

Minnesota Attorney General: Administrative Rules Proceedings

Copyright Notice:

This material may be protected by copyright law (U.S. Code, Title 17). Researchers are liable for any infringement. For more information, visit www.mnhs.org/copyright.

Version 3
August 20, 2018

#453

Attorney General

Gregory P. Huwe
Special Assistant
Attorney General

August 9, 1978

Lee E. Sheehy
Special Assistant
Attorney General

296-1288

Proposed Temporary Rules of the State Board of Education Relating to Education Aids for Pupils Attending Nonpublic Schools

The above-captioned rules submitted to this office for review pursuant to Minn. Stat. § 15.0412, Subd. 5 (1977) have been approved, except as discussed below.

This office's review as to form and legality relates only to the rules submitted for review. This review shall not constitute an opinion of the Office of the Attorney General as to the constitutionality of the underlying legislation should such legislation be challenged, nor does the review bear on any judicial review pending or subsequently instituted relating to this matter.

Secondly, Laws of 1978, Chapter 733, Section 19, adds a new section to Minn. Stat. Chapter 123. Proposed codification Minn. Stat. § 123.938, Subd. 2, limits distribution of funds under these provisions to schools of a certain size or to schools with a certain clientele, i.e., prohibits distribution to schools which are primarily non-preschool or provide programs for persons under the age of seven. Proposed Rule 1.0749 seems to vary the prohibition of funding preschool programs. As proposed for adoption, the clause "and are not preschools" is broader than the statutory prohibition cited above. Therefore, that clause is disapproved. Should the agency wish to add the word "primarily" before the word "preschools" in Rule 1.0749, such added language would make the clause acceptable.

The rules and Order in this matter leave the status of existing rules pertaining to this area unclear. The Notice published by the agency in the State Register dated July 10, 1978, indicates that these temporary rules supercede certain existing rules. Supplemental Order of the Board temporarily repealing those existing rules would be appropriate and should be submitted to this office. Further, the permanent rulemaking in this matter must clearly repeal, amend, or otherwise address existing related rules; and agency action must dispose of this situation more clearly than was done in this temporary promulgation.

Finally, this office recommends the filing of the originals of the Order Adopting and Rules as Adopted with the Secretary of State, although the statute does not require it.

If you have any questions, do not hesitate to call me.

LES:mb

Enclosures

#453 Dept of Education -

RULES REVIEW CHECKLIST

DATE RULES RECEIVED 8/3 Temporary Rule ✓

Resubmitted and Received _____

DUE DATE 8/10

a. Returned to Agency w/o filing w/Secy of State _____
b. Approved 8/9 Date Sent Back to Agency Memo to Hume

- -

1. Rules as Adopted _____
2. Rules as Proposed _____
3. Certificate of Board's Authorizing Resolution, where applicable _____
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 _____
15. Certificate of Compliance with Rulemaking Procedures _____
16. Copy of Notice of Intent to Solicit Outside Opinion, where applicable _____
17. Petition by Public, where applicable _____.

File

TED STATES DISTRICT COURT
For The
DISTRICT OF MINNESOTA - THIRD DIVISION

Civil Action File No. 3-76-8

Minnesota Civil Liberties Union et al

vs.

Howard Casmey, Commissioner of Education of the State of Minnesota et al.
and
Lisa Garcia, et al.
and
David and Julaine Wachholz, individually et al.

JUDGMENT

This action came on before the Court, Honorable Gerald W. Heaney, United States Circuit Judge, Honorable Edward J. Devitt, United States District Judge, and Honorable Earl R. Larson, United States District Judge, presiding, and the issues having been duly heard and a decision having been duly rendered,

It is Ordered and Adjudged that: 1) The provisision of Minnesota Statutes §§ 123.931 - 123.937 may remain in full force and effect as applied to pupils attending schools that are not church related, controlled by a church, or devoted to promoting a particular religious faith. The Minnesota Department of Education shall adopt such temporary rules pursuant to Minnesota Laws 1977, Chapter 443, Section 2, Subdivision 5, as are necessary to promptly implement the statute in accordance with the Court's Order. M.S. § § 123.934 and 123.935 shall be implemented to apply to nonsectarian schools only when the restriction contained in Minnesota Laws 1977, Chapter 447, Article VI, Section 12, is repealed, superseded, or expires by its own terms.
2) M.S. §§ 123.933, insofar as "instructional materials" as defined in § 123.932, Subdivision 1, is limited to the following materials:

> "Any book or book substitute which a pupil uses as a text or text substitute in a particular class or program in the school he regularly attends. Which book or book substitute shall be limited to books, workbooks, or manuals, whether bound or in looseleaf form, intended for use as a principal source of study material for a given class or group of students, a copy of which is expected to be available for individual use of each pupil in such class or group. In addition, pupils attending nonpublic schools may be supplied with such standarized tests as are in use in the public schools of the state."

3) The Minnesota Department of Education shall adopt a definition of secular, neutral, and nonideological to complement the statutory definition of "instructional materials." 4) The Minnesota Department of Education shall alter its accoutning procedures and the Annual Financial Report to properly reflect the inclusion of only those "instructional materials" as defined above and the statewide average cost per pupil unit, as computed in § 123.933, shall be determined accordingly. 5) Prior to authorizing reimbursement to public schools districts, the Minnesota Department of Education shall require a certificate of compliance from the public school districts that all "instructional materials" have been reviewed prior to the expenditure of public funds and are in accordance with the limitations set forth above. 6) The Minnesota Department of Education, prior to authorizing reimbursement, shall receive from the public school districts a list of the "instructional materials" actually purchased, which list will indicate the publisher of those "insturctional materials". 7) The Minnesota Department of Education may reimburse any school district for administrative costs and materials ordered prior to this Court's Order if those materials and administrative costs would have been permissible under existing regulations promulgated by the Minnesota Department of Education. 8) M.S. § 123.934 shall not be implemented. 9) M.S. § 123.935 shall be implemented by appropriate regulations when the restriction contained in Minnesota Laws 1977, Chapter 447, Article VI, § 12, is repealed, superseded, or expires by its own terms. 10) The Minnesota Department of Education shall adopt such temporary rules pursuant to Minnesota Laws 1977, Chapter 443, § 2, Subdivision 5, as are necessary to incorporate the terms of this Order related to sectarian schools.
11) This action is hereby dismissed with prejudice as to paragraph 2 through 8 and paragraph 10, without prejudice as to paragraphs 1 and 9, without costs to any party.

Dated at St. Paul, Minnesota, this 1st day of November 1977.

Approved: Earl R. Larson
U.S. Senior District Judge

HARRY A. SIEFERT
Clerk of Court
By: David J. Thielke, Deputy

Filed NOV 4
Harry A. Siefert
By: Geraldine L. Beaver

(51)

UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

THIRD DIVISION

Minnesota Civil Liberties Union, Americans United for Separation of Church and State, Minnesota Education Association, Minnesota Association of Secondary School Principals, Minnesota Association of School Administrators, Minnesota Congress of Parents, Teachers and Students, Minnesota Federation of Teachers, Matthew Stark, Kathleen Hauser, Donald K. Krause, individually and on behalf of the taxpayers of the State of Minnesota,

Plaintiffs,

vs.

Howard Casmey, Commissioner of Education of the State of Minnesota, James Lord, Minnesota State Treasurer, Dorothea Chelgren, David C. Brandon, Henry J. Bromelkamp, Daniel F. Burton, Lorin A. Gasterland, Erling O. Johnson, Ruth A. Myers, Louis R. Smerling, Henry G. Tweten, as members of the State Board of Education of the State of Minnesota,

Defendants,

and

Lisa Garcia, Christine Garcia and Julie Anne Garcia, Minors, by their father and mother and natural guardians, Ernest Garcia and Lupe Garcia, and Ernest Garcia and Lupe Garcia, individually; Robert E. Slater, III, Joseph F. Slater, Susan C. Slater, Thomas S. Slater, Timothy P. Slater, Sheila M. Slater, and Shannon C. Slater, minors, by their father and natural guardian, Robert E. Slater, Jr., and Robert E. Slater, Jr., individually; Donna Wheaton, a minor by her mother and natural guardian, Emma Hilliard, and Emma Hilliard, individually; and Leigh Ann Spears and Lisa Spears, minors, by their father and natural guardian, William Spears, and William Spears, individually,

Defendant Intervenors,

and

David and Julaine Wachholz, individually, and Amy, Michael and Laurel Wachholz, minor children, by their parents and natural guardians, David and Julaine Wachholz; James P. Larkin, individually, and Ann, Matthew, Thomas, Mary, Cecelia, Joan, Eileen, Gregory, John and Margaret Larkin, minor children, by their parent and natural guardian, James P. Larkin; Willis Weiberdink, individually, and Joan, Jan, and Wesley Weiberdink, minor children, by their parent and natural guardian, Willis Weiberdink; Robert E. and Rose Mary Geist, individually, and Robert E., Jr., Rose Mary, Christopher, and Larry Geist, minor children, by their parents and natural guardians, Robert E. and Rose Mary Geist,

Defendant Intervenors.

COPY

MEMORANDUM OPINION AND ORDER

No. 3-76-Civil 8

****

42

****

Before HEANEY, Circuit Judge, and DEVITT and LARSON, District Judges

PER CURIAM

****

Plaintiffs challenged the constitutionality of the Minnesota Educational Aids for Nonpublic School Children Act, Minnesota Statutes § 123.931, et seq., which provided for the loan of textbooks and other instructional materials to nonpublic school students, Minn. Stat. § 123.933; the loan of equipment to nonpublic students, Minn. Stat. § 123.934; and the rendering of auxiliary services such as counseling and guidance testing to these students, Minn. Stat. § 123.935. In a Memorandum Opinion issued November 29, 1976, this Court upheld the constitutionality of the Act. On appeal to the Supreme Court of the United States, the decision was vacated and the case remanded for further consideration consistent with the decision in Wolman v. Walter, 97 S.Ct. 2593 (1977). Upon remand, the parties entered into a stipulation which basically provides that aid granted to pupils attending sectarian nonpublic schools will be limited to books, book substitutes, achievement tests, and appropriate auxiliary services.[1] The Court finds that the stipulation is in accordance with the holding of Wolman and its provisions are incorporated in the Court's Order accompanying this opinion.

The only issue on which the parties did not agree and which is now before this Court is whether nonsectarian nonpublic school students may continue to receive the full aid originally provided for by the law. The parties do not contend that the establishment clause of the Federal Constitution proscribes State aid to pupils who attend private secular schools.

The question is one of severability: whether those statutory provisions that are void as applied to sectarian nonpublic school students can nevertheless remain in force as applied to nonsectarian nonpublic school students.

Decisions on the severability of nonpublic school aid statutes to permit aid to nonsectarian students or schools have reached divided results. The United States Supreme Court in Sloan v. Lemon, 413 U.S. 825, 833-34 (1973), affirmed the district court's refusal to sever aid to nonsectarian schools under the Pennsylvania Parent Reimbursement Act for Nonpublic Education. In Lemon v. Kurtzman, 411 U.S. 192 (1973), however, the Supreme Court affirmed a district court order proscribing payments to sectarian schools only, although the law in question had originally applied to all nonpublic schools.[2] See also Americans United for

Separation of Church and State v. Dunn, 384 F. Supp. 714 (M.D. Tenn.), vacated on other grounds, 421 U.S. 958 (1975)(severance denied); Committee for Public Education and Religious Liberty v. Levitt, 414 F. Supp. 1174 (S.D. N.Y. 1976), vacated on other grounds, 45 U.S.L.W. 3839 (U.S. 1977)(severance permitted); Commonwealth of Pennsylvania, Department of Education v. The First School, 370 A.2d 702 (Pa. 1977)(severance permitted). These diverse results are not surprising, for the issue of severability must be determined by reference to the particular statute involved and to the State's law of severability and rules of judicial construction. See Dorchy v. Kansas, 264 U.S. 286, 290-91 (1924).

The Minnesota school aid act does not contain a separate severability provision. But Minn. Stat. § 645.20, the general severability statute, creates a presumption that all laws are severable unless the Legislature specifically provides otherwise.[3] The statute essentially restates the familiar rule of judicial construction long used by the Minnesota Supreme Court in adjudicating the constitutionality of State laws:

> "The familiar rule on the subject is that, although a part of the statute is unconstitutional, that fact does not authorize the courts to declare the remainder void also, unless all the provisions are connected in subject-matter, depending on each other, operating together for the same purpose, or otherwise so connected together in meaning that it cannot be presumed the legislature would have passed the one without the other." State ex rel. Anderson v. Sullivan, 72 Minn. 126, 133, 75 N.W. 8, 9 (1898).

See also Bofferding v. Megelkoch, 129 Minn. 184, 187, 152 N.W. 135, 136 (1915); State ex rel. Finnegan v. Burt, 225 Minn. 86, 89-90, 29 N.W.2d 655, 657 (1947); Grozbach v. Common School Dist. No. 65, 237 Minn. 150, 154, 54 N.W.2d 130, 133 (1952).

Plaintiffs suggest that the usual rules of severability do not apply here because the Court would be required to sever a valid application of the law rather than a valid provision and Minn. Stat. § 645.20 speaks only in terms of the latter. But the Minnesota Supreme Court has applied the same rules in either situation; it has upheld a State law as applied to one class of beneficiaries while assuming its invalidity as applied to another class. Stevenson v. St. Clair, 161 Minn. 444, 201 N.W. 629 (1925)(minimum wage law constitutional as applied to minors although unconstitutional as applied to women); cf. Grobe v. Oak Center Creamery Co., 262 Minn. 60, 113 N.W.2d 458 (1962)(statute may be valid as applied to one set of facts and invalid as applied to another). Although Stevenson, supra, was decided before Minn. Stat. §645.20 was enacted, the Minnesota Supreme Court treats the savings statute as an adjunct to, not an abrogation of, the case law. See Grozbach v. Common School Dist. No. 65, supra. It would be anomalous for this Court

to treat the statute differently by giving it a technical interpretation that restricts the salutary judicial practice of saving valid parts of a law.

This Court must determine, then, whether it can be presumed that the Legislature would have chosen to benefit nonsectarian nonpublic school students even though the same benefits to students attending sectarian nonpublic schools have now been declared invalid. The purpose of the school aid law, as this Court previously found, is "treatment of nonpublic school students equal to that of public school students, so as to encourage freedom of choice in education and to allow for that cultural diversity which is basic to our way of life." Memorandum Opinion, November 26, 1976, at 5. Although the statute does not divide the beneficiaries of the act into "sectarian" and "nonsectarian" school students, the definition of "nonpublic" schools clearly includes the latter, Minn. Stat. § 123.932 subd. 3. The number of nonsectarian beneficiaries is relatively small,[4] but the statutory grant of aid to them is not connected with or dependent upon the aid granted to sectarian students. Since the declared policy of the statute is to equalize benefits among school children and assure freedom of choice, Minn. Stat. § 123.931, this Court cannot presume that the Legislature would not have passed the law solely to aid this class of beneficiaries. Moreover, severing the act as applied to nonsectarian school pupils leaves a complete law that can be fully executed and administered along the sectarian-nonsectarian dichotomy. Cf. Commonwealth of Pennsylvania Department of Education v. The First School, supra, at 706. While this Court cannot, of course, be certain of the Legislature's intent, all of these factors suggest that saving as much of the act as is constitutionally permissible will best effectuate the Legislature's purpose.

Plaintiffs suggest[5] one final factor that would militate against severability. They contend that the State's "impossible task" of investigating the secularity of schools that apply for aid could lead to excessive State entanglement with religion. It is true that the act will have to be administered with careful regard to preserving the sectarian-nonsectarian distinction. In granting various types of aid, the State will necessarily have to inquire whether a school is church-related, controlled by a church, or promotes a particular religious belief. But this inquiry can be conducted without creating the type of close ongoing relationship between the Government and religious authorities that the Constitution proscribes. Lemon v. Kurtzman, 403 U.S. 602, 614-15 (1971). Rather, it is akin to the determination of the tax exempt status of churches upheld in Waltz v. Commissioner, 397 U.S. 664 (1970); see also Commonwealth of Pennsylvania

Department of Education v. The First School, supra, at 711. In the unlikely event that the implementation of the sectarian-nonsectarian distinction leads in the future to excessive entanglement, that issue can then be brought before the courts. But the danger is now too remote to overcome the presumption of severability. Accordingly, the Court has determined that the provisions of Minn. Stat. §§ 123.931 - 123.937 may remain in full force and effect as applied to pupils attending schools that are not church related, controlled by a church, or devoted to promoting a particular religious faith.

On the basis of the proceedings herein, the foregoing Memorandum, and on consideration of the Stipulation Agreement of the parties,

IT IS ORDERED THAT:

1. The provisions of Minnesota Statutes §§ 123.931 - 123.937 may remain in full force and effect as applied to pupils attending schools that are not church related, controlled by a church, or devoted to promoting a particular religious faith. The Minnesota Department of Education shall adopt such temporary rules pursuant to Minnesota Laws 1977, Chapter 443, Section 2, Subdivision 5, as are necessary to promptly implement the statute in accordance with this Order. Minnesota Statutes §§ 123.934 and 123.935 shall be implemented to apply to nonsectarian schools only when the restriction contained in Minnesota Laws 1977, Chapter 447, Article VI, Section 12, is repealed, superseded, or expires by its own terms.

2. Paragraphs 2 through 10 of this Order relate to Minnesota Statutes §§ 123.931 - 123.937 as applied to sectarian schools. Minnesota Statutes § 123.933, insofar as "instructional materials" as defined in § 123.932, Subdivision 1, is limited to the following materials:

> "Any book or book substitute which a pupil uses as a text or text substitute in a particular class or program in the school he regularly attends. Which book or book substitute shall be limited to books, workbooks, or manuals, whether bound or in looseleaf form, intended for use as a principal source of study material for a given class or group of students, a copy of which is expected to be available for individual use of each pupil in such class or group. In addition, pupils attending nonpublic schools may be supplied with such standardized tests as are in use in the public schools of the state."

3. The Minnesota Department of Education shall adopt a definition of secular, neutral, and nonideological to complement the statutory definition of "instructional materials."

4. The Minnesota Department of Education shall alter its accounting procedures and the Annual Financial Report to properly reflect the inclusion of only those "instructional materials" as defined in paragraph 2, and the statewide average cost per pupil unit, as computed in § 123.933, shall be determined accordingly.

5. Prior to authorizing reimbursement to public school districts, the Minnesota Department of Education shall require a certificate of compliance from the public school districts that all "instructional materials" have been reviewed prior to the expenditure of public funds and are in accordance with the limitations set forth in paragraphs 2 and 3.

6. The Minnesota Department of Education, prior to authorizing reimbursement, shall receive from the public school districts a list of the "instructional materials" actually purchased, which list will indicate the publisher of those "instructional materials."

7. The Minnesota Department of Education may reimburse any school district for administrative costs and materials ordered prior to this Court's Order if those materials and administrative costs would have been permissible under existing regulations promulgated by the Minnesota Department of Education.

8. Minnesota Statute § 123.934 shall not be implemented.

9. Minnesota Statute § 123.935 shall be implemented by appropriate regulation when the restriction contained in Minnesota Laws 1977, Chapter 447, Article VI, § 12, is repealed, superseded, or expires by its own terms.

10. The Minnesota Department of Education shall adopt such temporary rules pursuant to Minnesota Laws 1977, Chapter 443, § 2, Subdivision 5, as are necessary to incorporate the terms of this Order related to sectarian schools.

11. The above entitled action is hereby dismissed with prejudice as to paragraphs 2 through 8 and paragraph 10, without prejudice as to paragraphs 1 and 9, without costs to any party, and a judgment consistent with this Court's Order shall be entered by the Clerk of this Court.

October 31, 1977.

United States Circuit Judge

United States District Judge

United States Senior District Judge

FOOTNOTES

1. The auxiliary services provision of the statute, Minn. Stat. § 123.935, had not been implemented at the time the previous opinion in this case was issued and the Court held the statute not facially unconstitutional. Memorandum Opinion, November 26, 1976, at 4. The Court's present Order includes the parties' stipulation that the provision will now be implemented, once certain legislative restrictions are lifted, by "appropriate regulations." Although the statute itself states that auxiliary services shall be provided to nonpublic school students in the school "whenever possible," the Court understands that "appropriate regulations" will limit the provision of auxiliary services in accordance with Wolman, supra, which mandated, inter alia, that some services be provided only off the premises of the school.

2. In Lemon v. Kurtzman, 403 U.S. 602 (1971) (Lemon I), a Pennsylvania private school aid act that granted aid to sectarian and nonsectarian private schools was held unconstitutional. On remand for further proceedings, the district court prohibited only sectarian schools from receiving future payments under the law and held that Lemon I should be applied only prospectively. It was the latter issue that the Supreme Court faced in Lemon II, supra, but its affirmance of the District Court order impliedly sanctioned the distinction drawn between sectarian and nonsectarian schools. The Pennsylvania Supreme Court also drew this conclusion, Commonwealth of Pennsylvania Department of Education v. The First School, supra.

3. The statute provides:

> "Unless there is a provision in the law that the provisions shall not be severable, the provisions of all laws shall be severable. If any provision of a law is found to be unconstitutional and void, the remaining provisions of the law shall remain valid, unless the court finds the valid provisions of the law are so essentially and inseparably connected with, and so dependent upon, the void provisions that the court cannot presume the legislature would have enacted the remaining valid provisions without the void one; or unless the court finds the remaining valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent."

4. Approximately 3,500 children in nonsectarian nonpublic schools are benefitted by the act.

5. Plaintiffs also suggested in passing that the law as severed might violate Art. 12 § 1 of the Minnesota Constitution which proscribes "special legislation." This contention can be easily dispensed with, for Art. 12 § 1 forbids only arbitrary classifications that have no reasonable basis, see e.g. Arens v. Village of Rogers, 240 Minn. 386, 61 N.W.2d 508, appeal dismissed 347 U.S. 949 (1954), and the classification here is not only reasonable but constitutionally required. Cf. Sloan v. Lemon, 413 U.S. 825, 834 (1973)("The Equal Protection Clause has never been regarded as a bludgeon with which to compel a State to violate other provisions of the Constitution").

STATE OF MINNESOTA

In the Matter of the Proposed Adoption of Temporary Rules of the State Board of Education Relating to Educational Aids for Pupils Attending Nonpublic Schools

ORDER ADOPTING RULES

The above-entitled proposed temporary rules were published in the State Register July 10, 1978, pursuant to Laws of 1978, ch. 733, § § 1-19.

After affording all interested persons an opportunity to submit data and views on the proposed temporary rule in writing as required by Minn. Stat. § 15.0412 subd. 5 (Supp. 1977), having considered all of the data and views adduced and applicable statutory standards and criteria and having confirmed the need for the above-captioned rules and the reasonableness thereof;

NOW THEREFORE, it is ordered that these rules identified as 5 MCAR § 1.0745-1.0756 attached hereto as Exhibit A are adopted this 1st day of August, 1978 pursuant to authority vested in us by Laws of 1978, ch. 733, § § 1-19.

STATE OF MINNESOTA
STATE BOARD OF EDUCATION

Elving O. Johnson

President
State Board of Education

CERTIFICATE OF THE BOARD'S

ADOPTION OF RULES AND RESOLUTION

I, Howard B. Casmey, do hereby certify that I am secretary and executive officer of the State 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 State 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 temporary rules relating to education aids for pupils attending nonpublic schools, be and they hereby are approved and adopted as amended at the meeting of the State Board of Eucation on August 1, 1978, said amendments having been made to the rules as proposed and published in the State Register, July 10, 1978, pursuant to Laws of 1978, ch. 733, §§ 1-19, and that Erling O. Johnson, President of the State 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 and Executive Officer
State Board of Education

Member, State Board of Education

STATEMENT OF COMPLIANCE WITH

MANUAL OF RULE MAKING PROCEDURES

I, Special Assistant Attorney General Gregory P. Huwe do hereby declare that I have examined the proposed temporary rules and all related documents and that, based on them and my personal familiarity with the applicable procedures, the Manual of Rule Making Procedures and applicable statutory requirements have been followed. Any exceptions are noted below.

Gregory P. Huwe

GREGORY P. HUWE
Special Assistant Attorney General

Date: August 1, 1978

Temporary Rules as ~~Proposed~~ Adopted
Chapter Thirty-Seven-A:
Textbooks and Standardized Tests
for Pupils Attending Nonpublic Schools

§1.0745 Policy. In order to promote equal educational opportunity for every school child in Minnesota and to assure all Minnesota pupils and their parents freedom of choice in education, textbooks and standardized tests as provided by Minn. Stat. §§123.931-123.937 (1976 as amended), shall be made available to pupils in nonpublic schools.

§1.0746 Definitions.

A. "Textbooks" means books, workbooks, or manuals, whether bound or in looseleaf form, which a pupil uses as a text or principal source of study in a particular class or program in the school he regularly attends and a copy of which is expected to be available for the individual use of each pupil in this class or program. The term includes only such textbooks as are available and of benefit to Minnesota public school pupils and which are secular, neutral and nonideological such that the material contained therein is not regarded as religious, spiritual, or sacred, and presents events, facts and theories that pertain to religion or religious doctrine in an impartial manner.

B. "Standardized tests" means tests and scoring services available from commercial publishing organizations and which are in use in the public schools of Minnesota to measure the progress of pupils in secular subjects.

§1.0747 State administration.

A. The department of education shall administer funds allocated for the purchase of textbooks and standardized tests to be loaned or provided to nonpublic school pupils.

B. The department of education, in cooperation with the state auditor's office, shall establish proper accounting methods for fiscal control, fund accounting, and the maintenance of records for the acquisition of textbooks and standardized tests to be loaned or provided to nonpublic school pupils.

C. Computation of pupil allocation. On or before March 1 the department of education shall determine, from the most recent data available, the allocation available per pupil for textbooks and standardized tests to be used for the following school year. The allocation per pupil shall be determined by dividing the total expenditure for textbooks and standardized tests by all public school districts in the state by the average daily membership of pupils enrolled in the districts during the same fiscal year. Pupils in grades one through twelve are counted as one pupil each; kindergarten pupils are counted as one-half pupil each.

§1.0748 Local administration.

A. Preliminary application. On or before April 1 the nonpublic school shall submit to the public school district or intermediary service area a preliminary application for participation in the textbooks and standardized tests aid program. The preliminary application shall be on forms provided by the department of education and shall include:

1. An estimate of the nonpublic school pupils, kindergarten through grade twelve, who ~~will~~ may be enrolled as of September 15 of the following school year and who ~~will~~ may be signing pupil request forms for textbooks and standardized tests.

2. An estimate of the nonpublic school's total allocation available for textbooks and standardized tests. The estimated allocation is determined by multiplying the estimated count of participating pupils by the allocation available per pupil for textbooks and standardized tests. Pupils in grades one through twelve are counted as one pupil each; kindergarten pupils are counted as one-half pupil each.

B. Purchase of materials. On or before May 1, the public school district or intermediary service area shall have completed its review of the preliminary application and shall notify the nonpublic school that it may begin submitting requests for textbooks and standardized tests for the following school year based on the estimated allocation. The materials requested by the nonpublic school shall be purchased by the public school district or intermediary service area within a reasonable time of the receipt of the requests. After the materials have arrived, they shall be promptly transmitted to each nonpublic school in the public school district or intermediary service area for distribution to the pupil applicants.

C. Final application. On or before September 25 the nonpublic school shall make final application for participation in the textbooks and standardized tests aid program to the district or intermediary service area by or on behalf of each participating nonpublic school pupil. The final application shall be on forms provided by the department of education and shall include:

1. A count of the nonpublic school pupils, kindergarten through grade twelve, who are enrolled as of September 15 of the current school year and who have signed pupil request forms for textbooks and standardized tests.

2. The nonpublic school's allocation for textbooks and standardized tests. The actual allocation shall be determined by multiplying the allocation available per pupil for textbooks and standardized tests by the total number of participating pupils. Pupils in grades one through twelve are counted as one pupil each; kindergarten pupils are counted as one-half pupil each.

D. Nonpublic school files. The nonpublic school shall maintain on file all pupil request forms for textbooks and standardized tests loaned or provided to nonpublic school pupils. The forms shall be available for inspection by the department of education, the public school district, or the intermediary service area.

E. Inventory. Textbooks and standardized tests loaned to pupils in nonpublic schools shall be maintained on inventory by the public school district or intermediary service area except in cases of consumable or nonreusable materials. The public school district or intermediary service area may declare loaned school books unusable after five years and remove them from the inventory.

F. Reimbursement. Upon completion of the distribution of the textbooks and standardized tests, each public school district or intermediary service area may claim from the department of education (1) the cost of materials and (2) a sum for the actual cost of administration which shall not exceed five percent of the cost of the materials distributed. The administrative costs shall be in addition to the allocation available for textbooks and standardized tests. Handling and shipping charges by the vendor shall be included in the allocation for textbooks and standardized tests for each nonpublic school. A public school district shall not be considered a vendor.

G. Certificate of compliance. Each claim for reimbursement shall include a certificate of compliance from the public school district or intermediary service area indicating that all materials have been reviewed prior to the expenditure of public funds and are in accordance with the limitations set forth in §1.0746.

H. Materials list. The public school district or intermediary service area shall include with each claim for reimbursement a list of the textbooks and standardized tests actually purchased. Such list shall also include the titles and the publishers of the materials.

Chapter Thirty-Seven-B: Instructional Materials for Pupils Attending Nonsectarian Nonpublic Schools

§1.0749 Policy. Instructional materials, as provided by Minn. Stat. §123.938 (1978), shall be made available to pupils attending nonsectarian nonpublic schools, provided such schools have an enrollment less than 200 pupils and are not preschools. The instructional materials aid shall be supplemental to the educational aids and services available to nonpublic school pupils as provided by Minn. Stat. §§123.931-123.937 (1976 as amended).

§1.0750 Definitions and general requirements.

A. "Nonsectarian nonpublic school" means any nonpublic school which is not church-related, not controlled by a church, and does not promote a religious belief.

B. The enrollment limitation of 200 pupils is based on the total number of pupils in kindergarten through grade twelve who are enrolled as of September 15 of the school year in which the aid is to be provided. For purposes of this count, all pupils, kindergarten through grade twelve are counted as one pupil each.

C. "Instructional materials" means "school library and audio-visual materials" and "instructional supplies."

1. School library and audio-visual materials include materials such as school library books and pamphlets available for individual use by students; maps and globes for individual use; periodicals and newspapers for individual use; audio-visual materials used in the instructional program such as films, filmstrips, recordings, exhibits, models, and television and radio teaching materials, exclusive of equipment.

2. Instructional supplies are consumable items such as tests, chalk, paper, test tubes, ink, pencils, paint, paint brushes, crayons, chemicals, shop supplies for vocational education, oils, cleaners, instructional farming supplies, supplies for the operation of equipment used in the teaching-learning process, physical education supplies, printing of individual materials, and magazines or periodicals for individual use.

D. Instructional materials must be secular, neutral, and nonideological such as the materials normally provided for pupils in public schools.

§1.0751 State administration.

A. The department of education shall administer funds for the provision of instructional materials to pupils attending nonsectarian nonpublic schools.

B. The department of education, in cooperation with the state auditor's office, shall establish proper accounting methods for fiscal control, fund accounting, and the maintenance of records for the acquisition of instructional materials to be loaned or provided to nonpublic school pupils.

C. Computation of pupil allocation. On or before March 1, the department of education shall determine the allocation available per pupil for instructional materials to be used for the following school year. The allocation per pupil shall be determined by dividing the total expenditure for instructional materials by all public school districts in the state by the total number of pupils based on an unduplicated count of pupils enrolled in the districts during the same fiscal year. Pupils in grades one through twelve are counted as one pupil each; kindergarten pupils are counted as one-half pupil each.

§1.0752 Local administration.

A. Preliminary application. On or before April 1 the nonpublic school shall submit to the public school district or intermediary service area a preliminary application for participation in the instructional materials aid program. The preliminary application shall be on forms provided by the department of education and shall include:

1. An estimate of the nonpublic school pupils, kindergarten through grade twelve, who ~~will~~ may be enrolled as of September 15 of the following school year and who ~~will~~ may be signing pupil request forms for instructional materials.

2. An estimate of the nonpublic school's total allocation available for instructional materials. The estimated allocation is determined by multiplying the estimated count of participating pupils by the allocation available per pupil for instructional materials. Pupils in grades one through twelve are counted as one pupil each; kindergarten pupils are counted as one-half pupil each.

3. A statement by representatives of the nonpublic school indicating that the school shall meet all the requirements for the instructional materials aid for the following school year as set forth in §1.0749 and §1.0750.

B. Purchase of materials. On or before May 1, the public school district or intermediary service area shall have completed its review of the preliminary application and shall notify the nonpublic school that it may begin submitting requests for instructional materials for the following school year based on the estimated allocation. The materials requested by the nonpublic school shall be purchased by the public school district or intermediary service area within a reasonable time of the receipt of the requests. After the materials have arrived, they shall be promptly transmitted to the nonpublic school for distribution to the pupil applicants.

C. Final application. On or before September 25 the nonpublic school shall make final application for participation in the instructional materials aid program to the public school district or intermediary service area by or on behalf of each participating nonpublic school pupil. The final application shall be on forms provided by the department of education and shall include:

1. A count of the nonpublic school pupils, kindergarten through grade twelve, who are enrolled as of September 15 of the current school year and who have signed pupil request forms for instructional materials.

2. The nonpublic school's allocation for instructional materials. The actual allocation shall be determined by multiplying the allocation available per pupil for instructional materials by the total number of participating pupils. Pupils in grades one through twelve are counted as one pupil each; kindergarten pupils are counted as one-half pupil each;

3. A statement by representatives of the nonpublic school indicating that the school meets all the requirements for the instructional materials aid as set forth in §1.0749 and §1.0750.

D. Nonpublic school files. The nonpublic school shall maintain on file all pupil request forms for instructional materials loaned or provided to nonpublic school pupils. The forms shall be available for inspection by the department of education.

E. Inventory. Instructional materials loaned to pupils in nonpublic schools shall be maintained on inventory by the public school district or intermediary service area except in cases of consumable or nonreusable materials. The public school district may declare loaned school books unusable after five years and remove them from the inventory.

F. Reimbursement. Upon completion of the distribution of the instructional materials, each public school district or intermediary service area may claim from the department of education (1) the cost of the materials and (2) a sum for the actual cost of administration which shall not exceed five percent of the cost of the materials distributed. The administrative costs shall be in addition to the allocation available for textbooks and standardized tests. Handling and shipping charges by the supplier shall be included in the allocation for each nonpublic school.

G. Certificate of compliance. Each claim for reimbursement shall include a certificate of compliance from the public school district or intermediary service area indicating that all materials have been reviewed prior to the expenditure of public funds and are in accordance with the limitation as set forth in §1.0749.

H. Materials list. The public school district or intermediary service area shall include with each claim for reimbursement a list of the materials actually purchased. Such list shall include the titles and the publishers of the materials.

Chapter Thirty-Seven-C: Health Services for Pupils Attending Nonpublic Schools

§1.0753 Policy. In order to promote equal educational opportunity for every school child in Minnesota and to assure all Minnesota pupils and their parents freedom of choice in education, health services as provided by Minn. Stat. §§123.931-123.937 (1978), shall be made available to pupils in nonpublic schools.

§1.0754 Definitions and general requirements.

A. "Health services" means physical and mental health services provided by licensed health services personnel or their assistants. Licensed health services personnel includes physicians, dentists, professional nurses or optometrists.

B. Health services shall not include the direct educational instruction of nonpublic pupils by health services personnel.

C. Health services shall not include those services which are required under the Special Education Law, Minn. Stat. §120.17 (1976, as amended), or which are eligible to receive reimbursement under the Special Education Aid Law, Minn. Stat. §124.32 (1976, as amended).

D. The public school district or intermediary service areas shall provide those specific health services which it offers to its public school pupils, provided the costs for such services do not exceed the amount allocated for health services by the department of education.

E. Costs relating to the provision of health services shall include (1) the salaries of licensed health services personnel and their assistants and (2) expenses for supplies, equipment and travel that are directly associated with the provision of health services by the licensed health services personnel or their assistants.

F. Health services may be provided at the nonpublic school, a neutral site, or at the public school.

§1.0755 State administration.

A. The department of education shall administer funds for the provision of health services to nonpublic school pupils.

B. The department of education, in cooperation with the state auditor's office, shall establish proper accounting methods for fiscal control, fund accounting, and the maintenance of records associated with the provision of health services to nonpublic school pupils.

C. Computation of pupil allocation. On or before March 1 the department of education shall determine from the most recent data available the allocation available per pupil for health services to be used for the following school year. The allocation per pupil for health services shall be the average expenditure per public school pupil for these services by those Minnesota public elementary and secondary schools which provide health services to public school pupils. Pupils in grades one through twelve are counted as one pupil each; kindergarten pupils are counted as one-half pupil each.

§1.0756 Local administration.

A. Preliminary application. On or before April 1 the nonpublic school shall submit to the district or intermediary service area a preliminary application for health services beginning with the following school year. The preliminary application shall be on forms provided by the department of education and shall include an estimate of the nonpublic school pupils, kindergarten through grade twelve, who will be enrolled as of September 15 of the following school year and who will be signing pupil request forms for health services. The preliminary application may also include an assessment of the type and level of health services desired for the following school year.

B. Annual consultation. Each year the district or intermediary service area shall hold an annual consultation with the nonpublic school regarding the location at which health services for nonpublic school pupils are to be offered. Final decision as to location shall be made by the public school district or intermediary service area.

C. Notification of services. On or before August 1 the public school district or intermediary service area shall inform the nonpublic school of the type, level, and location of health services that are to be made available during the following school year.

D. Final application. On or before September 25 the nonpublic school shall make final application for health services to the public school district or intermediary service area by or on behalf of each participating nonpublic school pupil. The final application shall indicate the number of nonpublic school pupils who are enrolled as of September 15 and have signed pupil request forms for health services.

E. Submission of program and budget. On or before October 15 the public school district or intermediary service area shall submit to the department of education a program and budget of the health services that are being offered to the nonpublic school pupils for the current school year. The program and budget shall be on forms made available by the department of education and shall include:

1. Projected health services expenditures for salaries, supplies, equipment and other expenses, which expenditures shall not exceed the amount allocated for health services to the public school district or intermediary service area by the department of education. The allocation for health services is determined by multiplying the total number of participating pupils by the allocation available per pupil for health services as set forth in § 1.0755 C. Pupils in grades one through twelve are counted as one pupil each; kindergarten pupils are counted as one-half pupil each.

2. Projected expenditures for health services administration, which expenditures shall not exceed an amount equal to five percent of the public school district's or intermediary service area's expenditures for health services for nonpublic school pupils and which shall be in addition to the health services allocation.

F. December 1 payment. On or before December 1, the department of education shall distribute to the public school district or intermediary service area an amount equal to 90 percent of the approved budget.

G. Year-end report. On or before July 15, following each school year, the public school district or intermediary service area shall submit to the department of education a year-end report of health services provided to nonpublic school pupils. The report shall be on forms made available by the department of education.

H. Final payment. On or before September 1, the department of education shall make the final adjusted payment to the district or intermediary service area based on the year-end report.

I. Nonpublic school files. The nonpublic school shall maintain on file all pupil request forms for health services. The forms shall be available for inspection by the department of education, the public school district or the intermediary service area.

ADMIN. 1000A (REV. 8/76)

STATE MINNESOTA

Office Memorandum

DEPARTMENT Education
Rm 736, Capitol Square Bldg.

TO : Lee Sheehy
Special Ass't. Attorney General

DATE: 8-2-78

RECEIVED
AUG 3 1978
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

FROM : Lois Steinhaus
Lois Steinhaus

PHONE: 6-4428

SUBJECT: Approval of Temporary Rules on Nonpublic Schools

Enclosed are copies of the Order Adopting Rules, Certificate of the Board's Adoption of Rules and Resolution, the rule as it appeared in the STATE REGISTER, the rule as it was adopted by the board and a copy of the Statement of Compliance with Manual of Rule Making Procedures.

Trust you will find everything in order.

EDU 682

~~education approval. deems that the vocational training has a special community significance in addition to individual benefit.~~

C. No change.

EDU 687 Annual report. Each year on or before ~~June 20~~ August 1, each district having a community service levy shall report to the Department of Education on forms authorized by the commissioner.

Department of Education Board of Education

Proposed Temporary Rules Governing Educational Aids for Pupils Attending Nonpublic Schools

Notice of Opportunity for Public Comment

The State Board of Education has proposed the following temporary rules and shall adopt such temporary rules pursuant to Laws of 1978, ch. 733, §§ 1-19. These rules will supersede the rules of the State Board of Education, EDU 740-744, Chapter Thirty-Seven Instructional Materials for Pupils Attending Nonpublic Schools.

All interested persons are hereby afforded the opportunity to submit data and views for 20 days after publication of this material in the *State Register* on the proposed temporary rules by writing to Gary Farland, Director of State Aids, or David Noenning, Specialist, Nonpublic Pupil Aid, Minnesota State Department of Education, 807 Capitol Square Building, 550 Cedar Street, St. Paul, Minnesota 55101.

Any written material received by the agency shall become part of the hearing record in the final adoption of the temporary rules.

Temporary Rules as Proposed

Chapter Thirty-seven A Textbooks and Standardized Tests for Pupils Attending Nonpublic Schools

5 MCAR § 1.0745 Policy. In order to promote equal educational opportunity for every school child in Minnesota and to assure all Minnesota pupils and their parents freedom of choice in education, textbooks and standardized tests as provided by Minn. Stat. §§ 123.931-123.937 (1976 as amended) shall be made available to pupils in nonpublic schools.

5 MCAR § 1.0746 Definitions.

A. "Textbooks" means books, workbooks, or manuals, whether bound or in looseleaf form, which a pupil uses as a text or principal source of study in a particular class or program in the school he regularly attends and a copy of which is expected to be available for the individual use of each pupil in this class or program. The term includes only such textbooks as are available and of benefit to Minnesota public school pupils and which are secular, neutral and nonideological such that the material contained therein is not regarded as religious, spiritual, or sacred, and presents events, facts and theories that pertain to religion or religious doctrine in an impartial manner.

B. "Standardized tests" means tests and scoring services available from commercial publishing organizations and which are in use in the public schools of Minnesota to measure the progress of pupils in secular subjects.

5 MCAR § 1.0747 State administration.

A. The Department of Education shall administer funds allocated for the purchase of textbooks and standardized tests to be loaned or provided to nonpublic school pupils.

B. The Department of Education, in cooperation with the State Auditor's Office, shall establish proper accounting methods for fiscal control, fund accounting, and the maintenance of records for the acquisition of textbooks and standardized tests to be loaned or provided to nonpublic school pupils.

C. Computation of pupil allocation. On or before March 1 the Department of Education shall determine, from the most recent data available, the allocation available per pupil for textbooks and standardized tests to be used for the following school year. The allocation per pupil shall be determined by dividing the total expenditure for textbooks and standardized tests by all public school districts in the state by the average daily membership of pupils enrolled in the districts during the same fiscal year. Pupils in grades one through twelve are counted as one pupil each; kindergarten pupils are counted as one-half pupil each.

5 MCAR § 1.0748 Local administration.

A. Preliminary application. On or before April 1 the nonpublic school shall submit to the public school district or intermediary service area a preliminary application for participation in the textbooks and standardized tests aid pro-

gram. The preliminary application shall be on forms provided by the department of education and shall include:

1. an estimate of the nonpublic school pupils, kindergarten through grade twelve, who will be enrolled as of September 15 of the following school year and who will be signing pupil request forms for textbooks and standardized tests;

2. an estimate of the nonpublic school's total allocation available for textbooks and standardized tests; the estimated allocation is determined by multiplying the estimated count of participating pupils by the allocation available per pupil for textbooks and standardized tests; pupils in grades one through twelve are counted as one pupil each, kindergarten pupils are counted as one-half pupil each.

B. Purchase of materials. On or before May 1, the public school district or intermediary service area shall have completed its review of the preliminary application and shall notify the nonpublic school that it may begin submitting requests for textbooks and standardized tests for the following school year based on the estimated allocation. The materials requested by the nonpublic school shall be purchased by the public school district or intermediary service area within a reasonable time of the receipt of the requests. After the materials have arrived, they shall be promptly transmitted to each nonpublic school in the public school district or intermediary service area for distribution to the pupil applicants.

C. Final application. On or before September 25, the nonpublic school shall make final application for participation in the textbooks and standardized tests aid program to the district or intermediary service area by or on behalf of each participating nonpublic school pupil. The final application shall be on forms provided by the department of education and shall include:

1. a count of the nonpublic school pupils, kindergarten through grade twelve, who are enrolled as of September 15 of the current school year and who have signed pupil request forms for textbooks and standardized tests;

2. the nonpublic school's allocation for textbooks and standardized tests; the actual allocation shall be determined by multiplying the allocation available per pupil for textbooks and standardized tests by the total number of participating pupils; pupils in grades one through twelve are counted as one pupil each, kindergarten pupils are counted as one-half pupil each.

D. Nonpublic school files. The nonpublic school shall maintain on file all pupil request forms for textbooks and standardized tests loaned or provided to nonpublic school pupils. The forms shall be available for inspection by the Department of Education, the public school district, or the intermediary service area.

E. Inventory. Textbooks and standardized tests loaned to pupils in nonpublic schools shall be maintained on inventory by the public school district or intermediary service area except in cases of consumable or nonreusable materials. The public school district or intermediary service area may declare loaned school books unusable after five years and remove them from the inventory.

F. Reimbursement. Upon completion of the distribution of the textbooks and standardized tests, each public school district or intermediary service area may claim from the Department of Education (1) the cost of materials and (2) a sum for the actual cost of administration which shall not exceed five percent of the cost of the materials distributed. The administrative costs shall be in addition to the allocation available for textbooks and standardized tests. Handling and shipping charges by the vendor shall be included in the allocation for textbooks and standardized tests for each nonpublic school.

G. Certificate of compliance. Each claim for reimbursement shall include a certificate of compliance from the public school district or intermediary service area indicating that all materials have been reviewed prior to the expenditure of public funds and are in accordance with the limitations set forth in § 1.0746.

H. Materials list. The public school district or intermediary service area shall include with each claim for reimbursement a list of the textbooks and standardized tests actually purchased. Such list shall also include the titles and the publishers of the materials.

Chapter Thirty-seven B Instructional Materials for Pupils Attending Nonsectarian Nonpublic Schools

5 MCAR § 1.0749 Policy. Instructional materials, as provided by Minn. Stat. § 123.938 (1978), shall be made available to pupils attending nonsectarian nonpublic schools, provided such schools have an enrollment less than 200 pupils and are not preschools. The instructional materials aid shall be supplemental to the educational aids and services available to nonpublic school pupils as provided by Minn. Stat. §§ 123.931-123.937 (1976 as amended).

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language. PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material."

5 MCAR § 1.0750

5 MCAR § 1.0750 Definitions and general requirements.

A. "Nonsectarian nonpublic school" means any nonpublic school which is not church-related, not controlled by a church, and does not promote a religious belief.

B. The enrollment limitation of 200 pupils is based on the total number of pupils in kindergarten through grade twelve who are enrolled as of September 15 of the school year in which the aid is to be provided. For purposes of this count, all pupils, kindergarten through grade twelve, are counted as one pupil each.

C. "Instructional materials" means "school library and audio-visual materials" and "instructional supplies."

1. School library and audio-visual materials include materials such as school library books and pamphlets available for individual use by students; maps and globes for individual use; periodicals and newspapers for individual use; audio-visual materials used in the instructional program such as films, filmstrips, recordings, exhibits, models, and television and radio teaching materials, exclusive of equipment.

2. Instructional supplies are consumable items such as tests, chalk, paper, test tubes, ink, pencils, paint, paint brushes, crayons, chemicals, shop supplies for vocational education, oils, cleaners, instructional farming supplies, supplies for the operation of equipment used in the teaching-learning process, physical education supplies, printing of individual materials, and magazines or periodicals for individual use.

D. Instructional materials must be secular, neutral, and nonideological such as the materials normally provided for pupils in public schools.

5 MCAR § 1.0751 State administration.

A. The department of education shall administer funds for the provision of instructional materials to pupils attending nonsectarian nonpublic schools.

B. The department of education, in cooperation with the State Auditor's Office, shall establish proper accounting methods for fiscal control, fund accounting, and the maintenance of records for the acquisition of instructional materials to be loaned or provided to nonpublic school pupils.

C. Computation of pupil allocation. On or before March 1, the Department of Education shall determine the allocation available per pupil for instructional materials to be used for the following school year. The allocation per pupil shall be determined by dividing the total expenditure for instructional materials by all public school districts in the state by the total number of pupils based on an unduplicated count of pupils enrolled in the districts during the same fiscal year. Pupils in grades one through twelve are counted as one pupil each; kindergarten pupils are counted as one-half pupil each.

5 MCAR § 1.0752 Local administration.

A. Preliminary application. On or before April 1, the nonpublic school shall submit to the public school district or intermediary service area a preliminary application for participation in the instructional materials aid program. The preliminary application shall be on forms provided by the department of education and shall include:

1. an estimate of the nonpublic school pupils, kindergarten through grade twelve, who will be enrolled as of September 15 of the following school year and who will be signing pupil request forms for instructional materials;

2. an estimate of the nonpublic school's total allocation available for instructional materials; the estimated allocation is determined by multiplying the estimated count of participating pupils by the allocation available per pupil for instructional materials; pupils in grades one through twelve are counted as one pupil each, kindergarten pupils are counted as one-half pupil each;

3. a statement by representatives of the nonpublic school indicating that the school shall meet all the requirements for the instructional materials aid for the following school year as set forth in § 1.0749 and § 1.0750.

B. Purchase of materials. On or before May 1, the public school district or intermediary service area shall have completed its review of the preliminary application and shall notify the nonpublic school that it may begin submitting requests for instructional materials for the following school year based on the estimated allocation. The materials requested by the nonpublic school shall be purchased by the public school district or intermediary service area within a reasonable time of the receipt of the requests. After the materials have arrived, they shall be promptly transmitted to the nonpublic school for distribution to the pupil applicants.

C. Final application. On or before September 25, the nonpublic school shall make final application for participation in the instructional materials aid program to the public school district or intermediary service area by or on behalf of each participating nonpublic school pupil. The final application shall be on forms provided by the department of education and shall include:

1. a count of the nonpublic school pupils, kindergarten through grade twelve, who are enrolled as of September 15

of the current school year and who have signed pupil request forms for instructional materials:

2. the nonpublic school's allocation for instructional materials; the actual allocation shall be determined by multiplying the allocation available per pupil for instructional materials by the total number of participating pupils; pupils in grades one through twelve are counted as one pupil each, kindergarten pupils are counted as one-half pupil each;

3. a statement by representatives of the nonpublic school indicating that the school meets all the requirements for the instructional materials aid as set forth in § 1.0749 and § 1.0750.

D. Nonpublic school files. The nonpublic school shall maintain on file all pupil request forms for instructional materials loaned or provided to nonpublic school pupils. The forms shall be available for inspection by the Department of Education.

E. Inventory. Instructional materials loaned to pupils in nonpublic schools shall be maintained on inventory by the public school district or intermediary service area except in cases of consumable or nonreusable materials. The public school district may declare loaned school books unusable after five years and remove them from the inventory.

F. Reimbursement. Upon completion of the distribution of the instructional materials, each public school district or intermediary service area may claim from the Department of Education (1) the cost of the materials and (2) a sum for the actual cost of administration which shall not exceed five percent of the cost of the materials distributed. The administrative costs shall be in addition to the allocation available for textbooks and standardized tests. Handling and shipping charges by the supplier shall be included in the allocation for each nonpublic school.

C. Certificate of compliance. Each claim for reimbursement shall include a certificate of compliance from the public school district or intermediary service area indicating that all materials have been reviewed prior to the expenditure of public funds and are in accordance with the limitation as set forth in § 1.0749.

H. Materials list. The public school district or intermediary service area shall include with each claim for reimbursement a list of the materials actually purchased. Such list shall include the titles and the publishers of the materials.

5 MCAR § 1.0755

Chapter Thirty-seven C Health Services for Pupils Attending Nonpublic Schools

5 MCAR § 1.0753 Policy. In order to promote equal educational opportunity for every school child in Minnesota and to assure all Minnesota pupils and their parents freedom of choice in education, health services as provided by Minn. Stat. §§ 123.931-123.937 (1978), shall be made available to pupils in nonpublic schools.

5 MCAR § 1.0754 Definitions and general requirements.

A. "Health services" means physical and mental health services provided by licensed health services personnel or their assistants. Licensed health services personnel includes physicians, dentists, professional nurses or optometrists.

B. Health services shall not include the direct educational instruction of nonpublic pupils by health services personnel.

C. Health services shall not include those services which are required under the Special Education Law, Minn. Stat. § 120.17 (1976, as amended), or which are eligible to receive reimbursement under the Special Education Aid Law, Minn. Stat. § 124.32 (1976, as amended).

D. The public school district or intermediary service areas shall provide those specific health services which it offers to its public school pupils, provided the costs for such services do not exceed the amount allocated for health services by the Department of Education.

E. Costs relating to the provision of health services shall include (1) the salaries of licensed health services personnel and their assistants and (2) expenses for supplies, equipment and travel that are directly associated with the provision of health services by the licensed health services personnel or their assistants.

F. Health services may be provided at the nonpublic school, a neutral site, or at the public school.

5 MCAR § 1.0755 State administration.

A. The Department of Education shall administer funds for the provision of health services to nonpublic school pupils.

B. The Department of Education, in cooperation with the

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language. PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material."

5 MCAR § 1.0755

State Auditor's Office, shall establish proper accounting methods for fiscal control, fund accounting, and the maintenance of records associated with the provision of health services to nonpublic school pupils.

C. Computation of pupil allocation. On or before March 1, the Department of Education shall determine from the most recent data available the allocation available per pupil for health services to be used for the following school year. The allocation per pupil for health services shall be the average expenditure per public school pupil for these services by those Minnesota public elementary and secondary schools which provide health services to public school pupils. Pupils in grades one through twelve are counted as one pupil each; kindergarten pupils are counted as one-half pupil each.

5 MCAR § 1.0756 Local administration.

A. Preliminary application. On or before April 1, the nonpublic school shall submit to the district or intermediary service area a preliminary application for health services beginning with the following school year. The preliminary application shall be on forms provided by the Department of Education and shall include an estimate of the nonpublic school pupils, kindergarten through grade twelve, who will be enrolled as of September 15 of the following school year and who will be signing pupil request forms for health services. The preliminary application may also include an assessment of the type and level of health services desired for the following school year.

B. Annual consultation. Each year the district or intermediary service area shall hold an annual consultation with the nonpublic school regarding the location at which health services for nonpublic school pupils are to be offered. Final decision as to location shall be made by the public school district or intermediary service area.

C. Notification of services. On or before August 1, the public school district or intermediary service area shall inform the nonpublic school of the type, level, and location of health services that are to be made available during the following school year.

D. Final application. On or before September 25, the nonpublic school shall make final application for health services to the public school district or intermediary service area by or on behalf of each participating nonpublic school pupil. The final application shall indicate the number of nonpublic school pupils who are enrolled as of September 15 and have signed pupil request forms for health services.

E. Submission of program and budget. On or before October 15, the public school district or intermediary service area shall submit to the Department of Education a program and budget of the health services that are being offered to the nonpublic school pupils for the current school year. The program and budget shall be on forms made available by the Department of Education and shall include:

1. projected health services expenditures for salaries, supplies, equipment and other expenses, which expenditures shall not exceed the amount allocated for health services to the public school district or intermediary service area by the Department of Education; the allocation for health services is determined by multiplying the total number of participating pupils by the allocation available per pupil for health services as set forth in § 1.0755 C.; pupils in grades one through twelve are counted as one pupil each, kindergarten pupils are counted as one-half pupil each;

2. projected expenditures for health services administration, which expenditures shall not exceed an amount equal to five percent of the public school district's or intermediary service area's expenditures for health services for nonpublic school pupils and which shall be in addition to the health services allocation.

F. December 1 payment. On or before December 1, the Department of Education shall distribute to the public school district or intermediary service area an amount equal to 90 percent of the approved budget.

G. Year-end report. On or before July 15, following each school year, the public school district or intermediary service area shall submit to the Department of Education a year-end report of health services provided to nonpublic school pupils. The report shall be on forms made available by the Department of Education.

H. Final payment. On or before September 1, the Department of Education shall make the final adjusted payment to the district or intermediary service area based on the year-end report.

I. Nonpublic school files. The nonpublic school shall maintain on file all pupil request forms for health services. The forms shall be available for inspection by the Department of Education, the public school district or the intermediary service area.