimination.

d. EDU 4, curriculum, relating to course offerings on the basis of sex.

e. EDU 620-639, relating to equality of educational opportunity and school desegregation.

f. Regulations under Title VI of the Civil Rights Act of 1964 as amended (45 CFR Part 80).

g. May 25, 1970, Office of Civil Rights memorandum, "Identification of Discrimination and Denial of Services on the Basis of National Origin". (See Exhibit C.)

h. August, 1975, Office of Civil Rights memorandum, "Identification of Discrimination in the Assignment of Children to Special Education Programs". (See Exhibit D.)

i. Title VII of the Civil Rights Act of 1964 (P.L. 88-352), as amended by the Equal Employment Opportunity Act of 1972 (P.L. 92-261).

Yes No

j. Record keeping and filing requirements for report EEO-5 (29 CFR 1602.39-1602.46).

k. Final Title IX regulations implementing education amendments of 1972, prohibiting sex discrimination in education, effective July 21, 1975 (45 CFR Part 86).

l. The Age Discrimination in Employment Act of 1967 (P.L. 90-202).

2. Has the district designed and implemented an information program to acquaint the district staff with its civil rights responsibilities?

3. Has at least one employee been appointed to coordinate the district's efforts to comply with Title IX and investigate complaints as required by 45 CFR 86.8(a)? That regulation requires that each recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under 45 CFR Part 86, including any investigation of any complaint communicated to such recipient alleging its noncompliance with this part or alleging any actions which would be prohibited by this part.

Yes No

4. Has the district adopted and published Title IX grievance procedures providing for prompt and equitable resolution of student and employee complaints as required by 45 CFR 86.8(b)? That regulation requires that each recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action which would be prohibited by 45 CFR Part 86.

5. Has the district adopted and disseminated a nondiscrimination policy as required by 45 CFR 86.9? That regulation requires each recipient school district to implement specific and continuing steps to notify applicants for admission and employment, students and parents of elementary and secondary school students, employees, sources of referral of applicants for admission and employment, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of sex in educational programs or activities which it operates.

6. Does the district have on file a signed copy of HEW Form No. 441, "Assurance of Compliance with the Department of Health, Education, and Welfare Regulation under Title VI of the Civil Rights Act of 1964?" (See Exhibit E.)

Yes No

7. Has the district completed a self-evaluation as required by 45 CFR 86.3? That regulation requires that each recipient education institution shall, by July 21, 1976, evaluate current policies and practices in terms of the requirements of 45 CFR Part 86, modify any policies and practices which don't meet the requirements, and take appropriate remedial steps to eliminate the effects of past sex discrimination.

8. Do guidelines of the district regarding procedures and/or criteria to be used in assigning students to classes ensure compliance with state and federal law prohibiting discrimination?

9. Do district curriculum policies or guidelines ensure compliance with state and federal law prohibiting discrimination?

10. Do district guidelines or requirements for physical education programs, including course outlines, instructional methodologies, class activities, and skill measurement criteria, ensure compliance with state and federal law prohibiting discrimination?

Yes No

11. Do district policies regarding the provision of counseling and testing services ensure compliance with state and federal law prohibiting discrimination?

12. Do counseling materials currently employed in the district ensure compliance with state and federal law prohibiting discrimination?

13. Do district policy and program guidelines ensure compliance with state and federal law requirements for nondiscrimination with regard to student marital or parental status?

14. Do district policies pertaining to student access to athletics ensure that males and females are provided equal access to interscholastic, intramural, or club athletics as required by state and federal law prohibiting discrimination?

15. Do statements or documents concerning district employment and personnel policies, practices, criteria, and procedures ensure compliance with state and federal law prohibiting discrimination in all areas, including:

- recruitment
- selection
- assignment (including extra-duty assignment)
- transfer

Yes No

- referral
- promotion
- retention
- dismissal
- fringe benefits?

16. Does the district preserve all personnel and employment records for at least two years, as required by 29 CFR 1602.40? Has the record of applicant flow for the past two years been examined to assure that all district employment policies, criteria, and procedures are being applied in a fashion which complies with state and federal laws prohibiting discrimination?

17. Do position descriptions, job classifications, and salary schedules:

- ensure job-relatedness of employment criteria?
- ensure equity in job classification?
- ensure equity in compensation for comparable jobs?

18. Does the local board have a policy statement which affirms that it does not enter into any contract with any person, agency, or organization if it has knowledge that such person, agency, or organization discriminates on the grounds listed in EDU 660, either in employment practices or in provisions, benefits, or services to students or employees?]]

Exhibit B

In support of its "Assurance of Compliance with State and Federal Law Prohibiting Discrimination", each school board shall affirm annually that it has as reference all documents listed in 1 (a-1) and that it has complied with all items 2-16.

Yes	No		GENERAL
		1.	Does the district have a copy of the following documents available for reference in each school building?
___	___	a.	Minn. Stat. § 363.03, Minnesota Human Rights Act.
___	___	b.	Minn. Stat. § 126.21, relating to sex discrimination and equal opportunity in athletic programs.
___	___	c.	Minn. Stat. § 124.15, relating to reduction of state aid for noncompliance with state and federal law prohibing discrimination.
___	___	d.	EDU 4, curriculum, relating to course offerings on the basis of sex.
___	___	e.	EDU 620-639, relating to equality of educational opportunity and school desegregation.
___	___	f.	Regulations under Title VI of the Civil Rights Act of 1964 as amended (45 CFR Part 80).

Yes No

___ ___ g. May 25, 1970, Office of Civil Rights memorandum, "Identification of Discrimination and Denial of Service on the Basis of National Origin".

___ ___ h. August, 1975, Office of Civil Rights memorandum, "Identification of Discrimination in the Assignment of Children to Special Education Programs".

___ ___ i. Title VII of the Civil Rights Act of 1964 (P.L. 88-352), as amended by the Equal Employment Opportunity Act of 1972 (P.L. 92-261).

___ ___ j. Record keeping and filing requirements for report EEO-5 (29 CFR 1602.39-1602.46).

___ ___ k. Final Title IX regulations implementing education amendments of 1972, prohibiting sex discrimination in education, effective July 21, 1975 (45 CFR Part 86).

___ ___ l. The Age Discrimination in Employment Act of 1967 (P.L. 90-202).

___ ___ 2. Has the district designed and implemented an information program to inform the district staff of its civil rights responsibilities?

Yes No

TITLE VI PROCEDURES

___ ___ 3. Does the district have on file a signed copy of HEW No. 441, Assurance of Compliance with the Department of Health, Education, and Welfare Regulation under Title VI of the Civil Rights Act of 1964?

TITLE IX PROCEDURES

___ ___ 4. Policy Notification: Has a policy statement of non-discrimination on the basis of sex been adopted, published, and disseminated to students, parents, employees, applicants for employment, sources of referral, and all unions or professional organizations?

___ ___ 5. Title IX Coordinator: Has the district designated an employee(s) to coordinate compliance efforts and to investigate complaints of sex discrimination; and has this person's name, office address, and phone number been given to students, parents, and employees?

___ ___ 6. Grievance Procedures: Has the district adopted and published grievance procedures providing for prompt and equitable resolution of student and employee complaints of possible sex discrimination under Title IX?

___ ___ 7. Self-Evaluation: Has the district completed and have on file a self-evaluation identifying any policies or practices which may not comply with Title IX; and have modifications and remedial steps been planned or taken to correct noncompliance?

Yes No TITLE IX PROCEDURES

___ ___ 8. Assurances: Has the district's efforts toward achieving compliance with Title IX been sufficiently well-documented to provide information necessary for assurance statements for applications for federal assistance?

EDUCATIONAL SERVICES

9. Access to courses:

___ ___ a. Are students assigned to required courses without regard to race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, or disability in -

___ ___ - health courses (except portions dealing with human sexuality)?

___ ___ - physical education courses?

___ ___ - industrial, business, vocational, technical education courses?

___ ___ - home economics courses?

___ ___ - music courses (except criteria of vocal range or quality)?

___ ___ - other courses _____ ?

If no, explain _____

_____

_____

Yes No EDUCATIONAL SERVICES

___ ___ b. Are elective courses open equally to all students and are assignment to such classes made without regard to race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, or disability in -

___ ___ - health courses (except portions dealing with human sexuality)?

___ ___ - physical education courses?

___ ___ - industrial, business, vocational, technical education courses?

___ ___ - home economics courses?

___ ___ - music courses (except criteria of vocal range or quality)?

___ ___ - other courses _____ ?

If no, explain _____

_____

_____

10. Counseling:

___ ___ a. Are all testing and appraisal materials the same for all students without regard to sex?

b. Do any classes have a disproportionate number (Over 80%) of any

Yes No EDUCATIONAL SERVICES

___ ___ - race?

___ ___ - sex?

___ ___ - other _____ ?

If yes, explain _____

_____

_____

___ ___ c. If a particular class contains over 80% of one sex or race, etc., has the district taken steps to assure that such disproportion is not the result of discrimination in procedures for assignment to classes, in counseling, or in appraisal materials?

11. Treatment of students:

Are students treated equally regardless of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, or disability with reference to -

___ ___ - extra-curricular activities?

___ ___ - insurance benefits?

___ ___ - health services?

___ ___ - employment assistance?

___ ___ - honors or awards?

___ ___ - rules for behavior and dress codes?

Yes No EDUCATIONAL SERVICES

If no, explain _____

_____

_____

12. Student marital/parental status?

___ ___ a. Does the district have a written policy which specifies that pregnant students shall not be excluded from any educational program or activity except when the student requests voluntarily to participate in a separate portion of the program or activity?

___ ___ b. If a medical certificate is required of pregnant students, is it also required of all other students for physical and emotional conditions requiring the attention of a physician?

13. Athletics:

___ ___ a. Are all athletic programs for the sixth grade and below, or for 11 years old and younger, designated for and open to members of both sexes on an equal basis?

If no, explain _____

_____

Yes No EDUCATIONAL SERVICES

___ ___ b. Are all district athletic programs for 7th grade and above, or for 12 years old and older, designated for and open to members of both sexes on an equal basis (except when separate teams are necessary to provide equal opportunity to members of both sexes?

If no, explain _____

_____

_____

___ ___ c. If the district provides separate teams for each sex, are the number of sports in each season the same for boys and for girls?

If no, explain _____

_____

___ ___ d. If the district provides separate teams for each sex, are the following services equal for members of both sexes?

___ ___ - provision of equipment and supplies?

___ ___ - scheduling of games and practice time?

___ ___ - travel and per diem allowance?

___ ___ - opportunity to receive coaching of equal expertise?

Yes No EDUCATIONAL SERVICES

___ ___ - assignment and compensation of coaches?

___ ___ - provision of athletic facilities, including locker rooms?

___ ___ - publicity?

If no, explain _____

_____

_____

___ ___ e. If the district provides separate teams in the same sport for boys and girls, is the expenditure per student (exclusive of gate receipts) the same for members of each sex?

If no, explain _____

_____

_____

EMPLOYMENT PRACTICES

14. Are all employment and personnel practices free from discrimination on the basis of age (40 to 64), race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, or disability (except when based on a bona fide occupational qualification) as follows:

___ ___ a. Are district employment application forms free from all reference to any of the above categories?

Yes No EMPLOYMENT PRACTICES

___ ___ b. Are district salary schedules free from any differential compensation on the basis of any of the above categories?

___ ___ c. Are district fringe benefits free from any differential treatment on the basis of any of the above categories?

___ ___ d. Are district procedures for recruitment, selection, assignment (including extra-duty assignment), transfer, referral, promotion, retention, and dismissal applied without regard to the above categories?

___ ___ e. Are position descriptions and job classifications free from all references to the above categories except when based on a bona fide occupational qualification?

If no, explain _____

_____

_____

___ ___ 15. a. Does the district preserve all personnel and employment records for at least two years, as required by 29 CFR 1602.40?

___ ___ b. Has the record of applicant flow for the past two years been examined to assure that all district employment policies, criteria, and procedures are being applied in compliance with state and federal laws prohibiting discrimination?

Yes No EMPLOYMENT PRACTICES

16. Do position descriptions, job classifications, and salary schedules:

___ ___ - ensure job-relatedness of employment criteria?

___ ___ - ensure equity in job classification?

___ ___ - ensure equity in compensation for comparable jobs?

Exhibit C

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of the Secretary

Washington, D.C. 20201

May 25, 1970

MEMORANDUM

TO: School Districts with More Than Five Percent National Origin-Minority Group Children

FROM: J. Stanley Pottinger
Director, Office for Civil Rights

SUBJECT: Identification of Discrimination and Denial of Services on the Basis of National Origin

Title VI of the Civil Rights Act of 1964, and the Departmental Regulation (45 CFR Part 80) promulgated thereunder, require that there be no discrimination on the basis of race, color or national origin in the operation of any federally assisted programs.

Title VI compliance reviews conducted in school districts with large Spanish-surnamed student populations by the Office for Civil Rights have revealed a number of common practices which have the effect of denying equality of educational opportunity to Spanish-surnamed pupils. Similar practices which have the effect of discrimination on the basis of national origin exist in other locations with respect to disadvantaged pupils from other national origin-minority groups, for example, Chinese or Portugese.

The purpose of this memorandum is to clarify D/HEW policy on issues concerning the responsibility of school districts to provide equal educational opportunity to national origin-minority group children deficient in English language skills. The following are some of the major areas of concern that relate to compliance with Title VI:

(1) Where inability to speak and understand the English language excludes national origin-minority group children from effective participation in the educational program offered by a school district, the district must take affirmative steps to rectify the language deficiency in order to open its instructional program to these students.

(2) School districts must not assign national origin-minority group students to classes for the mentally retarded on the basis of criteria which essentially measure or evaluate English language skills; nor may school districts deny national origin-minority group children access to college preparatory courses on a basis directly related to the failure of the school system to inculcate English language skills.

(3) Any ability grouping or tracking system employed by the school system to deal with the special language skill needs of national origin-minority group children must be designed to meet such language skill needs as soon as possible and must not operate as an educational dead-end or permanent track.

(4) School districts have the responsibility to adequately notify national origin-minority group parents of school activities which are called to the attention of other parents. Such notice in order to be adequate may have to be provided in a language other than English.

School districts should examine current practices which exist in their districts in order to assess compliance with the matters set forth in this memorandum. A school district which determines that compliance problems currently exist in that district should immediately communicate in writing with the Office for Civil Rights and indicate what steps are being taken to remedy the situation. Where compliance questions arise as to the sufficiency of programs designed to meet the language skill needs of national origin-minority group children already operating in a particular area, full information regarding such programs should be provided. In the area of special language assistance, the scope of the program and the process for identifying need and the extent to which the need is fulfilled should be set forth.

School districts which receive this memorandum will be contacted shortly regarding the availability of technical assistance and will be provided with any additional information that may be needed to assist districts in achieving compliance with the law and equal educational opportunity for all children. Effective as of this date the aforementioned areas of concern will be regarded by regional Office for Civil Rights personnel as a part of their compliance responsibilities.

Exhibit D

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of the Secretary

Washington, D.C. 20201

AUGUST, 1975

MEMORANDUM FOR CHIEF STATE SCHOOL OFFICERS
AND LOCAL SCHOOL DISTRICT SUPERINTENDENTS

SUBJECT: Identification of Discrimination in the Assignment of Children to Special Education Programs

Title VI of the Civil Rights Act 1964 and the Departmental Regulation (45 CFR Part 80) promulgated thereunder require that there be no discrimination on the basis of race, color, or national origin in the operation of any programs benefiting from Federal financial assistance. Similarly, Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex in education programs or activities benefiting from Federal financial assistance.

Compliance reviews conducted by the Office for Civil Rights have revealed a number of common practices which have the effect of denying equality of educational opportunity on the basis of race, color, national origin, or sex in the assignment of children to special education programs.

As used herein, the term "special education programs" refers to any class or instructional program operated by a State or local education agency to meet the needs of children with any mental, physical, or emotional exceptionality including, but not limited to, children who are mentally retarded, gifted and talented, emotionally disturbed or socially maladjusted, hard of hearing, deaf, speech-impaired, visually handicapped, orthopedically handicapped, or to children with other health impairments or specific learning disabilities.

The disproportionate over- or underinclusion of children of any race, color, national origin, or sex in any special program category may indicate possible noncompliance with Title VI or Title IX. In addition, evidence of the utilization of criteria or methods of referral, placement or treatment of students in any special education program which have the effect of subjecting individuals to discrimination because of race, color, national origin, or sex may also constitute noncompliance with Title VI and Title IX.

In developing its standards for Title VI and Title IX compliance in the area of special education, the Office for Civil Rights has carefully reviewed many of the requirements for State plans contained in Section 613 of the Education Amendments of 1974 (P.L. 93-380), which amended Part B of the Education of the Handicapped Act.

Based on the above, any one or more of the following practices may constitute a violation of Title VI or Title IX where there is an adverse impact on children of one or more racial or national origin groups or on children of one sex:

1. Failure to establish and implement uniform nondiscriminatory criteria for the referral of students for possible placement in special education programs.

2. Failure to adopt and implement uniform procedures for insuring that children and their parents or guardians are guaranteed procedural safeguards in decisions regarding identification, evaluation, and educational placement including, but not limited to the following:

a. prior written and oral notice to parents or guardians in their primary language whenever the local or State education agency proposes to change the educational placement of the child, including a full explanation of the nature and implications of such proposed change;

b. an opportunity for the parents or guardians to obtain an impartial due process hearing, examine all relevant records with respect to the classification of the child, and obtain an independent educational evaluation of the child;

c. procedures to protect the rights of the child when the parents or guardians are not known, unavailable, or the child is a ward of the State, including the assignment of an individual, who is not an employee of the State or local educational agency involved in the education of children, to act as a surrogate for the parents or guardians;

d. provisions to insure that the decisions rendered in the impartial due process hearing referred to in part (b) above shall be binding on all parties, subject only to appropriate administrative or judicial appeal; and

e. procedures to insure that, to the maximum extent appropriate, exceptional children are educated with children who are not exceptional and that special classes, separate schooling, or other removal of exceptional children from the regular education environment occur only when the nature or severity of the exceptionality is such that education in regular classes with the use of supplementary aides and services cannot be achieved satisfactorily.

3. Failure to adopt and implement procedures to insure that test materials and other assessment devices used to identify, classify and place exceptional children are selected and administered in a manner which is nondiscriminatory in its impact on children of any race, color, national origin or sex.

Such testing and evaluation materials and procedures must be equally appropriate for children of all racial and ethnic groups being considered for placement in special education classes. In that regard procedures and tests must be used which measure and evaluate equally well all significant factors related to the learning process, including but not limited to consideration of sensorimotor, physical, socio-cultural and intellectual development, as well as adaptive behavior. Adaptive behavior is the effectiveness or degree with which the individual meets the standards of personal independence and social responsibility expected of her or his age and cultural group. Accordingly, where present testing and evaluation materials and procedures have an adverse impact on members of a particular race, national origin, or sex, additional or substitute materials and procedures which do not have such an adverse impact must be employed before placing such children in a special education program.

4. Failure to assess individually each student's needs and assign her or him to a program designed to meet those individually identified needs.

5. Failure to adopt and implement uniform procedures with respect to the comprehensive reevaluation at least once a year of students participating in special education programs.

6. Failure to take steps to assure that special education programs will be equally effective for children of all cultural and linguistic backgrounds.

School officials should examine current practices in their districts to assess compliance with the matters set forth in this memorandum. A school district which determines that compliance problems currently exist in that district should immediately devise and implement a plan of remediation. Such a plan must not only include the redesign of a program or programs to conform to the above outlined practices, but also the provision of necessary reassessment or procedural opportunities for those students currently assigned to special education programs in a way contrary to the practices outlined. All students who have been inappropriately placed in a special education program in violation of Title VI or Title IX requirements must be reassigned to an appropriate program and provided with whatever assistance may be necessary to foster their performance in that program, including assistance to compensate for the detrimental effects of improper placement.

Some of the practices which may constitute a violation of Title VI or Title IX may also violate Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112), as amended by the Rehabilitation Act of 1973 (P.L. 93-516) which prohibits discrimination on the basis of handicap; and other practices not addressed by this memorandum and not currently prohibited by Title VI or Title IX may be prohibited by that Section. The Office for Civil Rights is currently formulating the regulation to implement Section 504.

School districts have a continuing responsibility to abide by this memorandum in order to remain in compliance with Title VI of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972.

Martin Gerry

Acting Director

Office for Civil Rights

Exhibit E: HEW Form No. 441

ASSURANCE OF COMPLIANCE WITH THE DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE REGULATION UNDER TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

_____ (hereinafter called the "Applicant")

(Name of Applicant)

HEREBY AGREES THAT it will comply with title VI of the Civil Rights Act of 1964 (P.L. 88-352) and all requirements imposed by or pursuant to the Regulation of the Department of Health, Education, and Welfare (45 CFR Part 80) issued pursuant to that title, to the end that, in accordance with title VI of that Act and the Regulation, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Applicant receives Federal financial assistance from the Department; and HEREBY GIVES ASSURANCE THAT it will immediately take any measures necessary to effectuate this agreement.

If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Applicant by the Department, this assurance shall obligate the Applicant, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of

similar services or benefits. If any personal property is so provided, this assurance shall obligate the Applicant for the period during which it retains ownership or possession of the property. In all other cases, this assurance shall obligate the Applicant for the period during which the Federal financial assistance is extended to it by the Department.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the Applicant by the Department, including installment payments after such date on account of applications for Federal financial assistance which were approved before such date. The Applicant recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this assurance, and that the United States shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Applicant, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Applicant.

Dated _____ _____

(Applicant)

By _____

(President, Chairman of Board, or comparable authorized official)

_____

_____

(Applicant's Mailing Address)

APPROVED AS TO FORM AND LEGALITY

APR 14 1977 19

WARREN SPANNAUS, ATTORNEY GENERAL

BY /s/ Michael B. Miller

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
APR 18 1977 - 11:15 am
Joan Anderson Growe
Secretary of State

ADMIN 1000

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : MICHAEL B. MILLER
Special Assistant Attorney General
G19-K Administration Building

DATE: March 8, 1977

FROM : Michael J. Bradley
Special Assistant Attorney General

PHONE: 3301

SUBJECT: EDU Rules 660-679 Governing "Prohibition of Discriminatory Practices in Education, Equality of Educational Opportunity, and School Desegregation."

Enclosed are all copies and items of the checklist as required for the promulgating of the above-referenced rules.

MJB:li

cc: Lois Steinhaus

Enc.

STATE OF MINNESOTA
DEPARTMENT OF EDUCATION

IN THE MATTER OF: The proposed adoption of rules of the state board of education governing prohibition of discriminatory practices in education, equality of educational opportunity, and school desegregation.

ORDER FOR HEARING

IT IS HEREBY ORDERED that a public hearing on the above - captioned rules be held in the State Office Building, Room 83, St. Paul, Minnesota on Thursday, November 4, commencing at 9:00 A.M. and continuing until all persons have had an opportunity to be heard.

IT IS FURTHER ORDERED that a Notice of Hearing be mailed to all persons or representatives of associations or other interested groups who have registered their names with the Secretary of State for that purpose.

IT IS FURTHER ORDERED that the Notice of Hearing be published in the State Register.

STATE OF MINNESOTA
Department of Education

Commissioner of Education

Date: September 10, 1976

State of Minnesota

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

IN THE MATTER OF: The proposed adoption of rules of the state board of education governing prohibition of discriminatory practices in education, equality of educational opportunity, and school desegregation.

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that a public hearing in the above-entitled matter will be held in the State Office Building, Room 83, St. Paul, Minnesota, on Thursday, November 4, 1976, commencing at 9:00 A.M. and continuing until all persons have had an opportunity to be heard.

All interested or affected persons will have an opportunity to participate. Statements may be made orally and written materials may be submitted at the hearing. In addition, written materials may be submitted by mail to Room 300, 1745 University Avenue, St. Paul, Minnesota 55104 to the attention of Hearing Examiner Peter Erickson, phone number (612) 296-8118, either before the hearing or within 20 days after the close of the hearing.

The proposed rules, if adopted, would 1) amend EDU 623 by eliminating a clause requiring school districts to report the number of certificated staff belonging to each race, and 2) establish new rules (chapter 33, EDU 660-679) governing the prohibition of discriminatory practices in education. A copy of the proposed rules is attached hereto. Additional copies will be available at the door on the date of the hearing. The agency's authority to promulgate the proposed rules is contained within Minn. Stat. 121.07 (1974) and Minn. Stat. 124.15, subd. 2a (1975). A "statement of need" explaining why the agency feels the proposed rules are necessary and a "statement of evidence" outlining the testimony they will be introducing will be filed with the Hearing Examiners Office at least 25 days prior to the hearing and will be available there for public inspection.

Under Minn. Stat. 10A.01, subd. 11 (1974), 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.

STATE OF MINNESOTA
Department of Education

Commissioner of Education

Date: September 10, 1976

AN EQUAL OPPORTUNITY EMPLOYER

Rules as Proposed

Chapter Thirty-One: [Regulations Relating to] Equality of Educational Opportunity and School Desegregation

NOTE: Additions to the original rule are underlined; deletions are bracketed.

EDU 623 Submission of data.

A. Each local board shall submit to the commissioner [within 60 days of the effective date of these regulations and annually thereafter] by November 15[,] of each year[,] such data as are required by subsection B of this section[, to determine the existing racial composition of the enrollment of each school in the district]. If a local board fails to submit such data by November 15[,] annually, the [C]commissioner shall notify the [B]board of non-compliance. A reasonable time of 15 days[,] shall be allowed for compliance.

B. Each local board shall submit a report showing the number of students enrolled which belong to each race [and the number of certificated personnel employed which belong to each race] for each of the schools under its jurisdiction. The information required to be submitted may be based upon sight count or any other method determined by the local board to be accurate. The clerk of the local board of education shall certify the accuracy of the report.

Chapter Thirty-Three: Prohibition of Discriminatory Practices in Education
(All new material)

EDU 660 Policy.

The policy of the state board of education is to assure compliance with state and federal law prohibiting discrimination because of age, race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, or disability, and to promote the elimination of these discriminatory practices in public schools and public educational agencies under its general supervision.

EDU 661 Duties of local boards, penalty for failure to comply.

A. Each local board shall submit to the commissioner such data as specified in EDU 662 for purposes of determining that the educational program is meeting provisions of state and federal law prohibiting discrimination on the grounds listed in EDU 660.

B. Each local board shall comply with all state and federal law prohibiting discrimination on the grounds listed in EDU 660.

C. Each local board shall direct the superintendent to coordinate, implement, and report to the local board the district's efforts to comply with these rules.

D. Each local school board shall, pursuant to Title IX of the Educational Amendments of 1972 (P.L. 92-318), disseminate on a continuing basis its policy of non-discrimination on the basis of sex.

E. The penalty for non-compliance with this chapter shall be the reduction of state aids pursuant to Minn. Stat. 124.15.

EDU 662 Compliance reports and submission of data.

A. Annually, on November 15, each school board shall submit to the commissioner a statement of compliance with state and federal law prohibiting discrimination on the grounds specified in EDU 660 and, in support of that statement, shall complete the form contained in EDU 662 C, and submit a report as required by 29 CFR 1602.41 (EEO-5 report), showing the number of certificated and non-certificated personnel employed which belong to each race and sex for each of the schools under its jurisdiction.

B. The statement of compliance required by Minn. Stat. 124.15, subd. 2a, shall be as specified in Exhibit A.

C. The form to be completed in support of the assurance statement shall be as specified in Exhibit B.

EDU 663 Notices.

A. The content of any notice of non-compliance shall be such as is specified in Minn. Stat. 124.15, subd. 3.

B. Any notice to a local board which is required by this chapter shall be written and shall be sent by certified mail to the superintendent and to the clerk of the local board of the district at their respective business addresses. For the purposes of this chapter, the business address of the clerk of the local board is deemed to be the main administrative office of the district.

EDU 664 Appearance before the state board.

Any school district aggrieved by a decision required of the commissioner under this chapter may serve a written request on the state board of education, within 30 days of any such decision, to appear before said board.

The appearance shall be made at the next regular state board meeting following receipt of such request. Following such appearance the board may, in writing, support, modify, or reject the commissioner's decision. Any such notice served by a school district shall stay any proceeding pursuant to Minn. Stat. 124.15, to reduce state aids for non-compliance with this chapter until a determination by the board.

EDU 665 Duties of the commissioner.

A. Upon receipt of the school board's assurance of compliance and the supporting data, the commissioner shall process the data and forward it to the commissioner of human rights, pursuant to Minn. Stat. 124.15, subd. 2a.

B. Within 90 days of the receipt of the data, the commissioner of education shall review it to determine whether a school district is in compliance with federal law prohibiting discrimination.

C. If, after review of the data, it appears to the commissioner that a violation of federal law exists, he shall make a prompt investigation.

D. If the investigation indicates non-compliance with federal law, the commissioner shall inform the school district.

E. If the non-compliance cannot be resolved by informal means, the commissioner may proceed to suspend or terminate federal assistance.

EDU 666

No district shall be exempt from this chapter.

EDU 667-679 Reserved for future use.

Exhibit A

Assurance of Compliance with State and Federal Law
Prohibiting Discrimination

_____
Name of School District

The undersigned hereby affirm that the above named school district is in compliance with the following state and federal laws prohibiting discrimination:

1. Minn. Stat. 363.03, Minnesota Human Rights Act, which prohibits discrimination in education programs and activities on grounds of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, or disability.

2. Title VI of the Civil Rights Act of 1964 (P.L. 88-352), which provides that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the district receives federal financial assistance.

3. Title VII of the Civil Rights Act of 1964 (P.L. 88-352), as amended by the Equal Employment Opportunity Act of 1972 (P.L. 92-261), which prohibits discrimination in employment because of an individual's race, color, religion, sex, or national origin.

4. Title IX of the Education Amendments of 1972 (P.L. 92-318), which prohibits discrimination on the basis of sex in education programs and activities receiving or benefiting from federal financial assistance.

5. The Age Discrimination in Employment Act of 1967 (P.L. 90-202), which prohibits discrimination on the basis of age (40 through 64).

6. Minn. Stat. 126.21, which prohibits sex discrimination in athletic programs.

7. EDU 4, curriculum, which provides that "No school shall provide any course or activity on the basis of sex. This includes health, physical education, home economics, and industrial education."

8. EDU 620-639, relating to equality of educational opportunity and school desegregation.

This assurance is given in consideration of and for the purpose of obtaining any and all federal grants, loans, contracts, property, discount, or other federal and state financial assistance extended after the date hereof to the district by the Department of Health, Education, and Welfare and the State Department of Education, including installment payments after such date on applications for federal financial assistance and state aid allotments which were approved before such date. The district recognizes and agrees that such federal and state financial assistance will be extended in reliance on the representations, supporting information required by Minn. Stat. 124.15, subd. 2a, and agreements made in this assurance. This assurance is binding on the district and the person or persons whose signatures appear below and who are authorized to sign this assurance on behalf of the district.

The attached form, Information Needed to Evidence Compliance, with this assurance statement is made a part thereof.

Dated _____ By _____
(School Superintendent)

By _____
(President or Chairman of School Board)

By _____
(Clerk of School Board)

Exhibit B

In support of its "Assurance of Compliance with State and Federal Law Prohibiting Discrimination", each school board shall affirm annually that it has as reference all documents listed in 1 (a-l) and that it has complied with all items 2-19.

Yes No 1. Does the district have a copy of the following documents available for references?

a. Minn. Stat. 363.03, Minnesota Human Rights Act.

b. Minn. Stat. 126.21, relating to sex discrimination in athletic programs.

Yes No

c. Minn. Stat. 124.15, relating to reduction of state aid for non-compliance with state and federal law prohibiting discrimination.

d. EDU 4, curriculum, relating to course offerings on the basis of sex.

e. EDU 620-639, relating to equality of educational opportunity and school desegregation.

f. Regulations under Title VI of the Civil Rights Act of 1964 as amended (45 CFR Part 80).

g. May 25, 1970, Office of Civil Rights memorandum, "Identification of Discrimination and Denial of Services on the Basis of National Origin". (See Exhibit C.)

h. August, 1975, Office of Civil Rights memorandum, "Identification of Discrimination in the Assignment of Children to Special Education Programs". (See Exhibit D.)

i. Title VII of the Civil Rights Act of 1964 (P.L. 88-352), as amended by the Equal Employment Opportunity Act of 1972 (P.L. 92-261).

j. Record keeping and filing requirements for report EEO-5 (29 CFR 1602.39-1602.46).

k. Final Title IX regulations implementing education amendments of 1972, prohibiting sex discrimination in education, effective July 21, 1975 (45 CFR Part 86).

l. The Age Discrimination in Employment Act of 1967 (P.L. 90-202).

2. Has the district designed and implemented an information program to acquaint the district staff with its civil rights responsibilities?

3. Has at least one employee been appointed to coordinate the district's efforts to comply with Title IX and investigate complaints as required by 45 CFR 86.8(a)? That regulation requires that each recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under 45 CFR Part 86, including any investigation of any complaint communicated to such recipient alleging its non-compliance with this part or alleging any actions which would be prohibited by this part.

Yes No

4. Has the district adopted and published Title IX grievance procedures providing for prompt and equitable resolution of student and employee complaints as required by 45 CFR 86.8(b)? That regulation requires that each recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action which would be prohibited by 45 CFR Part 86.

5. Has the district adopted and disseminated a non-discrimination policy as required by 45 CFR 86.9? That regulation requires each recipient school district to implement specific and continuing steps to notify applicants for admission and employment, students and parents of elementary and secondary school students, employees, sources of referral of applicants for admission and employment, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of sex in educational programs or activities which it operates.

6. Does the district have on file a signed copy of HEW Form No. 441, "Assurance of Compliance with the Department of Health, Education, and Welfare Regulation under Title VI of the Civil Rights Act of 1964?" (See Exhibit E.)

7. Has the district completed a self-evaluation as required by 45 CFR 86.3? That regulation requires that each recipient education institution shall, by July 21, 1976, evaluate current policies and practices in terms of the requirements of 45 CFR Part 86, modify any policies and practices which don't meet the requirements, and take appropriate remedial steps to eliminate the effects of past sex discrimination.

8. Do guidelines of the district regarding procedures and/or criteria to be used in assigning students to classes ensure compliance with state and federal law prohibiting discrimination?

9. Do district curriculum policies or guidelines ensure compliance with state and federal law prohibiting discrimination?

10. Do district guidelines or requirements for physical education programs, including course outlines, instructional methodologies, class activities, and skill measurement criteria, ensure compliance with state and federal law prohibiting discrimination?

Yes No

11. Do district policies regarding the provision of counseling and testing services ensure compliance with state and federal law prohibiting discrimination?

12. Do counseling materials currently employed in the district ensure compliance with state and federal law prohibiting discrimination?

13. Do district policy and program guidelines ensure compliance with state and federal law requirements for non-discrimination with regard to student marital or parental status?

14. Do district policies pertaining to student access to athletics ensure that males and females are provided equal access to interscholastic, intramural, or club athletics as required by state and federal law prohibiting discrimination?

15. Do statements or documents concerning district employment and personnel policies, practices, criteria, and procedures ensure compliance with state and federal law prohibiting discrimination in all areas, including:

- recruitment
- selection
- assignment (including extra-duty assignment)
- transfer
- referral
- promotion
- retention
- dismissal
- fringe benefits?

16. Does the district preserve all personnel and employment records for at least two years, as required by 29 CFR 1602.40? Has the record of applicant flow for the past two years been examined to assure that all district employment policies, criteria, and procedures are being applied in a fashion which complies with state and federal laws prohibiting discrimination?

17. Do position descriptions, job classifications, and salary schedules:

- ensure job-relatedness of employment criteria?
- ensure equity in job classification?
- ensure equity in compensation for comparable jobs?

18. Does the local board have a policy statement which affirms that it does not enter into any contract with any person, agency, or organization if it has knowledge that such person, agency, or organization discriminates on the grounds listed in EDU 660, either in employment practices or in provisions, benefits, or services to students or employees?

Exhibit C

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Office of the Secretary

Washington, D.C. 20201

May 25, 1970

MEMORANDUM

TO: School Districts with More Than Five Percent National Origin-Minority Group Children

FROM: J. Stanley Pottinger
Director, Office for Civil Rights

SUBJECT: Identification of Discrimination and Denial of Services on the Basis of National Origin

Title VI of the Civil Rights Act of 1964, and the Departmental Regulation (45 CFR Part 80) promulgated thereunder, require that there be no discrimination on the basis of race, color or national origin in the operation of any federally assisted programs.

Title VI compliance reviews conducted in school districts with large Spanish-surnamed student populations by the Office for Civil Rights have revealed a number of common practices which have the effect of denying equality of educational opportunity to Spanish-surnamed pupils. Similar practices which have the effect of discrimination on the basis of national origin exist in other locations with respect to disadvantaged pupils from other national origin-minority groups, for example, Chinese or Portugese.

The purpose of this memorandum is to clarify D/HEW policy on issues concerning the responsibility of school districts to provide equal educational opportunity to national origin-minority group children deficient in English language skills. The following are some of the major areas of concern that relate to compliance with Title VI:

(1) Where inability to speak and understand the English language excludes national origin-minority group children from effective participation in the educational program offered by a school district, the district must take affirmative steps to rectify the language deficiency in order to open its instructional program to these students.

(2) School districts must not assign national origin-minority group students to classes for the mentally retarded on the basis of criteria which essentially measure or evaluate English language skills; nor may school districts deny national origin-minority group children access to college preparatory courses on a basis directly related to the failure of the school system to inculcate English language skills.

(3) Any ability grouping or tracking system employed by the school system to deal with the special language skill needs of national origin-minority group children must be designed to meet such language skill needs as soon as possible and must not operate as an educational dead-end or permanent track.

(4) School districts have the responsibility to adequately notify national origin-minority group parents of school activities which are called to the attention of other parents. Such notice in order to be adequate may have to be provided in a language other than English.

School districts should examine current practices which exist in their districts in order to assess compliance with the matters set forth in this memorandum. A school district which determines that compliance problems currently exist in that district should immediately communicate in writing with the Office for Civil Rights and indicate what steps are being taken to remedy the situation. Where compliance questions arise as to the sufficiency of programs designed to meet the language skill needs of national origin-minority group children already operating in a particular area, full information regarding such programs should be provided. In the area of special language assistance, the scope of the program and the process for identifying need and the extent to which the need is fulfilled should be set forth.

School districts which receive this memorandum will be contacted shortly regarding the availability of technical assistance and will be provided with any additional information that may be needed to assist districts in achieving compliance with the law and equal educational opportunity for all children. Effective as of this date the aforementioned areas of concern will be regarded by regional Office for Civil Rights personnel as a part of their compliance responsibilities.

Exhibit D

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Office of the Secretary

Washington, D.C. 20201

AUGUST, 1975

MEMORANDUM FOR CHIEF STATE SCHOOL OFFICERS
AND LOCAL SCHOOL DISTRICT SUPERINTENDENTS

SUBJECT: Identification of Discrimination in the Assignment of Children to Special Education Programs

Title VI of the Civil Rights Act 1964 and the Departmental Regulation (45 CFR Part 80) promulgated thereunder require that there be no discrimination on the basis of race, color, or national origin in the operation of any programs benefiting from Federal financial assistance. Similarly, Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex in education programs or activities benefiting from Federal financial assistance.

Compliance reviews conducted by the Office for Civil Rights have revealed a number of common practices which have the effect of denying equality of educational opportunity on the basis of race, color, national origin, or sex in the assignment of children to special education programs.

As used herein, the term "special education programs" refers to any class or instructional program operated by a State or local education agency to meet the needs of children with any mental, physical, or emotional exceptionality including, but not limited to, children who are mentally retarded, gifted and talented, emotionally disturbed or socially maladjusted, hard of hearing, deaf, speech-impaired, visually handicapped, orthopedically handicapped, or to children with other health impairments or specific learning disabilities.

The disproportionate over- or underinclusion of children of any race, color, national origin, or sex in any special program category may indicate possible noncompliance with Title VI or Title IX. In addition, evidence of the utilization of criteria or methods of referral, placement or treatment of students in any special education program which have the effect of subjecting individuals to discrimination because of race, color, national origin, or sex may also constitute noncompliance with Title VI and Title IX.

In developing its standards for Title VI and Title IX compliance in the area of special education, the Office for Civil Rights has carefully reviewed many of the requirements for State plans contained in Section 613 of the Education Amendments of 1974 (P.L. 93-380), which amended Part B of the Education of the Handicapped Act.

Based on the above, any one or more of the following practices may constitute a violation of Title VI or Title IX where there is an adverse impact on children of one or more racial or national origin groups or on children of one sex:

1. Failure to establish and implement uniform nondiscriminatory criteria for the referral of students for possible placement in special education programs.

2. Failure to adopt and implement uniform procedures for insuring that children and their parents or guardians are guaranteed procedural safeguards in decisions regarding identification, evaluation, and educational placement including, but not limited to the following:

a. prior written and oral notice to parents or guardians in their primary language whenever the local or State education agency proposes to change the educational placement of the child, including a full explanation of the nature and implications of such proposed change;

b. an opportunity for the parents or guardians to obtain an impartial due process hearing, examine all relevant records with respect to the classification of the child, and obtain an independent educational evaluation of the child;

c. procedures to protect the rights of the child when the parents or guardians are not known, unavailable, or the child is a ward of the State, including the assignment of an individual, who is not an employee of the State or local educational agency involved in the education of children, to act as a surrogate for the parents or guardians;

d. provisions to insure that the decisions rendered in the impartial due process hearing referred to in part (b) above shall be binding on all parties, subject only to appropriate administrative or judicial appeal; and

e. procedures to insure that, to the maximum extent appropriate, exceptional children are educated with children who are not exceptional and that special classes, separate schooling, or other removal of exceptional children from the regular education environment occur only when the nature or severity of the exceptionality is such that education in regular classes with the use of supplementary aides and services cannot be achieved satisfactorily.

3. Failure to adopt and implement procedures to insure that test materials and other assessment devices used to identify, classify and place exceptional children are selected and administered in a manner which is nondiscriminatory in its impact on children of any race, color, national origin or sex.

Such testing and evaluation materials and procedures must be equally appropriate for children of all racial and ethnic groups being considered for placement in special education classes. In that regard procedures and tests must be used which measure and evaluate equally well all significant factors related to the learning process, including but not limited to consideration of sensorimotor, physical, socio-cultural and intellectual development, as well as adaptive behavior. Adaptive behavior is the effectiveness or degree with which the individual meets the standards of personal independence and social responsibility expected of her or his age and cultural group. Accordingly, where present testing and evaluation materials and procedures have an adverse impact on members of a particular race, national origin, or sex, additional or substitute materials and procedures which do not have such an adverse impact must be employed before placing such children in a special education program.

4. Failure to assess individually each student's needs and assign her or him to a program designed to meet those individually identified needs.

5. Failure to adopt and implement uniform procedures with respect to the comprehensive reevaluation at least once a year of students participating in special education programs.

6. Failure to take steps to assure that special education programs will be equally effective for children of all cultural and linguistic backgrounds.

School officials should examine current practices in their districts to assess compliance with the matters set forth in this memorandum. A school district which determines that compliance problems currently exist in that district should immediately devise and implement a plan of remediation. Such a plan must not only include the redesign of a program or programs to conform to the above outlined practices, but also the provision of necessary reassessment or procedural opportunities for those students currently assigned to special education programs in a way contrary to the practices outlined. All students who have been inappropriately placed in a special education program in violation of Title VI or Title IX requirements must be reassigned to an appropriate program and provided with whatever assistance may be necessary to foster their performance in that program, including assistance to compensate for the detrimental effects of improper placement.

Some of the practices which may constitute a violation of Title VI or Title IX may also violate Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112), as amended by the Rehabilitation Act of 1973 (P.L. 93-516) which prohibits discrimination on the basis of handicap; and other practices not addressed by this memorandum and not currently prohibited by Title VI or Title IX may be prohibited by that Section. The Office for Civil Rights is currently formulating the regulation to implement Section 504.

School districts have a continuing responsibility to abide by this memorandum in order to remain in compliance with Title VI of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972.

Martin Gerry
Acting Director
Office for Civil Rights

Exhibit E: HEW Form No. 441

ASSURANCE OF COMPLIANCE WITH THE DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE REGULATION UNDER TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

_____ (hereinafter called the "Applicant")
(Name of Applicant)

HEREBY AGREES THAT it will comply with title VI of the Civil Rights Act of 1964 (P.L. 88-352) and all requirements imposed by or pursuant to the Regulation of the Department of Health, Education, and Welfare (45 CFR Part 80) issued pursuant to that title, to the end that, in accordance with title VI of that Act and the Regulation, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Applicant receives Federal financial assistance from the Department; and HEREBY GIVES ASSURANCE THAT it will immediately take any measures necessary to effectuate this agreement.

If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Applicant by the Department, this assurance shall obligate the Applicant, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is so provided, this assurance shall obligate the Applicant for the period during which it retains ownership or possession of the property. In all other cases, this assurance shall obligate the Applicant for the period during which the Federal financial assistance is extended to it by the Department.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the Applicant by the Department, including installment payments after such date on account of applications for Federal financial assistance which were approved before such date. The Applicant recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this assurance, and that the United States shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Applicant, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Applicant.

Dated _____ _____
(Applicant)

By _____
(President, Chairman of Board, or comparable authorized official)

_____

_____
(Applicant's Mailing Address)

STATE OF MINNESOTA
DEPARTMENT OF EDUCATION

IN THE MATTER OF: The proposed adoption of rules of the state board of education governing prohibition of discriminatory practices in education, equality of educational opportunity, and school desegregation.

AFFIDAVIT OF RECEIPT OF SECRETARY OF STATE'S LIST

Gary Nachman, being duly sworn on oath deposes and says:

1) That he is an employee of the Department of Education of the State of Minnesota.

2) That on the 24th day of September, he went to the Secretary of State's office for the State of Minnesota and requested a current list of all representatives of associations or other interested groups or persons who had registered their names with the Secretary of State for the purpose of obtaining notices of public hearing relating to the promulgation of rules pursuant to M.S. 15.0412.

3) That on the 24th day of September, in response to the above request, the Secretary of State provided him with such a list, a copy of which is attached hereto and incorporated by refernece.

Further affiant sayeth not.

Gary Nachman

Subscribed and sworn to before me this 24th day of Sept, 1976.

Betty L. King

BETTY L. KING
Notary Public, Dakota Co. MN
My Commission Expires
June 13, 1983

Notary Public, Dakota County, Minnesota

My Commission expires June 13, 1983

STATE OF MINNESOTA
DEPARTMENT OF EDUCATION

IN THE MATTER OF: The proposed adoption of rules of the state board of education governing prohibition of discriminatory practices in education, equality of educational opportunity, and school desegregation.

CERTIFICATE OF DELIVERY
SECRETARY OF STATE LIST

I hereby certify that the attached 506 labels on 9 sheets constitute the complete list of persons, associations, and other interested groups who as of 11:00 O'clock A M., this 24th day of September, 1976, have requested pursuant to Minn. Stat. 15.0412, subd. 4, (1975), that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearing on proposed rules on the subject captioned above.

SECRETARY OF STATE
Joan Anderson Growe
By Neil Dion

STATE OF MINNESOTA
DEPARTMENT OF EDUCATION

IN THE MATTER OF: The proposed adoption of rules of the state board of education governing prohibition of discriminatory practices in education, equality of educational opportunity, and school desegregation.

AFFIDAVIT OF MAILING

Linda Alberg, being first duly sworn, deposes and says:

That on the 1st day of October, 19 76, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Hearing by depositing in the United States mail at said City of St. 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.

Linda Alberg

Subscribed and sworn to before me
this 4th day of October,
1976.

Betty L. King

BETTY L. KING
Notary Public, Dakota Co. MN
My Commission Expires
June 13, 1983

STATE OF MINNESOTA
DEPARTMENT OF EDUCATION

IN THE MATTER OF: The proposed adoption of rules of the state board of education governing prohibition of discriminatory practices in education, equality of educational opportunity, and school desegregation.

STATEMENT OF NEED

The above captioned rules are 1) a proposed amendment to EDU 623, concerning submission of data, and 2) proposed new rules, EDU 660-679, governing the prohibition of discriminatory practices in education.

The need to adopt these rules arises because of the reasons outlined on the attached pages.

Commissioner of Education

October 11, 1976
Date

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 Relating to EDU 660-679

STATEMENT OF NEED

Introduction

Minnesota Statutes, 1975, Chapter 124.15, subdivision 2a, charges the State Board of Education with the responsibility to promulgate rules relating to local school board assurances of compliances with state and federal law prohibiting discrimination on grounds of race, color, creed, religion, national origin, sex, age, marital status, status with regard to public assistance, or disability.

Minnesota Statute 363.03 prohibits discrimination in education programs and activities on grounds of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, or disability. Public law (90-202), age discrimination in the Employment Act of 1967, prohibits discrimination on grounds of age (40-64) in employment.

Chapter 124.15, (1975), Subdivision 2(a) directs the State Board of Education, after consultation with the Commissioner of Human Rights, to adopt rules and regulations which direct school districts to file with the Commissioner of Education assurances of compliance with state and federal laws prohibiting discrimination and which specify the information required to be submitted in support of the assurances.

In preparing for the implementation of this act and the preparation of these proposed rules, the Department of Education, Division of Planning and Development, Equal Educational Opportunities Section has examined in detail the state and federal laws prohibiting discrimination, has researched the laws and rules of other states to determine if any are related to this subject, (none could be found), has sought advice and input from school officials in Minnesota public schools, has sought advice from the Office for Civil Rights.

In an effort to gain a broad base of input and support, the State Board of Education has conducted two public hearings, the last of which was held December 18, 1975, in the Capitol Square Building, room 716, in the city of St. Paul.

Three basic issues can be sited as the underlying need for the proposed regulations:

(1) The 1975 Legislature has directed the State Board of Education to promulgate rules to assure that persons in education programs are not discriminated on grounds of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, age, or disability.

(2) Need to provide direction and standards so that both the schools and the beneficiaries of the educational programs can determine compliance.

(3) Need to assure that the State of Minnesota Department of Education and local school boards are in compliance and remain in compliance so that neither or both are deprived of federal or state financial assistance.

EDU 660 Policy

EDU 660 is a policy statement of the State Board of Education which is deemed necessary to specify the grounds on which discrimination is prohibited under both state and federal law.

EDU 661 Duties of local boards, penalty for failure to comply

EDU 661 (A) is deemed necessary to provide local boards with the rationale for submission of data specified in EDU 662 to the Commissioner.

EDU 661 (B) is necessary to remind local school boards that they are held accountable for compliance with state and federal laws prohibiting discrimination.

EDU 661 (C) is necessary to remind local boards that responsibility for assuring that educational programs administered and implemented without discrimination must be assisgned to the highest administrative officer of the district.

EDU 661 (1) is necessary to remind local boards that this is a specific requirement under the provisions of the regulations of Title IX of the Education Amendments of 1972.

EDU 661 (E) is necessary to inform local boards that the penalty for non-compliance with this chapter is the reduction of state aid pursuant to Minnesota Statute 124.15.

EDU 662 Compliance reports and submission of data

EDU 662 (A) is necessary to set forth how often local school boards shall file statements of compliance, complete and file the form in EDU 662 (C), and submit the information required by 29CFR1602-41 (EEO-5 report), the latter form requires the school board to show the number of certificated and non-certificated personnel employed which belongs to each race (black, American Indian, Hispanic, Asian American and white) and sex for each of the schools under its jurisdiction.

EDU 662 (B) is necessary to provide the statutory requirement for the statement of compliance.

EDU 662 (C) is necessary to inform local boards that the form specified in exhibit B contains or specifies information required to be submitted in support of the local boards' assurance statement, as required by Chapter 124.15, Subdivision 2a, and is necessary for making a determination of possible violations of Minnesota Statute, Chapter 363.03, Minnesota Human Rights Act.

EDU 663 Notices

EDU 663 (A) and (B) is necessary to give direction to the Commissioner of Education in fulfilling the requirement of Minnesota Statute 125.15, Subdivision 3.

EDU 664 Appearance before the State Board

EDU 664 is necessary to inform local school boards of the available appeal procedure when the local board disagrees with a ruling of the Commissioner of Education.

EDU 665 Duties of the Commissioner

EDU 665 (A) is necessary because of the statutory requirement of Minnesota Statute 124.15 requiring the Commissioner of Human Rights to review the statements of compliance and the supportive information to determine if one or more violations of the Minnesota Human Rights Act are occurring in the district.

EDU 665 (B, C, D, and E) are necessary to establish the time period in which the Commissioner of Education must determine that a violation of federal laws prohibiting discrimination are occurring and what action will be taken to investigate and act upon these violations.

EDU 666 - is necessary to inform local boards that these rules apply to all districts of the state.

EDU 667-679 - reserved for future use.

As indicated in the introduction of the statement of need, the staff of the EEO Section has examined and studied in detail the provisions of state and federal laws prohibiting discrimination on grounds cited in EDU 660. The staff has spent the last two to three years discussing, on an extensive basis with the Board of Education, the provisions of Titles VI and VII of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972. Because of the complexity and the number of laws prohibiting discrimination it was determined that a list of the laws and regulations should be provided to local boards as a part of the assurance of compliance statement. The staff and the State Board felt that unless the laws prohibiting discrimination were a part of the assurance statement the school districts could not be bound as indicated in the last paragraph of the statement. This assurance statement is modeled after the Title VI form 441, assurance of compliance with Title VI of the CRA as a condition for receiving federal financial assistance. A similar assurance statement is now required of all recipients of federal financial assistance as a requirement of Title IX of the Education Amendments of 1972.

Since the Commissioner receives and distributes federal funds to local school districts he is required by Title VI of the CRA and Title IX of the Education Amendments of 1972 to assure that school districts are in compliance with federal law prohibiting discrimination; therefore, he may, without state law, require an assurance statement from local school districts.

We believe that this assurance statement meets the requirement of Minnesota Statute 124.15, Subdivision 2a.

Exhibit B

Exhibit B is the form to be completed by local boards in support of its "Assurance of Compliance with State and Federal Law Prohibiting Discrimination."

Minnesota Statute 124.15, subdivision 2a directs that the State Board of Education specify the information required to be submitted in support of the assurances of compliance. Pursuant to this directive the State Board at two previous public hearings presented a list of data and information to be submitted by school districts that it deemed necessary in order to implement the spirit and letter of the law, but on both occasions the Board received negative reaction from local school boards as requiring too much information.

The rationale, then, for exhibit B is to assure that relevant statutes and regulations are available for reference for school district personnel and to request responses to statements indicative of the provisions of the laws. The assumption is that positive responses to the statements listed (2-18) will evidence compliance on the part of local school boards. The staff and the State Board of Education believe this checklist meets the requirement of Minnesota Statute, Chapter 124.15, subdivision 2a, and will not place an undue burden on school district personnel in supplying the information deemed necessary to assure compliance.

Item 1 (a-l) is necessary to inform school boards and administrative personnel of relevant laws and regulations prohibiting discrimination and the penalty for non-compliance.

Item 2 is necessary because each employee has a responsibility in the implementation of the provisions of the laws prohibiting discrimination on grounds cited in EDU 660. School personnel cannot be expected to implement and manage educational programs in compliance with laws prohibiting discrimination if they are not familiar with their provisions.

Item 3 is necessary to ensure the school board is in compliance with a specific requirement imposed under provisions of the Title IX regulations (45CFR, part 86) which requires that at least one employee must be appointed to coordinate the district's efforts to comply with Title IX and investigate complaints.

Item 4 is necessary to ensure the school board is in compliance with a specific requirement imposed under provisions of the Title IX regulation (45CFR 86.D). That regulation requires that each recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action which would be prohibited by 45 CFR, part 86.

Item 5 is necessary to ensure the school board is in compliance with a specific requirement imposed under provision of Title IX (45 CFR 86.9). That regulation requires each recipient school district to implement specific and continuing steps to notify applicants for admission and employment, students and parents of elementary and secondary school students, employees, sources of referral of applicants for admission and employment, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of sex in educational programs or activities which it operates.

Item 6 is necessary to remind school boards that they have in the past signed a form 441 assuring the Department of Health, Education, and Welfare that it is in compliance with provisions of Title VI of the Civil Rights Act, which states that, "No person in the United States shall, on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activities receiving federal financial assistance."

Item 7 is necessary to assure compliance with a specific requirement imposed under provision of Title IX (45 CFR 86.3). That regulation requires that each recipient education institution shall, by July 21, 1976, evaluate current policies and practices in terms of the requirements of 45 CFR, part 86, modify any policies and practices which do not meet the requirements and take appropriate remedial steps to eliminate the effects of past sex discrimination.

Item 8 is necessary to assure that students are being assigned to classes and educational programs in compliance with Title VI and Title IX. The HEW memorandum of August, 1975, Identification of Discrimination in the Assignment of Children to Special Education programs, states in part, "The disproportionate over or underinclusion of children of any race, color, national origin, or sex in any special program category may indicate possible non-compliance with Title VI or Title IX. In addition, evidence of the utilization of criteria or methods of referral, placement or treatment of students in any special education program which has the effect of subjecting individuals to discrimination because of race, color, national origin, or sex may also constitute non-compliance with Title VI or Title IX. Title IX, 45 CFR 86.36(c) requires, that "where a recipient finds that a particular class contains a substantially disproportionate number of individuals of one sex, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination on the basis of sex in counseling or appraisal materials or by counselors.

Item 9 is necessary to remind local school boards that they have a responsibility to ensure that textbooks and curriculum materials used in the district are non-discriminatory and that the State Board of Education expects local board cooperation in effectuating its policy of eliminating race and sex bias in education.

Item 10 is necessary to ensure the school board is in compliance with Title IX, 45 CFR 86.34, that regulation requires, that "A recipient shall not provide any course or otherwise carry out any of its education program or activity separately on the bases of sex, or require or refuse participation therein by any of its students on such basis, including health, physical education, industrial business, vocational, technical, home economics, music, and adult education courses," and State Board of Education regulation EDU 4, which provides that "No school shall provide any course or activity on the basis of sex. This includes health, physical education, home economics, and industrial education."

The reason for requesting specific information about physical education is that past experience indicates that discrimination on grounds of sex often occurs in this area.

Items 11 and 12 are necessary to insure that the school board is in compliance with Title VI CRA of 1964 and Title IX of the Education Amendments of 1972, 45CFR, part 80, and 45CFR, part 86 respectively. Title IX, 45CFR, part 86.36 (b) requires that, a recipient which uses testing or other materials for appraising or counseling students shall not use different materials for students on the basis of their sex or use materials which permit or require different treatment of students on such basis unless such different materials cover the same occupations and interest areas and the use of such different material is shown to be essential to eliminate sex bias.

The HEW memorandum of August, 1975, Identification of Discrimination in the Assignment of Children to Special Education Programs, states that in developing its standards for Title VI and Title IX compliance in the area of special education, the Office for Civil Rights has carefully reviewed many of the requirements for state plans contained in Section 613 of the Education Amendments of 1974 (P.L. 93-380), which amended part B of the Education of the Handicapped Act. Based on this review OCR identified a number of practices which may constitute a violation of Title VI or Title IX where there is an adverse impact on children of one sex. One such practice is a "failure to adopt and implement procedures to insure test materials and other assessment devices used to identify, clarify and place exceptional children are selected and administered in a manner which is non-discriminatory in its impact on children of any race, color, national origin or sex."

Such testing and evaluation materials and procedures must be equally appropriate for children of all racial and ethnic groups being considered for placement in special education classes. In that regard procedures and tests must be used which measure and evaluate equally well all significant factors related to the learning process, including but not limited to consideration of sensorimotor, physical, socio-cultural and intellectual development, as well as adaptive behavior. Adaptive behavior is the effectiveness or degree with which the individual meets the standards of personal

independence and social responsibility expected of her or his age and cultural group. Accordingly, where present testing and evaluation materials and procedures have an adverse impact on members of a particular race, national origin, or sex, additional or substitute materials and procedures which do not have such an adverse impact must be employed before placing such children in a special education program."

Item 13 is necessary to insure compliance with Minnesota Statute, Chapter 363.03 and Title IX, 45 CFR, Part 86.40. The latter regulation requires that a recipient shall not apply any rule concerning a student's actual or potential parental, family or marital status which treats students differently on the basis of sex. Part 86.40 (b) further provides that "a recipient shall not discriminate against any student, or exclude any student from its education program or activity, including any class or extra-curricular activity, on the basis of such student's pregnancy. childbirth, false pregnancy, termination of pregnancy or recovery therefrom, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient."

Item 14 is necessary to insure compliance with Minnesota Statute Section 363.03, Minnesota Statute, Section 126.21, athletic programs; sex discrimination and Title IX of the Education Amendments of 1972. Title IX, 45 CFR, 86.41 requires that "no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by recipient, and no recipient shall provide any such athletics separately on such basis." Exceptions are allowed in certain contact sports, such as boxing, wrestling, rugby, ice hockey, football, basketball and other sports, the purpose of major activity of which involves bodily contact.

Minnesota Statute 126.21 provides that a district may restrict membership on an athletic team to participants of one sex, if this restriction is necessary to provide members of each sex with an equal opportunity to participate in the athletic program; ... if two teams are operated in the same sport for each sex, the teams must be provided with substantially equal budgets per participants. exclusive of gate receipts and other revenues generated by that sport, and in all other respects are treated in a substantially equal manner.

Items 15, 16 and 17 are necessary to inform local boards of their duty to ensure compliance with relevant state and federal laws prohibiting discrimination in employment, which are, Minnesota Statute Chapter 363.03, Title VII of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972.

Title IX, 45 CFR, part 86.51 requires that "no person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination in employment, or recruitment, consideration, or selection; therefor, whether full-time or part-time under any education program or activity operated by a recipient which receives or benefits from federal financial assistance."

It should be noted that item 16 references 29 CFR 1602.4, which is the federal regulation describing the record-keeping requirements of recipients to ensure compliance with Title VII CRA, 1964.

Title VII, as amended by the Equal Opportunity Act of 1972 (Public Law 92-261, Section 703) states in part, (a) "It shall be an unlawful employment practice for an employer - (1) to fail or refuse to hire or discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex or national origin; or (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex or national origin..."

Item 18 is necessary to ensure that school boards are in compliance with Title IX, part 86.51 (3) which specifies that "a recipient shall not enter into any contractual or other relationship which directly or indirectly has the effect of subjecting employees or students to discrimination prohibited by this subpart including relationships with employment and referral agencies, with labor unions, and with organizations providing or administering fringe benefits to employees of the recipient."

STATE OF MINNESOTA
DEPARTMENT OF EDUCATION

IN THE MATTER OF: The proposed adoption of rules of the State Board of Education relating to EDU 660-679, Prohibition of Discriminatory Practices in Education.

STATEMENT OF EVIDENCE

I. Summary of Evidence

The evidence to be presented by the Department at the hearing will be that which is reviewed in detail in the "Statement of Need." Briefly, that evidence includes the requirements of Minnesota Statutes 1975, Chapter 124.15 requiring the Minnesota State Board of Education to promulgate rules relating to local educational agencies assuring compliance with state and federal laws prohibiting discrimination. In addition, individuals from the Department of Education and other witnesses will testify to the requirements of federal laws and educational rules and the adequacy of the report forms to indicate the degree of compliance with State and Federal laws.

II. Citations

A. State Statutes
   1. 124.15
   2. 363.03
   3. 126.21

B. Education Rules
   1. Edu 4
   2. Edu 620-639

C. Federal Law
   1. Title VI, Civil Rights Act of 1964 as amended (45 CFR Part 80)
   2. Title VII, Civil Rights Act of 1964 (P.L. 88-352) as amended by the Equal Employment Opportunity Act of 1972 (P.L. 92-261)
   3. Title IX, Education amendments of 1972 (45 CFR Part 86)
   4. The Age Discrimination in Employment Act of 1967 (P.L. 90-202)
   5. Rehabilitation Act of 1973 (P.L. 93-112), as amended by the Rehabilitation Act of 1973 (P.L. 93-516).

D. Exhibits
   1. Exhibit A, Assurance of Compliance with State and Federal Law Prohibiting Discrimination;
   2. Exhibit B, Reporting Form
   3. Exhibit C, Identification of Discrimination and Denial of Services on the Basis of National Origin
   4. Exhibit D, Identification of Discrimination in the Assignment of Children to Special Education Programs
   5. Exhibit E, HEW Form No. 441, Assurance of Compliance with the Department of Health, Education and Welfare Regulation under Title VI of the Civil Rights Act of 1964

We may call one or more of the following expert witnesses to testify:

DEPARTMENT OF EDUCATION PERSONNEL

Joseph P. Graba, Deputy Commissioner of Education for Administrative Management/Legislative Relations will provide testimony on the practices of the Department prior to the 1975 legislation requiring the development of EDU 660;

Gregory J. Waddick, Assistant Commissioner, Division of Planning and Development will provide testimony on the development of this proposed regulation and the result of previous public hearings on proposed regulations to meet the requirements of Minnesota Statute 124.15;

Archie L. Holmes, Director, Equal Educational Opportunity Section, Division of Planning and Development will provide testimony on the requirements of Title VI and Title VII of the Civil Rights Act of 1964;

Shirlee A. Walker, Consultant, Human Relations, Equal Educational Opportunities Section, Division of Planning and Development will provide testimony on the requirements of Title IX of the Educational Amendments of 1972.

MINNESOTA STATE BOARD OF EDUCATION

Dorothea Chelgren, President of the Minnesota State Board of Education will provide testimony regardingthe requirements of Edu 4 and its' relationship to Edu 660;

Daniel Burton, Member, Minnesota State Board of Education will provide testimony regarding the requirements of Edu 620 and its' relationship to the proposed regulation Edu 660.

DEPARTMENT OF HUMAN RIGHTS

William Wilson, Commissioner of the Minnesota Department of Human Rights will provide testimony on the responsibility of that Department in the implementation of Edu 660.

SCHOOL DISTRICT PERSONNEL

Katrina Green, Assistant to the Superintendent for Urban Affairs, St. Paul Public Schools will provide testimony on the adequacy of Exhibits A and B to report the degree of compliance with State and Federal laws prohibiting discrimination;

Robert Williams, Associate Superintendent for Intergroup Education, Minneapolis Public Schools will provide testimony on the adequacy of Exhibits A and B to report the degree of compliance with State and Federal laws prohibiting discrimination.

STATE OF MINNESOTA)
(ss.
COUNTY OF RAMSEY)

AFFIDAVIT OF SERVICE

Eileen A. Gaiovnik, being first duly sworn, deposes and says that on the 21st day of December 1976, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Report of Hearing Examiner EDU-77-002-PE unstamped, by placing in the designated tray to be collected by messenger for delivery to the central mailing station as required by Minn. Stat., § 16.54 (1974), a true and correct copy thereof on all persons at the addresses shown on the attached mailing list.

Eileen A. Gaiovnik

Subscribed and sworn to before me
this 21st day of December, 1976.

Pamela A. Haven

PAMELA A. HAVEN
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires July 25, 1983

STATE OF MINNESOTA
OFFICE OF HEARINGS EXAMINERS

FOR THE DEPARTMENT OF EDUCATION

In the Matter of the Proposed Adoption of Rules of the State Board of Education governing Prohibition of Discriminatory Practices in Education, Equality of Educational Opportunity, and School Desegregation.

REPORT OF HEARING EXAMINER

The above-entitled matter came on for hearing before Hearing Examiner Peter C. Erickson of the Minnesota Office of Hearing Examiners at 9:00 a.m. on Thursday, November 4, 1976 in Room 83 of the State Office Building, St. Paul, Minnesota.

Michael J. Bradley, Special Assistant Attorney General, 303 Capitol Square Building, appeared as counsel for the Department of Education. Gregory Waddick, Assistant Commissioner, Division of Planning and Development, and Archie Holmes, Director, Equal Educational Opportunity Section, testified on behalf of the Department. The hearing continued until all interested groups or persons had an opportunity to be heard concerning the adoption of the proposed rules.

Pursuant to Minn. Stat. § 15.052, subd. 3 (1975 Supp.), this Report will include Findings of Fact, Conclusions and Recommendations. The Department of Education shall make a copy of this Report available for review to any interested person upon request. Copies of the Report will be furnished at a nominal cost by the Office of Hearing Examiners.

The Department shall, if it proposes to adopt the rules as originally proposed or amended, submit the complete hearing record to the Chief Hearing Examiner no earlier than ten days subsequent to the receipt of this Report. It shall include the rules as originally proposed, and the rules as proposed for adoption in final form.

The submission to the Chief Hearing Examiner shall precede review by the Attorney General. The Chief Hearing Examiner shall complete his review and submit his report to the Department on the issue of substantial changes in the rule within ten calendar

days. The Department shall be responsible for filing the rules with the Attorney General.

Based upon the proceedings herein, the Examiner makes the following:

FINDINGS OF FACT

1. On September 20, 1976, the Department filed the following documents with the Chief Hearing Examiner:

(a) A Proposed Order for Hearing;
(b) A Proposed Notice of Hearing with the Proposed Rules attached; and
(c) A statement of the number of persons expected to attend and estimated length of hearing.

2. On October 1, 1976, the Department mailed the Notice of Hearing to all persons and associations who had registered their names with the Secretary of State for the purpose of receiving such notice, to all persons and associations on a list maintained by the Department of Education, and to all members of the Legislature.

3. On October 12, 1976, the Department filed with the Office of Hearings Examiners the following documents:

(a) The Order for Hearing;
(b) The Notice of Hearing as mailed;
(c) The affidavit of receipt of the Secretary of State's list;
(d) The Affidavit of Mailing;
(e) The Statement of Need;
(f) The affidavit of mailing of a notice pursuant to Minn. Stat. § 15.0412, subd. 6, a copy of the Notice and material received pursuant to the Notice;
(g) The names of Department personnel who will represent the agency;
(h) A summary of evidence.

The documents were available for inspection at the Office of Hearings Examiners from the date of filing to the date of the hearing.

4. The record was closed after allowing 20 days for submission of written comments at the end of the day on November 24, 1976.

5. Statutory authority to promulgate the proposed rules is found in Minn. Stat. § 124.15, subd. 2a (1975 Supp.). This section mandates that the State Board of Education, after consultation with the Commissioner of Human Rights, shall adopt rules which direct school districts to file assurances of compliance with state and federal laws prohibiting discrimination

and which specify the information required to be submitted in support of the assurances.

6. The proposed rules are needed to: (1) comply with the mandate of § 124.15, subd. 2a; (2) insure that persons in education programs are not discriminated against on grounds of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, age or disability; (3) provide direction and standards so that both the schools and the beneficiaries of educational programs can determine compliance; and (4) assure that the Department of Education and local school boards are in compliance and remain in compliance so that neither or both are deprived of federal or state financial assistance.

7. The proposed amendments to Edu 623 are necessary grammatical and typographical changes and set a date certain on which the information required in subsection B is to be submitted.

8. Proposed Edu 660, Policy, is a needed policy statement which specifies the grounds on which discrimination is prohibited under both state and federal law.

9. Proposed Edu 661, Duties of local boards, penalty for failure to comply, is necessary to clearly specify the responsibilities of local school boards regarding implementation of the proposed rules, compliance with state and federal law, and to impose a penalty of reduction of state aids for non-compliance with the proposed rules.

10. Proposed Edu 662, Compliance reports and submission of data, is needed to set forth how often local school boards shall file statements of compliance (proposed Exhibit A) and information in support thereof (EEO-5 report and proposed Exhibit B).

11. Proposed Edu 663, Notices, is necessary to give direction to the Commissioner of Education in fulfilling the requirements embodied in Minn. Stat. § 124.15, subd. 3 (1975).

(a) The Minnesota Association of School Administrators proposed an addition to Edu 663 to read as follows: "C. The Commissioner shall provide to each school in the State of Minnesota the

documents specified in Exhibit B, number 1, and shall provide for the updating to each school to insure compliance." The Association contends that the job of assembling, distributing and updating the listed documents could be much more easily and economically done by the Department of Education.

12. Proposed Edu 664 is necessary to inform local school boards of the available appeal procedure when the local board disagrees with a ruling of the Commissioner of Education.

(a) The Minnesota School Boards Association expressed concern about the relationship between Edu 664 and the appeal procedures already established in Minn. Stat. § 124.15, subd. 4, as they are not uniform. The question, then, of statutory authority to promulgate a different appeal procedure thus arises.

13. Proposed Edu 665 is necessary to clarify the reviewing responsibilities of the Commissioners of Education and Human Rights. It also sets out time limits for a determination of noncompliance with federal law and the sanctions to be used if noncompliance is found.

(a) The Department proposed to amend Edu 665 as follows:

> Upon receipt of the school board's assurance of compliance and the supporting data, the commissioner shall:
>
> A. In order to determine whether special state aid should be withheld, process the data and forward it to the commissioner of human rights, pursuant to Minn. Stat. § 124.15, subd. 2a.
>
> B. In order to determine whether a violation of federal laws prohibiting discrimination has occurred:
>
> 1. Within 90 days of the receipt of the data, the commissioner of education shall review it to determine whether a school district is in compliance with federal law prohibiting discrimination.
>
> 2. If, after review of the data, it appears to the commissioner that a violation of federal law exists, he shall make a prompt investigation.
>
> 3. If the investigation indicates noncompliance with federal law, the commissioner shall inform the school district.
>
> 4. If the non-compliance cannot be resolved by informal means, the commissioner may proceed to suspend or terminate federal assistance.

This amendment was proposed to clarify the intent of Edu 665 in response to questions raised at the hearing and in written comments.

(b) The issue was raised as to the authority of the Commissioner of Education to suspend or terminate federal assistance. The Department contends that:

> Minn. Stat. § 124.15, subd.2a (Supp. 1975), specifically requires the commissioner to receive assurances of compliance with federal law. Furthermore, Title VI, which is also applicable to Title IX, requires that the commissioner not transfer any federal funds to a school district that violates Title VI or IX. A failure in this regard potentially jeopardizes all federal money that presently is received by the commissioner for the use of school districts.

(c) The Department of Human Rights proposed to amend Edu 665A. as follows: ". . . forward it to the commissioner of human rights, in a format prescribed by the Department of Human Rights, pursuant to . . ." They contend that unless the data is submitted in a form prescribed by Human Rights, it will be impossible for them to act on it.

(d) The National Organization for Women (N.O.W.) submits that Edu 665A. is not clear as to what action, if any, is required by the Commissioner of Human Rights in order to trigger the sanctions imposed by Minn. Stat. § 124.15, subd. 3. They contend that the Commissioner's role is purely advisory and that the Department of Education can impose aid reductions pursuant to subd. 3 without notification by Human Rights. The Department stated that the statute is unclear on that question, and consequently, the proposed rules are not as definite as they might have been.

14. Proposed Edu 666 is needed to inform local boards that the rules apply to all districts of the state.

15. Proposed Exhibit A (which is a part of the actual rule) is the assurance of compliance form. This form sets out the state and federal laws that must be complied with and requires the signatures of school board representatives to affirm that compliance.

(a) A question was raised as to the potential liability of school district officers who are signatories on the form. The

Department states that there "is no personal liability. The only potential liability is the loss of state and federal aid to the district."

16. Proposed Exhibit B (which is also a part of the rule) is an informational form which, after having been completed by the school board, supports the assurance of compliance (Exhibit A).

(a) Much criticism was levied against proposed Exhibit B by several persons and groups, and a new Exhibit B was offered by the Sex Bias Advisory Committee. The Committee testified as follows:

> "The Sex Bias Advisory Committee of the State Board of Education has prepared a revised version of Exhibit B which we believe better serves the purposes of the statute and the needs of the schools to be informed as to the specific requirements made of them by laws prohibiting discrimination. It is our belief that school people have a genuine commitment to bring their schools into compliance with the law, but that they cannot undertake this responsibility in a meaningful way unless they know specifically what is required of them.
>
> "The principle difficulty with the Department version of Exhibit B is that it does not ask for information as required by the statute but rather it simply asks for another more detailed list of assurances of compliance. For example, question 13, of the Department version asks:
>
> > Do district policies and guidelines ensure compliance with state and federal law requirements of non-discrimination with regard to student marital or parental status?
>
> "This question does not really ask for information. It is a reptition of the assurance of compliance found in Exhibit A. This question puts the entire burden of reading and interpretation of the law (not just one law but many) on the school people who must fill out this questionnaire. This is an unrealistic and an unreasonable burden.
>
> "The Sex Bias Advisory Committee would replace this question with one that is more specific and more informative.
>
> 12. Student marital/parental status:
>
> a. Does the district have a written policy which specifies that pregnant students shall not be excluded from any educational program or activity except when the student requests voluntarily to participate in a separate portion of the program or activity?
>
> b. If a medical certificate is required of pregnant students, is it also required of all other

students for physical and emotional conditions requiring the attention of a physician?

"Whenever possible, we have eliminated questions of the type "Do you comply with . . ." and replaced them by a list of specific actions or prohibitions required by the rule. The object in all cases is to ask for information which is available to school people without requiring them to perform the function of a lawyer or a judge.

"In some instances, questions on the Department's version simply reproduce language from a federal rule. When this language tends to be legalistic and obscure, we have rewritten the question so as to simplify and clarify it. Several questions from the Department's version are not changed at all.

"The questions on the Department's version seem to have no logical order. For example, the five requirements of Title IX are not listed together but are scattered throughout. Similarly, no distinction is made between educational and employment practices. In order to provide organization, the questions have been reordered and grouped into the categories: General, Title VI Procedures, Title IX Procedures, Educational Services, and Employment Practices."

(b) An amendment was proposed to question 13b. of the Sex Bias Committee Exhibit B to strike the words "or when the sport is a contact sport". This amendment is the result of amended findings in a recent Ramsey County District Court case, Striebel et al v. St. Paul Board of Education.

17. It was suggested that a grievance procedure be set out in the rules in compliance with federal regulations.

18. The Twin Cities Chapter of N.O.W. submitted a lengthy statement urging rejection of the proposed rules in toto because they "believe that these rules would so subvert the purposes of the legislation as to render it essentially inoperative."

19. No "cost-of-implementation estimate" was submitted by the Department pursuant to Chapter 138, Laws of 1976.

CONCLUSIONS

1. Due, timely and adequate legal notice of the hearing was properly served and filed by the Department of Education. All other substantive and procedural requirements of statute or rule have been complied with.

2. The Examiner concludes that the Sex Bias Committee Exhibit B, attached hereto, with the amendment to it set out in Finding 16b., should be substituted for proposed Exhibit B. The Committee Exhibit is more functional, more informative, and although

it may have to be amended frequently, will serve a much more useful purpose than proposed Exhibit B.

3. The Examiner concludes that proposed Edu 663 should be amended by adding section C. to read"

> "The Commissioner shall provide to each school district in the state of Minnesota the documents specified in Exhibit B, number 1, and shall update the material as needed to insure compliance."

This is essentially what is proposed in Finding 11a.; however, it places the burden on the district to disseminate the documents to each school. It is reasonable to place the responsibility of furnishing the correct, updated law to the districts on the Department.

4. An appeal procedure is already set out for § 124.15 in subdivision 4. This procedure should apply to disputes arising out of new subdivision 2a. The Department of Education has not demonstrated statutory authority to change that procedure by rule, as they have proposed to do in Edu 664. Consequently, the Hearing Examiner recommends that Edu 664 be amended to read:

> Edu 664 Appeal of Commissioner's Determination. Any school district aggrieved by a decision required of the commissioner under this chapter may dispute that decision pursuant to Minn. Stat. § 124.15, subd. 4.

5. Proposed Edu 665 gives the Commissioner of Education the power to "suspend or terminate federal assistance." By the State's own admission, that power is granted by federal law, not state law. Furthermore, the Department has not demonstrated that it has statutory authority to promulgate a rule which specifies that power. All that § 124.15, subd. 2a authorizes is that rules be adopted "which direct school districts to file. . . assurances of compliance . . . and which specify the information required to be submitted in support of the assurances." Section 124.15, subd. 3, gives the Commissioner power to reduce only state aids. The Commissioner, of course, may exercise the federal grant of authority in regard to federal assistance, however, that authority should not be given by the proposed rules. Consequently, the Examiner recommends that proposed Edu 665 be amended to read:

> "Upon receipt of the school board's assurance of compliance and the supporting data, the commissioner shall:

A. In order to determine whether special state aid should be withheld, process the data and forward it to the commissioner of human rights, pursuant to Minn. Stat. § 124.15, subd. 2a.

B. In order to determine whether a violation of federal laws prohibiting discrimination has occurred:

1. Within 90 days of the receipt of the data, the commissioner of education shall review it to determine whether a school district is in compliance with federal law prohibiting discrimination.

2. If, after review of the data, it appears to the commissioner that a violation of federal law exists, he shall make a prompt investigation.

3. If the investigation indicates noncompliance with federal law, the commissioner shall inform the school district."

6. The Examiner feels that the Department of Human Rights and the Department of Education will have to resolve the "data format" question between themselves. It would not be reasonable to allow Human Rights to dictate the manner in which they receive information from the Department of Education. The suggestion of sending additional guidelines or information sheets to school districts would be in violation of Chapter 15.

7. The Examiner concludes that it is a legislative responsibility to clear up the ambiguity set out in Finding 13d.

8. The Examiner concludes that no statutory authority has been shown to enable the Department to enumerate a grievance procedure in the proposed rules.

9. Chapter 138, Laws of 1976, mandates a written estimate statement only in some instances. The record does not reveal any evidence which would warrant a conclusion that an estimate should have been submitted.

10. The Examiner concludes that the Department of Education has documented its statutory authority to promulgate the proposed rules with the exception of those recommended to be amended in Conclusions 4 and 5. The need for and reasonableness of the proposed rules have been demonstrated by an affirmative presentation of facts.

11. The Examiner concludes that the amendments he is suggesting to the rules make the rules more reasonable and that none of these amendments constitute a substantial change.

RECOMMENDATION

That the Department of Education adopt the proposed rules as recommended to be amended in this Report.

Dated this 21st day of December, 1976.

Peter C. Erickson

PETER C. ERICKSON
Hearing Examiner

STATE OF MINNESOTA
COUNTY OF RAMSEY

BEFORE PETER C. ERICKSON
HEARING EXAMINER
OFFICE OF HEARING EXAMINER

In the matter of the proposed adoption of Rules of the State Board of Education governing "Prohibition of Discriminatory Practices in Education, Equality of Educational Opportunity, and School Desegregation."

FINDING OF FACT

The above-entitled matter came on for hearing before Peter C. Erickson, Hearing Examiner of the Office of Hearing Examiner of the State of Minnesota on the 4th day of November, 1976 in Room 83 of the State Office Building, St. Paul, Minnesota 55155 after proper notice required by Minnesota Statutes, 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 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 recommendations by the Hearing Examiner with respect to the substitution of the Sex Bias Committee's Exhibit B with amendment and the amendments to EDU 663 (c), 664 and 665 will result in the proposed rules being more specific and less subject to misinterpretation, except that item number 10 (a) in exhibit B must be amended to read, "are all testing and appraisal materials the same for all students without regard to sex?"

   That amendment is necessary because as originally proposed is broader than either state or federal law and should be restricted pursuant to Title IX of the Education Amendments of 1972 to the category of sex.

STATE OF MINNESOTA
STATE BOARD OF EDUCATION

Howard B. Casmey
Commissioner
State Department of Education

STATE OF MINNESOTA
COUNTY OF RAMSEY

BEFORE PETER C. ERICKSON
HEARING EXAMINER
OFFICE OF HEARING EXAMINER

In the matter of the proposed adoption of Rules of the State Board of Education governing "Prohibition of Discriminatory Practices in Education, Equality of Educational Opportunity, and School Desegregation."

ORDER ADOPTING RECOMMENDATION OF HEARING EXAMINER AND RULES

The above-entitled matter came on for hearing before Hearing Examiner Peter C. Erickson of the Minnesota Office of Hearing Examiner at 9:00 a.m. on Thursday, November 4, 1976 in Room 83 of the State Office Building, St. Paul, Minnesota 55155, after proper notice required by Minnesota Statutes, 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 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 December 21, 1976, relative to the above - entitled matters and the findings of fact of Howard B. Casmey, Commissioner of Education.

THEREFORE, IT IS ORDERED that the Rules identified as EDU 660-679 are adopted this 15th day of February, 1977, pursuant to authority vested in us by Laws 1976, Chapter 271, Section 27.

STATE OF MINNESOTA
STATE BOARD OF EDUCATION

Lorin Gasterland
President
State Board of Education

CERTIFICATE OF BOARD'S
AUTHORIZING RESOLUTION

I, Howard B. Casmey, do hereby certify that I am secretary of the state board of education, a board duly authorized under the laws of the State of Minnesota, and that the following is true, complete, and correct copy of a resolution adopted at a meeting of the state board of education duly and properly called and held on the 12th day of July 1976; that a quorum was present at said meeting; and that a majority of those present voted for the resolution; that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> RESOLVED, that the State Board of Education shall call a hearing for the purpose of informing the public concerning proposed rules of the Board governing prohibition of discriminatory practices in education, equality of educational opportunity, and school desegregation; and that the Commissioner or his Deputy is authorized to sign an order and notice of such hearing to be conducted under rules of the board.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 2nd day of September, 1976.

Howard B. Casmey
Secretary, State Board of Education

Dorothea M Chelgren
Member, State Board of Education

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: March 8, 1977