

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
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Our File #562

Permanent Rule_____

Temporary Rule X

RULES REVIEW CHECKLIST

DATE RULES RECEIVED 12/3/79 DUE DATE 12/10/79

Resubmitted and Received_____

a. Returned to Agency w/o Filing w/Secretary of State 12-10-79
b. Approved 12-12-79 Date Sent Back to Agency_____

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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_____ Sufficiency_____
6. Secretary of State's List_____(one copy only)
7. Certificate of Acquisition of Secretary of State's List_____
8. Secretary of State's Certification of Delivery of Secretary of State's List to Agency_____
9. Affidavit of Mailing_____ At least 30 days prior to hearing_____
10. Publication in State Register_____ At least 30 days prior to hearing_____
11. Statement of Need and Evidence_____
12. Hearing Examiner's Report_____
13. Agency's Findings of Fact_____
14. Certificate of Board's Resolution Adopting Rules, where applicable_____
15. Order Adopting_____
16. Report of Chief Hearing Examiner_____
17. Order Approving Incorporation by Reference, where applicable_____
18. Certificate of Compliance with Rulemaking Procedures_____
19. Copy of Notice of Intent to Solicit Outside Opinion, where applicable_____
20. Petition by Public, where applicable_____

Chapter Seven: Standards and Procedures for the Provision of Special Education Instruction and Services for Children and Youth Who Are Handicapped

5 MCAR § 1.0120 Policies and definitions.

A. Policies.

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

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

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

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

5. Parental involvement. Parents of handicapped children have a right to be involved by the school district in the education decision making process. Only by consistent and direct involvement of parents will the school receive sufficient input to design and implement an effective program for the handicapped student. Parents and schools

are encouraged to cooperate in an open and objective manner, utilizing periodic conferences when possible so that formal hearings are necessary only when substantive disagreements exist between the parties.

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

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

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

B. Definitions.

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

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

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

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

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

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

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

7. "Resident school district" means the district where the handicapped person's parent or guardian resides or the district designated by the commissioner as provided in Minn. Stat. § 120.17, subd. 6 and 8a.

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

9. "Handicapped persons" includes the term "student," and "child" or "person" and means those "handicapped children" as defined by Minn. Stat. § 120.03 and amendments or supplements thereto. Determination of a handicapping condition shall be made by qualified personnel in accordance

with recognized professional standards and consistent with the provisions of 5 MCAR § 1.0124 and 5 MCAR § 1.0125. These rules shall not apply to persons receiving home or hospital instruction unless they have a presenting handicapping condition as described above.

10. "School age" means the age of four to twenty-one years for all handicapped children as defined in Minn. Stat. § 120.03 and shall not extend beyond secondary school or its equivalent.

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

"Continuum of Placement Model"

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

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

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

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

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

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

12. "Formal educational assessment," referred to in these rules also as an "assessment," is defined as an individual evaluation, conducted in accordance with recognized professional standards and the provisions of 5 MCAR § 1.0124, of a person's performance and/or development for the purpose of determining the need for initiation or change in his or her educational program including special education services.

13. "Parent" or "parents" include a biological mother or father, an adoptive mother or father, a legally appointed guardian, or such agency or other person appointed pursuant to 5 MCAR § 1.0123. All rights and responsibilities as provided herein belong to a person when the person is 18 years of age, unless the person is under legal guardianship.

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

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

16. Nondiscrimination for purposes of this rule means the requirement that school districts shall:

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

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

17. "Proposed action" for purposes of this rule shall be construed to mean a providing school district's proposed initiation or change or refusal to initiate or change a child's educational placement or special education services as set forth in 5 MCAR § 1.0125 E. or an educational assessment or reassessment as set forth in 5 MCAR § 1.0124 B.

18. "Individual educational program plan" referred to in these rules also as a "program plan" means a written statement for each handicapped person setting forth the person's educational needs and the educational program, including special education services, to be provided to such person. The program plan shall be developed in accordance with and contain the information required by 5 MCAR § 1.0125.

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

20. "Initial formal assessment" means the first formal assessment of a child provided by the district.

21. "Initial placement and provision of service(s)" means the first special education placement and provision of special education service(s) by the district.

EDU 121 Renumber as 5 MCAR § 1.0121.

EDU 122 Renumber as 5 MCAR § 1.0122.

EDU 123 Renumber as 5 MCAR § 1.0123.

5 MCAR § 1.0124 Identification and assessment procedures.

A. Identification of handicapped children.

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

a. preschool age handicapped children;

b. handicapped persons attending school;

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

2. The districts identification system shall be developed in accordance with the requirement of nondiscrimination.

B. Formal education assessment.

1. An assessment:

a. must be conducted when because of a person's performance in the present educational placement or presenting handicapping conditions, he or she is thought by the school district to be in need of possible initiation or change in the student's educational placement or program or special education services as set forth in 5 MCAR § 1.0125 E. which will provide an educational program, including special education services appropriately suited to the person's needs.

b. must be conducted at least every two years as required by 5 MCAR § 1.0126 B.

c. may be conducted if the parent requests.

2. Prior to conducting an assessment the district shall:

a. review the screening, referral or other data about the person and select licensed special education personnel and others as appropriate to conduct the assessment;

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

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

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

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

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

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

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

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

4. Notice before assessment:

a. must be provided in accordance with the provisions of 5 MCAR § 1.0127 B. prior to conducting a formal educational assessment or reassessment or when the district refuses a parent's request to conduct a formal educational assessment or reassessment. In case of refusal the notice shall be served within ten days after the refusal;

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

5 MCAR § 1.0125 Team determination and program needs determination. Development and content of the individual education program plan.

A. Team and program needs determination. Following the assessment, in order to determine if the person is in need of special education services, the district shall:

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

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

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

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

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

B. Development and content of the individual education program plan. The development of the program plan must:

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

2. be developed in accordance with the requirement of nondiscrimination, the principle of the least restrictive alternative, and recognized progressional standards;

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

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

C. Content of the individual education program plan.

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

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

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

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

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

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

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

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

E. Notice to parents after completion of the program plan and prior to placement. Notice in accordance with the provisions of 5 MCAR § 1.0127 C. is required whenever the providing school district purposes to initiate or change or refuses to initiate or change the level of educational placement as defined in the Continuum of Placement Model, or proposes to initiate or significantly change or refuses to initiate or significantly change the special education services for the child. For the purposes of this rule the terms initiate or change shall be construed to include the proposals set forth in Minn. Stat. § 120.17, subd. 3b (c) (2), (3), (4), and (5). The notice shall be served prior to the initiation or change or refusal to initiate or change the educational placement or special education services for the child. The notice shall be served within ten days after completion of the program plan and/or the refusal to initiate or change.

EDU 126 Renumber as 5 MCAR § 1.0126.

5 MCAR § 1.0127 Formal notice to parents.

A. General notice provisions.

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

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

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

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

5. All notices must be sufficiently detailed and precise to constitute adequate notice for hearing of the proposed action and contain a full explanation of all of the procedural safeguards available to parents under the provision of these rules.

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

B. Prior to the performance of or refusal to perform a formal educational assessment or reassessment as provided for in 5 MCAR § 1.0124 B., the providing school district shall prepare and serve a notice which shall meet the requirements of 5 MCAR § 1.0127 A. and shall:

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

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

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

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

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

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

7. inform the parents of their right and the procedure and time to have included on the team that interprets the assessment data and/or develops the individual program plans, such person(s) described in 5 MCAR § 1.0125 A. including a person who is a member of the same minority (as defined in Minn. Stat. § 126.021) or cultural background or who is knowledgeable concerning the racial, cultural, or handicapping differences of the student;

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

9. inform the parents that the district will not proceed with the initial formal assessment of a child, as defined in 5 MCAR § 1.0120 B., without prior written consent of the child's parent;

10. inform the parents that except for the initial formal assessment, the district shall proceed with the proposed assessment unless the parent objects on the enclosed "response form" or otherwise in writing within ten days after receipt of the notice;

11. inform the parents that if they object to the proposed assessment in writing a conciliation conference will be held at a mutually convenient time and place, but that if the parent refuses to attend the conference and the proposed assessment is not the initial formal assessment, the district will proceed with the proposed action;

12. inform the parents that if the parent objects to the proposed action during or after the initial conciliation conference they have a right to voice that objection at an impartial due process hearing;

13. inform the parents that they have the right to be represented by council or another person of their choosing at the conciliation conference or the impartial due process hearing;

14. a statement assuring that their child's educational program will not be changed as long as the parent objects to the proposed action, in the manner prescribed by these rules;

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

C. Prior to the initiation or change or the refusal to initiate or change a child's educational placement or special education services, as set forth in 5 MCAR § 1.0125 E. the providing school district shall prepare and serve a notice which shall meet the requirements of 5 MCAR § 1.0127 A. and shall:

1. include a copy of the individual educational program plan as described in 5 MCAR § 1.0125 C.;

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

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

4. inform the parents that the school district will not proceed with the initial placement and provision of service(s) as defined in 5 MCAR § 1.0120 B. without prior written consent of the child's parent;

5. inform the parents that except for the initial placement and provision of service(s), the district will proceed with the proposed placement and provision of service(s) unless the parent objects in writing on the enclosed "response form" or otherwise in writing within ten days after the receipt of the notice;

6. inform the parents that if they object to the proposed action, a conciliation conference will be held at a mutually convenient time and place but that if the parent refuses to attend the conciliation conference and the proposed placement and provision of service(s) is not the initial placement and provision of service(s), the school district will proceed with the proposed action;

7. inform the parents that if they still object to the proposed action at anytime after the first conciliation conference is convened, that they have a right to voice that objection at an impartial due process hearing;

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

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

5 MCAR § 1.0128 Conciliation conference.

A. When a conciliation conference must occur:

1. If the parent does not object in writing, to a proposed action as set forth in 5 MCAR § 1.0124 B. or 5 MCAR § 1.0125 E., within fourteen days after receipt of the notice and the proposed action is not an initial action as defined in 5 MCAR § 1.0127 B.9. and 5 MCAR § 1.0127 C.4., the proposed action shall take place. If such written objection is made, the providing school district shall arrange for a conference with the parent for the purpose of reviewing the reasons for the proposed action and conciliating the matter. The conference shall be held at a time and place mutually convenient to the parent and the school district representative and shall be held within ten days after receipt of the written objection. There may be more than one such conference and the parent may request a hearing under 5 MCAR § 1.0129 A. at anytime after the first conciliation conference is convened.

2. If the parent refuses to provide prior written consent as set forth in 5 MCAR § 1.0127 B.9. and 5 MCAR § 1.0127 C.4. within ten days after the receipt of the notice and response form, the providing school district shall arrange for a conference with the parent for the purpose of reviewing the reasons for the proposed action and conciliating the matter. The conference shall be held at a time and place mutually convenient to the parent and school district representative and shall be held within ten days after the expiration of the ten day period for parent response.

B. Memorandum.

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

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

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

3. that if they do not request a hearing on the written "request form" or otherwise in writing pursuant to 5 MCAR § 1.0129 A. within seven days after receipt of the notice, the district will proceed with the proposed action unless the proposed action is an initial action as defined in 5 MCAR § 1.0127 B.9. and 5 MCAR § 1.0127 C.4. In cases of such proposed initial actions, when a parent continues to refuse to provide written permission, the district shall schedule a hearing within seven days after the expiration of the seven days allowed for parent response;

4. that if a hearing is scheduled the district shall send a notice describing the rights and procedures available to the parents relative to the hearing.

C. "Days" when used in 5 MCAR § 1.0128 means calendar days.

5 MCAR § 1.0129 The hearing.

A. When a hearing must be held.

1. A hearing regarding a proposed action as set forth in 5 MCAR § 1.0124 B. or 5 MCAR § 1.0125 E. shall be held whenever the providing district receives the parents' request for a hearing. This request must be in writing and must be made within seven days after the parents' receipt of the written memorandum pursuant to 5 MCAR § 1.0128 B. Provided, however, that no parent shall have a right to request a hearing unless at least one conciliation conference has been held pursuant to 5 MCAR § 1.0128 A.

2. A district shall conduct a hearing whenever a parent refuses to provide written permission for the initial formal assessment of a child, initial placement of a child in a special education program, or the initial provision of special education services, provided the district has made at least one attempt to obtain this written consent through at least one conciliation conference.

B. Notice.

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

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

a. the hearing shall take place before an impartial hearing officer mutually agreed to by the school board and the parent. If the school board and parent are unable to agree on a hearing officer, the school board shall request the commissioner to appoint a hearing officer.

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

c. inform the parent of their right or responsibility:

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

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

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

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

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

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

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

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

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

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

f. that the hearing officer will make a written decision based only on evidence received and introduced into the record at the hearing not more than 45 days from the receipt of the request for the hearing and that the proposed action will be upheld only upon showing by the school district by a preponderance of the evidence. A proposed action that would result in the child being removed from regular education program may be sustained only when, and to the extent the nature or severity of the handicap is such that a regular education program would not be satisfactory and the child would be better served in an alternative program. Consideration of alternative educational programs must also be given;

g. that the decision of the hearing officer is binding on all parties unless appealed to the commissioner by the parent or the providing district;

h. that unless the district and parent agree otherwise, the student shall not be denied initial admission to school and that the student's education program shall not be changed as long as the parents object to the proposed action in the manner prescribed by these rules.

C. Hearing officers.

1. The hearing shall take place before an impartial hearing officer mutually agreed to by the school board and the parents.

2. If the school board and the parent are unable to agree on a hearing officer, the school board shall request the commissioner to appoint a hearing officer.

3. The hearing officer shall not be a school board member or employee of the school district where the child resides or of the child's school

district of residence, an employee of any other public agency involved in the education or care of the child, or any person with a personal or professional interest which would conflict with his objectivity at the hearing. A person who otherwise qualified as a hearing officer is not an employee of the district solely because the person is paid by the district to serve as a hearing officer.

4. If a hearing officer requests an independent educational assessment of a child, the cost of the assessment shall be at district expense. All expenses of the hearing, except for the parents' and resident school district's attorney's fees or other expenses incidental to the parents or resident school district participation in the hearing, shall be paid by the providing school district.

D. Prehearing review by the hearing officer.

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

a. the providing school district's notice(s) and memorandum prepared pursuant to 5 MCAR § 1.0128 B. to the parents;

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

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

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

e. the provisions of b. and c. need not apply when the hearing concerns a proposed action as set forth in 5 MCAR § 1.0124 B.

2. Upon receipt of the information set forth in 1. above, the hearing officer:

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

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

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

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

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

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

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

h. may grant specific extensions of time beyond the 45 day period at the request of either party.

E. Hearing rights of the respective parties.

1. The hearing shall be closed unless the parent requests an open hearing.

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

3. At a reasonable time prior to the hearing, the parent or their representative(s), as the case may be, shall be given access to all of the providing and resident school districts' records and such other records pertaining to the child that are authorized by law to be disclosed, including but not limited to all tests, evaluations, assessments, reports, and other written information concerning the educational assessment or reassessment, conducted pursuant to 5 MCAR § 1.0124 B. upon which the proposed action may be based.

4. At least five days prior to the hearing the parents shall receive from the school districts, who are parties of the hearing, a brief resume of "additional material allegations" referring to conduct, situations or conditions which are discovered and found to be relevant to the issues to be contested at the hearing and which are not contained in the original notice or memorandum provided pursuant to 5 MCAR § 1.0127 B. or C. or 5 MCAR § 1.0128 B. And that if such material allegation or information relating thereto are not so disclosed, it shall be left to the person conducting the hearing to determine if those material allegations may be introduced or considered.

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

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

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

F. Hearing procedures.

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

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

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

4. A tape recording, stenographic record, or other record of the hearing shall be made, and if an appeal is filed pursuant to 5 MCAR § 1.0129 H. the hearing shall be transcribed by the providing school district and shall be accessible to the parties involved within five days of the filing of the appeal.

G. The decision of the hearing officer. Not more than 45 days from the receipt of the request for a hearing, the hearing officer shall prepare a written decision based on evidence received and introduced into the record at the hearing. Such decision shall address itself to the following:

1. Decisions regarding assessment or reassessment.

a. The hearing officer may sustain a proposed assessment or reassessment of the person as set forth in 5 MCAR § 1.0124 B. upon a showing by the school district(s) by a preponderance of the evidence which demonstrates that there are facts, relating to the person's performance in his or her present education placement or presenting handicapping conditions, which indicate reasonable grounds to believe that the educational assessment or reassessment procedures are justified, as a step toward the possible initiation of or change in the person's educational placement or program, including special education services, which will provide an educational program, including special education services, appropriately suited to the person's needs.

b. Consistent with the standards, requirements, and principles set forth in statute and these rules, the hearing officer shall have the authority, based on all the evidence received at the hearing, to modify the proposed assessment or reassessment instruments or procedures in order to insure compliance with the requirement of nondiscrimination.

2. Decisions regarding educational placement.

a. Based on an application of the standards, requirements and principles set forth in Minn. Stat. § 120.17, subd. 3a, and in these rules, the proposed action regarding the person's educational placement or special education services as set forth in 5 MCAR § 1.0125 C. shall be sustained in whole or in part by the hearing officer only upon a showing of need by the school district(s) by a preponderance of the evidence.

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

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

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

3. All local hearing officer decisions shall:

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

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

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

d. be based on the standards and principles set forth in Minn. Stat. § 120.17, subd. 3a, and 5 MCAR § 1.0129 G.1. and 2.

4. All decisions shall be filed with the commissioner of education and shall be sent by mail to the parties. The decision(s) shall also include information detailing the right to appeal the decision, the procedure and time in which to do so, and an appeal form on which the parent may identify which appeal option, as set forth in 5 MCAR § 1.0129 H.2., they request.

H. Effective date of the action and appeals.

1. The decision of the hearing officer shall be binding on all parties unless appealed to the commissioner by the parent or the school board where the child resides; and shall become effective 15 days after service of the decision unless the decision is appealed.

2. The hearing officer's decision issued pursuant to 5 MCAR § 1.0129 G.1., 2., or 3., may be appealed by the parent or the school board where the child resides to the commissioner of education within 15 days of receipt of that written decision(s) in the following manner:

a. The appeal decision shall be based on a review of the local decision(s) and the entire record.

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

3. The school board shall be a party to any appeal. The commissioner shall issue a final decision based on a review of the local decision(s) and the entire records within 30 calendar days after the filing of the appeal. The commissioner shall seek additional evidence if necessary and may afford the parties an opportunity for written or oral argument; provided any hearing held to seek additional evidence shall be an impartial due process hearing but shall be deemed not to be a contested case hearing. The commissioner may grant specific extensions of time beyond the 30 day period at the request of any party.

4. The commissioner's final decision shall:

a. be in writing;

b. include findings and conclusions; and

c. be based on the standards set forth in Minn. Stat. § 120.17, subd. 3a and the standards, requirements, and principles set forth in 5 MCAR § 1.0129 G.1. and 2. and these rules.

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

6. If the providing school district fails to implement the hearing officer's decision, the parent shall have the right to bring such failure to the attention of the commissioner. In accordance with the provisions of Minn. Stat. § 124.15, the state board of education may impose such sanctions necessary to correct any such failure.

I. "Days" when used in 5 MCAR § 1.0129 means calendar days.

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
DEC 1 1978
Secretary of State

APPROVED AS TO FORM AND LEGALITY

DEC 12 1979 19

WARREN SPANNAUS, ATTORNEY GENERAL

BY Joanne Hinderaker

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
DEC 13 1979
Joan Anderson Growe
Secretary of State

11:10 AM

Our File: #562

ADMIN 1000 (Rev. 1/78)

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : RUTH A. MYERS, President
State Board of Education

DATE: December 10, 1979

Attn: Lois E. Steinhaus

FROM : JOANNE E. HINDERAKER JEH
Special Assistant
Attorney General

PHONE: 296-4692

SUBJECT: In the Matter of the Proposed Adoption of Temporary Rules of the State Board of Education Governing Standards and Procedures of Special Education Instruction and Services for Children and Youth Who Are Handicapped.

The temporary rules in the above-captioned matter are hereby approved by this office with the following exceptions:

1. In 5 MCAR § 1.0127 B. (pg. 10 of the Adopted Rule text) the word "in" was inadvertently omitted between the phrase "as provided for" and "5 MCAR § 1.0124 B."

2. The amended version of 5 MCAR § 1.0129 H. 3. (pg. 20 of the Adopted Rule text) does not completely conform to the 1979 statutory amendments to Minn. Stat. § 120.17 Subd. 3b (f). In the amended statute the Commissioner's final decision must be issued "within 30 calendar days after the filing of the appeal." However 5 MCAR § 1.0129 H. 3 requires the commissioner's decision "within 30 days after receipt of the local decision(s) and the transcript." The language of the rule should be made consistent with the change in the statutory requirement.

While the statute relating to temporary rules does not require the following procedure, this office recommends that a copy of the temporary rules as adopted and the Order Adopting Rules should be filed with the Secretary of State by the agency. Of course, the agency is responsible for compliance with the notice of adoption and other requirements of Minn. Stat. § 15.0412 Subd. 5. If you have any questions, do not hesitate to contact me.

JEH/bw
Encl.
cc: Marshall Whitlock
Duane Harves
Charles Mottl

ADMIN 1000 (Rev. 1/78)

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT Education
736 Capitol Square Bldg.
550 Cedar St.

DATE: 12-3-79

TO : Joanne E. Hinderaker
Special Ass't. Attorney General

FROM : Lois E. Steinhaus
Education Statistics Section

PHONE: 6-4428

SUBJECT: Approval of Temporary Rule, Chapter Seven: Standards and Procedures Of Special Education Instruction and Services for Children and Youth Who are Handicapped

Enclosed is a Statement of Compliance from our assistant attorney general and the following material:

Certificate of Board's Authorizing Resolution (2)

Certificate of Board's Adoption of Rules Resolution (2)

Order Adopting Rules attached to Temporary Rules
Adopted (3)

rere sent to the (2)

appeared in the (2)

wing changes - none were made

ved.

have some one come and pick it up.

STATE OF MINNESOTA
OFFICE INFORMATION MEMO

DATE: 12-5-79 TIME: 9:25

TO: Joanne Hinderaker
LOCATION:

FROM: Lois
LOCATION:

PHONE NO.: 6-4428
RECEIVED BY:

☐ Was here to see you ☐ Will call again
☐ Please call ☐ Returned your call

ACTION
☐ Review and see me
☐ Review and return
☐ Prepare reply for my sig.
☐ Reply and send me copy
☐ For your approval
☐ For your information
☐ For signature
☐ As we discussed
☐ As you requested
☐ Take appropriate action
☐ Notify staff
☐ FILE ☐ DISPOSE

REMARKS/MESSAGES
Please discard the copies of the Temp. Rules as Adopted that you recid on Dec. 3 and

☐ OVER

PHOTOCOPY:
___ NO. OF COPIES
___ DATE NEEDED
☐ ONE SIDE ONLY ☐ HEAD TO HEAD ☐ HEAD TO FOOT
☐ COLLATE ☐ STAPLE ☐ (Other)___

TYPING
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☐ ROUGH DRAFT ☐ SINGLE SPACE ☐ DOUBLE SPACE
☐ RUSH ☐ FINAL COPY ☐ CARBONS___

SF-00008-02

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ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

STATE OF MINNESOTA

DEPARTMENT OF EDUCATION

STATE BOARD OF EDUCATION
DIVISION OF SPECIAL AND
COMPENSATORY EDUCATION

In the Matter of the
Proposed Adoption of
Temporary Rules of the
State Board of Education
Governing Standards and
Procedures of Special Education
Instruction and Services for
Children and Youth Who Are
Handicapped.

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 upon 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

Special Assistant Attorney General

Dated: Dec. 3, 1979

Working copy

Temporary Rules as Adopted

Chapter Seven: Standards and Procedures for the Provision of Special Education Instruction and Services for Children and Youth Who Are Handicapped

5 MCAR § 1.0120 Policies and definitions.

A. Policies.

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

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

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

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

5. Parental involvement. Parents of handicapped children have a right to be involved by the school district in the education decision making process. Only by consistent and direct involvement of parents will the school receive sufficient input to design and implement an effective program for the handicapped student. Parents and schools

are encouraged to cooperate in an open and objective manner, utilizing periodic conferences when possible so that formal hearings are necessary only when substantive disagreements exist between the parties.

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

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

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

B. Definitions.

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

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

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

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

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

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

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

7. "Resident school district" means the district where the handicapped person's parent or guardian resides or the district designated by the commissioner as provided in Minn. Stat. § 120.17, subd. 6 and 8a.

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

9. "Handicapped persons" includes the term "student," and "child" or "person" and means those "handicapped children" as defined by Minn. Stat. § 120.03 and amendments or supplements thereto. Determination of a handicapping condition shall be made by qualified personnel in accordance

with recognized professional standards and consistent with the provisions of 5 MCAR § 1.0124 and 5 MCAR § 1.0125. These rules shall not apply to persons receiving home or hospital instruction unless they have a presenting handicapping condition as described above.

10. "School age" means the age of four to twenty-one years for all handicapped children as defined in Minn. Stat. § 120.03 and shall not extend beyond secondary school or its equivalent.

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

"Continuum of Placement Model"

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

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

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

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

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

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

12. "Formal educational assessment," referred to in these rules also as an "assessment," is defined as an individual evaluation, conducted in accordance with recognized professional standards and the provisions of 5 MCAR § 1.0124, of a person's performance and/or development for the purpose of determining the need for initiation or change in his or her educational program including special education services.

13. "Parent" or "parents" include a biological mother or father, an adoptive mother or father, a legally appointed guardian, or such agency or other person appointed pursuant to 5 MCAR § 1.0123. All rights and responsibilities as provided herein belong to a person when the person is 18 years of age, unless the person is under legal guardianship.

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

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

16. Nondiscrimination for purposes of this rule means the requirement that school districts shall:

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

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

17. "Proposed action" for purposes of this rule shall be construed to mean a providing school district's proposed initiation or change or refusal to initiate or change a child's educational placement or special education services as set forth in 5 MCAR § 1.0125 E. or an educational assessment or reassessment as set forth in 5 MCAR § 1.0124 B.

18. "Individual educational program plan" referred to in these rules also as a "program plan" means a written statement for each handicapped person setting forth the person's educational needs and the educational program, including special education services, to be provided to such person. The program plan shall be developed in accordance with and contain the information required by 5 MCAR § 1.0125.

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

20. "Initial formal assessment" means the first formal assessment of a child provided by the district.

21. "Initial placement and provision of service(s)" means the first special education placement and provision of special education service(s) by the district.

EDU 121 Renumber as 5 MCAR § 1.0121.

EDU 122 Renumber as 5 MCAR § 1.0122.

EDU 123 Renumber as 5 MCAR § 1.0123.

5 MCAR § 1.0124 Identification and assessment procedures.

A. Identification of handicapped children.

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

a. preschool age handicapped children;

b. handicapped persons attending school;

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

2. The districts identification system shall be developed in accordance with the requirement of nondiscrimination.

B. Formal education assessment.

1. An assessment:

a. must be conducted when because of a person's performance in the present educational placement or presenting handicapping conditions, he or she is thought by the school district to be in need of possible initiation or change in the student's educational placement or program or special education services as set forth in 5 MCAR § 1.0125 E. which will provide an educational program, including special education services appropriately suited to the person's needs.

b. must be conducted at least every two years as required by 5 MCAR § 1.0126 B.

c. may be conducted if the parent requests.

2. Prior to conducting an assessment the district shall:

a. review the screening, referral or other data about the person and select licensed special education personnel and others as appropriate to conduct the assessment;

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

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

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

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

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

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

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

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

4. Notice before assessment:

a. must be provided in accordance with the provisions of 5 MCAR § 1.0127 B. prior to conducting a formal educational assessment or reassessment or when the district refuses a parent's request to conduct a formal educational assessment or reassessment. In case of refusal the notice shall be served within ten days after the refusal;

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

5 MCAR § 1.0125 Team determination and program needs determination. Development and content of the individual education program plan.

A. Team and program needs determination. Following the assessment, in order to determine if the person is in need of special education services, the district shall:

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

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

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

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

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

B. Development and content of the individual education program plan. The development of the program plan must:

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

2. be developed in accordance with the requirement of nondiscrimination, the principle of the least restrictive alternative, and recognized progressional standards;

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

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

C. Content of the individual education program plan.

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

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

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

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

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

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

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

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

E. Notice to parents after completion of the program plan and prior to placement. Notice in accordance with the provisions of 5 MCAR § 1.0127 C. is required whenever the providing school district purposes to initiate or change or refuses to initiate or change the level of educational placement as defined in the Continuum of Placement Model, or proposes to initiate or significantly change or refuses to initiate or significantly change the special education services for the child. For the purposes of this rule the terms initiate or change shall be construed to include the proposals set forth in Minn. Stat. § 120.17, subd. 3b (c) (2), (3), (4), and (5). The notice shall be served prior to the initiation or change or refusal to initiate or change the educational placement or special education services for the child. The notice shall be served within ten days after completion of the program plan and/or the refusal to initiate or change.

EDU 126 Renumber as 5 MCAR § 1.0126.

5 MCAR § 1.0127 Formal notice to parents.

A. General notice provisions.

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

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

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

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

5. All notices must be sufficiently detailed and precise to constitute adequate notice for hearing of the proposed action and contain a full explanation of all of the procedural safeguards available to parents under the provision of these rules.

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

B. Prior to the performance of or refusal to perform a formal educational assessment or reassessment as provided for 5 MCAR § 1.0124 B., the providing school district shall prepare and serve a notice which shall meet the requirements of 5 MCAR § 1.0127 A. and shall:

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

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

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

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

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

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

7. inform the parents of their right and the procedure and time to have included on the team that interprets the assessment data and/or develops the individual program plans, such person(s) described in 5 MCAR § 1.0125 A. including a person who is a member of the same minority (as defined in Minn. Stat. § 126.021) or cultural background or who is knowledgeable concerning the racial, cultural, or handicapping differences of the student;

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

9. inform the parents that the district will not proceed with the initial formal assessment of a child, as defined in 5 MCAR § 1.0120 B., without prior written consent of the child's parent;

10. inform the parents that except for the initial formal assessment, the district shall proceed with the proposed assessment unless the parent objects on the enclosed "response form" or otherwise in writing within ten days after receipt of the notice;

11. inform the parents that if they object to the proposed assessment in writing a conciliation conference will be held at a mutually convenient time and place, but that if the parent refuses to attend the conference and the proposed assessment is not the initial formal assessment, the district will proceed with the proposed action;

12. inform the parents that if the parent objects to the proposed action during or after the initial conciliation conference they have a right to voice that objection at an impartial due process hearing;

13. inform the parents that they have the right to be represented by council or another person of their choosing at the conciliation conference or the impartial due process hearing;

14. a statement assuring that their child's educational program will not be changed as long as the parent objects to the proposed action, in the manner prescribed by these rules;

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

C. Prior to the initiation or change or the refusal to initiate or change a child's educational placement or special education services, as set forth in 5 MCAR § 1.0125 E. the providing school district shall prepare and serve a notice which shall meet the requirements of 5 MCAR § 1.0127 A. and shall:

1. include a copy of the individual educational program plan as described in 5 MCAR § 1.0125 C.;

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

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

4. inform the parents that the school district will not proceed with the initial placement and provision of service(s) as defined in 5 MCAR § 1.0120 B. without prior written consent of the child's parent;

5. inform the parents that except for the initial placement and provision of service(s), the district will proceed with the proposed placement and provision of service(s) unless the parent objects in writing on the enclosed "response form" or otherwise in writing within ten days after the receipt of the notice;

6. inform the parents that if they object to the proposed action, a conciliation conference will be held at a mutually convenient time and place but that if the parent refuses to attend the conciliation conference and the proposed placement and provision of service(s) is not the initial placement and provision of service(s), the school district will proceed with the proposed action;

7. inform the parents that if they still object to the proposed action at anytime after the first conciliation conference is convened, that they have a right to voice that objection at an impartial due process hearing;

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

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

5 MCAR § 1.0128 Conciliation conference.

A. When a conciliation conference must occur:

1. If the parent does not object in writing, to a proposed action as set forth in 5 MCAR § 1.0124 B. or 5 MCAR § 1.0125 E., within fourteen days after receipt of the notice and the proposed action is not an initial action as defined in 5 MCAR § 1.0127 B.9. and 5 MCAR § 1.0127 C.4., the proposed action shall take place. If such written objection is made, the providing school district shall arrange for a conference with the parent for the purpose of reviewing the reasons for the proposed action and conciliating the matter. The conference shall be held at a time and place mutually convenient to the parent and the school district representative and shall be held within ten days after receipt of the written objection. There may be more than one such conference and the parent may request a hearing under 5 MCAR § 1.0129 A. at anytime after the first conciliation conference is convened.

2. If the parent refuses to provide prior written consent as set forth in 5 MCAR § 1.0127 B.9. and 5 MCAR § 1.0127 C.4. within ten days after the receipt of the notice and response form, the providing school district shall arrange for a conference with the parent for the purpose of reviewing the reasons for the proposed action and conciliating the matter. The conference shall be held at a time and place mutually convenient to the parent and school district representative and shall be held within ten days after the expiration of the ten day period for parent response.

B. Memorandum.

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

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

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

3. that if they do not request a hearing on the written "request form" or otherwise in writing pursuant to 5 MCAR § 1.0129 A. within seven days after receipt of the notice, the district will proceed with the proposed action unless the proposed action is an initial action as defined in 5 MCAR § 1.0127 B.9. and 5 MCAR § 1.0127 C.4. In cases of such proposed initial actions, when a parent continues to refuse to provide written permission, the district shall schedule a hearing within seven days after the expiration of the seven days allowed for parent response;

4. that if a hearing is scheduled the district shall send a notice describing the rights and procedures available to the parents relative to the hearing.

C. "Days" when used in 5 MCAR § 1.0128 means calendar days.

5 MCAR § 1.0129 The hearing.

A. When a hearing must be held.

1. A hearing regarding a proposed action as set forth in 5 MCAR § 1.0124 B. or 5 MCAR § 1.0125 E. shall be held whenever the providing district receives the parents' request for a hearing. This request must be in writing and must be made within seven days after the parents' receipt of the written memorandum pursuant to 5 MCAR § 1.0128 B. Provided, however, that no parent shall have a right to request a hearing unless at least one conciliation conference has been held pursuant to 5 MCAR § 1.0128 A.

2. A district shall conduct a hearing whenever a parent refuses to provide written permission for the initial formal assessment of a child, initial placement of a child in a special education program, or the initial provision of special education services, provided the district has made at least one attempt to obtain this written consent through at least one conciliation conference.

B. Notice.

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

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

a. the hearing shall take place before an impartial hearing officer mutually agreed to by the school board and the parent. If the school board and parent are unable to agree on a hearing officer, the school board shall request the commissioner to appoint a hearing officer.

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

c. inform the parent of their right or responsibility:

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

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

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

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

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

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

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

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

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

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

f. that the hearing officer will make a written decision based only on evidence received and introduced into the record at the hearing not more than 45 days from the receipt of the request for the hearing and that the proposed action will be upheld only upon showing by the school district by a preponderance of the evidence. A proposed action that would result in the child being removed from regular education program may be sustained only when, and to the extent the nature or severity of the handicap is such that a regular education program would not be satisfactory and the child would be better served in an alternative program. Consideration of alternative educational programs must also be given;

g. that the decision of the hearing officer is binding on all parties unless appealed to the commissioner by the parent or the providing district;

h. that unless the district and parent agree otherwise, the student shall not be denied initial admission to school and that the student's education program shall not be changed as long as the parents object to the proposed action in the manner prescribed by these rules.

C. Hearing officers.

1. The hearing shall take place before an impartial hearing officer mutually agreed to by the school board and the parents.

2. If the school board and the parent are unable to agree on a hearing officer, the school board shall request the commissioner to appoint a hearing officer.

3. The hearing officer shall not be a school board member or employee of the school district where the child resides or of the child's school

district of residence, an employee of any other public agency involved in the education or care of the child, or any person with a personal or professional interest which would conflict with his objectivity at the hearing. A person who otherwise qualified as a hearing officer is not an employee of the district solely because the person is paid by the district to serve as a hearing officer.

4. If a hearing officer requests an independent educational assessment of a child, the cost of the assessment shall be at district expense. All expenses of the hearing, except for the parents' and resident school district's attorney's fees or other expenses incidental to the parents or resident school district participation in the hearing, shall be paid by the providing school district.

D. Prehearing review by the hearing officer.

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

a. the providing school district's notice(s) and memorandum prepared pursuant to 5 MCAR § 1.0128 B. to the parents;

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

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

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

e. the provisions of b. and c. need not apply when the hearing concerns a proposed action as set forth in 5 MCAR § 1.0124 B.

2. Upon receipt of the information set forth in 1. above, the hearing officer:

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

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

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

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

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

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

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

h. may grant specific extensions of time beyond the 45 day period at the request of either party.

E. Hearing rights of the respective parties.

1. The hearing shall be closed unless the parent requests an open hearing.

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

3. At a reasonable time prior to the hearing, the parent or their representative(s), as the case may be, shall be given access to all of the providing and resident school districts' records and such other records pertaining to the child that are authorized by law to be disclosed, including but not limited to all tests, evaluations, assessments, reports, and other written information concerning the educational assessment or reassessment, conducted pursuant to 5 MCAR § 1.0124 B. upon which the proposed action may be based.

4. At least five days prior to the hearing the parents shall receive from the school districts, who are parties of the hearing, a brief resume of "additional material allegations" referring to conduct, situations or conditions which are discovered and found to be relevant to the issues to be contested at the hearing and which are not contained in the original notice or memorandum provided pursuant to 5 MCAR § 1.0127 B. or C. or 5 MCAR § 1.0128 B. And that if such material allegation or information relating thereto are not so disclosed, it shall be left to the person conducting the hearing to determine if those material allegations may be introduced or considered.

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

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

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

F. Hearing procedures.

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

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

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

4. A tape recording, stenographic record, or other record of the hearing shall be made, and if an appeal is filed pursuant to 5 MCAR § 1.0129 H. the hearing shall be transcribed by the providing school district and shall be accessible to the parties involved within five days of the filing of the appeal.

G. The decision of the hearing officer. Not more than 45 days from the receipt of the request for a hearing, the hearing officer shall prepare a written decision based on evidence received and introduced into the record at the hearing. Such decision shall address itself to the following:

1. Decisions regarding assessment or reassessment.

a. The hearing officer may sustain a proposed assessment or reassessment of the person as set forth in 5 MCAR § 1.0124 B. upon a showing by the school district(s) by a preponderance of the evidence which demonstrates that there are facts, relating to the person's performance in his or her present education placement or presenting handicapping conditions, which indicate reasonable grounds to believe that the educational assessment or reassessment procedures are justified, as a step toward the possible initiation of or change in the person's educational placement or program, including special education services, which will provide an educational program, including special education services, appropriately suited to the person's needs.

b. Consistent with the standards, requirements, and principles set forth in statute and these rules, the hearing officer shall have the authority, based on all the evidence received at the hearing, to modify the proposed assessment or reassessment instruments or procedures in order to insure compliance with the requirement of nondiscrimination.

2. Decisions regarding educational placement.

a. Based on an application of the standards, requirements and principles set forth in Minn. Stat. § 120.17, subd. 3a, and in these rules, the proposed action regarding the person's educational placement or special education services as set forth in 5 MCAR § 1.0125 C. shall be sustained in whole or in part by the hearing officer only upon a showing of need by the school district(s) by a preponderance of the evidence.

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

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

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

3. All local hearing officer decisions shall:

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

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

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

d. be based on the standards and principles set forth in Minn. Stat. § 120.17, subd. 3a, and 5 MCAR § 1.0129 G.1. and 2.

4. All decisions shall be filed with the commissioner of education and shall be sent by mail to the parties. The decision(s) shall also include information detailing the right to appeal the decision, the procedure and time in which to do so, and an appeal form on which the parent may identify which appeal option, as set forth in 5 MCAR § 1.0129 H.2., they request.

H. Effective date of the action and appeals.

1. The decision of the hearing officer shall be binding on all parties unless appealed to the commissioner by the parent or the school board where the child resides; and shall become effective 15 days after service of the decision unless the decision is appealed.

2. The hearing officer's decision issued pursuant to 5 MCAR § 1.0129 G.1., 2., or 3., may be appealed by the parent or the school board where the child resides to the commissioner of education within 15 days of receipt of that written decision(s) in the following manner:

a. The appeal decision shall be based on a review of the local decision(s) and the entire record.

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

3. The school board shall be a party to any appeal. The commissioner shall issue a final decision based on a review of the local decision(s) and the entire records within 30 days after receipt of the local decision(s) and the transcript. The commissioner shall seek additional evidence if necessary and may afford the parties an opportunity for written or oral argument; provided any hearing held to seek additional evidence shall be an impartial due process hearing but shall be deemed not to be a contested case hearing. The commissioner may grant specific extensions of time beyond the 30 day period at the request of any party.

4. The commissioner's final decision shall:

a. be in writing;

b. include findings and conclusions; and

c. be based on the standards set forth in Minn. Stat. § 120.17, subd. 3a and the standards, requirements, and principles set forth in 5 MCAR § 1.0129 G.1. and 2. and these rules.

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

6. If the providing school district fails to implement the hearing officer's decision, the parent shall have the right to bring such failure to the attention of the commissioner. In accordance with the provisions of Minn. Stat. § 124.15, the state board of education may impose such sanctions necessary to correct any such failure.

I. "Days" when used in 5 MCAR § 1.0129 means calendar days.

PROPOSED TEMPORARY RULES AND REQUEST FOR PUBLIC COMMENT

Department of Education

Proposed Temporary Rules Governing Standards and Procedures for the Provision of Special Education Instruction and Services for Children and Youth Who are Handicapped

Request for Public Comment

Notice is hereby given that the Department of Education has proposed the following temporary rules for the purpose of implementing the provisions of Laws of 1979, ch. 334, Article III, subd. 3b., Procedures For Decisions.

All interested persons are hereby afforded the opportunity to submit their comments on the proposed rule for 20 days immediately following publication of this material in the State Register by writing to Wilfred Antell, Ed.D., Assistant Commissioner, Division of Special and Compensatory Education, Department of Education, 550 Cedar Street, St. Paul, Minnesota 55101. The temporary rules may be revised on the basis of the comments received. Any written material received shall become part of the record in the final adoption of the temporary rules.

September 10, 1979

Howard B. Casmey
Secretary, State Board of Education

Temporary Rules as Proposed

Chapter Seven: Standards and Procedures for the Provision of Special Education Instruction and Services for Children and Youth Who Are Handicapped

5 MCAR §1.0120 ~~EDU-120~~ Policies and definitions.

A. Policies.

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

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

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

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

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

6. Accountability for instruction and services. As provided in Minn. Stat. §120.17, subd. 2, the district of residence is responsible for maintaining an appropriate program for all eligible handicapped persons regardless of the

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

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

8. Physical facilities. Physical aspects and specification of schools, classrooms, and other facilities which will be used by handicapped children, shall be designed to meet their special physical, educational and emotional needs. To this end, responsible school districts constructing, renovating, or

repairing facilities which are intended for or are likely to be used by handicapped children, shall plan, locate, design, construct, equip ~~equi~~, and maintain them with due regard for the special capabilities, handicaps, and requirements of the handicapped children to be accommodated therein.

B. Definitions.

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

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

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

3. "Special education services" means any specially designed instruction to meet the unique needs of a handicapped person, including classroom instruction or instruction in the home, hospital, institution, residential facility or other public or private facility providing special instruction and services pursuant to Minn. Stat. §§120.17 and 124.32. This term includes, but not by way of limitation, the education, instruction, training, aids and services and/or ancillary or supplementary and supportive aids and services necessary for the education of handicapped persons. This term also includes, but not by way of limitation, related services such as transportation, and developmental, corrective, and other supportive services including medical and counseling services,

except that such medical services shall be for diagnostic or assessment purposes only, as may be required to assist a handicapped person to benefit from special education services. For purposes of this rule the term also means and includes a "primary placement in a special education program" as that term is defined and used herein; and "special instruction and services," "supplementary services," and "special education program" as those terms are defined and used in Minn. Stat. §120.17.

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

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

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

7. "Resident school district" means the district where the handicapped person's parent or guardian resides or the district designated by the commissioner as provided in Minn. Stat. §120.17, subd. 6 and 8a.

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

9. "Handicapped persons" includes the term "student," and "child" or "person" and means those "handicapped children" as defined by Minn. Stat. §120.03 and amendments or supplements thereto. Determination of a handicapping condition shall be made by qualified personnel in accordance with recognized professional standards and consistent with the provisions of 5 MCAR §1.0124 ~~EDU 124~~ and 5 MCAR §1.0125 ~~125~~. These rules shall not apply to persons receiving home or hospital instruction unless they have a presenting handicapping condition as described above.

10. "School age" means the age of four to twenty-one years for all handicapped children as defined in Minn. Stat. §120.03 and shall not extend beyond secondary school or its equivalent. ~~for persons who are deaf, blind, crippled, or have speech defects and ages five to twenty-one years for other handicapped persons, in accordance with Minn. Stat. s120.17 subd. 1 and amendments or supplements thereto. As of August 15, 1977 school age shall mean ages four to twenty one for all handicapped children.~~

11. ~~"Lease~~"Least restrictive alternative" means the principle that to the maximum extent appropriate, handicapped persons, including those in public or private institutions or other care facilities, are educated with persons who are not handicapped, and that special classes, separate schooling or other removal of handicapped persons from the regular educational environment shall occur only when and to the extent that the nature or severity of the handicap is such that education in regular classes with the use of special education services cannot

be achieved satisfactorily. Furthermore, there must be an indication that the person will be better served outside of the regular program. For the purposes set forth therein this principle shall include the following "Continuum of Placement Model."

"Continuum of Placement Model"

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

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

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

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

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

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

12. "Formal educational assessment," referred to in these rules also as an "assessment," is defined as an individual evaluation, conducted in accordance with recognized professional standards and the provisions of 5 MCAR §1.0124 ~~EDU 124~~, of a person's performance and/or development for the purpose of determining the need for initiation or change in his or her educational program including special education services.

13. "Parent" or "parents" include a biological mother or father, an adoptive mother or father, a legally appointed guardian, or such agency or other person appointed pursuant to 5 MCAR §1.0123 ~~EDU-123~~. All rights and responsibilities as provided herein belong to a person when the person is 18 years of age, unless the person is under legal guardianship.

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

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

16. Nondiscrimination for purposes of this rule means the requirement that school districts shall:

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

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

17. "Proposed action" for purposes of this rule shall be construed to mean a providing school district's proposed initiation or change or refusal to initiate or change a child's educational placement or special education services as set forth in 5 MCAR §1.0125 E. ~~EDU-125-E.~~ or an educational assessment or reassessment as set forth in 5 MCAR §1.0124 B. ~~EDU-124-B.~~

18. "Individual educational program plan" referred to in these rules also as a "program plan" means a written statement for each handicapped person setting forth the person's educational needs and the educational program, including special education services, to be provided to such person. The program plan shall be developed in accordance with and contain the information required by 5 MCAR §1.0125 ~~EDU-125.~~

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

20. "Initial formal assessment" means the first formal assessment of a child provided by the district.

21. "Initial placement and provision of service(s)" means the first special education placement and provision of special education service(s) by the district.

EDU 121 Renumber as 5 MCAR §1.0121

EDU 122 Renumber as 5 MCAR §1.0122

EDU 123 Renumber as 5 MCAR §1.0123

5 MCAR §1.0124 ~~EDU-124~~ Identification and assessment procedures.

A. Identification of handicapped children.

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

a. preschool age handicapped children;

b. handicapped persons attending school;

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

2. The districts identification system shall be developed in accordance with the requirement of nondiscrimination.

B. Formal educational assessment.

1. An assessment:

a. must be conducted when because of a person's performance in the present educational placement or presenting handicapping conditions, he or she is thought by the school district to be in need of possible initiation or change in the student's educational placement or program or special education services as

set forth in 5 MCAR §1.0125 E. ~~EDU-125-E~~ which will provide an educational program, including special education services appropriately suited to the person's needs.

b. must be conducted at least every two years as required by 5 MCAR §1.0126 B. ~~EDU-126-B.~~

c. may be conducted if the parent requests.

2. Prior to conducting an assessment the district shall:

a. review the screening, referral or other data about the person and select licensed special education personnel and others as appropriate to conduct the assessment;

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

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

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

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

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

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

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

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

4. Notice before assessment:

a. must be provided in accordance with the provisions of 5 MCAR §1.0127 B ~~127-B~~ prior to conducting a formal educational assessment or reassessment or when the district refuses a parent's request to conduct a formal educational assessment or reassessment. In case of refusal the notice shall be served within ten days after the refusal;

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

5 MCAR §1.0125 ~~EDU-125~~ Team determination and program needs determination. Development and content of the individual education program plan.

A. Team and program needs determination. Following the assessment, in order

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

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

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

3. interpret the data consistent with the requirement of nondiscrimination.

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

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

B. Development and content of the individual education program plan

The development of the program plan must:

1. be prepared, in writing, by the providing district for each person in need of special education services; when the providing district is not the

resident district, a copy of the program plan shall be sent to the resident district;

2. be developed in accordance with the requirement of nondiscrimination, the principle of the least restrictive alternative, and recognized progressional standards;

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

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

C. Content of the individual education program plan.

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

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

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

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

4. the reasons for the type of education placement and program including type of special education services to be provided, the location, amount of time, starting date, anticipated special education service duration, names and school telephone numbers of those personnel responsible for providing the special educa-

tion services. In accordance with the principle of least restrictive alternatives, substantiate why the proposed action is the most appropriate in terms of the person's educational needs;

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

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

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

E. Notice to parents after completion of the program plan and prior to placement. Notice in accordance with the provisions of 5 MCAR §1.0127 C. ~~EDU-127-6.~~ is required whenever the providing school district purposes to initiate or change or refuses to initiate or change the level of educational placement as defined in the Continuum of Placement Model, or proposes to initiate or significantly change or refuses to initiate or significantly change the special education services for the child. For the purposes of this rule the terms initiate or change shall be construed to include the proposals set forth in Minn. Stat. §120.17, subd. 3b (c) (2), (3), (4), and (5). The notice shall be served prior

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

EDU 126 Renumber as 5 MCAR §1.0126

5 MCAR §1.0127 ~~EDU-127~~ Formal notice to parents.

A. General notice provisions.

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

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

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

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

5. All ~~the~~ notices must be sufficiently detailed and precise to constitute adequate notice for hearing of the proposed action and contain a full explanation of all of the procedural safeguards available to parents under the provision of these rules.

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

B. Prior to the performance of or refusal to perform a formal educational assessment or reassessment as provided for 5 MCAR §1.0124 B. ~~EDU-124-B.~~, the providing school district shall prepare and serve a notice which shall meet the requirements of 5 MCAR §1.0127 A. and shall:

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

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

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

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

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

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

7. inform the parents of their right and the procedure and time to have included on the team that interprets the assessment data and/or develops the individual program plans, such person(s) described in 5 MCAR §1.0125 A. ~~EDU-125-A.~~ including a person who is a member of the same minority (as defined in Minn. Stat. §126.021) or cultural background or who is knowledgeable concerning the racial, cultural, or handicapping differences of the student;

8. inform the parents that they may obtain an independent assessment at their own expense~~.~~;

9. inform the parents that the district will not proceed with the initial formal assessment ~~proposed action~~ of a child, as defined in 5 MCAR §1.0120 B., without prior written consent of the child's parent; ~~unless the parent objects on the enclosed "response form" or otherwise in writing within ten days after the receipt of the notice;~~

10. inform the parents that except for the initial formal assessment, the district shall proceed with the proposed assessment unless the parent objects on the enclosed "response form" or otherwise in writing within ten days after receipt of the notice;

11. ~~10.~~ inform the parents that if they object to the proposed assessment ~~action~~ in writing a conciliation conference will be held at a mutually convenient time and place, but that if the parent refuses to attend the conference and the

proposed assessment is not the initial formal assessment, the district will proceed with the proposed action;

12. ~~11.~~ inform the parents that if the parent ~~still~~ objects to the proposed action during or after the initial ~~final~~ conciliation conference they have a right to voice that objection at an impartial ~~informal~~ due process hearing~~.~~;

13. ~~12.~~ inform the parents that they have the right to be represented by council or another person of their choosing at the conciliation conference or the impartial ~~informal~~ due process hearing~~.~~;

14. ~~13.~~ a statement assuring that their child's educational program will not be changed as long as the parent objects to the proposed action, in the manner prescribed by these rules~~.~~;

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

C. Prior to the initiation or change or the refusal to initiate or change a child's educational placement or special education services, as set forth in 5 MCAR §1.0125 E. ~~EDU-125-E.~~ the providing school district shall prepare and serve a notice which shall meet the requirements of 5 MCAR §1.0127 A. and shall:

1. include a copy of the individual educational program plan as described in 5 MCAR §1.0125 C. ~~EDU-125-C.~~;

2. inform the parents of their right and time and procedure to request and to receive interpretations of assessment or reassessment procedures, instruments

and data and of the program plan from a knowledgeable school district employee and for that conference to be held in private;

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

4. inform the parents that the school district will not proceed with the initial placement and provision of service(s) ~~proposed action~~ as defined in 5 MCAR § 1.0120 B. without prior written consent of the child's parent; ~~unless the parent objects in writing on the enclosed "response form" or otherwise to the proposed action within ten days after receipt of the notice.~~

5. inform the parents that except for the initial placement and provision of service(s), the district will proceed with the proposed placement and provision of service(s) unless the parent objects in writing on the enclosed "response form" or otherwise in writing within ten days after the receipt of the notice;

6. ~~5.~~ inform the parents that if they object to the proposed action, a conciliation conference will be held at a mutually convenient time and place but that if the parent refuses to attend the conciliation conference and the proposed placement and provision of service(s) is not the initial placement and provision of service(s), the school district will proceed with the proposed action;

7. ~~6.~~ inform the parents that if they still object to the proposed action at anytime after the first conciliation conference is convened, that they have a right to voice that objection at an impartial ~~informal~~ due process hearing;

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

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

5 MCAR §1.0128 ~~EDU-128~~ Conciliation conference.

A. When a conciliation conference must occur:

1. If the parent does not object in writing, to a proposed action as set forth in 5 MCAR §1.0124 B. ~~EDU-124-B.~~ or 5 MCAR §1.0125 E. ~~EDU-125-E.~~, within fourteen ~~ten~~ days after receipt of the notice and the proposed action is not an initial action as defined in 5 MCAR §1.0127 B.9. and 5 MCAR §1.0127 C.4., the proposed action shall take place. If such written objection is made, the providing school district shall arrange for a conference with the parent for the purpose of reviewing the reasons for the proposed action and conciliating the matter. The conference shall be held at a time and place mutually convenient to the parent and the school district representative and shall be held within ten days after receipt of the written objection. There may be more than one such conference and the parent may ~~not~~ request a hearing under 5 MCAR §1.0129 A. ~~EDU-129-A.~~ at anytime after the first conciliation conference is convened. ~~until at least one conciliation conference has been held.~~

2. If the parent refuses to provide prior written consent as set forth in 5 MCAR §1.0127 B.9. and 5 MCAR §1.0127 C.4. within ten days after the receipt of the notice and response form, the providing school district shall arrange for a conference with the parent for the purpose of reviewing the reasons for the

proposed action and conciliating the matter. The conference shall be held at a time and place mutually convenient to the parent and school district representatives and shall be held within ten days after the expiration of the ten day period for parent response.

B. Memorandum.

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

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

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

3. that if they do not request a hearing on the written "request form" or otherwise in writing pursuant to 5 MCAR §1.0129 A. ~~EDU-129-A.~~ within seven days after receipt of the notice, the district will proceed with the proposed action~~.~~ unless the proposed action is an initial action as defined in 5 MCAR §1.0127 B.9. and 5 MCAR §1.0127 C.4. In cases of such proposed initial actions, when a parent continues to refuse to provide written permission, the district shall schedule a hearing within seven days after the expiration of the seven days allowed for parent response;

4. that if a hearing is scheduled ~~they request a hearing on the written "request form" or otherwise in writing~~ the district shall send ~~that they will~~

~~receive~~ a notice describing the rights and procedures available to the parents ~~them~~ relative to the hearing~~;~~.

C. "Days" when used in 5 MCAR §1.0128 means calendar days. ~~If no such written request is made after the final conciliation meeting, the proposed action shall take place.~~

5 MCAR §1.0129 ~~EDU-129~~ The hearing.

A. When a hearing must be held.

1. A hearing regarding a proposed action as set forth in 5 MCAR §1.0124 B. ~~EDU-124-B~~ or 5 MCAR §1.0125 E. ~~EDU-125-E.~~ shall be held ~~not later than 30 days, unless continued pursuant to the mutual agreement of the parent and school district(s)~~ whenever after the providing district receives the parents' request for a hearing. This request must be in writing and must be made within seven days after the parents' receipt of the written memorandum pursuant to 5 MCAR §1.0128 B. ~~EDU-128-B.~~ Provided, however, that no parent shall have a right to request a hearing unless at least one conciliation conference has been held pursuant to 5 MCAR §1.0128 A. ~~EDU-128-A.~~

2. A district shall conduct a hearing whenever a parent refuses to provide written permission for the initial formal assessment of a child, initial placement of a child in a special education program, or the initial provision of special education services, provided the district has made at least one attempt to obtain this written consent through at least one conciliation conference.

B. Notice.

1. Written notice of the time, date and place of all hearings shall be

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

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

a. ~~that at the option of the school board,~~ the hearing shall take place ~~(1)~~ before ~~the school board or its designee;~~ an impartial hearing officer ~~(2) a person~~ mutually agreed to by the school board and the parent~~;~~. ~~or (3) a person appointed by the commissioner;~~ If the school board and parent are unable to agree on a hearing officer, the school board shall request the commissioner to appoint a hearing officer.

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

c. inform the parent of their right or responsibility:

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

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

(3) to call their own witnesses and to present evidence, including

expert medical, psychological, and educational testimony and relevant records, tests, assessments, reports, or other information;

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

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

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

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

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

d. that at the hearing the burden of proof is on the school district to show that the proposed action is justified on the basis of the child's educational needs or his or her current educational performance, or presenting handicapping

conditions taking into account the presumption that placement in a regular public school class with special education services is preferable to removal from the regular classroom;

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

f. that the hearing officer ~~person-conducting-the-hearing~~ will make a written decision based only on evidence received and introduced into the record at the hearing not more than 45 days from the receipt of the request for the hearing ~~within-five-days-following-the-hearing~~ and that the proposed action will be upheld only upon showing by the school district by a preponderance of the evidence. A proposed action that would result in the child being removed from regular education program may be sustained only when, and to the extent the nature or severity of the handicap is such that a regular education program would not be satisfactory and the child would be better served in an alternative program. Consideration of alternative educational programs must also be given~~.~~;

g. that the decision of the hearing officer ~~person-conducting-the-hearing~~ is binding on all parties unless appealed to the commissioner by the parent or the providing district; ~~may-be-reviewed-by-the-school-board,-at-its-option,-within-ten-days-following-the-hearing-officer's-decision;~~

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

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

h. ~~j.~~ that unless the district and parent agree otherwise, the student shall not be denied initial admission to school and that the student's education program shall not be changed as long as the parents object to the proposed action in the manner prescribed by these rules.

C. Hearing officers.

1. ~~At the option of the school board,~~ The hearing shall take place ~~either~~ before ~~the school board; or (1) its designee, (2) a person~~ an impartial hearing officer mutually agreed to by the school board and the parents~~;~~. ~~or (3) a person appointed by the commissioner. The school board shall exercise its option and a person to conduct the hearing must be selected at least ten days prior to the hearing. The parties by agreement may continue the time and date of the hearing for not more than ten days for the purpose of mutually agreeing to a person to conduct the hearing.~~

2. If the school board and the parent are unable to agree on a hearing officer, the school board shall request the commissioner to appoint a hearing officer.

3. The hearing officer shall not be a school board member or employee of the school district where the child resides or of the child's school district of residence, an employee of any other public agency involved in the education or care of the child, or any person with a personal or professional interest which would conflict with his objectivity at the hearing. A person who otherwise qualified as a hearing officer is not an employee of the district solely because the person is paid by the district to serve as a hearing officer.

4. If a hearing officer requests an independent educational assessment of a child, the cost of the assessment shall be at district expense. All expenses of the hearing, except for the parents' and resident school district's attorney's fees or other expenses incidental to the parents or resident school district participation in the hearing, shall be paid by the providing school district.

D. Prehearing review by the hearing officer.

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

a. the providing school district's notice(s) and memorandum prepared pursuant to 5 MCAR §1.0128 B. ~~EDU-128-B.~~ to the parents;

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

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

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

e. the provisions of b. and c. need not apply when the hearing concerns a proposed action as set forth in 5 MCAR §1.0124 B. ~~EDU-124-B.~~

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

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

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

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

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

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

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

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

h. may grant specific extensions of time beyond the 45 day period at the request of either party.

E. Hearing rights of the respective parties.

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

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

3. At a reasonable time prior to the hearing, the parent or their representative(s), as the case may be, shall be given access to all of the providing and resident school districts' records and such other records pertaining to the child that are authorized by law to be disclosed, including but not limited to all tests, evaluations, assessments, reports, and other written information concerning the educational assessment or reassessment, conducted pursuant to 5 MCAR §1.0124 B. ~~EDU-124-B.~~ upon which the proposed action may be based.

4. At least five days prior to the hearing the parents shall receive from the school districts, who are parties of the hearing, a brief resume of "additional material allegations" referring to conduct, situations or conditions which are discovered and found to be relevant to the issues to be contested at the hearing and which are not contained in the original notice or memorandum provided pursuant to 5 MCAR §1.0127 B. or C. or 5 MCAR §1.0128 B. ~~EDU-127-B.-or C.-or-128-B.~~ And that if such material allegation or information relating thereto are not so disclosed, it shall be left to the person conducting the hearing to determine if those material allegations may be introduced or considered.

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

6. All parties or their representatives, as the case may be, shall have the right to request the attendance of any employee of the school district(s), or any other person who may have evidence relating to the proposed action, and to confront, and to cross examine any such witness. Any such request must be made

to the appropriate school district or to the person whose attendance is requested at least five days in advance of the hearing. Such written requests shall also be filed with the person(s) conducting the hearing at the time of hearing.

~~7.--Evidentiary-standards-regarding-contested-cases-as-specified-pursuant to-Minn.-Stat.-ch.-15-shall-apply.~~

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

F. Hearing procedures.

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

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

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

4. A tape recording, stenographic record, or other record of the hearing shall be made, and if an appeal is filed pursuant to 5 MCAR §1.0129 H. ~~EDU-129-H.~~, the hearing shall be transcribed by the providing school district and shall be accessible to the parties involved within five days of the filing of the appeal. ~~Provided-however,-for-appeals-of-local-decisions-issued-by-school-boards-or their-designees-concerning-proposed-actions-as-set-forth-in-EDU-129-H.2.a.,-no written-transcript-shall-be-made-if-the-parent-requests-a-chapter-15-due-process hearing-pursuant-to-EDU-129-H.--The-record-or-transcription,-as-the-case-may-be, shall,-upon-request,-be-made-available-to-the-parent-or-their-representative.~~

G. The ~~local~~ decision of the hearing officer. ~~Within-five-days-after-the hearing,~~ Not more than 45 days from the receipt of the request for a hearing, the hearing officer ~~person(s)-conducting-the-hearing~~ shall prepare a written decision based on evidence received and introduced into the record at the hearing. Such decision shall address itself to the following:

1. Decisions regarding assessment or reassessment.

a. The hearing officer ~~person-conducting-the-hearing~~ may sustain a proposed assessment or reassessment of the person as set forth in 5 MCAR §1.0124 B. ~~EDU-124-B.~~ upon a showing by the school district(s) by a preponderance of the evidence which demonstrates that there are facts, relating to the person's

performance in his or her present education placement or presenting handicapping conditions, which indicate reasonable grounds to believe that the educational assessment or reassessment procedures are justified, as a step toward the possible initiation of or change in the person's educational placement or program, including special education services, which will provide an educational program, including special education services, appropriately suited to the person's needs.

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

2. Decisions regarding educational placement.

a. Based on an application of the standards, requirements and principles set forth in Minn. Stat. §120.17, subd. 3a, and in these rules, the proposed action regarding the person's educational placement or special education services as set forth in 5 MCAR §1.0125 C. ~~EDU-125-C.~~ shall be sustained in whole or in part by the hearing officer ~~person-conducting-the-hearing~~ only upon a showing of need by the school district(s) by a preponderance of the evidence.

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

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

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

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

3. ~~4.~~ All local hearing officer decisions shall:

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

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

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

d. be based on the standards and principles set forth in Minn. Stat. §120.17, subd. 3a, and 5 MCAR §1.0129 G.1. and 2. ~~EDU-129-G.1.-and-2.~~

4. ~~5.~~ All decisions shall be filed with the commissioner of education and shall be sent by mail to the parties. ~~The-decision-of-the-person-conducting the-hearing-shall-not-be-served-until-after-expiration-of-the-time-for-school board-review.~~ The decision(s) shall also include information detailing the right to appeal the decision, the procedure and time in which to do so, and an appeal form on which the parent may identify which appeal option, as set forth in 5 MCAR §1.0129 H.2. ~~EDU-129-H.2.~~, they request.

H. Effective date of the action and appeals.

1. The decision of the hearing officer ~~person-conducting-the-hearing,-or in-case-of-school-board-review,-the-board's-decision,~~ shall be binding on all parties unless appealed to the commissioner by the parent or the school board where the child resides; and shall become effective 15 days after service of the decision unless the decision is appealed.

2. The hearing officer's ~~binding-local~~ decision issued pursuant to 5 MCAR §1.0129 G.1., 2., or 3., ~~EDU-129-G.1.,-2.,-or-3.,~~ may be appealed by the parent or the school board where the child resides to the commissioner of education within 15 days of receipt of that written decision(s) in the following manner:

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

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

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

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

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

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

~~a-chapter-15-due-process-hearing,-the-commissioner-shall-issue-a-final-decision within-30-days-after-that-hearing-and-the-final-decision-shall-be-based-on-the report-of-the-hearing-examiner.~~ The commissioner shall seek additional evidence if necessary and may afford the parties an opportunity for written or oral argument; provided any hearing held to seek additional evidence shall be an impartial due process hearing but shall be deemed not to be a contested case hearing. The commissioner may grant specific extensions of time beyond the 30 day period at the request of any party.

4. The commissioner's final decision shall:

a. be in writing;

b. include findings and conclusions; and

c. be based on the standards set forth in Minn. Stat. §120.17, subd. 3a and the standards, requirements, and principles set forth in 5 MCAR §1.0129 G.1. and 2. ~~EDU-G.1.-and-2.~~ and these rules.

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

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

I. "Days" when used in 5 MCAR §1.0129 means calendar days.

STATE OF MINNESOTA

In the Matter of the Proposed
Adoption of Temporary Rules of
the State Board of Education
Governing Standards and Procedures of Special Education
Instruction and Services for Children and Youth
Who are Handicapped

ORDER ADOPTING RULES

The above-entitled proposed temporary rules were published in the State Register on October 1, 1979, pursuant to the authority in Minn. Stat. § 120.17 (1978) as amended by Laws of 1979, Ch. 334, Article III, Section 18.

After affording all interested persons an opportunity to submit data and view on the proposed temporary rule in writing as required by Minn. Stat. § 15.0412, subd. 5 (1978) having considered all 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 §§ 1.0120 - 1.0129 (EDU 120 - 129) attached hereto as Exhibit A are adopted this 5th day of November, 1979 pursuant to the above authority.

STATE OF MINNESOTA
STATE BOARD OF EDUCATION

Ruth A. Myers
President
State Board of Education

submit either directly to the Department or through the regional management information center. Amendments may be made to the calendar each quarter thereafter.

B. The data acquisition calendar shall contain, at a minimum, the name and description of the form and the date when it is due to the Department.

C. Only data elements contained in the data element dictionary shall be included in the form and shall be used according to the standards established in the data element dictionary.

D. Proposed froms to be included or deleted from the data acquisition calendar shall be approved only after each data element has been approved by the Commissioner as provided in 5 MCAR § 1.0903.

Department of Education

Proposed Temporary Rules Governing Standards and Procedures for the Provision of Special Education Instruction and Services for Children and Youth Who Are Handicapped

Request for Public Comment

Notice is hereby given that the Department of Education has proposed the following temporary rules for the purpose of implementing the provisions of Laws of 1979, ch. 334, Article III, subd. 3b., Procedures For Decisions.

All interested persons are hereby afforded the opportunity to submit their comments on the proposed rules for 20 days immediately following publication of this material in the *State Register* by writing to Wilfred Antell, Ed.D., Assistant Commissioner, Division of Special and Compensatory Education, Department of Education, 550 Cedar Street, St. Paul, Minnesota 55101. The temporary rules may be revised on the basis of the comments received. Any written material received shall become part of the record in the final adoption of the temporary rules.

September 10, 1979

Howard B. Casmey, Secretary
State Board of Education

Temporary Rules as Proposed

Chapter Seven: Standards and Procedures for the Provision of Special Education Instruction and Services for Children and Youth Who Are Handicapped

5 MCAR § 1.0120 ~~EDU 120~~ Policies and definitions.

A. Policies.

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

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

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

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

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

6. Accountability for instruction and services. As provided in Minn. Stat. § 120.17, subd. 2, the district of residence is responsible for maintaining an appropriate pro-

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

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

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

B. Definitions.

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

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

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

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

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

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

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

7. "Resident school district" means the district where the handicapped person's parent or guardian resides or the district designated by the commissioner as provided in Minn. Stat. § 120.17, subds. 6 and 8a.

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."

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

9. "Handicapped persons" includes the term "student," and "child" or "person" and means those "handicapped children" as defined by Minn. Stat. § 120.03 and amendments or supplements thereto. Determination of a handicapping condition shall be made by qualified personnel in accordance with recognized professional standards and consistent with the provisions of 5 MCAR § 1.0124 ~~EDU 124~~ and 5 MCAR § 1.0125 ~~125~~. These rules shall not apply to persons receiving home or hospital instruction unless they have a presenting handicapping condition as described above.

10. "School age" means the age of four to twenty-one years for all handicapped children as defined in Minn. Stat. § 120.03 and shall not extend beyond secondary school or its equivalent. ~~for persons who are deaf, blind, crippled, or have speech defects and ages five to twenty-one years for other handicapped persons, in accordance with Minn. Stat. § 120.17 subd. 1 and amendements or supplements thereto. As of August 15, 1977 school age shall mean ages four to twenty one for all handicapped children.~~

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

"Continuum of Placement Model"

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

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

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

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

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

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

12. "Formal educational assessment," referred to in these rules also as an "assessment," is defined as an individual evaluation, conducted in accordance with recognized professional standards and the provisions of 5 MCAR § 1.0124 ~~EDU 124~~, of a person's performance and/or development for the purpose of determining the need for initiation or change in his or her educational program including special education services.

13. "Parent" or "parents" include a biological mother or father, an adoptive mother or father, a legally appointed guardian, or such agency or other person appointed pursuant to 5 MCAR § 1.0123 ~~EDU 123~~. All rights and responsibilities as provided herein belong to a person when the person is 18 years of age, unless the person is under legal guardianship.

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

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

16. Nondiscrimination for purposes of this rule means the requirement that school districts shall:

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

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

17. "Proposed action" for purposes of this rule shall be construed to mean a providing school district's proposed

initiation or change or refusal to initiate or change a child's educational placement or special education services as set forth in 5 MCAR § 1.0125 E. ~~EDU 125 E.~~ or an educational assessment or reassessment as set forth in 5 MCAR § 1.0124 B. ~~EDU 124 B.~~

18. "Individual educational program plan" referred to in these rules also as a "program plan" means a written statement for each handicapped person setting forth the person's educational needs and the educational program, including special education services, to be provided to such person. The program plan shall be developed in accordance with and contain the information required by 5 MCAR § 1.0125 ~~EDU 125~~.

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

20. "Initial formal assessment" means the first formal assessment of a child provided by the district.

21. "Initial placement and provision of service(s)" means the first special education placement and provision of special education service(s) by the district.

EDU 121 Renumber as 5 MCAR § 1.0121.

EDU 122 Renumber as 5 MCAR § 1.0122.

EDU 123 Renumber as 5 MCAR § 1.0123.

5 MCAR § 1.0124 ~~EDU 124~~ Identification and assessment procedures.

A. Identification of handicapped children.

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

a. preschool age handicapped children;

b. handicapped persons attending school;

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

2. The districts identification system shall be developed in accordance with the requirement of nondiscrimination.

B. Formal educational assessment.

1. An assessment:

a. must be conducted when because of a person's performance in the present educational placement or presenting handicapping conditions, he or she is thought by the school district to be in need of possible initiation or change in the student's educational placement or program or special education services as set forth in 5 MCAR § 1.0125 E. ~~EDU 125 E~~ which will provide an educational program, including special education services appropriately suited to the person's needs;

b. must be conducted at least every two years as required by 5 MCAR § 1.0126 B.; ~~EDU 126 B.~~

c. may be conducted if the parent requests.

2. Prior to conducting an assessment the district shall:

a. review the screening, referral or other data about the person and select licensed special education personnel and others as appropriate to conduct the assessment;

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

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

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

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

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

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

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

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

4. Notice before assessment:

a. must be provided in accordance with the provi-

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sions of 5 MCAR § 1.0127 B. ~~127 B.~~ prior to conducting a formal educational assessment or reassessment or when the district refuses a parent's request to conduct a formal educational assessment or reassessment. In case of refusal the notice shall be served within ten days after the refusal;

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

5 MCAR § 1.0125 ~~EDU 125~~ Team determination and program needs determination. Development and content of the individual education program plan.

A. Team and program needs determination. Following the assessment, in order to determine if the person is in need of special education services, the district shall:

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

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

3. interpret the data consistent with the requirement of nondiscrimination;

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

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

B. Development and content of the individual education program plan. The development of the program plan must:

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

2. be developed in accordance with the requirement of nondiscrimination, the principle of the least restrictive alternative, and recognized progressional standards;

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

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

C. Content of the individual education program plan. The program plan must be based on the assessment data and other information and be consistent with the requirement of nondiscrimination and the principle of least restrictive alternative and must include:

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

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

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

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

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

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

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

E. Notice to parents after completion of the program plan and prior to placement. Notice in accordance with the provisions of 5 MCAR § 1.0127 C. ~~EDU 127 C.~~ is required whenever the providing school district purposes to initiate or change or refuses to initiate or change the level of educational placement as defined in the Continuum of Placement Model, or proposes to initiate or significantly change or refuses to initiate or significantly change the special education services for the child. For the purposes of this rule the terms initiate or change shall be construed to include the proposals set forth in Minn. Stat. § 120.17, subd. 3b (c) (2), (3), (4), and (5). The notice shall be served prior to the intiation or change or refusal to initiate or change the educational placement or special education services for the child. The notice shall be served within ten days after completion of the program plan and/or the refusal to initiate or change.

EDU 126 Renumber as 5 MCAR § 1.0126.

5 MCAR § 1.0127 ~~EDU 127~~ Formal notice to parents.

A. General notice provisions.

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

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

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

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

5. All ~~the~~ notices must be sufficiently detailed and precise to constitute adequate notice for hearing of the proposed action and contain a full explanation of all of the procedural safeguards available to parents under the provision of these rules.

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

B. Prior to the performance of or refusal to perform a formal educational assessment or reassessment as provided for 5 MCAR § 1.0124 B. ~~EDU 124 B.~~, the providing school district shall prepare and serve a notice which shall meet the requirements of 5 MCAR § 1.0127 A. and shall:

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

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

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

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

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

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

7. inform the parents of their right and the procedure and time to have included on the team that interprets the assessment data and/or develops the individual program plans, such person(s) described in 5 MCAR § 1.0125 A. ~~EDU 125 A.~~ including a person who is a member of the same minority (as defined in Minn. Stat. § 126.021) or cultural background or who is knowledgeable concerning the racial, cultural, or handicapping differences of the student;

8. inform the parents that they may obtain an independent assessment at their own expense~~.~~;

9. inform the parents that the district will not proceed with the initial formal assessment ~~proposed action~~ of a child, as defined in 5 MCAR § 1.0120 B., without prior written consent of the child's parent; ~~unless the parent objects on the enclosed "response form" or otherwise in writing within ten days after the receipt of the notice;~~

10. inform the parents that except for the initial formal assessment, the district shall proceed with the proposed assessment unless the parent objects on the enclosed "response form" or otherwise in writing within ten days after receipt of the notice;

11. ~~10.~~ inform the parents that if they object to the proposed assessment ~~action~~ in writing a conciliation conference will be held at a mutually convenient time and place, but that if the parent refuses to attend the conference and the proposed assessment is not the initial formal assessment, the district will proceed with the proposed action;

12. ~~11.~~ inform the parents that if the parent ~~still~~ objects to the proposed action during or after the initial ~~final~~ conciliation conference they have a right to voice that objection at an impartial ~~informal~~ due process hearing~~.~~;

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

14. ~~13.~~ a statement assuring that their child's educational program will not be changed as long as the parent objects to the proposed action, in the manner prescribed by these rules~~.~~;

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

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C. Prior to the initiation or change or the refusal to initiate or change a child's educational placement or special education services, as set forth in 5 MCAR § 1.0125 E. ~~EDU 125 E.~~ the providing school district shall prepare and serve a notice which shall meet the requirements of 5 MCAR § 1.0127 A. and shall:

1. include a copy of the individual educational program plan as described in 5 MCAR § 1.0125 C. ~~EDU 125 C.~~;

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

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

4. inform the parents that the school district will not proceed with the initial placement and provision of service(s) ~~proposed action~~ as defined in 5 MCAR § 1.0120 B. without prior written consent of the child's parent; ~~unless the parent objects in writing on the enclosed "response form" or otherwise to the proposed action within ten days after receipt of the notice.~~

5. inform the parents that except for the initial placement and provision of service(s), the district will proceed with the proposed placement and provision of service(s) unless the parent objects in writing on the enclosed "response form" or otherwise in writing within ten days after the receipt of the notice;

6. ~~5.~~ inform the parents that if they object to the proposed action, a conciliation conference will be held at a mutually convenient time and place but that if the parent refuses to attend the conciliation conference and the proposed placement and provision of service(s) is not the initial placement and provision of service(s), the school district will proceed with the proposed action;

7. ~~6.~~ inform the parents that if they still object to the proposed action at anytime after the first conciliation conference is convened, that they have a right to voice that objection at an impartial ~~informal~~ due process hearing;

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

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

5 MCAR § 1.0128 ~~EDU 128~~ Conciliation conference.

A. When a conciliation conference must occur:

1. If the parent does not object in writing, to a proposed action as set forth in 5 MCAR § 1.0124B. ~~EDU 124 B.~~ or 5 MCAR § 1.0125 E. ~~EDU 125 E.~~, within fourteen ~~ten~~ days after receipt of the notice and the proposed action is not an initial action as defined in 5 MCAR § 1.0127 B.9. and 5 MCAR § 1.0127 C.4., the proposed action shall take place. If such written objection is made, the providing school district shall arrange for a conference with the parent for the purpose of reviewing the reasons for the proposed action and conciliating the matter. The conference shall be held at a time and place mutually convenient to the parent and the school district representative and shall be held within ten days after receipt of the written objection. There may be more than one such conference and the parent may ~~not~~ request a hearing under 5 MCAR § 1.0129 A. ~~EDU 129 A.~~ at anytime after the first conciliation conference is convened. ~~until at least one conciliation conference has been held.~~

2. If the parent refuses to provide prior written consent as set forth in 5 MCAR § 1.0127 B.9. and 5 MCAR § 1.0127 C.4. within ten days after the receipt of the notice and response form, the providing school district shall arrange for a conference with the parent for the purpose of reviewing the reasons for the proposed action and conciliating the matter. The conference shall be held at a time and place mutually convenient to the parent and school district representatives and shall be held within ten days after the expiration of the ten day period for parent response.

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

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

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

3. that if they do not request a hearing on the written "request form" or otherwise in writing pursuant to 5 MCAR § 1.0129 A. ~~EDU 129 A.~~ within seven days after receipt of the notice, the district will proceed with the proposed action~~;~~ unless the proposed action is an initial action as defined in 5 MCAR § 1.0127 B.9. and 5 MCAR § 1.0127 C.4. In cases of such proposed initial actions, when a parent continues to refuse to provide written permission, the district shall schedule a hearing within seven days after the expiration of the seven days allowed for parent response;

4. that if a hearing is scheduled ~~they request a hearing on the written "request form" or otherwise in writing~~ the district shall send ~~that they will receive~~ a notice describing the rights and procedures available to the parents ~~them~~ relative to the hearing~~:~~.

C. "Days" when used in 5 MCAR § 1.0128 means calendar days. ~~If no such written request is made after the final conciliation meeting, the proposed action shall take place.~~

5 MCAR § 1.0129 ~~EDU 129~~ The hearing.

A. When a hearing must be held.

1. A hearing regarding a proposed action as set forth in 5 MCAR § 1.0124 B. ~~EDU 124 B.~~ or 5 MCAR § 1.0125 E. ~~EDU 125 E.~~ shall be held ~~not later than 30 days, unless continued pursuant to the mutual agreement of the parent and school district(s)~~ whenever ~~after~~ the providing district receives the parents' request for a hearing. This request must be in writing and must be made within seven days after the parents' receipt of the written memorandum pursuant to 5 MCAR § 1.0128 B. ~~EDU 128 B.~~ Provided, however, that no parent shall have a right to request a hearing unless at least one conciliation conference has been held pursuant to 5 MCAR § 1.0128 A. ~~EDU 128 A.~~

2. A district shall conduct a hearing whenever a parent refuses to provide written permission for the initial formal assessment of a child, initial placement of a child in a special education program, or the initial provision of special education services, provided the district has made at least one attempt to obtain this written consent through at least one conciliation conferrence.

B. Notice.

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

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

a. ~~that at the option of the school board,~~ the hearing shall take place ~~(1)~~ before ~~the school board or its designee;~~ an impartial hearing officer ~~(2) a person~~ mutually agreed to by the school board and the parent~~;~~. ~~or (3) a person appointed by the commissioner;~~ If the school board and parent are unable to agree on a hearing officer, the school board shall request the commissioner to appoint a hearing officer.

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

c. inform the parent of their right or responsibility:

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

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

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

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

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

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

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

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

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

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

f. that the hearing officer ~~person conducting the hearing~~ will make a written decision based only on evidence received and introduced into the record at the hearing not more than 45 days from the receipt of the request for the hearing ~~within five days following the hearing~~ and that the

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proposed action will be upheld only upon showing by the school district by a preponderance of the evidence. A proposed action that would result in the child being removed from regular education program may be sustained only when, and to the extent the nature or severity of the handicap is such that a regular education program would not be satisfactory and the child would be better served in an alternative program. Consideration of alternative educational programs must also be given~~.~~;

g. that the decision of the hearing officer ~~person conducting the hearing~~ is binding on all parties unless appealed to the commissioner by the parent or the providing district; ~~may be reviewed by the school board, at its option, within ten days following the hearing officer's decision;~~

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

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

h. ~~j.~~ that unless the district and parent agree otherwise, the student shall not be denied initial admission to school and that the student's education program shall not be changed as long as the parents object to the proposed action in the manner prescribed by these rules.

C. Hearing officers.

1. ~~At the option of the school board,~~ Tthe hearing shall take place ~~either~~ before ~~the school board~~; ~~or (1) its designee, (2) a person~~ an impartial hearing officer mutually agreed to by the school board and the parents~~;~~. ~~or (3) a person appointed by the commissioner. The school board shall exercise its option and a person to conduct the hearing must be selected at least ten days prior to the hearing. The parties by agreement may continue the time and date of the hearing for not more than ten days for the purpose of mutually agreeing to a person to conduct the hearing.~~

2. If the school board and the parent are unable to agree on a hearing officer, the school board shall request the commissioner to appoint a hearing officer.

3. The hearing officer shall not be a school board member or employee of the school district where the child resides or of the child's school district of residence, an employee of any other public agency involved in the education or care of the child, or any person with a personal or professional interest which would conflict with his objectivity at the hearing. A person who otherwise qualified as a hearing officer is not an employee of the district solely because the person is paid by the district to serve as a hearing officer.

4. If a hearing officer requests an independent educational assessment of a child, the cost of the assessment shall be at district expense. All expenses of the hearing, except for the parents' and resident school district's attorney's fees or other expenses incidental to the parents or resident school district participation in the hearing, shall be paid by the providing school district.

D. Prehearing review by the hearing officer.

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

a. the providing school district's notice(s) and memorandum prepared pursuant to 5 MCAR § 1.0128 B. ~~EDU 128 B.~~ to the parents;

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

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

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

e. the provisions of b. and c. need not apply when the hearing concerns a proposed action as set forth in 5 MCAR § 1.0124 B. ~~EDU 124 B.~~

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

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

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

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

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

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

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

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

h. may grant specific extensions of time beyond the 45 day period at the request of either party.

E. Hearing rights of the respective parties.

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

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

3. At a reasonable time prior to the hearing, the parent or their representative(s), as the case may be, shall be given access to all of the providing and resident school districts' records and such other records pertaining to the child that are authorized by law to be disclosed, including but not limited to

all tests, evaluations, assessments, reports, and other written information concerning the educational assessment or reassessment, conducted pursuant to 5 MCAR § 1.0124 B. ~~EDU 124 B.~~ upon which the proposed action may be based.

4. At least five days prior to the hearing the parents shall receive from the school districts, who are parties of the hearing, a brief resume of "additional material allegations" referring to conduct, situations or conditions which are discovered and found to be relevant to the issues to be contested at the hearing and which are not contained in the original notice or memorandum provided pursuant to 5 MCAR § 1.0127 B. or C. or 5 MCAR § 1.0128 B. ~~EDU 127 B. or C. or 128 B.~~ And that if such material allegation or information relating thereto are not so disclosed, it shall be left to the person conducting the hearing to determine if those material allegations may be introduced or considered.

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

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

~~7. Evidentiary standards regarding contested cases as specified pursuant to Minn. Stat. ch. 15 shall apply.~~

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

F. Hearing procedures.

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

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

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

4. A tape recording, stenographic record, or other record of the hearing shall be made, and if an appeal is filed pursuant to 5 MCAR § 1.0129 H. ~~EDU 129 H.~~, the hearing shall be transcribed by the providing school district and shall be accessible to the parties involved within five days of the filing of the appeal. ~~Provided however, for appeals of local decisions issued by school boards or their designees concerning proposed actions as set forth in EDU 129 H.2.a., no written transcript shall be made if the parent requests a chapter 15 due process hearing pursuant to EDU 129 H. The record or transcription, as the case may be, shall, upon request, be made available to the parent or their representative.~~

G. The ~~local~~ decision of the hearing officer. ~~Within five days after the hearing,~~ Not more than 45 days from the receipt of the request for a hearing, the hearing officer ~~person(s) conducting the hearing~~ shall prepare a written decision based on evidence received and introduced into the record at the hearing. Such decision shall address itself to the following:

1. Decisions regarding assessment or reassessment.

a. The hearing officer ~~person conducting the hearing~~ may sustain a proposed assessment or reassessment of the person as set forth in 5 MCAR § 1.0124 B. ~~EDU 124 B.~~ upon a showing by the school district(s) by a preponderance of the evidence which demonstrates that there are facts, relating to the person's performance in his or her present education placement or presenting handicapping conditions, which indicate reasonable grounds to believe that the educational assessment or reassessment procedures are justified, as a step toward the possible initiation of or change in the person's educational placement or program, including special education services, which will provide an educational program, including special education services, appropriately suited to the person's needs.

b. Consistent with the standards, requirements, and principles set forth in statute and these rules, the hearing officer ~~person conducting the hearing~~ shall have the authority, based on all the evidence received at the hearing, to modify the proposed assessment or reassessment instruments

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or procedures in order to insure compliance with the requirement of nondiscrimination.

2. Decisions regarding educational placement.

a. Based on an application of the standards, requirements and principles set forth in Minn. Stat. § 120.17, subd. 3a, and in these rules, the proposed action regarding the person's educational placement or special education services as set forth in 5 MCAR § 1.0125 C. ~~EDU 125 C.~~ shall be sustained in whole or in part by the hearing officer ~~person conducting the hearing~~ only upon a showing of need by the school district(s) by a preponderance of the evidence.

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

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

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

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

3. ~~4.~~ All local hearing officer decisions shall:

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

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

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

d. be based on the standards and principles set forth in Minn. Stat. § 120.17, subd. 3a, and 5 MCAR § 1.0129 G.1. and 2. ~~EDU 129 G.1. and 2.~~

4. ~~5.~~ All decisions shall be filed with the Commissioner of Education and shall be sent by mail to the parties. ~~The decision of the person conducting the hearing shall not be served until after expiration of the time for school board review.~~ The decision(s) shall also include information detailing the right to appeal the decision, the procedure and time in which to do so, and an appeal form on which the parent may identify which appeal option, as set forth in 5 MCAR § 1.0129 H.2. ~~EDU 129 H.2.~~, they request.

H. Effective date of the action and appeals.

1. The decision of the hearing officer ~~person conducting the hearing, or in case of school board review, the board's decision,~~ shall be binding on all parties unless appealed to the commissioner by the parent or the school board where the child resides; and shall become effective 15 days after service of the decision unless the decision is appealed.

2. The hearing officer's ~~binding local~~ decision issued pursuant to 5 MCAR § 1.0129 G.1., 2., or 3., ~~EDU 129 G.1., 2., or 3.,~~ may be appealed by the parent or the school board where the child resides to the Commissioner of Education within 15 days of receipt of that written decision(s) in the following manner:

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

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

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

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

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

3. The school board shall be a party to any appeal. The

commissioner shall issue a final decision based on a review of the local decision(s) and the entire records within 30 days after receipt of the local decision(s) and the transcript. ~~However, in appeals of local decisions wherein the parent has properly requested a chapter 15 due process hearing, the commissioner shall issue a final decision within 30 days after that hearing and the final decision shall be based on the report of the hearing examiner.~~ The commissioner shall seek additional evidence if necessary and may afford the parties an opportunity for written or oral argument; provided any hearing held to seek additional evidence shall be an impartial due process hearing but shall be deemed not to be a contested case hearing. The commissioner may grant specific extensions of time beyond the 30 day period at the request of any party.

4. The commissioner's final decision shall:

a. be in writing;

b. include findings and conclusions; and

c. be based on the standards set forth in Minn. Stat. § 120.17, subd.3a and the standards, requirements, and principles set forth in 5 MCAR § 1.0129 G.1. and 2. ~~EDU G.1. and 2.~~ and these rules.

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

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

I. "Days" when used in 5 MCAR § 1.0129 means calendar days.

Department of Health

Proposed Rule Relating to the Collection of Information from Health-Related Manpower

Notice of Hearing

Notice is hereby given that a public hearing regarding the above-entitled matter will be held pursuant to Minn. Stat. § 15.0412, subd. 4 (1978) in Room 105, Minnesota Department of Health Building, 717 Delaware Street Southeast, Minneapolis, Minnesota, on November 5, 1979, commencing at 9:00 a.m.

All interested or affected persons will have an opportunity to participate concerning the adoption of the proposed rule captioned above. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted by mail to Harry S. Crump, Hearing Examiner, at Room 300, 1745 University Avenue, Saint Paul, Minnesota 55104, telephone (612) 296-8111, either before the hearing or within five (5) working days after the close of the hearing or for a longer period not to exceed 20 calendar days if ordered by the hearing examiner. All such statements will be entered into and become part of the record.

Testimony or other evidence to be submitted for consideration should be pertinent to the matter at hand. For those wishing to submit written statements or exhibits, it is requested that at least three (3) copies be furnished. In addition, it is suggested, to save time and avoid duplication, that those persons, organizations, or associations having a common viewpoint or interest in these proceedings join together where possible and present a single statement in behalf of such interests. The conduct of the hearing shall be governed by the rules of the Office of Hearing Examiners.

The statutory authority of the Commissioner to promulgate and adopt the above-captioned rule is contained in Minn. Stat. §§ 15.0412, subd. 3; 144.05; 144.051 and 144.052 (1973). If adopted, the proposed rule would enable the Commissioner of Health to collect information pertaining to the numbers, distribution and characteristics of individuals licensed or registered by the Commissioner or the health-related licensing boards which are the Board of Medical Examiners, the Board of Dentistry, the Board of Nursing, the Board of Pharmacy, the Board of Examiners of Nursing Home Administrators, the Board of Chiropractic Examiners, the Board of Optometry, the Board of Psychology, the Board of Veterinary Medicine, and the Board of Podiatry. The rule identifies, in addition to that already specified in Section 144.052, the specific types of information that will be collected from licensees and registrants. This information is necessary in order to establish an informational system which will constitute a resource for making decisions pertaining to health-related manpower. The rule also specifies the types of forms on which such information shall be collected from licensees and registrants and how parties other than the Commissioner may collect data for health-related manpower planning purposes through the system established by Minn. Stat. §§ 114.051 and 144.052 and this proposed rule.

Copies of the proposed rule are now available and at least one free copy may be obtained by writing to the Minnesota Department of Health, Division of Health Manpower, Atten-

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STATE OF MINNESOTA

In the Matter of the Proposed
Adoption of Temporary Rules of
the State Board of Education
Governing Standards and Procedures of Special Education
Instruction and Services for Children and Youth
Who are Handicapped

ORDER ADOPTING RULES

The above-entitled proposed temporary rules were published in the State Register on October 1, 1979, pursuant to the authority in Minn. Stat. § 120.17 (1978) as amended by Laws of 1979, Ch. 334, Article III, Section 18.

After affording all interested persons an opportunity to submit data and view on the proposed temporary rule in writing as required by Minn. Stat. § 15.0412, subd. 5 (1978) having considered all 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 §§ 1.0120 - 1.0129 (EDU 120 - 129) attached hereto as Exhibit A are adopted this 5th day of November, 1979 pursuant to the above authority.

STATE OF MINNESOTA
STATE BOARD OF EDUCATION

Ruth A. Myers
President
State Board of Education

Chapter Seven: Standards and Procedures for the Provision of Special Education Instruction and Services for Children and Youth Who Are Handicapped

5 MCAR § 1.0120 Policies and definitions.

A. Policies.

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

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

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

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

5. Parental involvement. Parents of handicapped children have a right to be involved by the school district in the education decision making process. Only by consistent and direct involvement of parents will the school receive sufficient input to design and implement an effective program for the handicapped student. Parents and schools

are encouraged to cooperate in an open and objective manner, utilizing periodic conferences when possible so that formal hearings are necessary only when substantive disagreements exist between the parties.

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

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

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

B. Definitions.

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

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

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

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

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

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

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

7. "Resident school district" means the district where the handicapped person's parent or guardian resides or the district designated by the commissioner as provided in Minn. Stat. § 120.17, subd. 6 and 8a.

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

9. "Handicapped persons" includes the term "student," and "child" or "person" and means those "handicapped children" as defined by Minn. Stat. § 120.03 and amendments or supplements thereto. Determination of a handicapping condition shall be made by qualified personnel in accordance

with recognized professional standards and consistent with the provisions of 5 MCAR § 1.0124 and 5 MCAR § 1.0125. These rules shall not apply to persons receiving home or hospital instruction unless they have a presenting handicapping condition as described above.

10. "School age" means the age of four to twenty-one years for all handicapped children as defined in Minn. Stat. § 120.03 and shall not extend beyond secondary school or its equivalent.

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

"Continuum of Placement Model"

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

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

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

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

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

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

12. "Formal educational assessment," referred to in these rules also as an "assessment," is defined as an individual evaluation, conducted in accordance with recognized professional standards and the provisions of 5 MCAR § 1.0124, of a person's performance and/or development for the purpose of determining the need for initiation or change in his or her educational program including special education services.

13. "Parent" or "parents" include a biological mother or father, an adoptive mother or father, a legally appointed guardian, or such agency or other person appointed pursuant to 5 MCAR § 1.0123. All rights and responsibilities as provided herein belong to a person when the person is 18 years of age, unless the person is under legal guardianship.

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

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

16. Nondiscrimination for purposes of this rule means the requirement that school districts shall:

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

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

17. "Proposed action" for purposes of this rule shall be construed to mean a providing school district's proposed initiation or change or refusal to initiate or change a child's educational placement or special education services as set forth in 5 MCAR § 1.0125 E. or an educational assessment or reassessment as set forth in 5 MCAR § 1.0124 B.

18. "Individual educational program plan" referred to in these rules also as a "program plan" means a written statement for each handicapped person setting forth the person's educational needs and the educational program, including special education services, to be provided to such person. The program plan shall be developed in accordance with and contain the information required by 5 MCAR § 1.0125.

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

20. "Initial formal assessment" means the first formal assessment of a child provided by the district.

21. "Initial placement and provision of service(s)" means the first special education placement and provision of special education service(s) by the district.

EDU 121 Renumber as 5 MCAR § 1.0121.

EDU 122 Renumber as 5 MCAR § 1.0122.

EDU 123 Renumber as 5 MCAR § 1.0123.

5 MCAR § 1.0124 Identification and assessment procedures.

A. Identification of handicapped children.

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

a. preschool age handicapped children;

b. handicapped persons attending school;

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

2. The districts identification system shall be developed in accordance with the requirement of nondiscrimination.

B. Formal education assessment.

1. An assessment:

a. must be conducted when because of a person's performance in the present educational placement or presenting handicapping conditions, he or she is thought by the school district to be in need of possible initiation or change in the student's educational placement or program or special education services as set forth in 5 MCAR § 1.0125 E. which will provide an educational program, including special education services appropriately suited to the person's needs.

b. must be conducted at least every two years as required by 5 MCAR § 1.0126 B.

c. may be conducted if the parent requests.

2. Prior to conducting an assessment the district shall:

a. review the screening, referral or other data about the person and select licensed special education personnel and others as appropriate to conduct the assessment;

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

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

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

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

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

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

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

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

4. Notice before assessment:

a. must be provided in accordance with the provisions of 5 MCAR § 1.0127 B. prior to conducting a formal educational assessment or reassessment or when the district refuses a parent's request to conduct a formal educational assessment or reassessment. In case of refusal the notice shall be served within ten days after the refusal;

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

5 MCAR § 1.0125 Team determination and program needs determination. Development and content of the individual education program plan.

A. Team and program needs determination. Following the assessment, in order to determine if the person is in need of special education services, the district shall:

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

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

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

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

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

B. Development and content of the individual education program plan. The development of the program plan must:

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

2. be developed in accordance with the requirement of nondiscrimination, the principle of the least restrictive alternative, and recognized progressional standards;

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

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

C. Content of the individual education program plan.

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

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

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

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

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

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

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

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

E. Notice to parents after completion of the program plan and prior to placement. Notice in accordance with the provisions of 5 MCAR § 1.0127 C. is required whenever the providing school district purposes to initiate or change or refuses to initiate or change the level of educational placement as defined in the Continuum of Placement Model, or proposes to initiate or significantly change or refuses to initiate or significantly change the special education services for the child. For the purposes of this rule the terms initiate or change shall be construed to include the proposals set forth in Minn. Stat. § 120.17, subd. 3b (c) (2), (3), (4), and (5). The notice shall be served prior to the initiation or change or refusal to initiate or change the educational placement or special education services for the child. The notice shall be served within ten days after completion of the program plan and/or the refusal to initiate or change.

EDU 126 Renumber as 5 MCAR § 1.0126.

5 MCAR § 1.0127 Formal notice to parents.

A. General notice provisions.

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

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

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

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

5. All notices must be sufficiently detailed and precise to constitute adequate notice for hearing of the proposed action and contain a full explanation of all of the procedural safeguards available to parents under the provision of these rules.

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

B. Prior to the performance of or refusal to perform a formal educational assessment or reassessment as provided for 5 MCAR § 1.0124 B., the providing school district shall prepare and serve a notice which shall meet the requirements of 5 MCAR § 1.0127 A. and shall:

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

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

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

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

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

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

7. inform the parents of their right and the procedure and time to have included on the team that interprets the assessment data and/or develops the individual program plans, such person(s) described in 5 MCAR § 1.0125 A. including a person who is a member of the same minority (as defined in Minn. Stat. § 126.021) or cultural background or who is knowledgeable concerning the racial, cultural, or handicapping differences of the student;

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

9. inform the parents that the district will not proceed with the initial formal assessment of a child, as defined in 5 MCAR § 1.0120 B., without prior written consent of the child's parent;

10. inform the parents that except for the initial formal assessment, the district shall proceed with the proposed assessment unless the parent objects on the enclosed "response form" or otherwise in writing within ten days after receipt of the notice;

11. inform the parents that if they object to the proposed assessment in writing a conciliation conference will be held at a mutually convenient time and place, but that if the parent refuses to attend the conference and the proposed assessment is not the initial formal assessment, the district will proceed with the proposed action;

12. inform the parents that if the parent objects to the proposed action during or after the initial conciliation conference they have a right to voice that objection at an impartial due process hearing;

13. inform the parents that they have the right to be represented by council or another person of their choosing at the conciliation conference or the impartial due process hearing;

14. a statement assuring that their child's educational program will not be changed as long as the parent objects to the proposed action, in the manner prescribed by these rules;

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

C. Prior to the initiation or change or the refusal to initiate or change a child's educational placement or special education services, as set forth in 5 MCAR § 1.0125 E. the providing school district shall prepare and serve a notice which shall meet the requirements of 5 MCAR § 1.0127 A. and shall:

1. include a copy of the individual educational program plan as described in 5 MCAR § 1.0125 C.;

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

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

4. inform the parents that the school district will not proceed with the initial placement and provision of service(s) as defined in 5 MCAR § 1.0120 B. without prior written consent of the child's parent;

5. inform the parents that except for the initial placement and provision of service(s), the district will proceed with the proposed placement and provision of service(s) unless the parent objects in writing on the enclosed "response form" or otherwise in writing within ten days after the receipt of the notice;

6. inform the parents that if they object to the proposed action, a conciliation conference will be held at a mutually convenient time and place but that if the parent refuses to attend the conciliation conference and the proposed placement and provision of service(s) is not the initial placement and provision of service(s), the school district will proceed with the proposed action;

7. inform the parents that if they still object to the proposed action at anytime after the first conciliation conference is convened, that they have a right to voice that objection at an impartial due process hearing;

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

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

5 MCAR § 1.0128 Conciliation conference.

A. When a conciliation conference must occur:

1. If the parent does not object in writing, to a proposed action as set forth in 5 MCAR § 1.0124 B. or 5 MCAR § 1.0125 E., within fourteen days after receipt of the notice and the proposed action is not an initial action as defined in 5 MCAR § 1.0127 B.9. and 5 MCAR § 1.0127 C.4., the proposed action shall take place. If such written objection is made, the providing school district shall arrange for a conference with the parent for the purpose of reviewing the reasons for the proposed action and conciliating the matter. The conference shall be held at a time and place mutually convenient to the parent and the school district representative and shall be held within ten days after receipt of the written objection. There may be more than one such conference and the parent may request a hearing under 5 MCAR § 1.0129 A. at anytime after the first conciliation conference is convened.

2. If the parent refuses to provide prior written consent as set forth in 5 MCAR § 1.0127 B.9. and 5 MCAR § 1.0127 C.4. within ten days after the receipt of the notice and response form, the providing school district shall arrange for a conference with the parent for the purpose of reviewing the reasons for the proposed action and conciliating the matter. The conference shall be held at a time and place mutually convenient to the parent and school district representative and shall be held within ten days after the expiration of the ten day period for parent response.

B. Memorandum.

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

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

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

3. that if they do not request a hearing on the written "request form" or otherwise in writing pursuant to 5 MCAR § 1.0129 A. within seven days after receipt of the notice, the district will proceed with the proposed action unless the proposed action is an initial action as defined in 5 MCAR § 1.0127 B.9. and 5 MCAR § 1.0127 C.4. In cases of such proposed initial actions, when a parent continues to refuse to provide written permission, the district shall schedule a hearing within seven days after the expiration of the seven days allowed for parent response;

4. that if a hearing is scheduled the district shall send a notice describing the rights and procedures available to the parents relative to the hearing.

C. "Days" when used in 5 MCAR § 1.0128 means calendar days.

5 MCAR § 1.0129 The hearing.

A. When a hearing must be held.

1. A hearing regarding a proposed action as set forth in 5 MCAR § 1.0124 B. or 5 MCAR § 1.0125 E. shall be held whenever the providing district receives the parents' request for a hearing. This request must be in writing and must be made within seven days after the parents' receipt of the written memorandum pursuant to 5 MCAR § 1.0128 B. Provided, however, that no parent shall have a right to request a hearing unless at least one conciliation conference has been held pursuant to 5 MCAR § 1.0128 A.

2. A district shall conduct a hearing whenever a parent refuses to provide written permission for the initial formal assessment of a child, initial placement of a child in a special education program, or the initial provision of special education services, provided the district has made at least one attempt to obtain this written consent through at least one conciliation conference.

B. Notice.

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

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

a. the hearing shall take place before an impartial hearing officer mutually agreed to by the school board and the parent. If the school board and parent are unable to agree on a hearing officer, the school board shall request the commissioner to appoint a hearing officer.

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

c. inform the parent of their right or responsibility:

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

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

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

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

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

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

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

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

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

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

f. that the hearing officer will make a written decision based only on evidence received and introduced into the record at the hearing not more than 45 days from the receipt of the request for the hearing and that the proposed action will be upheld only upon showing by the school district by a preponderance of the evidence. A proposed action that would result in the child being removed from regular education program may be sustained only when, and to the extent the nature or severity of the handicap is such that a regular education program would not be satisfactory and the child would be better served in an alternative program. Consideration of alternative educational programs must also be given;

g. that the decision of the hearing officer is binding on all parties unless appealed to the commissioner by the parent or the providing district;

h. that unless the district and parent agree otherwise, the student shall not be denied initial admission to school and that the student's education program shall not be changed as long as the parents object to the proposed action in the manner prescribed by these rules.

C. Hearing officers.

1. The hearing shall take place before an impartial hearing officer mutually agreed to by the school board and the parents.

2. If the school board and the parent are unable to agree on a hearing officer, the school board shall request the commissioner to appoint a hearing officer.

3. The hearing officer shall not be a school board member or employee of the school district where the child resides or of the child's school

district of residence, an employee of any other public agency involved in the education or care of the child, or any person with a personal or professional interest which would conflict with his objectivity at the hearing. A person who otherwise qualified as a hearing officer is not an employee of the district solely because the person is paid by the district to serve as a hearing officer.

4. If a hearing officer requests an independent educational assessment of a child, the cost of the assessment shall be at district expense. All expenses of the hearing, except for the parents' and resident school district's attorney's fees or other expenses incidental to the parents or resident school district participation in the hearing, shall be paid by the providing school district.

D. Prehearing review by the hearing officer.

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

a. the providing school district's notice(s) and memorandum prepared pursuant to 5 MCAR § 1.0128 B. to the parents;

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

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

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

e. the provisions of b. and c. need not apply when the hearing concerns a proposed action as set forth in 5 MCAR § 1.0124 B.

2. Upon receipt of the information set forth in 1. above, the hearing officer:

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

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

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

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

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

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

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

h. may grant specific extensions of time beyond the 45 day period at the request of either party.

E. Hearing rights of the respective parties.

1. The hearing shall be closed unless the parent requests an open hearing.

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

3. At a reasonable time prior to the hearing, the parent or their representative(s), as the case may be, shall be given access to all of the providing and resident school districts' records and such other records pertaining to the child that are authorized by law to be disclosed, including but not limited to all tests, evaluations, assessments, reports, and other written information concerning the educational assessment or reassessment, conducted pursuant to 5 MCAR § 1.0124 B. upon which the proposed action may be based.

4. At least five days prior to the hearing the parents shall receive from the school districts, who are parties of the hearing, a brief resume of "additional material allegations" referring to conduct, situations or conditions which are discovered and found to be relevant to the issues to be contested at the hearing and which are not contained in the original notice or memorandum provided pursuant to 5 MCAR § 1.0127 B. or C. or 5 MCAR § 1.0128 B. And that if such material allegation or information relating thereto are not so disclosed, it shall be left to the person conducting the hearing to determine if those material allegations may be introduced or considered.

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

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

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

F. Hearing procedures.

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

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

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

4. A tape recording, stenographic record, or other record of the hearing shall be made, and if an appeal is filed pursuant to 5 MCAR § 1.0129 H. the hearing shall be transcribed by the providing school district and shall be accessible to the parties involved within five days of the filing of the appeal.

G. The decision of the hearing officer. Not more than 45 days from the receipt of the request for a hearing, the hearing officer shall prepare a written decision based on evidence received and introduced into the record at the hearing. Such decision shall address itself to the following:

1. Decisions regarding assessment or reassessment.

a. The hearing officer may sustain a proposed assessment or reassessment of the person as set forth in 5 MCAR § 1.0124 B. upon a showing by the school district(s) by a preponderance of the evidence which demonstrates that there are facts, relating to the person's performance in his or her present education placement or presenting handicapping conditions, which indicate reasonable grounds to believe that the educational assessment or reassessment procedures are justified, as a step toward the possible initiation of or change in the person's educational placement or program, including special education services, which will provide an educational program, including special education services, appropriately suited to the person's needs.

b. Consistent with the standards, requirements, and principles set forth in statute and these rules, the hearing officer shall have the authority, based on all the evidence received at the hearing, to modify the proposed assessment or reassessment instruments or procedures in order to insure compliance with the requirement of nondiscrimination.

2. Decisions regarding educational placement.

a. Based on an application of the standards, requirements and principles set forth in Minn. Stat. § 120.17, subd. 3a, and in these rules, the proposed action regarding the person's educational placement or special education services as set forth in 5 MCAR § 1.0125 C. shall be sustained in whole or in part by the hearing officer only upon a showing of need by the school district(s) by a preponderance of the evidence.

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

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

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

3. All local hearing officer decisions shall:

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

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

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

d. be based on the standards and principles set forth in Minn. Stat. § 120.17, subd. 3a, and 5 MCAR § 1.0129 G.1. and 2.

4. All decisions shall be filed with the commissioner of education and shall be sent by mail to the parties. The decision(s) shall also include information detailing the right to appeal the decision, the procedure and time in which to do so, and an appeal form on which the parent may identify which appeal option, as set forth in 5 MCAR § 1.0129 H.2., they request.

H. Effective date of the action and appeals.

1. The decision of the hearing officer shall be binding on all parties unless appealed to the commissioner by the parent or the school board where the child resides; and shall become effective 15 days after service of the decision unless the decision is appealed.

2. The hearing officer's decision issued pursuant to 5 MCAR § 1.0129 G.1., 2., or 3., may be appealed by the parent or the school board where the child resides to the commissioner of education within 15 days of receipt of that written decision(s) in the following manner:

a. The appeal decision shall be based on a review of the local decision(s) and the entire record.

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

3. The school board shall be a party to any appeal. The commissioner shall issue a final decision based on a review of the local decision(s) and the entire records within 30 days after receipt of the local decision(s) and the transcript. The commissioner shall seek additional evidence if necessary and may afford the parties an opportunity for written or oral argument; provided any hearing held to seek additional evidence shall be an impartial due process hearing but shall be deemed not to be a contested case hearing. The commissioner may grant specific extensions of time beyond the 30 day period at the request of any party.

4. The commissioner's final decision shall:

a. be in writing;

b. include findings and conclusions; and

c. be based on the standards set forth in Minn. Stat. § 120.17, subd. 3a and the standards, requirements, and principles set forth in 5 MCAR § 1.0129 G.1. and 2. and these rules.

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

6. If the providing school district fails to implement the hearing officer's decision, the parent shall have the right to bring such failure to the attention of the commissioner. In accordance with the provisions of Minn. Stat. § 124.15, the state board of education may impose such sanctions necessary to correct any such failure.

I. "Days" when used in 5 MCAR § 1.0129 means calendar days.

CERTIFICATE OF BOARD'S
AUTHORIZING RESOLUTION

I, Howard B. Casmey, do hereby certify that I am the Secretary 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 10 th day of September, 1979, 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 Howard B. Casmey, Commissioner of Education, or a Deputy Commissioner of Education in the absence of the Commissioner, be and hereby is granted the authority and directed to provide for the publication of proposed temporary rules governing the Provision of Special Education Instruction and Services in the State Register. Such rules shall be published in the form attached hereto, provided that the Commissioner or, in his absence, a Deputy Commissioner may make such changes, not substantial in nature, which he or, in his absence, a Deputy Commissioner deems appropriate prior to publication in the State Register.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 10 th day of September, 1979.

Howard B. Casmey
HOWARD B. CASMEY
Secretary, State Board of Education

Ruth A. Myers
Member, State Board of Education

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 5th day of October, 1979; 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.

WHEREAS, authority is vested in us by Minn. Stat. §120.17 (1978) as amended by Laws of 1979, Ch. 334, Article III, Section 18, which states the State Board of Education may adopt temporary rules effective until June 30, 1980.

WHEREAS, an agency has the authority to implement temporary rules pursuant to Minn. Stat. §15.0412 subd. 5,

THEREFORE, BE IT RESOLVED, that the temporary rules governing standards and procedures for the provision of special education instruction and services for children who are handicapped are hereby approved and adopted to implement Minn. Stat. §120.17 (1978) as amended by Laws of 1979, Ch. 334, Article III, Section 2, Procedures For Decisions.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 5th day of November, 1979.

HOWARD B. CASMEY
Secretary, State Board of Education

Member, State Board of Education