436 - Bd of Education

RULES REVIEW CHECKLIST

DATE RULES RECEIVED 6/21 Temporary Rule _____

Resubmitted and Received 8/4

DUE DATE 7/11 ~~8/14~~

a. Returned to Agency w/o filing w/Secy of State _____
b. Approved _____ Date Sent Back to Agency _____

- -

1. Rules as Adopted ✓
2. Rules as Proposed ✓
3. Certificate of Board's Authorizing Resolution, where applicable ~~N.A~~ ✓
4. Order for Hearing ✓
5. Notice of Hearing ✓
   (i) Sufficiency ✓
6. Secretary of State's List ✓
7. Certificate of Acquisition of Secretary of State's List ✓
8. Affidavit of Mailing ✓
   (i) At least 30 days prior to hearing ✓
9. Statement of Need and Evidence ✓
10. Hearing Examiner's Report _____
11. Agency's Findings of Fact ✓
12. Certificate of Board's Resolution Adopting Rules, where applicable _____
13. Order Adopting ✓
14. Report of Chief Hearing Examiner ✓
    (i) Finding of No Substantial Change ✓
    (ii) Permission to Incorporate by Reference, where applicable N.A.
15. Certificate of Compliance with Rulemaking Procedures ✓
16. Copy of Notice of Intent to Solicit Outside Opinion, where applicable N.A
17. Petition by Public, where applicable N.A.



Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Attorney General

Charles T. Mottl
Special Assistant
Attorney General

July 11, 1978

Lee E. Sheehy
Special Assistant
Attorney General

296-1288

In the Matter of the Proposed Adoption of Rules of the State Board of Education for Pre-School Health and Developmental Screening and Experimental Programs Exception

As we discussed, the above-captioned rules are being returned herewith and have not been filed with the Secretary of State. The following rules, or portions thereof have been disapproved as to form and legality for the following reasons:

1. Certification of Board's Adoption of Rules Resolution: Such certification required pursuant to AttyGen 302(i)(2) did not appear to be submitted to this office in the materials provided by the agency.

2. 1.0010: Besides the improper citation brought to my attention by Lois Steinhaus which must be corrected, Subdivision C improperly grants the agency unfettered discretion by use of the word "may". The word "shall" must be used.

3. 1.0720(C): The final clause in the definition of the word "parent" may too broadly extend rights given to "parents" under the rule to agencies or individuals which should not have such rights. E.g., "parents" under these rules have rights to all private data. Since one citizen indirectly raised this spector during public hearings (See Hearing Examiner's Report, Paragraph 11(b), p.6), this office wants further assurances from the agency that no such possibility exists or, in the alternative, clarifying language added to the definition of "parent" which would eliminate such a possibility.

4. 1.0722(D): This rule appears to improperly vary the statutory provisions of Minn. Stat. § 123.702, Subd. 1 (1977). Specifically, that statute leaves the determination of "financially feasible" to the local school board. Because of the use of the word "may", the rule implies that the final determination shall be made by the state board. One means of remedying this flaw is to change the word "may" to "shall".

5. 1.0723(A): The absence of a conjunctive word denoting the relationship between Subdivisions 1 and 2 of this rule makes its meaning unclear. As with the subsequent sections, the words "and" or "or" must be inserted to clarify whether Subdivisions 1 and 2 are alternates or cumulative.

I have retained a copy of materials in this matter should you wish to discuss them with me. Upon consideration of the above and resubmittal based on such consideration and appropriate changes, I will approve and file these rules. Please advise the agency to resubmit the originals of the Orders Adopting and Adopted Rules, as amended if necessary, which I have returned herewith.

LES:mb

Enclosure

cc: Duane Harves

8-4-78

To: Lee Sheehy
From: Chuck Mottl 3854

Attached are the amended rules:
1: Experimental Programs for Elementary & Middle Schools
2: PreSchool Screening Rule

In my view, the changes are consistent with your memorandum of July 11, 1978.

The Department took the changes to the State Board of Education for approval. Appropriate certificate are attached.

Call me if you have any questions

RECEIVED
AUG 4 19[illegible]
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

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 for Pre-school Health and Developmental Screening.

FINDINGS OF FACT AND ORDER ADOPTING RULES

The above-entitled matter came on for hearing before Hearing Examiner Peter C. Erickson of the State Office of Hearing Examiner at 9:00 a.m. on Friday, February 3, 1978 in the Department of Health Building, Minneapolis, Minnesota, 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, we find that the findings of fact of the Hearing Examiner accurately reflect the facts in the record.

NOW THEREFORE, BE IT RESOLVED that the State Board of Education hereby adopts the following Findings of Fact and Conclusions:

1. The Hearing Examiner concluded that the following rules as proposed, were both needed and reasonable. The State Board of Education concurs and hereby adopts and incorporates herein the Findings of Fact, Conclusions and Recommendations of the Hearing Examiner with respect thereto:

§ 1.0720 A, B, C, D, E, F, G.

§ 1.0721 A, B, C.

§ 1.0722 A 1, A 2, A 3, A 4, A 5, A 6, A 9, B, C, E, F.

§ 1.0723 A 2, B, C, D, F 1.

§ 1.0724 A 2 a, A 3, A 4 a, A 4 b, A 5, B 2 a, B 2 c, B 2 d, B 2 e, B 3, D, E.

§ 1.0725 A, B, C, D.

2. The following changes were introduced by the Department of Education at the public hearing:

§ 1.0724 A.2.b. "Direct observation of the child's functioning utilizing <u>standardized</u> developmental screening instruments approved by the Minnesota Department of Education...."

Department of Education personnel testified in substance that the addition of the word, "standardized", is necessary to ensure that children will be screened in an

objective, uniform manner rather than a subjective arbitrary fashion. Standardized procedures are required for comparing results and evaluating the effectiveness of the screening, as is required by Minnesota Laws 1977, Chapter 437. No contrary testimony was introduced.

§ 1.0724 A.4.d. "A test such as the Screening Test for Young Children and Retardates (STYCAR), the Snellen E cube, the Snellen Alphabet Chart, ~~and plus lenses~~...."

Dr. Letson from the Children's Eye Clinic, University of Minnesota, testified that the plus lenses is inappropriate for pre-school children since it confuses them and makes results confusing to interpret. No contrary testimony was introduced. The term, "and plus lenses", is therefore deleted.

§ 1.0724 B.1. "Assessment of the unclothed child including an inspection of pulse, respiration, blood pressure, head, eyes, ears, nose, pharynx, neck, chest, heart, lungs, abdomen, spine, extremities, joints, muscle tone, skin and ~~neurological~~ neurologic reaction according to normal procedures."

This is an editorial change to clarify the procedure to be used.

§ 1.0724 ~~C.~~ I. "Diagnosis, treatment or therapy shall not be provided in the pre-school screening program but this does not preclude provision of such services as a part of a related program."

This is an editorial change to clarify the meaning of the sentence.

The Hearing Examiner concluded the changes, as proposed, were both needed and reasonable. The State Board of Education concurs and hereby adopts and incorporates herein the Findings of Fact, Conclusions and Recommendations of the Hearing Examiner with respect thereto.

3. Pursuant to the suggestion of the Hearing Examiner in Finding 14a the word "statutorily" has been deleted from § 1.0722 D, and the words "to the extent the school board determines they are financially feasible" has been deleted from § 1.0724 A. and B. As amended, these will read:

§ 1.0722 D. "Exceptions to the ~~statutorily~~ required screening components may be made by the State Board upon submission to it of evidence that a local board is not able to supply such screening due to financial limitations."

§ 1.0724 A. "Screening procedures shall, ~~to the extent the school board determines they are financially feasible,~~ include the following components:"

§ 1.0724 B. "As of July 1, 1978, the screening procedure shall, in addition to the components included in A. of this section, ~~and to the extent the school board determines they are financially feasible,~~ include the following components:"

Testimony at the hearing indicated some confusion in interpreting whether the local school board or the State Board of Education would determine the financial feasibility of providing all components of the screening. The State Board of Education concurs in the Examiner's finding that the above changes clarify the authority of the State Board of Education to make such decisions.

4. Finding 14 b of the Hearing Examiner indicated a need to clarify that only a registered nurse, and not a licensed practical nurse, would be qualified to perform certain screening functions. The State Board of Education therefore amends § 1.0723 A.1. as follows:

§ 1.0723 A.1. ~~"Who must be registered and currently licensed in the State of Minnesota.~~ A nurse currently licensed to practice professional nursing in the State of Minnesota shall be qualified to perform those pre-school screening functions permitted under the state Nurse Practice Act."

This specific wording is used to maintain consistency with the Nurse Practice Act (statutory) and better describes the limitations on nursing activity than the wording in the rule as initially proposed. In addition, the amendment is consistent with Minnesota Laws 1978, Chapter 793, Section 23 amending Minnesota Laws 1977, Chapter 437. The State Board of Education finds that the amendment is reasonable and necessary.

5. Finding 14 h of the Hearing Examiner recommended changes as follows:

§ 1.0724 A.1. "An individual review of past and present health status including perinatal, psychosocial, family health, ~~nutrition intake~~ and immunizations."

The inclusion of "nutrition intake" in the description of required components of the program for the first year was in error, since this component by Minnesota Laws 1977, Chapter 437, Section 2, Subdivision 1 only applies to the second year of the program. The State Board of Education concurs with this deletion as necessary to keep the rules consistent with Minnesota Laws 1977, Chapter 437.

§ 1.0724 B.2.b."Urine ~~and Bacteriuria~~ (Bililabstix, ~~Culturia Assay~~)."

Consideration of further evidence since the hearing confirms that the bacteriuria test for pre-school females is of questionable value. The State Board of Education concurs with this deletion.

6. Finding 15 b. suggested a paragraph to be added to § 1.0724 E concerning immunizations. The suggested amendment stated, "If federal law requires that immunization services be offered as a part of pre-school screening, local school boards shall offer such serv ices."

The State Board of Education finds that:

a) There is no federal law which specifically requires such immunization services as a part of pre-school screening.

b) The pre-school screening law does not authorize or provide for immunization services to be provided by the school, and does not provide adequate funds to provide such service.

c) The local school board may assume liability related to such immunization services if they are provided directly by the board.

d) Legislation of the 1978 session mandates that schools require certain immunizations prior to entry of a child into school the first time. The choice as to how and when immunizations are made available to students should be an option of the local school board.

The State Board of Education therefore rejects the recommendation of the Hearing Examiner.

7. In finding 15 d., the Hearing Examiner suggests the need for further clarification of the follow-up process. Pursuant to such Finding the following amendments are made:

§ 1.0722 A.7. "Referral procedures to be utilized when a condition is identified in need of ~~diagnosis or treatment~~ further evaluation."

This is an editorial change to clarify the purpose of referral. A number of situations could arise which would not require diagnosis or treatment, but would indicate a further need for evaluation of the pupil.

§ 1.0722 A.8. "Procedures to be utilized to determine whether or not referral resources were ~~utilized~~ used in accordance with 5 MCAR 1.0724F."

This amendment provides that the conditions to meet the rule, 5 MCAR 1.0724 F, must be reported in the plan submitted to the State Board of Education.

§ 1.0724 F. "A minimum of two attempts shall be made, at least one of which shall be in writing with return postage, to determine whether recommended referrals were utilized."

This amendment describes a procedure to ensure that an effort will be made to follow up on all suggested referrals. Since the program is voluntary on the part of parents, two attempts to make a contact should be adequate to provide necessary information without leading to a feeling of harassment on the part of parents. Provision of return postage should make it possible for all parents to respond without an outlay for postage or undue inconvenience. The State Board of Education concurs with the need for clarification, and finds these amendments reasonable and necessary.

8. Pursuant to finding 14 c, § 1.0723 is amended to read:

§ 1.0723 E. "Clinic assistant.

1. Who has been trained by Department of Education or Department of Health professional staff in administering one or more of the health or developmental screening measures, or

2. Who has been trained by a program providing equivalent preparation as determined by the Department of Health or the Department of Education."

The State Board of Education finds that there are a number of alternate sources of training, such as college or university courses, which could be used to train clinic assistants. Such training sources should be utilized, but to maintain standards, the training program should be approved by the appropriate agency, either the Department of Education or the Department of Health. The State Board therefore finds these amendments reasonable and necessary.

9. Medical testimony presented at the hearing (pages 87-90, transcript of hearings) suggested an amendment to § 1.0724 A.4.d., in addition to the deletion of the "plus lenses". This would provide some flexibility to incorporate new and different tests for visual acuity which provided comparable measurement to those now listed. The amendment is as follows:

§ 1.0724A.4.d. "Test for visual acuity. A test such as the Screening Test for Young Children and Retardates (STYCAR), the Snellen E cube, the Snellen Alphabet Chart, ~~and plus lenses~~ or a test with equivalent standards, as determined by the Department of Health or Department of Education, must be used."

The State Board of Education finds this amendment is needed and reasonable.

10. Finding 14 E of the Hearing Examiner indicated that the Worth 4 Dot test is inappropriate for children under 6 years of age. The State Board of Education concurs and amends § 1.0724 A.4.c. as follows:

§ 1.0724 A.4.c. "Muscle balance screening procedures include at least observation, cover test, and the Hirschberg test, ~~and the Worth 4 Dot~~ or a test with equivalent standards as determined by the Department of Health or the Department of Education, which is appropriate for the age group being screened."

This amendment also provides for flexibility in using other alternate tests which may become available and which provide measurement equivalent to the others listed.

11. Legislation of the 1978 session has indicated a need for some clarification of § 1.0723 relating to priority to be given to potential providers of services to schools. The section is amended to read:

§ 1.0723 Staffing.

"Screening shall be performed by qualified personnel. In selecting personnel to implement the pre-school screening program, school districts shall give first priority to volunteers. Second priority shall be given to others possessing minimum qualifications who can provide services determined to be most cost effective. A person may perform one or more of the functions described in A through F of this section provided appropriate qualifications are met. Each pre-school health and developmental screening program shall include the following screening personnel meeting the stated minimum qualifications:"

The State Board of Education finds this amendment necessary to bring the proposed rules into conformity with Minnesota Laws 1978, Chapter 793.

12. In finding 12.d., the Hearing Examiner suggested further spelling out of activities to coordinate pre-school screening with other programs to minimize cost and maximize efficiency on the local level. The State Board of Education agrees and adopts the following amendments:

§ 1.0721 D. "The pre-school screening program and follow up shall be coordinated as far as possible with other health screening programs to eliminate duplication of services and provide more efficient administration. School districts shall arrange for exchange of information on students with other health screening programs. Such exchange shall be consistent with 5 MCAR 1.0724 D."

The State Board of Education finds that there are a number of other programs which may coordinate screening with the pre-school screening program, including the Early and Periodic Screening, Diagnosis and Treatment program, Headstart, the "Child Find" program related to special education services and others. Because of the variety and number of such programs, details of coordination are determined to be a local option, thus providing the greatest possible flexibility and cost effectiveness as determined by the local school board.

The State Board of Education finds this amendment reasonable and necessary.

§ 1.0724 C. "No pre-school screening program shall provide laboratory tests, a health history or physical assessment so any child who has been provided with those laboratory tests, a health history, physical assessment or physical examination within the previous 12 months. The school district shall request the results of any laboratory test, health history or physical examination within the 12 months preceding a scheduled pre-school screening clinic, ~~If requested by the parent, health history and physical examination completed by a personal physician within the~~

~~previous-12-months-or-completed-by-a-personal-physician-within-the-previous-12 months-or-within-60-days-after-the-provision-of-other-screening-tests-shall-be accepted-by-the-school-district~~ for inclusion in the school record in lieu of comparable information collected in the screening program. Procedures shall be developed for exchange of student information in accordance with 5 MCAR 1.0724 D."

In addition to spelling out various aspects of coordination as recommended by the Hearing Examiner, the State Board of Education finds this amendment is necessary to bring the proposed rules in conformity with Minnesota Laws 1978, Chapter 793, which changes the use of physician information collected within the past 12 months from a voluntary to a mandated procedure. This amendment provides for greater cost effectiveness of the program by utilizing already existing services instead of duplicating screening. At the same time provision is made for utilization of results from other agencies in school records for greater efficiency and benefits to the children.

The State Board of Education finds this amendment reasonable and necessary.

§ 1.0724 H. "Local school districts shall request information from parents concerning Medical Assistance eligibility to make it possible for the district to comply with 5 MCAR § 1.0725 C."

To avoid duplication of services, it is necessary that local school boards be aware of children eligible for screening under the Medical Assistance program. Confidentiality of information laws complicate the process by which information on individuals may be exchanged between agencies and would necessitate considerable telephone communication and exchange of written information, placing an undue burden upon the schools. Requesting the information from parents simplifies the process, avoids undue delays and provides for parental control of information.

The State Board of Education finds this amendment reasonable and necessary.

Having considered all other comments and suggestions, no other changes in the Rules are recommended at this time.

THEREFORE, IT IS ORDERED that the rules identified as § 1.0721 - § 1.0725 as amended (attached hereto) are adopted this 5th day of June, 1978, pursuant to authority vested in us by Minnesota Statutes 123.703, Subdivision 1.

STATE OF MINNESOTA
STATE BOARD OF EDUCATION

Henry G. Tweten
President
State Board of Education

Addendum

The following changes were inadvertently omitted from the Finding of Fact and Order Adopting Recommendations of Hearing Examiner and Rules for Pre-School Health and Developmental Screening.

§ 1.0723 Staffing.*

"F. 2. Registered nurse who has been trained by the Minnesota department of health or approved by the Minnesota department of health as having been trained to perform dental screening."

§ 1.0724 ~~F.~~ G.

This change in lettering is necessary due to the addition of the new paragraph F. There is no change in the wording of the paragraph.

STATE OF MINNESOTA
STATE BOARD OF EDUCATION

Henry G. Tweten
President
State Board of Education

*This change is to clarify that the person performing dental screening should be a qualified nurse and that volunteers, for instance, would not be appropriately used to perform this screening.

EDU 78-003-PE

Board of Education

Division of Instruction

Rules for Experimental Programs for Elementary and Middle Schools; and Pre-School Health and Developmental Screening are Adopted

The rules published in the State Register, Vol. 2, No. 21, pp. 1051-1055, November 28, 1977 (2 S. R. pp. 1051-1055), are adopted and are identical in every respect to their proposed form with the following amendments. (Only the sections that have been changed appear here).

Chapter Thirty-Six: Pre-School Health and Developmental Screening

5 MCAR § 1.0721

D. The pre-school screening program and follow-up shall be coordinated as far as possible with other health screening programs to eliminate duplication of services and provide more efficient administration. School districts shall arrange for exchange of information on students with other health screening programs. Such exchange shall be consistent with 5 MCAR § 1.0724 D.

5 MCAR § 1.0722

A. 7. Referral procedures to be utilized when a condition is identified in need of ~~diagnosis or treatment.~~ further evaluation.

A. 8. Procedures to be utilized to determine whether or not referral resources were ~~utilized.~~ used in accordance with 5 MCAR § 1.0724 F.

D. Exceptions to the ~~statutorily~~ required screening components may be made by the state board upon submission to it of evidence that a local board is not able to supply such screening due to financial limitations.

5 MCAR § 1.0723 Staffing.

Screening shall be performed by qualified personnel. In selecting personnel to implement the pre-school screening program, school districts shall give first priority to volunteers. Second priority shall be given to others possessing minimum qualifications who can provide services determined to be most cost effective. A person may perform one or more of the functions described in A through F of this section provided appropriate qualifications are met. Each pre-school health and developmental screening program shall include the following screening personnel meeting the stated minimum qualifications:

A. Nurse.

1. ~~Who must be registered and currently licensed in the state of Minnesota.~~ A nurse currently licensed to practice professional nursing in the state of Minnesota shall be qualified to perform those pre-school screening functions permitted under the state Nurse Practice Act.

E. Clinic assistant.

1. Who has been trained by department of education or department of health professional staff in administering one or more of the health or developmental screening measures~~.~~, or

2. Who has been trained by a program providing equivalent preparation as determined by the department of health or the department of education.

F. Dental screener.

2. Registered nurse Wwho has been trained by the Minnesota department of health or approved by the Minnesota department of health as having been trained to perform dental screening.

5 MCAR § 1.0724 Screening procedures.

A. Screening procedures shall, ~~to the extent the school board determines they are finacially feasible,~~ include the following components:

1. An individual review of past and present health status including perinatal, psychosocial, family health, ~~nutrition-intake~~ and immunizations.

A. 2. b. Direct observation of the child's functioning utilizing standardized developmental screening instruments approved by the Minnesota department of education and which have:

A. 4. c. Muscle balance screening procedures include at least observation, cover test, and the Hirschberg test ~~and-the-Worth-4-Dot.~~ or a test with equivalent standards as determined by the department of health or the department of education, which is appropriate for the age group being screened.

A. 4. d. Test for visual acuity. A test such as the Screening Test for Young Children and Retardates (STYCAR), the Snellen E cube, the Snellen Alphabet Chart, ~~and-plus-lenses~~ or a test with equivalent standards, as determined by the department of health or department of education, must be used.

B. As of July 1, 1978, the screening procedure shall, in addition to the components included in A of this section, ~~and-to-the-extent-the-school-board determines-they-are-financially-feasible~~ include the following components:

B. 1. Assessment of the unclothed child including an inspection of pulse, respiration, blood pressure, head, eyes, ears, nose, pharynx, neck, chest, heart, lungs, abdomen, spine, extremities, joints, muscle tone, skin and neurological reaction according to normal procedures.

B. 2. b. Urine ~~and-bacteriuria~~ (bililabstix~~,-culturia-assay~~).

C. No pre-school screening program shall provide laboratory tests, a health history or physical assessment to any child who has been provided with those laboratory tests, a health history, physical assessment or physical examination within the previous 12 months. The school district shall request the results of any laboratory test, health history or physical examination within the 12 months preceding a scheduled pre-school screening clinic, ~~If-requested-by-the-parent,~~

~~health-history-and-physical-examination-completed-by-a-personal-physician-within the-previous-12-months-or-within-60-days-after-the-provision-of-other-screening tests-shall-be-accepted-by-the-school-district~~ for inclusion in the school records in lieu of comparable information collected in the screening program. Procedures shall be developed for exchange of student information in accordance with 5 MCAR § 1.0724 D.

F. A minimum of two attempts shall be made, at least one of which shall be in writing with return postage, to determine whether recommended referrals were utilized.

~~F.~~ G. Data on individual students obtained in the screening program shall be incorporated into school district records, except as indicated in D of this section.

H. Local school districts shall request information from parents concerning medical assistance eligiblity to make it possible for the district to comply with 5 MCAR § 1.0725 C.

~~G.~~ I. Diagnosis, treatment or therapy shall not be provided in the pre-school screening program but this does not preclude provision of such services as a part of a related program.

5 MCAR § 1.0725

A. Payment of aids for the costs of screening conducted in accordance with an approved plan shall be made as provided for by legislative appropriations.

STATE OF MINNESOTA

STATE BOARD OF EDUCATION

IN THE MATTER OF THE ADOPTION OF
PROPOSED RULES OF THE STATE BOARD
OF EDUCATION GOVERNING EXPERIMENTAL
PROGRAMS FOR ELEMENTARY AND MIDDLE SCHOOLS.

FINDINGS AND ORDER
ADOPTING RULES

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 3rd day of February, 1978, at 9:00 a.m. in the Department of Health Building, Minneapolis, Minnesota after proper notice required by Minn. Stat., Section 15.0412 was served upon all persons, associations, and other interested groups registered with the Secretary of State for that purpose.

After affording interested persons an opportunity to present written and oral data, statements, and arguments, having reviewed all of the testimony, having considered all of the evidence adduced, having considered the Findings of Fact, as they relate to the above captioned rules as found on pages 2, 3, and 4 of the Report of the Hearing Examiner which is attached, Conclusions and Recommendation of the Hearing Examiner relating to the above captioned rules as found on pages 22 and 23 of the Report of the Hearing Examiner which is attached, 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 rule.

NOW, THEREFORE, BE IT RESOLVED, that the State Board of Education hereby adopts and incorporates herein the Findings of Fact, Conclusions and Recommendation of Peter C. Erickson, Hearing Examiner, dated March 31, 1978, relative to the above captioned rules and

THEREFORE, IT IS ORDERED that this Rule attached hereto and identified as 5 MCAR § 1.010 is adopted this 5th day of June, 1978, pursuant to authority vested in us by Minn. Stat., Section 121.11.

By _____

President
State Board of Education

STATE OF MINNESOTA
DEPARTMENT OF EDUCATION

IN THE MATTER OF: The proposed rules of the State Board of Education relating to pre-school health and developmental screening.

STATEMENT OF NEED

Minnesota Laws 1977, ch 437 (codified as Minnesota Statues Sections 123.701-123.705 (Supp. 1977)) requires all school districts in the state to make pre-school health and developmental screening available. Minn. Stat. Sec. 123.703, Subd. 1, provides that rules for the program will be adopted by the State Board of Education. In accordance with this section, temporary rules were duly adopted by the State Board of Education on September 12, 1977, and approved by the Attorney General on September 19, 1977.

The purpose of the pre-school screening program is to assist parents and communities in improving the health of Minnesota children and in planning educational and health programs. Two existing programs, the Early and Periodic Screening, Diagnosis and Treatment (EPSDT, a federal program administered by the Department of Welfare), and the Early and Periodic Screening (EPS), a state program administered by the Department of Health, provide similar services but on a much more limited basis. Minn. Stat. Sec. 123.701 et seq. mandates that such services be available to all children on a no-cost basis. Utilization of the service is voluntary on the part of the parents.

Unless otherwise designated, all references to a law relate to Minnesota Laws 1977, Chapter 437 (codified as Minn. Stat. Secs. 123.701 - 123.705, (Supp. 1977)).

Minn. Stat. Sec. 123.701 et seq. provides that "all screening components shall be consistent with the standards of the State Board of Health for early and periodic screening programs"; and "The State Board of Education shall consider the standards employed by the State Board of Health for early and periodic screening programs in drafting proposed rules." For this reason, several sections of these rules are either directly quoted from the proposed rules for EPS or are consistent with the content of those rules. Because of the inter-relationship of rules, hearings are being scheduled to be held consecutively.

§ 1.0720 of the proposed rules relating to pre-school screening, which provides definitions, is necessary to define terms included in the rules which are either different than usually accepted definitions of the terms, or are otherwise inadequately defined for the purposes of this program. Except as indicated, the definitions are consistent with definitions of the EPS program to assure standards consistent with those of the State Board of Health and thus to avoid duplication of administration and reporting.

"assessment" is defined since the term has different meanings to educators, and in this case the law clearly is using the term interchangeably with "screening".

"parent" is defined to be consistent with the definition included in Department of Education rules EDU 120 A 13, dealing with the special education programs. This will make possible better coordination with the special education "child find" program, and avoid duplication of efforts.

"referral" is defined because the term in this program refers to a process of informing parents of resources available rather than providing a direct contact with another agency. This differs from the definition used in other educational programs.

§ 1.0721 relating to participation in the program and the delivery of services is necessary to emphasize the school's active role in the administration of the program. Since this is a new program, school personnel have been raising numerous questions on these aspects of the service.

§ 1.0722 relating to the local school district plan is necessary so the State Board of Education can 1) determine whether local schools are implementing the program in accordance with the law, 2) determine the need for technical assistance, 3) obtain data for reports to the legislature, including recommendations for future improvements in the program. Time and effort will be saved by allowing school personnel to describe the procedures being planned rather than following a prescribed format or answering detailed questions.

§ 1.0722 A1 concerning local school district plans is necessary to assist the State Board of Education in determining the extent to which local school boards are attempting to actively encourage participation in the screening program, evaluate the effectiveness of outreach activities and determine the need for additional assistance in developing materials and techniques for outreach activities.

§ 1.0722 A2 requiring information on location and frequency of screening will provide information to insure the availability of the screening services both as to time and location in relation to the families being served. For instance, are some families unable to obtain the screening services because they are only given at times when parents are working, or in locations so distant that parents are unwilling or unable to bring their children in for screening.

§ 1.0722 A 3 and A 4 outling required staff and procedures are necessary to assure that local programs can adequately offer screening services and have components meeting the standards of the State Board of Health and the EPS program as required in the law. Information necessary to plan for training of local screeners will also be provided. On the basis of the information, for instance, time and places for training sessions will be determined. In addition, information will be provided to determine whether or not present standards are adequate to provide effective services to children.

§ 1.0722 A 5. A preschool screening has little value unless parents are informed of the results and are given help in understanding and taking any remedial action where it seem warranted. This section, requiring reporting to parents, is necessary to provide information to assist the State Board of Education in determining the effectiveness of procedures being used and the need for technical assistance for improving the reporting process.

§ 1.0722 A 6. One of the purposes of this legislation as given in the statement of purpose is for "planning educational and health programs". Information provided in this part of the local plan will indicate the procedures being used by the school in utilizing screening information, especially for educational planning, and provide the basis for evaluating present procedures and providing technical assistance for program improvement. Such information is necessary for effective planning of educational and health programs.

§ 1.0722 A 7 and 8. Detection of possible health or developmental problems would be a waste of taxpayers money if there is no follow-up to diagnose and

correct identified needs. These sections relating to follow-up procedures will provide background information to evaluate effectiveness of referral procedures, and the need for technical assistance to be provided to improve local school board activities. Corrective procedures can then be developed to assure adequate programs for Minnesota children.

§ 1.0722 A 9. It is necessary that this information on using other available screening programs be provided so that technical assistance may be given local school boards in avoiding dupliction of efforts, utilizing existing volunteer programs for efficient use of funds, and improving coordination of services.

§ 1.0722 B. This section relates to payment to local schools to insure that program standards are being met and services provided as the legislature intended. It will make certain that necessary information is provided to the State Board of Education for evaluation and improvement of the program, and for reports required to be submitted to the legislature.

§ 1.0722 C. Since contracting for services is allowed in this program, and it is anticipated many schools will provide services in this way, it simplifies paperwork, avoids duplication of effort, and saves time if such information does not need to be recopied in the local school plan. Most schools have copying equipment and this section provides the option of supplying information either by providing a copy of the contract spelling out the details, or rewriting them for the plan.

§ 1.0722 D. The law provides that schools must provide all components of the program "to the extent the school board determines they are financially feasible..." This section sets forth the procedures to be followed by local boards to request exemption form providing any of the mandated components. Since financial need is the only basis for exemption, no further criteria are given.

§ 1.0722 E. Additional components are required for fiscal year 1979; therefore, additional information must be submitted the second year. This section provides that an annual plan will be submitted to indicate changes. To avoid duplication of effort and simplify the submission of subsequent annual plans, only changes need to be reported and approved, rather than a complete rewriting of the plan each year.

§ 1.0722 F. This section provides a necessary deadline for submitting claims for reimbursement compatible with the state fiscal year, yet providing flexibility for schools wishing to conduct screening in June. Allowing school boards to submit claims any time after completion of the screening will avoid a pile up of claims at the end of the year and provide more efficient processing.

§ 1.0723 on staffing and § 1.0724 A and B on screening procedures provide necessary information to the State Board of Education to assure that local schools are meeting standards of the State Board of Health for early and periodic screening programs as provided in Section 2, Subdivision 1. The standards given for staff are those required for the early and periodic screening programs of the State Board of Health. Hearings on these standards are scheduled prior to this hearing.

§ 1.0724 C. In a number of cases, it is anticipated that children will have had a recent physical examination by the family physician, which might include several of the health components included in the screening program. To avoid the duplication of services which would result in requiring a repeat of the same components, this section provides that information from such outside

resources may be submitted for inclusion in the school record. The time limits given are to provide reasonable assurance that the information is current.

§ a.0724 D and F are necessary to emphasize the relation of records from this program to other school records, and the legal rights of parents and children for privacy. Section 4 of the law provides authority.

§ 1.0724 E is needed to emphasize that schools do not make direct referrals, but only suggest appropriate resources to the parents. Emphasis is necessary because in some other circumstances schools may make direct referrals.

§ 1.0724 G. This paragraph relating to diagnosis, treatment and therapy is needed to clarify the limits of the screening process. Most educators have had little contact with the concept of "screening" and there is need to emphasize not only what screening is, but also what it is not. Clarification is needed because some other programs, such as EPSDT, do include diagnosis and treatment.

§ 1.0725 A. Provide for reimbursement to local schools. No dollar figure or percentage figure is given for the payment, since the amount may vary from year to year.

§ 1.0725 B provides that a 50% advance is not automatic, but must be requested. This is intended to simplify reimbursements, yet provide some flexibility.

§ 1.0725 C Children from families qualifying for the EPSDT program are already eligible for screening, and are also eligible for the additional services of diagnosis and treatment. To conserve state funds provided for this screening program, costs are to be provided by EPSDT where possible. Since the state is providing for reimbursement only on costs incurred under this program, there could be no claim submitted if expenses have already been paid by EPSDT. This paragraph provides procedures to avoid a double billing.

Section D. It is necessary to emphasize that Minn. Stat. Sec 123.701 et seq. provide for screening a child only once before entering kindergarten, since other programs such as EPSDT and EPS are "periodic", that is, screening may be repeated at designated intervals.

Proposed Rules

Chapter Thirty-Six: Pre-School Health and Developmental Screening

(All new material)

§ 1.0720 Definitions. For the purposes of this chapter, terms are defined as follows:

A. Assessment - as used in these rules is synonomous with "screening" as indicated below.

B. Developmental Screening - includes identifying the motor, language, social-emotional, and cognitive status of the child.

C. Parent or parents include a biological mother or father, an adoptive mother or father, a legally appointed guardian, or such agency or other person appointed pursuant to Minnesota statutes.

D. Pre-school health and developmental screening program - Systematic procedures developed to conduct screening of pre-school children in accordance with Minnesota statutes.

E. Referral - An organized system for providing information on agencies or specialists to be utilized in diagnosis and treatment of problems identified through the screening procedure.

F. Screening - Use of procedures to sort out apparently well children from those in need of more definitive study of physical or developmental problems.

G. Screening personnel - Professional, paraprofessional, and volunteer staff in local schools or contracted agencies who will conduct activities related to the pre-school health and developmental screening program.

§ 1.0721 Participation in program and delivery of services.

A. All children in the state of Minnesota shall have available without cost the services of trained personnel to screen for possible health and

developmental problems once prior to entering school.

B. Participation in the screening program by children shall be voluntary, and shall not be required for entry into school. Parents may elect to participate in only a part of the screening program if they so desire.

C. Pre-school health and developmental screening services shall be provided by all local school boards, with the consultation of local societies of health providers. School boards, individually or in cooperation with other schools or agencies, shall, wherever possible, contract with or purchase service from an approved early and periodic screening program. Where this is not possible, or all services are not available, school boards may contract with other health care providers to operate screening programs. Volunteer screening programs shall also be integrated and utilized where available.

D. The pre-school screening program shall be coordinated as far as possible with other health screening programs to eliminate duplication of services and provide more efficient administration.

§ 1.0722 Local school district plan.

A. The school board for each school district shall submit to the department of education its plan for implementation of a pre-school screening program to be fully operational during fiscal year 1978. Such a plan shall be submitted prior to implementation of the pre-school screening and shall have the following components:

1. Procedures to be used to inform parents of pre-school children concerning the screening services provided and procedures to encourage participation in the pre-school screening program.

2. Information on the location of facilities to be utilized and the frequency of screening.

3. Staff to be utilized, and their qualifications which shall include

professional training, specialized training completed, and plans for in-service training. Staff must meet the qualifications listed in 5 MCAR § 1.0723.

4. Procedures to be utilized in screening each component area, in accordance with standards listed in 5 MCAR § 1.0724.

5. Procedures to be utilized in reporting results of screening to parents.

6. Procedures for integration of information in school records and dissemination to school staff where parental consent has been received.

7. Referral procedures to be utilized when a condition is identified in need of diagnosis or treatment.

8. Procedures to be utilized to determine whether or not referral resources were utilized.

9. Procedures to include integration and utilization of other screening programs, including volunteer screening programs, available to the district.

B. Payment, including advance payment, shall not be made until the information indicated above is received and approval of the plan is given by the department of education.

C. If services are contracted, to the extent that information included in A of this section is included in the contract, a copy of the contract shall satisfy the reporting requirements of this section.

D. Exceptions to the statutorily required screening components may be made by the state board upon submission to it of evidence that a local board is not able to supply such screening due to financial limitations.

E. Plans for implementation of the screening program shall be made annually prior to implementation of screening program for that fiscal year or May 1, whichever is earlier. After the initial plan, subsequent plans need only indicate changes or revisions in the program.

F. Claims shall be submitted by June 30 of each fiscal year.

§ 1.0723 Staffing.

Screening shall be performed by qualified personnel. A person may perform one or more of the functions described in A through F of this section provided appropriate qualifications are met. Each pre-school health and developmental screening program shall include the following screening personnel meeting the stated minimum qualifications:

A. Nurse.

1. Who must be registered and currently licensed in the state of Minnesota.

2. Who has successfully completed training seminars provided by the Minnesota department of health or participated in equivalent training programs designated by the Minnesota department of health to prepare individual to perform child screening.

B. Clinic coordinator who shall be responsible for administration of all components of the pre-school screening program.

C. Vision and hearing technician.

1. Who has been trained by the Minnesota department of health to perform vision and hearing screening, or

2. Who has been trained by a program providing equivalent preparation as determined by the department of health.

D. Laboratory assistant, for programs with a laboratory component.

1. Who must be registered as a laboratory technician, or

2. Who has been trained to perform the specific tests used in the screening session under the supervision of a nurse trained in accordance with 5 MCAR § 1.0723 A.

E. Clinic assistant.

1. Who has been trained by department of education or department of

health professional staff in administering one or more of the health or developmental screening measures.

F. Dental Screener.

1. Who must be a licensed dental hygienist or a registered or certified dental assistant, or

2. Who has been trained by the Minnesota department of health or approved by the Minnesota department of health as having been trained to perform dental screening.

§ 1.0724 Screening procedures.

A. Screening procedures shall, to the extent the school board determines they are financially feasible, including the following components:

1. An individual review of past and present health status including perinatal, psychosocial, family health, nutrition intake and immunizations.

2. Developmental screening tests of the child's development in the areas of motor development, language development, social-emotional development, and cognitive development by using procedures which shall include:

a. Parent report of the child's functioning history in the areas of skills development, emotional and behavior status.

b. Direct observation of the child's functioning utilizing developmental screening instruments approved by the Minnesota department of education and which have:

(1) Written procedures for administration and scoring.

(2) Norms for the age range being tested.

3. Hearing Tests: To test for deviations from the normal range of auditory acuity using the Puretone Audiometric Screening Test. A Verbal Auditory Screening of Children may be used for 4 year old children.

4. Vision Tests: To test for eye health and deviations from the normal range of visual acuity and muscle balance in the child. Approved programs must:

a. Check the child for a history of maternal and/or neonatal infection and a family history of ocular abnormalities such as color blindness or retinitis pigmentosa.

b. Observe and examine the child's pupils and light following reflex, presence and absence of nystagmus, muscle balance, and an external exmaination of the eyes.

c. Muscle balance screening procedures include at least observation, cover test, Hirshberg test and the Worth 4-Dot.

d. Test for visual acuity. A test such as the Screening Test for Young Children and Retardates (STYCAR), the Snellen E cube, the Snellen Alphabet Chart and plus lenses must be used.

5. Dental Inspection: The child's mouth is to be inspected for any obvious oral or dental abnormalities.

B. As of July 1, 1978, the screening procedure shall, in addition to the components included in A of this section, and to the extent the school board determines they are financially feasible, include the following components:

1. Assessment of the unclothed child including an inspection of pulse, respiration, blood pressure, head, eyes, ears, nose, pharynx, neck, chest, heart, lungs, abdomen, spine, extremities, joints, muscle tone, skin and neurological according to normal procedures.

2. Laboratory tests: The following tests are to be administered appropriate for the age and sex of the child including:

a. Tuberculin.

b. Urine and Bacteriuria (Bililabstix, Culturia Assay).

c. Anemia testing (Microhematocrit, Hemoglobin).

d. Blood Lead - test for increased lead absorption and lead poisoning in children whose history indicates the possibility of exposure to undue levels of lead in the environment or atmosphere.

e. Sickle Cell Testing: This test is to be administered only with consent of the parent(s) or guardian(s).

3. Nutrition Status Review: A review of the child's food intake.

C. If requested by the parent, health history and physical examination completed by a personal physician within the previous 12 months or within 60 days after the provision of other screening tests shall be accepted by the school district for inclusion in the school records in lieu of comparable information collected in the screening program.

D. Data on individual students is private as defined by state statutes and shall not be disclosed to a third party, including the district, without the informed consent of the parent. All information must be made available to the parents.

E. Upon identification of a condition in need of diagnosis or further attention, parents shall be informed of appropriate agencies or specialists capable of performing needed services, such as the family physician or special education programs.

F. Data on individual students obtained in the screening program shall be incorporated into school district records, except as indicated in D of this section.

G. Diagnosis, treatment or therapy shall not be provided in the pre-school screening program but this does not preclude such services as a part of a related program.

§ 1.0725 Payment of aids

A. Payment of aids for the costs of screening conducted in accordance with an approved plan shall be made as provided for by legislative appropriations.

B. An advance of 50 percent of the estimated aid payment may be made upon request.

C. Where a child is known to be eligible to have costs of screening paid for under other state or federal programs, requests for payment shall be made to such other agencies, and the school may not claim reimbursement under this program.

D. No aid payment shall be made for screening any child more than once.

Rule as Adopted

Chapter One: Classification for State Aids, Minimum Requirements for Elementary and Secondary Schools

§ 1.010 Experimental programs. Elementary and middle schools desiring to offer an experimental course or program of studies that would require exemption to existing state board of education rules may request approval for such course offerings or programs. If the proposed program is approved, the state board of education is empowered to provide an exemption to rules that otherwise would apply.

A. The proposal shall include: A statement of the goals and objectives of the program which must include an expectation of improving the instructional program or the reduction of program costs without reduction in effectiveness or quality.

A listing of the activities and procedures to be utilized in accomplishing the stated objectives.

A definite time limit for the experiment not to exceed three years.

A statement of the evaluation procedures to be used in determining the effectiveness of the program. Such evaluation shall be conducted by persons other than employees of the district.

An identification of the state board of education rules, from which the district requests exemption for the purpose of the proposed program.

B. Evidence shall be provided that the proposal has been given thorough exposure to students and parents, that the faculty has been involved in the development of the proposal, and that the proposal has the approval of the local board of education.

C. If the evaluation at the end of the course or program is positive, the state board of education may authorize continuation of the program. When such continuation is granted, the state board of education shall stipulate the specific rules from which the program shall continue to be exempt.

Rule as Adopted

Chapter Thirty-Six
Pre-School Health and Developmental Screening

§ 1.0720 Definitions. For the purposes of this chapter, terms are defined as follows:

A. Assessment - as used in these rules is synonomous with "screening" as indicated below.

B. Developmental Screening - includes indentifying the motor, language, social-emotional, and cognitive status of the child.

C. Parent or parents include: 1) a biological mother or father, 2) an adoptive mother or father, 3) a legally appointed guardian, 4) in the event that a child is a ward of the commissioner of public welfare or other public official, the commissioner or such official; or 5) when the parent or guardian is unknown or cannot be found after reasonable efforts have been made, then such agency or other person appointed pursuant to Minnesota statutes or court order.

D. Pre-school health and developmental screening program - systematic procedures developed to conduct screening of pre-school children in accordance with Minnesota statutes.

E. Referral - An organized system for providing information on agencies or specialists to be utilized in diagnosis and treatment of problems identified through the screening procedure.

F. Screening - Use of procedures to sort out apparently well children from those in need of more definitive study of physical or developmental problems.

G. Screening personnel - Professional, paraprofessional, and volunteer staff in local schools or contracted agencies who will conduct activities related to the pre-school health and developmental screening program.

§ 1.0721 Participation in program and delivery of services.

A. All children in the state of Minnesota shall have available without cost the services of trained personnel to screen for possible health and developmental problems once prior to entering school.

B. Participation in the screening program by children shall be voluntary, and shall not be required for entry into school. Parents may elect to participate in only a part of the screening program if they so desire.

C. Pre-school health and developmental screening services shall be provided by all local school boards, with the consultation of local societies of health providers. School boards, individually or in cooperation with other schools or agencies, shall, wherever possible, contract with or purchase service from an

approved early and periodic screening program. Where this is not possible, or all services are not available, school boards may contract with other health care providers to operate screening programs. Volunteer screening programs shall also be integrated and utilized where available.

D. The pre-school screening program and follow-up shall be coordinated as far as possible with other health screening programs to eliminate duplication of services and provide more efficient administration. School districts shall arrange for exchange of information on students with other health screening programs. Such exchange shall be consistent with 5 MCAR § 1.0724 D.

§ 1.0722 Local school district plan.

A. The school board for each school district shall submit to the department of education its plan for implementation of a pre-school screening program to be fully operational during fiscal year 1978. Such a plan shall be submitted prior to implementation of the pre-school screening and shall have the following components:

1. Procedures to be used to inform parents of pre-school children concerning the screening services provided and procedures to encourage participation in the pre-school screening program.

2. Information on the location of facilities to be utilized and the frequency of screening.

3. Staff to be utilized, and their qualifications which shall include professional training, specialized training completed, and plans for in-service training. Staff must meet the qualifications listed in 5 MCAR § 1.0723.

4. Procedures to be utilized in screening each component area, in accordance with standards listed in 5 MCAR § 1.0724.

5. Procedures to be utilized in reporting results of screening to parents.

6. Procedures for integration of information in school records and dissemination to school staff where parental consent has been received.

7. Referral procedures to be utilized when a condition is identified in need of further evaluation.

8. Procedures to be utilized to determine whether or not referral resources were used in accordance with 5 MCAR § 1.0724 F.

9. Procedures to include integration and utilization of other screening programs, including volunteer screening programs, available to the district.

B. Payment, including advance payment, shall not be made until the information indicated above is received and approval of the plan is given by the department of education.

C. If services are contracted, to the extent that information included in A of this section is included in the contract, a copy of the contract shall satisfy the reporting requirements of this section.

D. Exceptions to the required screening components shall be made by the state board upon submission to it of evidence that a local board is not able to supply such screening due to financial limitations.

E. Plans for implementation of the screening program shall be made annually prior to implementation of screening program for that fiscal year or May 1, whichever is earlier. After the initial plan, subsequent plans need only indicate changes or revisions in the program.

F. Claims shall be submitted by June 30 of each fiscal year.

§ 1.0723 Staffing.

Screening shall be performed by qualified personnel. In selecting personnel to implement the pre-school screening program, school districts shall give first priority to volunteers. Second priority shall be given to others possessing minimum qualifications who can provide services determined to be most cost effective. A person may perform one or more of the functions described in A through F of this section provided appropriate qualifications are met. Each pre-school health and developmental screening program shall include the following screening personnel meeting the stated minimum qualifications:

A. Nurse.

1. A nurse currently licensed to practice professional nursing in the state of Minnesota shall be qualified to perform those pre-school screening functions permitted under the state nurse practice act, and

2. Who has successfully completed training seminars provided by the Minnesota department of health or participated in equivalent training programs designated by the Minnesota department of health to prepare individual to perform child screening.

B. Clinic coordinator who shall be responsible for administration of all components of the pre-school screening program.

C. Vision and hearing technician.

1. Who has been trained by the Minnesota department of health to perform vision and hearing screening, or

2. Who has been trained by a program providing equivalent preparation as determined by the department of health.

D. Laboratory assistant, for programs with a laboratory component.

1. Who must be registered as a laboratory technician, or

2. Who has been trained to perform the specific tests used in the screening session under the supervision of a nurse trained in accordance with 5 MCAR § 1.0723 A.

E. Clinic assistant.

1. Who has been trained by department of education or department of health professional staff in administering one or more of the health or developmental screening measures, or

2. Who has been trained by a program providing equivalent preparation as determined by the department of health or the department of education.

F. Dental screener.

1. Who must be a licensed dental hygienist or a registered or certified dental assistant, or

2. Registered nurse who has been trained by the Minnesota department of health or approved by the Minnesota department of health as having been trained to perform dental screening.

§ 1.0724 Screening procedures.

A. Screening procedures shall include the following components:

1. An individual review of past and present health status including perinatal, psychosocial, family health and immunizations.

2. Developmental screening tests of the child's development in the areas of motor development, language development, social-emotional development, and cognitive development by using procedures which shall include:

a. Parent report of the child's functioning history in the areas of skills development, emotional and behavior status.

b. Direct observation of the child's functioning utilizing standardized developmental screening instruments approved by the Minnesota department of education and which have:

(1) Written procedures for administration and scoring.

(2) Norms for the age range being tested.

3. Hearing tests: To test for deviations from the normal range of auditory acuity using the Puretone Audiometric Screening Test. A Verbal Auditory Screening of Children may be used for 4 year old children.

4. Vision tests: To test for eye health and deviations from the normal range of visual acuity and muscle balance in the child. Approved programs must:

a. Check the child for a history of maternal and/or neonatal infection and a family history of ocular abnormalities such as color blindness or retinitis pigmentosa.

b. Observe and examine the child's pupils and light following reflex, presence and absence of nystagmus, muscle balance, and an external examination of the eyes.

c. Muscle balance screening procedures include at least observation, cover test, and the Hirschberg test or a test with equivalent standards as determined by the department of health or the department of education, which is appropriate for the age group being screened.

d. Test for visual acuity. A test such as the Screening Test for Young Children and Retardates (STYCAR), the Snellen E cube, the Snellen Alphabet Chart, or a test with equivalent standards, as determined by the department of health or department of education, must be used.

5. Dental inspection: The child's mouth is to be inspected for any obvious oral or dental abnormalities.

B. As of July 1, 1978, the screening procedure shall, in addition to the components included in A of this section, include the following components:

1. Assessment of the unclothed child including an inspection of pulse, respiration, blood pressure, head, eyes, ears, nose, pharynx, neck, chest, heart lungs, abdomen, spine, extremities, joints, muscle tone, skin and neurologic reaction according to normal procedures.

2. Laboratory tests: The following tests are to be administered appropriate for the age and sex of the child including:

a. Tuberculin.

b. Urine (bililabstix).

c. Anemia testing (microhematocrit, hemoglobin).

d. Blood Lead - test for increased lead absorption and lead poisoning in children whose history indicates the possibility of exposure to undue levels of lead in the environment or atmosphere.

e. Sickle cell testing: This test is to be administered only with consent of the parent(s) or guardian(s).

3. Nutrition status review: A review of the child's food intake.

C. No pre-school screening program shall provide laboratory tests, a health history or physical assessment to any child who has been provided with those laboratory tests, a health history, physical assessment or physical examination within the previous 12 months. The school district shall request the results of any laboratory test, health history or physical examination within the 12 months preceding a scheduled pre-school screening clinic, for inclusion in the school records in lieu of comparable information collected in the screening program. Procedures shall be developed for exchange of student information in accordance with 5 MCAR § 1.0724 D.

D. Data on individual students is private as defined by state statutes and shall not be disclosed to a third party, including the district, without the informed consent of the parent. All information must be made available to the parents.

E. Upon identification of a condition in need of diagnosis or further attention, parents shall be informed of appropriate agencies or specialists capable of performing needed services, such as the family physician or special education programs.

F. A minimum of two attempts shall be made, at least one of which shall be in writing with return postage, to determine whether recommended referrals were utilized.

G. Data on individual students obtained in the screening program shall be incorporated into school district records, except as indicated in D of this section.

H. Local school districts shall request information from parents concerning medical assistance eligibility to make it possible for the district to comply with 5 MCAR § 1.0725 C.

I. Diagnosis, treatment or therapy shall not be provided in the pre-school screening program but this does not preclude provision of such services as a part of a related program.

§ 1.0725 Payment of aids.

A. Payment of aids for the costs of screening conducted in accordance with an approved plan shall be made as provided for by legislative appropriations.

B. An advance of 50 percent of the estimated aid payment may be made upon request.

C. Where a child is known to be eligible to have costs of screening paid for under other state or federal programs, requests for payment shall be made to such other agencies, and the school may not claim reimbursement under this program.

D. No aid payment shall be made for screening any child more than once.

STATE OF MINNESOTA

STATE BOARD OF EDUCATION

In the matter of the adoption of rules of the state board of education governing pre-school health and developmental screening.

FINDINGS OF FACT AND AMENDED ORDER ADOPTING RULES

WHEREAS, the State Board of Education, on June 5, 1978, adopted the rules governing Pre-school Health and Developmental Screening identified as 5 MCAR § 1.0720 et seq., and

WHEREAS, certain changes are required to be made to such rules as a matter of law,

NOW THEREFORE, BE IT RESOLVED that the State Board of Education hereby adopts and incorporates herein its Findings of Fact and Order Adopting Rules governing Pre-School Health and Developmental Screening, together with the attached Addendum, dated June 5, 1978 and signed by Henry G. Tweten, with the following exceptions:

a. 5 MCAR § 1.0720 C shall, for the reasons set forth above be amended to read:

"Parent or parents include: 1) a biological mother or father, 2) an adoptive mother or father, 3) a legally appointed guardian, 4) in the event that a child is a ward of the commissioner of public welfare or other public official, the commissioner or such official, or 5) when the parent or guardian is unknown or cannot be found after reasonable efforts have been made, then such agency or other person appointed pursuant to Minnesota Statutes or court order."

b. 5 MCAR § 1.0722 D shall, for the reasons set forth above, be amended to read:

"Exceptions to the required screening components shall be made by the state board upon submission to it of evidence that a local board is not able to supply such screening due to financial limitations."

c. 5 MCAR § 1.0723 A shall, for the reasons set forth above, be amended to read:

"A. Nurse.

1. A nurse currently licensed to practice professional nursing in the State of Minnesota shall be qualified to perform those pre-school screening functions permitted under the state Nurse Practice Act, and

2. Who has successfully completed training seminars provided by the Minnesota department of health or participated in equivalent training programs designated by the Minnesota department of health to prepare individual to perform child screening."

THEREFORE, IT IS ORDERED that these rules identified as 5 MCAR § 1.0720 - § 1.0725, as amended (attached hereto) are adopted this 1st day of August, 1978, pursuant to authority vested in me by Minnesota Laws 1977, ch. 437 and Minnesota Laws 1978, ch. 793, sec. 23 subd. 4.

STATE OF MINNESOTA

STATE BOARD OF EDUCATION

Edwin E. Johnson

President

STATE OF MINNESOTA

STATE BOARD OF EDUCATION

In the Matter of the Adoption of
Proposed Rules of the State Board
of Education Governing Experimental
Programs for Elementary and Middle Schools.

FINDINGS OF FACT AND
AMENDED ORDER ADOPTING
RULES

WHEREAS, 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 3rd day of February, 1978, at 9:00 a.m. in the Department of Health Building, Minneapolis, Minnesota after proper notice required by Minn. Stat., Section 15.0412, was served upon all persons, associations, and other interested groups registered with the Secretary of State for that purpose, and

WHEREAS, after affording interested persons an opportunity to present written and oral data, statements, and arguments, having reviewed all of the testimony, having considered all of the evidence adduced, having considered the Findings of Fact, as they relate to the above captioned rules as found on pages 2, 3, and 4 and the Conclusions and Recommendations relating thereto as found on pages 22 and 23 of the Report of the Hearing Examiner dated March 31, 1978, and as amended on April 27, 1978, 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 rule, and

WHEREAS, the State Board of Education, on June 5, 1978, adopted the rules governing experimental programs for elementary and middle schools identifying such rules as 5 MCAR § 1.010, and

WHEREAS, such rules are properly identified as 5 MCAR § 1.0010, and

WHEREAS, certain changes are required to be made as a matter of law in paragraph C of such rules, specifically that "may" be amended to read "shall" in line 2 of paragraph C thereof,

NOW, THEREFORE, BE IT RESOLVED, that the State Board of Education rescinds its Findings and Order Adopting Rules dated June 5, 1978, governing experimental programs for elementary and middle schools; and

BE IT FURTHER RESOLVED, that the State Board of Education hereby adopts and incorporates herein the Findings of Fact, Conclusions and Recommendations of Peter C. Erickson, Hearing Examiner, dated March 31, 1978, relative to the above captioned rules except as follows:

a. The rules governing experimental programs for elementary and middle schools shall, except as may otherwise hereafter be deemed appropriate by the Commissioner of Education, be designated as 5 MCAR § 1.0010; and

b. 5 MCAR § 1.0010 C, line 2, shall be amended for the reasons set forth above by deleting "may" and inserting "shall" in lieu thereof.

THEREFORE, IT IS ORDERED that this rule identified as 5 MCAR § 1.0010, as amended (attached hereto) is adopted this 1st day of August, 1978, pursuant to authority vested in us by Minn. Stat. § 121.11.

STATE OF MINNESOTA
STATE BOARD OF EDUCATION

Erling O. Johnson
President

CERTIFICATE OF BOARD'S

ADOPTION OF RULES RESOLUTION

I, Howard B. Casmey, do hereby certify that I am secretary of the Board of Education, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Board of Education duly and properly called and held on the 1st day of August, 1978; that a quorum was present at said meeting; (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 rules relating to experimental programs for elementary and middle schools, as amended, be and they hereby are approved and adopted, pursuant to authority vested in us by Minn. Stat. § 121.11 (1976) and that Henry G. Tweten, one of the members of the Board of Education, be and hereby is authorized to sign an order adopting those rules."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 1st day of August, 1978.

for Howard B. Casmey
Secretary

Member, State Board of Education

CERTIFICATE OF BOARD'S

ADOPTION OF RULES RESOLUTION

I, Von Valletta , do hereby certify that I am secretary of the Board of Education, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Board of Education duly and properly called and held on the 1st day of August , 1978; that a quorum was present at said meeting; 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 rules relating to preschool health and developmental screening, as amended, be and they hereby are approved and adopted, pursuant to authority vested in us by Minnesota Laws 1977, ch. 437 and Minnesota Laws 1978, ch. 793, sec. 23, subd. 4 and that Erling O. Johnson one of the members of the Board of Education, be and hereby is authorized to sign an order adopting those rules."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 1st day of August , 1978

Von Valletta

Erling O. Johnson

Member, State Board of Education

436

Attorney General

Charles F. Hotel
Special Assistant
Attorney General

July 11, 1978

Lee E. Sheehy
Special Assistant
Attorney General

296-1318

In the Matter of the Proposed Adoption of Rules of the State Board of Education for Pre-School Health and Developmental Screening and Experimental Programs Exception

As we discussed, the above-captioned rules are being returned herewith and have not been filed with the Secretary of State. The following rules, or portions thereof have been disapproved as to form and legality for the following reasons:

1. Certification of Board's Adoption of Rules Resolution: Such certification required pursuant to Atty Gen 302(1)(2) did not appear to be submitted to this office in the materials provided by the agency.

2. 1.0010: Besides the improper citation brought to my attention by Lois Steinhaus which must be corrected, Subdivision C improperly grants the agency unfettered discretion by use of the word "may". The word "shall" must be used.

3. 1.0720(C): The final clause in the definition of the word "parent" may too broadly extend rights given to "parents" under the rule to agencies or individuals which should not have such rights. I.e., "parents" under these rules have rights to all private data. Since one citizen indirectly raised this specter during public hearings (See Hearing Examiner's Report, Paragraph 11(b), p.6), this office wants further assurances from the agency that no such possibility exists or, in the alternative, clarifying language added to the definition of "parent" which would eliminate such a possibility.

4. 1.0722(D): This rule appears to improperly vary the statutory provisions of Minn. Stat. § 123.702, Subd. 1 (1977). Specifically, that statute leaves the determination of "financially feasible" to the local school board. Because of the use of the word "may", the rule implies that the final determination shall be made by the state board. One means of remedying this flaw is to change the word "may" to "shall".

5. 1.0723(A): The absence of a conjunctive word denoting the relationship between Subdivisions 1 and 2 of this rule makes its meaning unclear. As with the subsequent sections, the words "and" or "or" must be inserted to clarify whether Subdivisions 1 and 2 are alternates or cumulative.

July 11, 1978

I have retained a copy of materials in this matter should you wish to discuss them with me. Upon consideration of the above and resubmittal based on such consideration and appropriate changes, I will approve and file these rules. Please advise the agency to resubmit the originals of the Orders Adopting and Adopted Rules, as amended if necessary, which I have returned herewith.

LES:mb

Enclosure

cc: Duane Farver

Rule as adopted

Chapter Thirty-Six:

Pre-School Health and Developmental Screening.

§ 1.0720 Definitions. For the purposes of this chapter, terms are defined as follows:

A. Assessment - as used in these rules is synonomous with "screening" as indicated below.

B. Developmental Screening - includes identifying the motor, language, social-emotional, and cognitive status of the child.

C. Parent or parents include a biological mother or father, an adoptive mother or father, a legally appointed guardian, or such agency or other person appointed pursuant to Minnesota statutes.

D. Pre-school health and developmental screening program - systematic procedures developed to conduct screening of pre-school children in accordance with Minnesota statutes.

E. Referral - An organized system for providing information on agencies or specialists to be utilized in diagnosis and treatment of problems identified through the screening procedure.

F. Screening - Use of procedures to sort out apparently well children from those in need of more definitive study of physical or developmental problems.

G. Screening personnel - Professional, paraprofessional, and volunteer staff in local schools or contracted agencies who will conduct activities related to the pre-school health and developmental screening program.

§ 1.0721 Participation in program and delivery of services.

A. All children in the state of Minnesota shall have available without cost the services of trained personnel to screen for possible health and

developmental problems once prior to entering school.

B. Participation in the screening program by children shall be voluntary, and shall not be required for entry into school. Parents may elect to participate in only a part of the screening program if they so desire.

C. Pre-school health and developmental screening services shall be provided by all local school boards, with the consultation of local societies of health providers. School boards, individually or in cooperation with other schools or agencies, shall, wherever possible, contract with or purchase service from an approved early and periodic screening program. Where this is not possible, or all services are not available, school boards may contract with other health care providers to operate screening programs. Volunteer screening programs shall also be integrated and utilized where available.

D. The pre-school screening program and follow-up shall be coordinated as far as possible with other health screening programs to eliminate duplication of services and provide more efficient administration. School districts shall arrange for exchange of information on students with other health screening programs. Such exchange shall be consistent with 5 MCAR § 1.0724 D.

§ 1.0722 Local school district plan.

A. The school board for each school district shall submit to the department of education its plan for implementation of a pre-school screening program to be fully operational during fiscal year 1978. Such a plan shall be submitted prior to implementation of the pre-school screening and shall have the following components:

1. Procedures to be used to inform parents of pre-school children concerning the screening services provided and procedures to encourage participation in the pre-school screening program.

2. Information on the location of facilities to be utilized and the frequency of screening.

3. Staff to be utilized, and their qualifications which shall include professional training, specialized training completed, and plans for in-service training. Staff must meet the qualifications listed in 5 MCAR § 1.0723.

4. Procedures to be utilized in screening each component area, in accordance with standards listed in 5 MCAR § 1.0724.

5. Procedures to be utilized in reporting results of screening to parents.

6. Procedures for integration of information in school records and dissemination to school staff where parental consent has been received.

7. Referral procedures to be utilized when a condition is identified in need of further evaluation.

8. Procedures to be utilized to determine whether or not referral resources were used in accordance with 5 MCAR § 1.0724 F.

9. Procedures to include integration and utilization of other screening programs, including volunteer screening programs, available to the district.

B. Payment, including advance payment, shall not be made until the information indicated above is received and approval of the plan is given by the department of education.

C. If services are contracted, to the extent that information included in A of this section is included in the contract, a copy of the contract shall satisfy the reporting requirements of this section.

D. Exceptions to the required screening components may be made by the state board upon submission to it of evidence that a local board is not able to supply such screening due to financial limitations.

E. Plans for implementation of the screening program shall be made annually prior to implementation of screening program for that fiscal year or May 1, whichever is earlier. After the initial plan, subsequant plans

need only indicate changes or revisions in the program.

F. Claims shall be submitted by June 30 of each fiscal year.

§ 1.0723 Staffing.

Screening shall be performed by qualified personnel. In selecting personnel to implement the pre-school screening program, school districts shall give first priority to volunteers. Second priority shall be given to others possessing minimum qualifications who can provide services determined to be most cost effective. A person may perform one or more of the functions described in A through F of this section provided appropriate qualifications are met. Each pre-school health and developmental screening program shall include the following screening personnel meeting the stated minimum qualifications:

A. Nurse.

1. A nurse currently licensed to practice professional nursing in the State of Minnesota shall be qualified to perform those pre-school screening functions permitted under the state Nurse Practice Act.

2. Who has successfully completed training seminars provided by the Minnesota department of health or participated in equivalent training programs designated by the Minnesota department of health to prepare individual to perform child screening.

B. Clinic coordinator who shall be responsible for administration of all components of the pre-school screening program.

C. Vision and hearing technician.

1. Who has been trained by the Minnesota department of health to perform vision and hearing screening, or

2. Who has been trained by a program providing equivalent preparation as determined by the department of health.

D. Laboratory assistant, for programs with a laboratory component.

1. Who must be registered as a laboratory technician, or

2. Who has been trained to perform the specific tests used in the screening session under the supervision of a nurse trained in accordance with 5 MCAR § 1.0723 A.

E. Clinic assistant.

1. Who has been trained by department of education or department of health professional staff in administering one or more of the health or developmental screening measures, or

2. Who has been trained by a program providing equivalent preparation as determined by the department of health or the department of education.

F. Dental screener.

1. Who must be a licensed dental hygienist or a registered or certified dental assistant, or

2. Registered nurse who has been trained by the Minnesota department of health or approved by the Minnesota department of health as having been trained to perform dental screening.

§ 1.0724 Screening procedures.

A. Screening procedures shall include the following components:

1. An individual review of past and present health status including perinatal, psychosocial, family health and immunizations.

2. Developmental screening tests of the child's development in the areas of motor development, language development, social-emotional development, and cognitive development by using procedures which shall include:

a. Parent report of the child's functioning history in the areas of skills development, emotional and behavior status.

b. Direct observation of the child's functioning utilizing standardized developmental screening instruments approved by the Minnesota

department of education and which have:

(1) Written procedures for administration and scoring.

(2) Norms for the age range being tested.

3. Hearing tests: To test for deviations from the normal range of auditory acuity using the Puretone Audiometric Screening Test. A Verbal Auditory Screening of Children may be used for 4 year old children.

4. Vision Tests: To test for eye health and deviations from the normal range of visual acuity and muscle balance in the child. Approved programs must:

a. Check the child for a history of maternal and/or neonatal infection and a family history of ocular abnormalities such as color blindness or retinitis pigmentosa.

b. Observe and examine the child's pupils and light following reflex, presence and absence of nystagmus, muscle balance, and an external examination of the eyes.

c. Muscle balance screening procedures include at least observation, cover test, and the Hirschberg test or a test with equivalent standards as determined by the department of health or the department of education, which is appropriate for the age group being screened.

d. Test for visual acuity. A test such as the Screening Test for Young Children and Retardates (STYCAR), the Snellen E cube, the Snellen Alphabet Chart, or a test with equivalent standards, as determined by the department of health or department of education, must be used.

5. Dental Inspection: The child's mouth is to be inspected for any obvious oral or dental abnormalities.

B. As of July 1, 1978, the screening procedure shall, in addition to the components included in A of this section, include the following components:

1. Assessment of the unclothed child including an inspection of pulse, respiration, blood pressure, head, eyes, ears, nose, pharynx, neck,

chest, heart, lungs, abdomen, spine, extremities, joints, muscle tone, skin and neurologic reaction according to normal procedures.

2. Laboratory tests: The following tests are to be administered appropriate for the age and sex of the child including:

a. Tuberculin.

b. Urine (Bililabstix).

c. Anemia testing (Microhematocrit, Hemoglobin).

d. Blood Lead - test for increased lead absorption and lead poisoning in children whose history indicates the possibility of exposure to undue levels of lead in the environment or atmosphere.

e. Sickle Cell Testing: This test is to be administered only with consent of the parent(s) or guardian(s).

3. Nutrition status review: A review of the child's food intake.

C. No pre-school screening program shall provide laboratory tests, a health history or physical assessment to any child who has been provided with those laboratory tests, a health history, physical assessment or physical examination within the previous 12 months. The school district shall request the results of any laboratory test, health history or physical examination within the 12 months preceding a scheduled pre-school screening clinic, for inclusion in the school records in lieu of comparable information collected in the screening program. Procedures shall be developed for exchange of student information in accordance with 5 MCAR § 1.0724 D.

D. Data on individual students is private as defined by state statutes and shall not be disclosed to a third party, including the district, without the informed consent of the parent. All information must be made available to the parents.

E. Upon identification of a condition in need of diagnosis or further attention, parents shall be informed of appropriate agencies or specialists capable of performing needed services, such as the family physician or special

education programs.

F. A minimum of two attempts shall be made, at least one of which shall be in writing with return postage, to determine whether recommended referrals were utilized.

G. Data on individual students obtained in the screening program shall be incorporated into school district records, except as indicated in D of this section.

H. Local school districts shall request information from parents concerning Medical Assistance eligibility to make it possible for the district to comply with 5 MCAR § 1.0725C.

I. Diagnosis, treatment or therapy shall not be provided in the pre-school screening program but this does not preclude provision of such services as a part of a related program.

§ 1.0725 Payment of aids.

A. Payment of aids for the costs of screening conducted in accordance with an approved plan shall be made as provided for by legislative appropriations.

B. An advance of 50 percent of the estimated aid payment may be made upon request.

C. Where a child is known to be eligible to have costs of screening paid for under other state or federal programs, requests for payment shall be made to such other agencies, and the school may not claim reimbursement under this program.

D. No aid payment shall be made for screening any child more than once.

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE BOARD OF EDUCATION
BOARD FOR VOCATIONAL EDUCATION

In the Matter of: The proposed Adoption of rules of the state board of education (state board for vocational education) governing experimental programs for elementary and middle schools; and rules for preschool health and developmental screening; and rules for content, approval and funding of vocational education programs.

REPORT OF HEARING EXAMINER

The above-entitled matter came on for hearing before Hearing Examiner Peter C. Erickson of the State Office of Hearing Examiner at 9:00 a.m. on Friday, February 3, 1978 in the Department of Health Building, Minneapolis, Minnesota.

Charles T. Mottl, Special Assistant Attorney General, appeared as counsel for the Department of Education. E. Raymond Peterson, Assistant Commissioner of Education, and Reynold Erickson, Director of Pupil Personnel Services, testified in support of the proposed rules on behalf of the Department. The hearing continued until all interested groups or persons had had an opportunity to be heard concerning the adoption of the proposed rule.

Pursuant to Minn. Stat. § 15.0412, subd. 4, this Report shall be available for review to all affected individuals upon request for at least five days.

The Department of Education shall, if it proposes to adopt the rules as originally proposed or amended, submit the complete hearing record, including its Findings and Order, to the Chief Hearing Examiner no earlier than five days subsequent to the receipt of this Report. This submission shall clearly indicate any changes made to the rules as originally proposed, preferably in the format that will be submitted to the State Register for publication. The Chief Hearing Examiner shall complete his review and submit his report to the Department on the issues of substantial changes in the rule and compliance with Minn. Stat.

§ 15.0412 within ten calendar days. Thereafter, the Department of Education shall be responsible for filing the rules with the Attorney General and for notifying persons who have indicated that they wish to be notified of such filing.

Based upon all the records and proceedings herein, the Examiner makes the following:

FINDINGS OF FACT

1. On November 8, 1977, the Department filed the following documents with the Chief Hearing Examiner:

(a) A copy of the proposed rules;
(b) A proposed Order for Hearing;
(c) A proposed Notice of Hearing; and
(d) A Statement of the estimated length and number of people attending the hearing.

2. On November 28, 1977, a Notice of Hearing and a copy of the proposed rules were published at 2 State Register 1051.

3. On December 1, 1977, 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.

4. On January 5, 1978, the Department filed 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 Secretary of State's Certificate and list;
(f) The Statement of Need;
(g) The Statement of Evidence, including the names of witnesses to be called; and
(h) The names of Department personnel who will represent the agency.

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

5. The record remained open through February 22, 1978, for the receipt of written comments and statements.

6. Pursuant to Minn. Stat. § 15.0412, subd. 4, both the Hearing Examiner and the Department of Education requested that an extension through April 14, 1978 be granted to complete the

Report on this matter. The Chief Hearing Examiner ordered that an extension be granted through April 14, 1978.

7. Statutory authority to promulgate the proposed rules is contained in Minn. Stat. §§ 121.11, subd. 7 (1976), and 123.703, subd. 1 (1977 Supp.).

8. Pursuant to Minn. Stat. § 15.052, subd. 3 (1976), it is the duty of the Hearing Examiner to: ". . . (4) make a report on each proposed agency action . . . taking notice of the degree to which the agency has (i) documented its statutory authority to take the proposed action; (ii) fulfilled all relevant, substantive and procedural requirements of law or rule, and (iii) demonstrated the need for and reasonableness of its proposed action with an affirmative presentation of facts."

9. The Department supported the need and reasonableness of 5 MCAR § 1.010, Experimental Programs, as follows:

> The need for this rule then is to provide a degree of flexibility that will allow, on an experimental basis, an elementary or middle school to institute a program that could not otherwise be provided. Similar authority already exists for secondary schools as provided for in Edu 40 A(4)(c). Examples would be experiments with flexible-modular scheduling and 90-minute block scheduling, which would call for exemption to rules Edu 42 A.1., and Edu 46 C.1., which refers to six, seven, or eight-period days.
>
> Before an exemption to existing rules may occur, a series of requirements must be satisfied. First, an exemption may only be granted by the State Board of Education. That requirement is reasonable because the original rules reflect the policy decisions of the State Board, and therefore, only that body should determine whether unanticipated events suggest an altered policy decision.
>
> Before an exemption may be granted, there must be an expectation that the experimental program will either improve the program from an educational standpoint, or will result in reduced program costs without a reduction in quality. Those are viewed as the only two instances in which an exemption could be justified. The criteria are reasonable in that a reduction in program quality should not be permitted by reason of an exemption. A reduction in quality would run counter to the very reason for the original adoption of the rules of the State Board.
>
> The application must state goals and objectives along with how it is anticipated those goals and objectives will be reached by listing the activities and procedures that will be utilized. Through those requirements, the State Board will be enabled to judge the

validity of a proposed experimental program and also form a judgment on whether the stated objectives are likely to be reached.

A time limit of three years has been established. Because such programs are by their very nature experimental, the programs should be allowed only for a limited time period during which time the program can be evaluated. However, the period must be of a sufficient length of time in which to evaluate the experimental program so as to determine whether the goals andobjectives have been accomplished. The three-year period should be sufficient to allow for a full evaluation. No minimum term is specified because, in some instances, the experimental program may be of a nature that a full three-year period is unnecessary.

The application must also indicate the procedures that will be utilized in evaluating the program. This criteria is included to assure that the results of the program are adequately measured. The evaluation is to be conducted by persons outside of the district to increase the objectivity of the evaluation.

Section B is included to ensure that a proposed program has been adequately studied by the school district prior to the application being submitted to the State Board. The likelihood of success of the program will be significantly increased if it has the support of the parents, teachers, and students. Only approval by the local school board is required because by law that is the body with the final responsibility for the school district. The interests of the parents, students, and the teachers will be protected in two ways. First, the local school board is likely to be responsive to those groups. Secondly, because of the requirements of Section B, those groups will be aware of the proposed action of the local board, and if they have concerns that are not satisfied, they may contact the State Board of Education.

Section C authorizes a local school board to continue a program that has proven effective. Should such a program be continued, then the rules of the State Board will be amended to permanently permit such a program. However, it takes a considerable period of time to amend rules. Therefore, the purpose of this provision is to permit a school district to continue the program until such time as the rules may be amended. It is also possible that in some instances, a program may be successful in one district that, because of the unique nature of the school district, would not be successful in other districts. In such instances, the district should be allowed to continue its program despite the fact that a rule change would not be advisable.

10. The Minnesota Education Association commented on proposed 5 MCAR § 1.010 as follows:

The Minnesota Education Association wishes to make only a brief comment in regard to MCAR 1.0010 Experimental Programs.

MEA is, of course, in favor of innovative programs that result in improved service to the students in our schools.

MEA is, however, concerned that this rule may encourage some districts to develop programs that will reduce the cost of service but not maintain the high quality needed by the clients, the students and parents.

MEA is particularly concerned that the rules relating to class size will be the primary rule from which districts will request exemption. Thus, we would suggest a yearly evaluation of the program to determine its effectiveness without reduction in quality of instruction.

Further, we believe that more specifics are needed in regard to who shall conduct the evaluation of the program. As currently stated, "such evaluation shall be conducted by persons other than employees of the district," leaves a wide latitude. Should it not be conducted by the State Department of Education?

11. § 1.0720 of the proposed rules relating to pre-school screening, which provides definitions, is necessary to define terms included in the rules which are either different than usually accepted definitions of the terms, or are otherwise inadequately defined for the purposes of this program. Except as indicated, the definitions are consistent with definitions of the EPS program to assure standards consistent with those of the State Board of Health and thus avoid duplication of administration and reporting.

1. "assessment" is defined since the term has different meanings to educators, and in this case, the law clearly is using the term interchangeably with "screening".

2. "parent" is defined to be consistent with the definition included in Department of Education rules EDU 120 A.13, dealing with the special education programs. This will make possible better coordination with the special education "child find" program, and avoid duplication of efforts.

3. "referral" is defined because the term in this program refers to a process of informing parents of resources available rather than providing a direct contact with another agency. This differs from the definition used in other educational programs.

a. The School Nurses Organization of Minnesota (SNOM) made the following comments on § 1.0720:

1.0720 The order of the definitions does not seem to follow sequentially. SNOM suggests the following order, addition and deletions.

1.0720 A

1.0720 F

1.0720 Health Screening - systematic procedure to screen vision, hearing, dental, physical, nutritional and immunization status.

1.0720 B. Developmental Screening - Systematic Procedures to screen the motor, language, social-emotional, ~~cognitive~~ and developmental status of the child.

1.0720 G. in conformity with required training standards.

1.0720 E. Referral - An organized system of providing information on agencies for children with problems identified through screening to be seen by an appropriate resource for evaluation, diagnosis and treatment.

b. Mrs. Annette Heuer commented as follows:

1.0720 Definitions.

C. Please delete "or such agency . . . Minnesota statutes." A child's parent/s is/are his/her biological mother and/or biological father, or adoptive mother and/or father, or legally appointed guardian. An agency or other person appointed pursuant to Minnesota Statutes shall work with such parent/s. (Please, let's not make such agency or person a parent!)

c. Betty Hubbard, Chairperson of the Governmental Operations Committee, Governor's Planning Council on Developmental Disabilities, State Planning Agency, commented as follows:

§ 1.0720 Definitions.

E. Referral, as defined here, is not used in the sense of active staff assistance to parents to help them to find and use community health, medical, educational and social services, but as described in § 1.0724, Screening Procedures, E., page 7, refers, rather, to giving a written list of possible resources to a parent, which parents may use as they please.

Recommendation: That E. Referral Resources - a list of agencies or specialists which parents may use for diagnosis and treatment of problems identified through screening procedures."

d. The Duluth Public Schools commented on § 1.0720 as follows:

A. Recommend that "assessment" not be defined as synonymous with "screening".

Rationale: Edu 120 (§ B.12) defines "assessment" as "an individual evaluation, conducted in accordance with recognized professional standards and the provisions of EDU 124, of a person's performance and/or development for the purpose of determining the need for initiation or change in his or her educational program including special education services."

The purposes of screening and assessment are significantly different.

The purpose of screening is to identify those individuals requiring a medical evaluation or formal educational assessment. The purpose of assessment is to determine the need for initiation or change in an individual's educational program. An assessment is a more comprehensive and more individualized procedure than a screening since according to EDU 124 (§ B.4), it "must reflect the person's current level of performance and shall be appropriate to the presenting problem."

B. Recommend that the definition of "developmental screening be changed to read "procedures utilized to indicate possible delays in the motor, language, social-emotional, or cognitive areas of development which warrant further observation and testing."

Rationale: The definition provided in the proposed rules is closer to the definition of "developmental assessment." Screening does not identify the child's status in the various stages of development. It is intended only to indicate those with <u>possible</u> problems.

E. Recommend that the word "specialist" be omitted and substituted with "appropriate resources or persons in a specialized area."

Rationale: "Specialist" frequently connotates a specific type of physician.

e. The Hearing Examiner concludes that § 1.0720, as proposed, is both needed and reasonable.

12. <u>§ 1.0721</u> relating to participation in the program and the delivery of services is necessary to emphasize the school's active role in the administration of the program. Since this is a new program, school personnel have raised numerous questions on these aspects of the service.

a. The Fergus Falls Public Schools, together with several other persons and groups, commented on § 1.0721 C. as follows:

> I would refer you to Page 2, Part C, in which the statement "School boards, individually 'shall' contract . . . screening programs.
>
> It seems to me that the word "shall" is creating a mandatory purchase of service. It would seem that since the school board is responsible for the screening, they should have the discretion to provide service within their own organization and have the opportunity to purchase service if they wish.
>
> The changing of the word "shall" to the word "may" would accomplish this.

The Examiner points out, however, that Minn. Stat. § 123.702, subd. 4, specifically mandates that school boards shall contract with EPS programs.

b. The Minnesota Nurses Association (MNA) commented on § 1.0721 as follows:

> 1.0721 Several people at the hearing expressed their concern regarding the lack of coordination between the three departments -- Department of Public Welfare, Minnesota Health Department, and Department of Education. We also share this concern as the proposed rules do not outline how the agencies will coordinate the system. Without this spelled out, we are concerned that: 1) the public will be confused by the three programs and the purpose of each; 2) duplication of services may result; 3) referral and follow-up will not be coordinated with EPSDT; and 4) federal monies may be lost.

c. Nancy Feldman, EPSDT Supervisor, Department of Public Welfare, testified as follows:

> This Department feels that specific requirements for school district coordination with the EPSDT Program are essential for inclusion in this rule. Sections of the proposed rule which relate to such coordination are 1.0721(D), 1.0724(C), and 1.0725(C). Two basic points are involved in this recommendation: 1) Coordination with the EPSDT Program should be mandated to school districts since such coordination is essential to the operation of both screening programs, and 2) In order to mandate this coordination, the requirements must be clearly spelled out in the proposed rule.
>
> Coordination should be mandated to school districts for the following reasons:
>
> 1) The Preschool Screening and EPSDT Programs have an overlapping constituency. Approximately 5,600 three year olds and 5,800 four year olds in

the state are eligible for Medical Assistance and would also be eligible for the Preschool Screening Program.

2) Both programs require the offer of screening services to children who are eligible for the program and both require case management and follow-up services.

3) Given the two conditions specified above, the potential for duplicating outreach, screening and follow-up services is very great. The cost of such duplication would be great, not only in dollars, but also in the time and inconvenience to the parents and children who would be subjected to duplicated outreach requests, follow-up phone calls or visits and screening services.

4) School districts have traditionally been reluctant to inquire about welfare status. If such coordination is not mandated, it seems likely that a substantial number of school districts could choose to ignore coordination at the local level.

5) Since EPSDT services are funded totally by Medical Assistance funds, a total of $220,000 could potentially come into the Preschool Screening Program during the biennium as an addition to the $1,425,000 which was appropriated by the state legislature for the program. Also, since Medical Assistance monies are composed of approximately 58% federal funds, such reimbursement would make maximum use of federal monies. The Preschool Screening appropriation was made by the legislature with this addition of federal funds in mind.

If coordination with the EPSDT Program is to be mandated to school districts for the above reasons, then these requirements should be explicitly required in the rule for the following reasons:

1) Our experience indicates that the current language is not clear to either school districts or local welfare agencies. We have had numerous telephone calls from and contacts with such agencies who were seeking clarification on coordination policies.

2) If such coordination is to be required of school districts, then they should have the opportunity to see the requirements clearly written in rule form and to comment on them. Putting coordination requirements into manual material and not into the rule does <u>not</u> allow school districts the chance to have input into the requirements.

3) Coordination between preschool screening and the EPSDT Program is not explicitly required in the authorizing legislation. Therefore, since one of the purposes of rules is to expand and clarify on legislation, the rule is the appropriate place to make these requirements known to school districts.

Based on the above reasons, the Department of Public Welfare submits the following language requiring school district coordination with the EPSDT Program as an amendment to the proposed rule.

After July 1, 1978, school districts shall:

1) Determine the Medical Assistance status of every child screened.

2) Use the inter-department screening reporting form as the official screening record for every child screened.

3) Seek Medical Assistance reimbursement for every eligible child who is screened.

4) Coordinate follow-up efforts with local welfare agencies so follow-up efforts are not duplicated.

5) Count as screened any child who has received an EPSDT screening within six months and obtain the screening information from the provider so that services are not duplicated.

The Department of Education stated that these added measures would "add an unreasonable burden of letters, telephone calls, or other communication. Issues of confidentality. . . would need to be addressed."

d. The Examiner concludes that the proposed rule is both needed and reasonable. The Examiner recommends, however, that § 1.0721 D. be amended as set forth above in Finding 12.c. The Legislature intended that the three programs (EPSDT, EPS and Preschool Screening) be coordinated to minimize cost and maximize efficiency on the local level. This concept should be more clearly spelled out in the proposed rules.

13. §1.0722 relating to the local school district plan is necessary so the State Board of Education can 1) determine whether local schools are implementing the program in accordance with the law; 2) determine the need for technical assistance; 3) obtain data for reports to the Legislature, including recommendations fom future improvements in the program. Time and effort will be saved by allowing school personnel to describe the procedures being planned rather than following a prescribed format or answering detailed questions.

§ 1.0722 A.1. concerning local school district plans is necessary to assist the State Board of Education in determining the extent to which local school boards are attempting to actively encourage participation in the screening program, evaluate

effectiveness of outreach activities and determine the need for additional assistance in developing materials and techniques for outreach activities.

§ 1.0722 A.2. requiring information on location and frequency of screening will provide information to insure the availability of the screening services both as to time and location in relation to the families being served. For instance, are some families unable to obtain the screening services because they are only given at times when parents are working or in locations so distant that parents are unwilling or unable to bring their children in for screening.

§ 1.0722 A.3. and A.4. outlining required staff and procedures are necessary to assure that local programs can adequately offer screening services and have components meeting the standards of the State Board of Health and the EPS program as required in the law. Information necessary to plan for training of local screeners will also be provided. On the basis of the information, for instance, time and places for training sessions will be determined. In addition, information will be provided to determine whether or not present standards are adequate to provide effective services to children.

§ 1.0722 A.5. A **preschool screening** has little value unless parents are informed of the results and are given help in understanding and taking any remedial action where it seems warranted. This section, requiring reporting to parents, is necessary to provide information to assist the State Board of Education in determining the effectiveness of procedures being used and the need for technical assistance for improving the reporting process.

§ 1.0722 A.6. One of the purposes of this legislation, as given in the statement of purpose, is for "planning educational and health programs". Information provided in this part of the local plan will indicate the procedures being used by the school in utilizing screening information, especially for educational

planning, and provide the basis for evaluating present procedures and providing technical assistance for program improvement. Such information is necessary for effective planning of educational and health programs.

§ 1.0722 A.7. and A.8. Detection of possible health or developmental problems would be a waste of taxpayers' money if there is no follow-up to diagnose and correct identified needs. These sections relating to follow-up procedures will provide background information to evaluate effectiveness of referral procedures, and the need for technical assistance to be provided to improve local school board activities. Corrective procedures can then be developed to assure adequate programs for Minnesota children.

§ 1.0722 A.9. It is necessary that this information on using other available screening programs be provided so that technical assistance may be given local school boards in avoiding duplication of efforts, utilizing existing volunteer programs for efficient use of funds, and improving coordination of services.

§ 1.0722 B. This section relates to payment to local sch schools to insure that program standards are being met and services provided as the Legislature intended. It will make certain that necessary information is provided to the State Board of Education for evaluation and improvement of the program, and for reports required to be submitted to the Legislature.

§ 1.0722 C. Since contracting for services is allowed in this program, and it is anticipated many schools will provide services in this way, it simplifies paperwork, avoids duplication of effort, and saves time if such information does not need to be recopied in the local school plan. Most schools have copying equipment, and this section provides the option of supplying information either by providing a copy of the contract spelling out the details, or rewriting them for the plan.

§ 1.0722 D. The law provides that schools must provide all

components of the program "to the extent the school board determines they are financially feasible. . . ." This section sets forth the procedures to be followed by local boards to request exemption from providing any of the mandated components. Since financial need is the only basis for exemption, no further criteria are given.

§ 1.0722 E. Additional components are required for fiscal year 1979; therefore, additional information must be submitted the second year. This section provides that an annual plan will be submitted to indicate changes. To avoid duplication of effort and simplify the submission of subsequent annual plans, only changes need to be reported and approved rather than a complete rewriting of the plan each year.

§ 1.0722 F. This section provides a necessary deadline for submitting claims for reimbursement compatible with the state fiscal year, yet providing flexibility for schools wishing to conduct screening in June. Allowing school boards to submit claims any time after completion of the screening will avoid a pile-up of claims at the end of the year and provide more efficient processing.

a. Rebecca Knittle, managing attorney for Legal Advocacy for the Developmentally Disabled of Minnesota, commented on § 1.0722 as follows:

> A major concern relates to the local school district plan, as set forth in 5 MCAR § 1.0722. The requirements of the plan are extremely vague and will not give school districts adequate guidance in setting up their district plan. Furthermore, unless the Department of Education has obtained substantially increased funding to permit close scrutiny of all plans which are submitted, it is likely that plans will vary greatly from school district to school district. It is not in the interest of children to be screened under this program nor, do we believe, is it the intention of the legislature, that there be large variations in the screening programs throughout the state. Thus, this whole section should be re-written to specify the necessary requirements for the procedures to be included within each district's plan.

b. Elaine Saline, EPSDT Coordinator, Ramsey County, stated that the local school district plan "should be sent to local health and welfare agencies, as well as the state, to assist in coordination of the programs."

c. The Minnesota Medical Association (MMA) commented as follows:

> Section C on page 7 of the rules permits information from a personal physician to be accepted in lieu of the information that should be obtained through this Pre-School Screening Program. We believe that the School Board's plan should include notifying parents of this option. Therefore, we recommend that an additional section be added under 1.0722 A. on page 2 stating:
>
> > "Procedures to be used to inform parents that a health history, physical examination, laboratory tests, and immunization completed by a personal physician within the stated time period shall be accepted in lieu of comparable components in the screening program."
>
> We then recommend that Section 1.0722 A.1. be amended by striking "~~the~~ Pre-School Screening Program" and substituting "a Pre-School Screening Program." This would recognize that other screening programs are acceptable in meeting the requirements of the statute and rules.

d. Betty Hubbard commented as follows:

> § 1.0722 Local Plan. Under A.7. and A.8., page 3, refer to referral and follow-up procedures which appear to be forbidden in § 1.0724, Screening Procedures, under E., page 7, which says that referral and follow-up are not to be a part of this screening program.
>
> Recommendation: That A.7., page 3, be changed to read: "7. Procedures to be used in preparing a regularly updated list of referral resources which parents may use for diagnosis and treatment." No. 8 should be deleted because follow-up is not an identified component of the mandated service.

The Examiner does not read § 1.0724 E. as prohibiting referral and follow-up. Minn. Stat. § 123.702, subd. 2, mandates, rather, that an "appropriate follow-up and referral process" be available.

e. The Examiner concludes that § 1.0722, as proposed, is both needed and reasonable.

14. § 1.0723 on staffing, and § 1.0724 A. and B. on screening procedures provide necessary information to the State Board of Education to assure that local schools are meeting standards of the State Board of Health for early and periodic screening programs as in § 2, subd. 1. The standards given for staff are those required for the early and periodic screening programs of the State Board of Health.

a. Jim Kenney, Assistant Director for Health Services, Minneapolis Public Schools, stated that there is an apparent conflict in the language contained in § 1.0722 D. and § 1.0724 A. and B. The Department agreed that an amendment was needed. The Examiner suggests that the easiest way to resolve the difficulty would be to delete the word "statutorily " from § 1.0722 D. and delete the words "to the extent the school board determines they are financially feasible" in § 1.0724 A. and B.

b. The MNA recommends that § 1.023 A.1. be amended to read, "Who is currently licensed as a professional nurse by the Minnesota Board of Nursing" because an LPN would not be able to perform the functions necessary to carry out the objectives of the program.

c. Betty Hubbard commented as follows:

§ 1.0723 Staffing.

E. Clinic Assistant.

Recommendation: That "or" be added to end of No. 1, and that No. 2 be added as follows: "who has been trained by a program providing equivalent preparation as determined by the department of health or the department of education.

The Department agreed with this proposed amendment.

d. The Olmsted County Health Department stated that § 1.0724 A.1. refers to nutrition intake and the statute does not require nutrition status review until 1979. Also, Olmsted County questioned the value of a bacteriuria test for preschool females. The MMA suggests that the bacteriuria test be deleted from the rules.

e. Dr. Robert Letson testified that § 1.0724 A.4.c. should be amended by deleting the "Worth 4-Dot" test. He asserts that very few children under six years of age can follow the instructions for the test. The Duluth Public Schools and the Mayo Clinic supported Dr. Letson's proposal. Dr. Letson, an ophthalmologist, has had 17 years of vision-testing experience with preschool children.

f. The MMA commented on § 1.0724 B.1. as follows:

We would like to comment on the unclothed assessment of the child which will be required beginning July 1, 1978 and is discussed on page 6, Section B. of the rules. We have reservations about the privacy that will be available to perform this "assessment" which we also believe goes beyond observation of the child to an actual physical examination and therefore should be performed by qualified personnel. We are concerned that the rules do not state specific standards that require the unclothed assessment to be conducted in a private and healthy environment under controlled sanitary conditions. At the very minimum, the procedures manual should set out detailed requirements that must be met for approval of an unclothed assessment component of a plan.

g. Dr. John F. Hick proposed that § 1.0724 B.1. be amended as follows:

Amend Paragraph 1.0724 B.1. of Chapter 36, State Register, to limit assessment of the unclothed child in the following manner: "Physical assessment may be performed only through contract with a licensed health professional or agency engaged on a regular basis in child health assessment."

This would not preclude further experimentation with the use of nurses possessing qualifications below this level (e.g. school nurses) on a pilot study basis, limited to a minimum number of school districts, so long as the experiment could be designed to properly test the reliability and validity of the examinations. Chapter 36 refers to the Preschool Screening Act as an experiment, but it seems inappropriate to choose the entire state as a laboratory for untested components of the program.

h. The Examiner concludes that §§ 1.0723 and 1.0724 A. and B. are reasonable as proposed with the amendment suggested in paragraph 1 above. The Examiner also recommends that the rule be amended as set forth in Finding 14.d. above.

15. § 1.0724 C. In a number of cases, it is anticipated that children will have had a recent physical examination by the family physician which might include several of the health components included in the screening program. To avoid the duplication of services which would result in requiring a repeat of the same components, this section provides that information from such outside resources may be submitted for inclusion in the school record. The time limits given are to provide reasonable assurance that the information is current.

§ 1.0724 D. and F. are necessary to emphasize the relation of records from this program to other school records, and the legal rights of parents and children for privacy.

§ 1.0724 E. is needed to emphasize that schools do not make direct referrals, but only suggest appropriate resources to the parents. Emphasis is necessary because in some other circumstances, schools may make direct referrals.

§ 1.0724 G. This paragraph relating to diagnosis, treatment and therapy is needed to clarify the limits of the screening process. Most educators have had little contact with the concept of "screening", and there is need to emphasize not only what screening is, but also what it is not. Clarification is needed because some other programs, such as EPSDT, do include diagnosis and treatment.

a. Anoka-Hennepin Independent School District No. 11 commented on § 1.0724 D. as follows:

> Please note in the Proposed Rules Item 1.0724 D. that the information gained in the screening process for which the school is responsible shall not be disclosed to a third party, including the school district, without parental consent. I am fully aware of the implications of data privacy laws but see some obvious practical problems with this mandate. If the district conducts the screening, how will it not be a party to the information derived? If the district contracts for the screening and the purpose of the legislation is in part for the school to provide service, what good is there for the child in the district not having access to the information?

b. Dr. Ronald Campbell, Chief of the Maternal and Child Health Section, Department of Health, proposed that § 1.0724 E. be amended by adding the language:

> The child who is found to have deficiencies in his immunization status shall be offered appropriate immunization services as part of the preschool screening service rather than through referral if there is legal consent from the parents or guardians, and there are no medical or religious contradictions to administration of the vaccine.

Dr. Campbell contends that this amendment is necessary because the federal requirements of Title XIX will be changed in the near future to require that immunization services be offered as a part of the screening.

Nancy Feldman also supported "on-site" vaccinations as follows:

> Finally, we wish to reiterate this Department's support for the amendment proposed by the Department of Health that would require the provision of immunizations as part of the preschool screening process. We feel that the Preschool Screening Program can be an excellent vehicle for helping to ensure that all school age children in Minnesota are properly immunized. We wish to voice our complete agreement with the testimony of Dr. Ron Campbell and of Ms. Diane Peterson from the Department of Health concerning the drop in immunization levels in children in Minnesota and the crucial need for using every means available to ensure that children are fully immunized. In addition, we wish to emphasize the importance which federal authorities are placing on immunizations as evidenced by HEW Secretary Califano's recent announcement of a new federal immunization initiative. As I testified, new proposed federal penalty regulations for the EPSDT Program will require provision of immunizations as part of the EPSDT screening package. In order for the screening programs of the three state departments to remain compatible and for state agencies to do everything possible to assure that all children in the state are adequately immunized, this Department feels a requirement that immunizations be included as part of the preschool screening package is essential.

The Education Department opposes on-site immunizations for the following reasons:

> 1) There is no authorization for the Board of Education to require immunizations in the Pre-School Screening law; 2) requiring or providing immunizations could add costs to the program without any additional support; 3) the added liability of the school for medical results, such as allergies to the immunizations. While we have encouraged schools to coordinate the screening with agencies providing immunizations, assigning the schools the responsibility for immunizations is not reasonable.

The Examiner agrees that there is no statutory authority for the Department to mandate that immunizations be offered during screening. The statute (Minn. Stat. § 123.702) directs the Board to offer a "screening program" with "appropriate follow-up and referral process." If the federal government should require that vaccinations be offered, the state would have little choice but to comply. Therefore, the Examiner recommends that the rule be amended by the inclusion of the following language: <u>If federal law requires that immunization services be offered as a part of preschool screening, local school boards shall offer such services.</u>

c. The MMA suggested that § 1.0724 C. be amended as follows:

> On page 7 of the Rules, we propose that Subdivision C. be amended to state that, "If requested by the parent, health history, physical examination, laboratory tests, . . ." We then suggest another sentence be added to that section stating, "A signed statement by a personal physician stating that the child has no deficiencies in his immunization status shall be accepted in lieu of any immunization component required in the Screening Program."

d. Nancy Feldman commented as follows:

> As we testified at the public hearing, we are concerned with the screening procedures which are contained in Section 1.0724 of the proposed rule. We are concerned because the screening standards contained in this rule and the EPS rule are not the same, and because the EPS rule incorporates referral criteria by reference to the EPS Manual and thus clearly specifies the conditions under which a child should be referred, while the Preschool Screening rule does not contain such referral criteria. For example, referral criteria for dental in the EPS Manual include referring a child if he or she has not been to the dentist in one year. The preschool screening rule does not include referral criteria by reference and therefore does not require referral for children who do not have obvious dental abnormalities. There are other differences between the screening standards contained in the preschool screening rule and the EPS rule. We feel the standards contained in the EPS rule are clearer, more explicit, and more closely related to the standards contained in DPW's EPSDT rule. We therefore again recommend that the standards and referral criteria which are contained in the Minnesota Department of Health EPS rule be substituted for the standards as written in the proposed preschool screening rule.

Elaine Saline commented that the proposed rules do not contain referral criteria or follow-up procedures after screening. She stated that, "There should be language which says this will be done and will be coordinated with other screening programs including Title XIX EPSDT."

The MNA stated that, "These proposed rules do not identify a follow-up component. Without follow-up, it is impossible to evaluate the effectiveness of the screening program and to assure that the required services were made available."

Dr. John Hick made the following suggestions:

Proposed New Material:

> The Departments of Health and Education of the State of Minnesota shall be required to:

1) establish minimal referral criteria for use by individual school districts.

2) acquaint potential referral resources with the minimal referral criteria and with standard recommendations regarding further diagnostic and treatment recommendations.

3) randomly sample parents of children who have been screened in order to test parental satisfaction with the screening process, whether abnormalities detected by screening were verified, whether treatment or educational intervention was instituted, and parental satisfaction with the diagnostic and treatment intervention.

The Department of Education commented as follows regarding referral criteria:

> That rules should spell out specific referral criteria: i.e., at what point does a particular child exhibit symptoms sufficient to require referral. Screeners are trained to do the screening, and depending on the instrument, determine whether or not a child needs referral. We do not believe the rules should be more explicit and limit the practice of expertise of the screeners.

Minn. Stat. § 123.702 prescribes that local boards "shall ensure that an appropriate follow-up and referral process is available." The Examiner does not think that "referral process" and referral criteria are synonymous. Criteria should be developed and taught during screener training. The Examiner concludes that a "referral process" is adequately dealt with in the proposed rules. The Examiner also points out at this time that the Department of Health has withdrawn the procedural manual from its proposed rules. Thus, EPS will not include referral criteria either.

The proposed rules do not, however, adequately deal with "an appropriate follow-up . . . process". In this regard, the rules are lacking. The Examiner will not attempt to draft suitable language, but rather, leave that to the discretion of the Department. Nothing which constitutes a substantial change may be incorporated into these rules, however. See Minn. Stat. § 15.052, subd. 4, and Minn. Rule HE 108.

e. The Examiner concludes that proposed §§ 1.0724 C. - G. are both needed and reasonable.

16. § 1.0725 A. provides for reimbursement to local schools. No dollar figure or percentage figure is given for the payment since the amount may vary from year to year.

§ 1.0725 B. provides that a 50% advance is not automatic, but must be requested. This is intended to simplify reimbursements yet provide some flexibility.

§ 1.0725 C. Children from families qualifying for the EPSDT program are already eligible for screening and are also eligible for the additional services of diagnosis and treatment. To conserve state funds provided for this screening program, costs are to be provided by EPSDT where possible. Since the state is providing for reimbursement only on costs incurred under this program, there could be no claim submitted if expenses have already been paid by EPSDT. This paragraph provides procedures to avoid a double billing.

§ 1.0725 D. It is necessary to emphasize that Minn. Stat. § 123.701, et seq., provides for screening a child only once before entering kindergarten since other programs such as EPSDT and EPS are "periodic", that is, screening may be repeated at designated intervals.

a. The Interagency Advisory Committee on Child Health Screening commented on § 1.0725 D. as follows:

> § 1.0725 should contain a statement which requires schools to seek reimbursement from the Department of Public Welfare for the screening of children who are eligible for Medical Assistance. Money is currently available in Minnesota to pay for the screening of Medical Assistance eligible children through the EPSDT program. The components of screening under EPSDT are identical to those required of school districts after July 1, 1978.

b. The Examiner concludes that §§ 1.0725 A. - D., as proposed, are both needed and reasonable.

17. Betty Hubgard made the following general comments regarding the proposed rules:

> The pre-school health and developmental screening bills proposed by Rep. Peggy Byrne and Senator John Milton had as their initial goal the coordination of Early and Periodic Screening programs for Medicaid-eligible children, and a pre-school

screening program for all three- and four-year-olds, with Title XIX paying for the eligible children and the Department of Education paying for the others. However, as the legislative session wore on, the bills began to take on some different characteristics, based on the agenda of persons and agencies not entirely committed to the original goal.

The result is a puzzling law which does not make clear what legislative intent actually was. If it was the intention of legislators to require the public school to serve solely as a vehicle for passing through the appropriated funds to local health agencies which could then operate screening clinics in local elementary schools, they would have provided a per-child reimbursement which would cover the cost. If they intended that the districts would conduct screenings tailored to the $13 per child reimbursement, they would not have mandated the rigid EPS requirements which cost so much more than $13. As it stands, the law is virtually impossible to implement, which is an excellent reason for not promulgating rules at this time, but to allow this two-year pilot project to ooperate under guidelines. At the end of the project period, an evaluation of the program would allow the State Board of Education and the State Legislature to decide whether to terminate or continue the program, or to introduce an entirely new piece of legislation. In the future, it may be necessary to amend the Administrative Procedures Act to allow experimental programs to operate on guidelines until it can be ascertained whether they have any value or not.

Based upon the foregoing Findings of Fact, the Hearing Examiner makes the following:

CONCLUSIONS

1. The Department of Education gave proper notice of the promulgation of the proposed rules and proposed rule amendments.

2. The Department of Education has statutory authority to promulgate the proposed rules.

3. The Department of Education has fulfilled all relevant, substantive and procedural requirements of law or rule.

4. Except as otherwise specifically noted in the foregoing Findings of Fact, the Board of Education has demonstrated the need for and the reasonableness of the proposed rules by an affirmative presentation of facts in the record.

5. The Hearing Examiner suggests that the proposed rules be amended as recommended in Findings 12.d., 14.a., 14.c.,

14.h., 15.b. and 15.d., discussed herein. The Department should further examine the entire record in this matter before final action is taken.

6. The Examiner concludes that the amendments he is suggesting make the proposed rules more reasonable and do not constitute a substantial change.

Based upon the foregoing Conclusions, the Hearing Examiner makes the following:

RECOMMENDATION

That the Department of Education adopt the proposed rules as recommended to be amended in this Report and on the basis of the record made herein.

Dated this 31 day of March, 1978.

Peter C. Erickson

PETER C. ERICKSON
Hearing Examiner

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE BOARD OF EDUCATION
BOARD FOR VOCATIONAL EDUCATION

In the Matter of: The proposed Adoption of rules of the state board of education (state board for vocational education) governing experimental programs for elementary and middle schools; and rules for preschool health and developmental screening; and rules for content, approval and funding of vocational education programs.

ORDER AMENDING REPORT OF HEARING EXAMINER

The Report of the Hearing Examiner, dated March 31, 1978, in the above-entitled matter shall be amended as follows:

FINDINGS OF FACT

* * *

14 h. (as amended) The Examiner concludes that §§ 1.0723 and 1.0724 A. and B. are reasonable as proposed with the amendment suggested in paragraph ± a above. The Examiner also recommends that the rule be amended as set forth in Finding 14.d. above.

Dated this 27th day of April, 1978.

Peter C. Erickson

PETER C. ERICKSON
Hearing Examiner

EDU-78-003-PE

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE BOARD OF EDUCATION
BOARD FOR VOCATIONAL EDUCATION

IN THE MATTER OF: THE PROPOSED ADOPTION OF RULES OF THE STATE BOARD OF EDUCATION (STATE BOARD FOR VOCATIONAL EDUCATION) GOVERNING EXPERIMENTAL PROGRAMS FOR ELEMENTARY AND MIDDLE SCHOOLS; AND RULES FOR PRESCHOOL HEALTH AND DEVELOPMENTAL SCREENING; AND RULES FOR CONTENT, APPROVAL AND FUNDING OF VOCATIONAL EDUCATION PROGRAMS.

REPORT OF THE
CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on February 3, 1978, before Peter C. Erickson, a Hearing Examiner of the State Office of Hearing Examiners, on the above-entitled matter in compliance with Minn. Stat. § 15.0412, Subd. 4; and

WHEREAS, the Report of Hearing Examiner made pursuant to Minn. Stat. § 15.052, Subd. 3, was issued to the Board of Education on March 31, 1978, and an Order Amending Report of Hearing Examiner was issued on April 27, 1978; and

WHEREAS, the Board of Education has now determined to adopt rules pursuant to Minn. Stat. § 15.0412, Subd. 4; and

WHEREAS, the Board of Education has submitted said rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.052, Subd. 4, and Rule HE 107; and

WHEREAS, the Chief Hearing Examiner finds that the final proposed rules are not substantially different from those proposed at the public hearing and that the Board of Education has met all requirements of Minn. Stat. § 15.0412, Subd. 4.

NOW, THEREFORE, upon receipt of this Report, the Board of Education has the responsibility of submitting the complete hearing record and the rules as adopted by the Board to the Attorney General and to publish in the State Register, all pursuant to Minn. Stat. § 15.0412, Subd. 4.

Dated this 13th day
of June, 1978.

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

STATE OF MINNESOTA
DEPARTMENT OF EDUCATION

IN THE MATTER OF: The proposed new rule of the state board of education governing experimental programs for elementary and middle schools.

STATEMENT OF NEED § 1.010

The State Board of Education has authority pursuant to M.S. 121.11, Subd. 7 (1976) to standardize public schools, and establish rules relating to examinations, reports, courses of study, and other such matters. Pursuant to that authority, the State Board of Education has adopted rules that regulate many aspects of the school program including, for example, student-staff ratios, required classes, and the length of the school day. While in the vast majority of cases those rules are valid in their implementation, instances arise where if an elementary or middle school were released from the constraints of the State Board's rules,an improvement of instruction or a reduction in program costs might occur.

The need for this rule then is to provide a degree of flexibility that will allow, on an experimental basis, an elementary or middle school to institute a program that could not otherwise be provided. Similar authority already exists for secondary schools as provided for in Edu 40 A(4)(c). Examples would be experiments with flexible-modular scheduling and 90 minute block scheduling, which would call for exemption to rules Edu 42 A., 1., and Edu 46 C., 1., which refers to six, seven, or eight period days.

Before an exemption to existing rules may occur, a series of requirements must be satisfied. First, an exemption may only be granted by the State Board of Education. That requirement is reasonable because the original rules reflect the policy decisions of the State Board, and therefore, only that body should determine whether unanticipated events suggest an altered policy decision.

Before an exemption may be granted, there must be an expectation that the experimental program will either improve the program from an educational standpoint, or will result in reduced program costs without a reduction in quality. Those are viewed as the only two instances in which an exemption could be justified. The criteria are reasonable in that a reduction in program quality should not be permitted by reason of an exemption. A reduction in quality would run counter to the very reason for the original adoption of the rules of the State Board.

The application must state goals and objectives, along with how it is anticipated those goals and objectives will be reached by listing the activities and procedures that will be utilized. Through those requirements, the State Board will be enabled to judge the validity of a proposed experimental program and also form a judgment on whether the stated objectives are likely to be reached.

A time limit of three years has been established. Because such programs are by their very nature experimental, the programs should be allowed only for a limited time period during which time the program can be evaluated. However, the period must be of a sufficient length of time in which to evaluate the experimental program so as to determine whether the goals and objectives have been accomplished. The three-year period should be sufficient to allow for a full evaluation. No minimum term is specified because in some instances the experimental program may be of a nature that a full three-year period is unnecessary.

The application must also indicate the procedures that will be utilized in evaluating the program. This criteria is included to assure that the results of the program are adequately measured. The evaluation is to be conducted by persons outside of the district to increase the objectivity of the evaluation.

Section B is included to ensure that a proposed program has been adequately studied by the school district prior to the application being submitted to the State Board. The likelihood of success of the program will be significantly increased if it has the support of the parents, teachers, and students. Only approval by the local school board is required because by law that is the body with the final responsibility for the school district. The interests of the parents, students, and the teachers will be protected in two ways. First, the local school board is likely to be responsive to those groups. Secondly, because of the requirements of Section B, those groups will be aware of the proposed action of the local board and if they have concerns that are not satisfied, they may contact the State Board of Education.

Section C authorizes a local school board to continue a program that has proven effective. Should such a program be continued, then the rules of the State Board will be amended to permanently permit such a program. However, it takes a considerable period of time to amend rules. Therefore, the purpose of this provision is to permit a school district to continue the program until such time as the rules may be amended. It is also possible that in some instances, a program may be successful in one district that because of the unique nature of the school district would not be successful in other districts. In such instances, the district should be allowed to continue its program despite the fact that a rule change would not be advisable.

ADMIN 1000

STATE OF MINNESOTA

DEPARTMENT Education

Office Memorandum

TO : Michael B. Miller
Special Ass't. Attorney General
G19K Administration Bldg.

DATE: 6-20-78

FROM : Lois Steinhaus
Lois Steinhaus
Education Statistics Section

PHONE: 6-4428

SUBJECT: Approval for rules governing experimental programs for elementary and middle schools; and rules for preschool health and developmental screening.

Enclosed is the complete record of the hearing.

Also enclosed are four copies of the rules as adopted and four copies of the order for hearing. In addition are three copies of each of the following:

1. Proposed rule (2)
2. Notice of hearing
3. Affidavit of receipt of secretary of state's list
4. Certificate of Delivery secretary of state's list
5. Affidavit of mailing
6. Statement of need (2)
7. Statement of evidence (2)
8. Findings and Order adopting rules (2)
9. Certificate of board's authorizing resolution (2)

Proposed Rule

Chapter One: Classification for State Aids, Minimum Requirements for Elementary and Secondary Schools

(All new material)

§ 1.010 Experimental programs. Elementary and middle schools desiring to offer an experimental course or program of studies that would require exemption to existing state board of education rules may request approval for such course offerings or programs. If the proposed program is approved, the state board of education is empowered to provide an exemption to rules that otherwise would apply.

A. The proposal shall include: A statement of the goals and objectives of the program which must include an expectation of improving the instructional program or the reduction of program costs without reduction in effectiveness or quality.

A listing of the activities and procedures to be utilized in accomplishing the stated objectives.

A definite time limit for the experiment not to exceed three years.

A statement of the evaluation procedures to be used in determining the effectiveness of the program. Such evaluation shall be conducted by persons other than employees of the district.

An identification of the state board of education rules, from which the district requests exemption for the purpose of the proposed program.

B. Evidence shall be provided that the proposal has been given thorough exposure to students and parents, that the faculty has been involved in the development of the proposal, and that the proposal has the approval of the local board of education.

C. If the evaluation at the end of the course or program is positive, the state board of education may authorize continuation of the program. When such continuation is granted, the state board of education shall stipulate the specific rules from which the program shall continue to be exempt.

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 7th day of November, 1977; 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 the experimental programs for elementary and middle schools; 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 7th day of November, 1977.

Secretary, State Board of Education

Member, State Board of Education

STATE OF MINNESOTA
DEPARTMENT OF EDUCATION

IN THE MATTER OF: The proposed adoption of rules of the state board of education governing experimental programs for elementary and middle schools and rules regarding pre-school health and developmental screening.

ORDER FOR HEARING

IT IS HEREBY ORDERED that a public hearing on the above-captioned rule be held in the Veteran's Building, Conference Room D, St. Paul, Minnesota on Tuesday, January 10, 1978, 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: 11/7/77

STATE OF MINNESOTA
BOARD OF EDUCATION

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE STATE BOARD OF EDUCATION GOVERNING EXPERIMENTAL PROGRAMS FOR ELEMENTARY AND MIDDLE SCHOOLS AND RULES REGARDING PRESCHOOL HEALTH AND DEVELOPMENTAL SCREENING.

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that a public hearing in the above-entitled matters will be held in the Veteran's Building, Conference Room D, St. Paul, Minnesota on Tuesday, January 10, 1978, commencing at 9:00 a.m., or as soon thereafter as possible, 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 material may be submitted at the hearing. In addition, written materials may be submitted by mail to Mr. Peter Erickson, Office of Hearing Examiner, 1745 University Avenue, Room 300, St. Paul, Minnesota 55104, telephone (612) 296-8118, before the hearing or after the hearing until the record is closed. The record will remain open for five or twenty working days after the public hearing ends, as ordered by the Hearing Examiner.

A copy of the proposed rules § 1.010 and §§ 1.0720-1.0725 are attached hereto. Section 1.010 involves the granting of variances from current regulations of the State Board of Education for experimental programs in elementary and middle schools. Sections 1.0720-1.0725 regulate the manner in which Minn. Laws 1977, ch. 437, preschool health and developmental screening programs, will be implemented. One free copy may be obtained by writing to the Minnesota Department of Education, Division of Instruction, 657 Capitol Square Building, 550 Cedar Street, St. Paul, Minnesota 55101. Additional copies will be available at the door on the date of the hearing. The Board's authority to promulgate the proposed rules is contained in Minnesota Statutes § 121.11 (1976) and Laws 1977, ch. 437, section 3. A statement of need explaining why the Board believes the proposed rules are necessary and reasonable, and a statement of evidence outlining the testimony to be introduced, shall be filed with the Hearing Examiner's office at least twenty-five (25) days prior to the hearing and will be available there for public inspection.

Please be advised that Minnesota Statutes, Chapter 10A (1976), requires each lobbyist to register with the Ethical Practices Board within five (5) days after he commences lobbying. Lobbying includes attempting to influence rulemaking by communicating or urging others to communicate with public officials. A lobbyist is generally any individual who spends more than $250.00 per year for lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association and who spends more than $250.00 per year or five (5) hours per month lobbying. The statute in question provides certain exceptions. Questions should be directed to the Minnesota Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, telephone (612) 296-5615.

STATE OF MINNESOTA
BOARD OF EDUCATION

11/7, 1977

HOWARD B. CASMEY
SECRETARY

NOTICE OF HEARING

Notice is hereby given that the public hearing in the matter of the proposed adoption of rules: experimental programs for elementary and middle schools; and pre-school health and developmental screening has been rescheduled for February 3, 1978, in Room 105 in the State Department of Health Building, 717 Delaware St. S. E., Minneapolis, Minnesota, commencing at 9:00 A.M. or as soon thereafter as possible and continuing until all persons have had an opportunity to be heard.

The rules are published in the State Register, Vol. 2, Number 21, pp. 1051-1056. The date and place of the public hearing as specified in that notice is superseded.

STATE OF MINNESOTA
BOARD OF EDUCATION

IN THE MATTER OF: The proposed adoption of rules of the state board of education (state board for vocational education) governing experimental programs for elementary and middle schools; and rules for preschool health and developmental screening; and rules for content, approval and funding of vocational education programs.

AFFIDAVIT OF RECEIPT OF SECRETARY OF STATE'S LIST

Lois Steinhaus, being duly sworn on oath deposes and says:

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

2) That on the 28th day of November, she 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 hearings relating to the promulgation of rules pursuant to Minn. Stat. § 15.0412.

3) That on the 28th day of November, in response to the above request, the Secretary of State provided her with such a list, a copy of which is attached hereto and incorporated by reference.

Further affiant sayeth not.

Lois Steinhaus

Subscribed and sworn to before me
this 28th day of November
1977

Ruana Dadrais

Notary Public

Ramsey County, Minnesota
My Commission expires June 16, 1984

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RECEIVED
NOV 9 1977
OFFICE OF REVISOR
EXAMINER

STATE OF MINNESOTA
BOARD OF EDUCATION

IN THE MATTER OF: The proposed adoption of rules of the state board of education (state board for vocational education) governing experimental programs for elementary and middle schools; rules for preschool health and developmental screening; and rules for content, approval and funding of vocational education programs.

CERTIFICATE OF DELIVERY
SECRETARY OF STATE LIST

I hereby certify that the attached 9 (486 labels) sheets constitute the complete list of persons, associations, and other interested groups who as of 8 AM o'clock ~~AM~~, this ~~8th~~ day of NOVEMBER, 1977, have requested pursuant to Minn. Stat. § 15.0412, subd. 4, (1976), 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 Cheri L. Mattson

STATE OF MINNESOTA
BOARD OF EDUCATION

IN THE MATTER OF: The proposed adoption of rules of the state board of education (state board for vocational education) governing experimental programs for elementary and middle schools; rules for preschool health and developmental screening; and rules for content, approval and funding of vocational education programs.

AFFIDAVIT OF MAILING

Harold Klecker, being first duly sworn, deposes and says:

That on the 1 day of December, 1977, at the City of St. Paul, County of Ramsey, State of Minnesota, he served the attached Notice of Hearing and a copy of the proposed rules 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.

Harold E. Klecker

Subscribed and sworn to before me
this 1 day of December,
1977.

Luana Vaunais

LUANA VAUNAIS
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires June 16, 1984

STATE OF MINNESOTA
DEPARTMENT OF EDUCATION

IN THE MATTER OF: The proposed adoption of rules of the state board of education governing experimental programs for elementary and middle schools.

STATEMENT OF EVIDENCE

Evidence of the need for this proposed rule is based upon the fact that a number of school systems each year request permission to try a new approach to their instructional program which may not be authorized by or within existing state board of education rules. In a number of cases, flexibility for instructional programs is limited by existing rules, and it is quite possible that there could be financial savings to local school districts without decreasing the effectiveness of the instructional program if a school district could be allowed to be exempted from existing rules that would otherwise apply. Similar authority already exists for secondary schools as provided for in Edu 40 A (4)(c). Many experimental programs have existed for secondary schools, but the rule which permits these programs for secondary education does not provide the same flexibility for elementary and middle school programs. Experimental programs in the secondary schools have given evidence that some of the proposals have been successful, and others have indicated that the new process does not benefit education. It is important to find out both outcomes. An example which illustrates the value of secondary experimental programs is the large number of modular-flexible programs which existed during the period from 1969 to the present. Most of these programs have been proven to be much less valuable than was anticipated and have been dropped. A shift from the conventional six period day to the four 90 minute period day has proven to be quite beneficial and has spread from Breckenridge to Browerville, Blooming Prairie, Mahtomedi, Ogilvie, Osakis, Rothsay, Waubun, and others. The 45-15 plan at Mora, made possible by special legislation, has provided good evidence of a successful experimental program.

Evidence of this need is expressed by an attached letter from Superintendent Ralph H. Lieber, Chairman of the West Metro Superintendents' Association. This letter is presented as a resolution adopted by the West Metro Association of School Administrators consisting of 27 school districts.

Others who will testify are:

1. Dr. Pius Lacher, Superintendent
   Mora Public Schools
   Mora, Minnesota
   -- Value of experimenting with the 45-15 plan of school organization.

2. Dr. Michael Hickey, Superintendent
   St. Louis Park Public Schools
   -- Flexibility in instructional programming.

3. Dr. Stanley Gilbertson
   Assistant Superintendent of
   Elementary Education
   Bloomington Public Schools
   -- Teaming for instruction.

STATE OF MINNESOTA
DEPARTMENT OF EDUCATION

IN THE MATTER OF: The proposed rules of the State Board of Education relating to pre-school health and developmental screening.

STATEMENT OF EVIDENCE

Testimony will be presented reviewing Minn. Laws 1977, Ch. 437 (codified as Minn. Stat. Secs. 123.701 - 123.705 (Supp. 1977)) which mandates that the State Board of Education adopt rules relating to pre-school health and developmental screening, with standards consistent with the State Board of Health for early and periodic screening programs. Statements will identify the base for development of standards and the need for specific proposed rules.

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

Dr. E. Raymond Peterson, Assistant Commissioner of Education (Instruction), Department of Education, will provide testimony as to the process of implementing Minn. Laws 1977, Ch. 437 relating to pre-school screening.

Reynold Erickson, Director of Pupil Personnel Services, Minnesota Department of Education, will testify on the development of the rules and why these provisions are reasonable and necessary.

Ronald G. Campbell, M.D., Section of Maternal and Child Health, Department of Health, will testify as to the consistency of these rules with those of the early and periodic screening program.

EDU 78-003-PE

In the Matter of the Proposed
Adoption of Rules of the
State Board of Education
Governing Experimental Programs
for Elementary and Middle Schools
and Rules Regarding Pre-School
Health and Developmental Screening

STATEMENT OF COMPLIANCE WITH
MANUAL OF RULE MAKING PROCEDURES

I, Special Assistant Attorney General Charles T. Mottl, 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.

Charles T. Mottl

CHARLES T. MOTTL
Special Assistant Attorney General

Dated: June 21, 1978.