

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File #622

Permanent Rule X

Temporary Rule _____

RULES REVIEW CHECKLIST

DATE RULES RECEIVED 7/31 DUE DATE 8/20

Resubmitted and Received _____

a. Returned to Agency w/o Filing w/Secretary of State _____

b. Approved 9/22 Date Sent Back to Agency 8/20 9/23

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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 ✓ 4.23.80
   Sufficiency ? incorrect citation to statutory authority.

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 ✓ 3.18.80

10. Publication in State Register ✓ contains same incorrect statutory citation as appears in Notice of Hearing as mailed.
    At least 30 days prior to hearing ✓ 3.10.80

11. Statement of Need and Evidence ✓

12. Hearing Examiner's Report ✓

13. Agency's Findings of Fact ✓ incorporated in #15- Order Adopting

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 ✓ 1.30.78 ✓ 5.22.78

20. Petition by Public, where applicable N/A

State of Minnesota
County of Ramsey

Before Peter C. Erickson
Hearing Examiner
Office of Hearing Examiners

In the Matter of the Proposed Adoption of the Rules of the State Board of Education Governing the Requirements and Procedures for Student Admission to, Program and Evaluation During Attendance at, and Transfer from the State Residential Schools for Deaf, Blind, and Multiply-Handicapped Sensory Impaired Students
5 MCAR § 1.0133-1.0138.

Findings of Fact and Order Adopting Rules.

The above entitled matter came up for hearing before Peter C. Erickson, Hearing Examiner assigned by the Chief Hearing Examiner, on Wednesday, April 23, 1980 in the Huckleberry Inn, Faribault, Minnesota, after proper notice required by Minnesota Statute, Section 15.0412, was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having reviewed all of the testimony, having considered all of the evidence submitted, having considered the Report of the Hearing Examiner, and based upon all of the testimony and proceedings herein, and applicable statutory standards or criteria, having withheld action on the proposed Rules for the required period of time after receipt of the Report of the Hearing Examiner, and having confirmed the need for the above captioned Rules, we find that the Findings of Fact of the Hearing Examiner accurately reflect the facts in the record.

NOW THERFORE, BE IT RESOLVED that the State Board of Education accepts as its own, rejects or modifies the Report of the Hearing Examiner dated May 28, 1980, relative to the above entitled manner as set forth below:

I. The State Board of Education accepts the findings contained in sections 1 through 8 and 13 of the Hearing Examiner's Report.

II. The remaining sections of the Hearing Examiner's Report are accepted by the State Board of Education, except as modified below.

III. 5 MCAR § 1.0133, Definitions, incorporates by reference eight definitions contained in EDU 120 B. (5 MCAR § 1.0120 B) and defines twelve other terms which apply more specifically to the residential schools' framework.

A. Marge Goldberg, co-director of PACER and Marie Saunders, parent of a Minnesota School for the Deaf student, each suggested that the responsibility of the resident school district to pay for the transportation costs between the residential schools and a student's resident district should be clarified in the rules. The Department suggested a note explaining this responsibility be attached to the definition of "resident school district." The Hearing Examiner suggested the reference should be made within the rule itself.

The Board finds that the concern is a valid one and amends the above mentioned 5 MCAR § 1.0133 B.3, "resident school district," by addition of the following language:

> The cost of transporting the student to and from the State residential school shall be borne by the student's resident district as provided in Minn. Stat. § 128A.07.

B. The Board finds the proposed definitions as amended in 5 MCAR § 1.0133 to be both needed and reasonable.

IV. 5 MCAR § 1.0134, Admission Procedures, details all the procedural steps which must be taken by the resident school district and parent for the admission of a student into the state residential schools.

A. The Council for the Handicapped and PACER suggested that 5 MCAR § 1.0134 B.3.c. and 1.0135 D.1. should be amended to ensure that the language of those sections does not limit the parent's ability to include participants of his/her own choosing at a team meeting.

The Board finds that the concern is a valid one and amends the above mentioned two sections with the following language for clarification of intent:

> This statement shall not be read to limit the parent's right to include participants, other than the schools' employees, of his/her own choosing at the scheduled meeting.

B. The Board finds that proposed 5 MCAR § 1.0134, as amended in A. above, is both needed and reasonable.

V. Proposed 5 MCAR § 1.0136, Formal Notices to Parents, incorporates the provisions of EDU 127 A. (5 MCAR § 1.0127 A.) for consistency and details notice requirements for parents and the resident school district. These requirements are designed to comply with the mandates of federal law and Minn. Stat. 120.17.

A. PACER suggested that 5 MCAR § 1.0136 C.9. be amended by adding a statement that would clarify that the results of an independent educational assessment could be included in the development of a child's individual educational program plan. The Department concurred and suggests that 5 MCAR §§1.0136 C.9., 1.0136 E.7., and 1.0136 F.4. be amended by the addition of the following language to ensure consistency throughout these proposed rules:

and that at his/her request, the results of this independent assessment shall be considered in the development of an appropriate educational program for the student.

This statement would clarify the intended use of the independent assessment. The Board finds that the concern is a valid one and adopts this amendment for clarification of the rules.

B. The Council for the Handicapped recommended that certain language changes be made to comply with the definitions of "serve" and "service". The Board amends 5 MCAR §1.0136 A. by changing the word "sent" to served and 5 MCAR § 1.0136 B. by changing "send" to serve for clarification and consistency.

C. The Council for the Handicapped suggested that the rules mandate that a qualified interpreter be provided for meetings if requested by any party. The Department stated that, if needed, an interpreter would be provided by the residential schools and that Chapter 574 of 1980 Laws establishes this right. Although the Rule cannot be found to be unreasonable because of the inadequacy alleged by the Council, the Examiner suggests that an "interpreter provision" be included in the rule to put parties on notice of the availability of that service.

The Board does not adopt the proposed amendment to 5 MCAR § 1.0136 for the following reason:

5 MCAR § 1.0127 A., which is incorporated by reference into this notice section, 5 MCAR § 1.0136, requires under general notice provisions that:

> "for the 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 procedings, 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."

Because this provision is included in the proposed rules by reference, this right will be sufficiently protected under the provisions of 5 MCAR § 1.0136 as proposed.

D. The Board finds that proposed 5 MCAR § 1.0136, as amended in paragraphs A. and B. above, is both needed and reasonable.

VII. Proposed 5 MCAR § 1.0138, The Hearing, sets forth all the procedural requirements for a due process hearing.

A. Several comments were received objecting to the rules' provisions which require that parents pay for the cost of a transcript if the Hearing Officer's decision is appealed. Additionally, the language regarding transcript cost contained in 5 MCAR § 1.0138 B.2.e. and C.3. appears to be inconsistent.

The Board finds that the concern is a valid one and amends 5 MCAR § 1.0138 B.2.e. for clarity of intent. 5 MCAR 1.0138 B.2.e. which reads, "... that a record shall be kept of the hearing and shall be made available at cost to the parent if the decision is appealed;..." shall be amended to read:

that a record shall be kept of the hearing and a copy of the transcribed record shall be available to the parent upon request at the cost of the copy.

B. As amended in A. above, the Board finds that proposed 5 MCAR § 1.0138 is both needed and reasonable.

VIII. Two additional technical amendments are adopted to correct errors in the rules and to clarify their meaning.

A. 5 MCAR § 1.0134 B.4.b., page 6, which reads: "... an admission staffing shall be conducted without a parent in attendance...," should be amended to read: "... an admission meeting shall be conducted...". This is a correction to ensure consistency throughout the rules in the use of the term "meeting".

B. In 5 MCAR § 1.0135 D.1., page 10, there is a typographical error which reads, "...as deemed appropriate by the residential schools' administrator shallbe conduced...". This should be amended to read: "... as deemed appropriate by the residential schools' administrator shall be conducted...". This is the correction of an error and does not affect the substantive meaning of the rule.

The Board has adopted the foregoing changes to ensure grammatical accuracy and consistency in the rules. The Board views these amendments as needed and reasonable.

IX. Having considered all other comments and suggestions, no other changes in the proposed rules will be made at this time.

X. The State Board of Education finds all the above amendments reasonable and necessary.

THEREFORE, BE IT ORDERED that 5 MCAR § 1.0133 - 1.0138, as amended be adopted this 14th day of July, 1980, pursuant to the statutory authority vested in us by Minn. Stat. 128A.02, subd. 6. (Supp. 1979).

Howard B. Casmey
Secretary, State Board of Education

Ruth A. Myers
Member, State Board of Education

A D D E N D U M

The following changes in form of the above entitled rules have been made to correct errors in cross-referencing and grammar:

1. In Section 1.0135 C. 3. c., the reference to Section 1.0137 A. 2. has been changed to Section 1.0137 A. 3. to correct an error in cross-referencing.

2. In Section 1.0135 D. 1., the second sentence interrupts the flow from the colon to the list of items subject to the colon. In order to correct for grammar and language flow, Section 1.0135 D. 1. has been changed as follows:

> A An admission and transfer team meeting ~~which~~ shall include the required state residential schools participants, the parent, the student if appropriate, and may include a representative of the resident school district and other persons as deemed appropriate by the residential schools' administrator. ~~shall be conducted.~~ This statement shall not be read to limit the parent's right to include participants, other than the schools' employees, of his/her own choosing at the scheduled meeting. An admission and transfer team meeting shall be conducted:

3. In Section 1.0136 C. 1., the reference to Section 1.0134 C. 3. has been changed to 5 MCAR Section 1.0134 C. 2. to correct an error in cross-referencing.

4. In Section 1.0136 G. 1. the word "students'" has been changed to "student's" to correct a grammatical error.

5. In Section 1.0137 A. 2., the reference to Section 1.0134 C. 3. d. has been changed to Section 1.0134 C. 2. to correct an error in cross-referencing.

6. In Section 1.0137 A. 3., the reference to Section 1.0136 E. has been change to Section 1.0136 F. to correct an error in cross-referencing.

7. In Section 1.0138 F. 3. b., the phrase in the second to the last line "... with the principle at least restrictive alternatives;" has been changed to "... with the principle ~~at~~ of least restrictive alternatives;" to correct grammatical errors.

8. In Section 1.0138 F. 5. c., the reference to 5 MCAR Section 1.0138 G. has been deleted to correct an error in cross-referencing.

Howard B. Casmey
Secretary, State Board of Education

September 18, 1980
Date

Henry J. Bromelkamp
Member, State Board of Education

Rules as Adopted

Chapter Seven-A: Requirements and Procedures for Student Admission to, Program and Evaluation During Attendance at, and Transfer from the State Residential Schools for Deaf, Blind, and Multiply Handicapped Sensory Impaired Students

5 MCAR § 1.0133 Definitions. The following terms used throughout these rules shall have the following meanings ascribed to them.

A. The definitions of these terms shall be as stated in EDU 120 B. (5 MCAR § 1.0120 B.)

1. Special education services;

2. Handicapped persons;

3. Least restrictive alternatives;

4. Recognized professional standards;

5. Proposed action;

6. Nondiscrimination;

7. Formal educational assessment; and

8. Individual educational program plan.

B. In addition, these terms shall have the following meanings ascribed to them.

1. "State residential schools" as used in these rules shall mean either or both the Minnesota school for the deaf and the Minnesota braille and sight saving school, which are operated by the state board of education pursuant to Minn. Stat. ch. 128A.

2. "Residential schools' administrator" shall mean the administrator of the Minnesota state residential schools as defined in Minn. Stat. § 128A.02., subd. 3., or his/her designee.

3. "Resident school district", also referred to as "district," shall mean the district where the handicapped student's parent or legal guardian resides or the district designated by the commissioner as provided in Minn. Stat. § 120.17, subd. 6., 7.a., and 8.a. The cost of transporting the student to and from the state residential school shall be borne by the student's resident district as provided in Minn. Stat. § 128A.07.

4. "Admit" shall mean the action taken by the state residential schools in accepting the placement of a student and agreeing to provide appropriate educational services to the student.

5. "Transfer" shall mean the action taken by the state residential schools in dismissing a student from placement and the termination of the responsibility for providing the appropriate educational services to the student.

6. "Periodic review" as used in these rules shall mean a review which shall be conducted by the state residential schools, at least twice a year, to determine the appropriateness of a student's individual education plan and if appropriate, revise its provisions.

7. "Annual review" as used in these rules shall mean a review which shall be conducted by the state residential schools and reviewed at a formal meeting. The review shall be held at least once a year to examine a student's individual education program and if appropriate, revise its provisions. This may be counted as one of the required periodic reviews during the year in which it is conducted.

8. "Admission and transfer team" as referred to in these rules shall mean the individuals who are required to participate in a formal meeting to develop, review or revise a handicapped student's individual education program and/or to determine whether to admit or transfer the student to or from the state residential schools.

9. "Formal notice" as used in these rules shall mean a written statement served upon the student's parent or guardian so as to fulfill the requirements of procedural safeguards.

10. "Serve" or "service" as used in these rules shall mean the in hand delivery or the first class mailing to the last known address of a written notice. Service by mail is complete upon mailing.

11. "Parent" shall mean a parent, a guardian, a person acting as a parent of a child, or a legally appointed guardian. The term does not include the state if the child is a ward of the state.

12. "Days" shall mean calendar days between the official beginning and ending dates of the school year at the state residential schools. All procedures relating to but not limited to assessments, reassessments, individual education program plans, periodic reviews, conciliation conferences and hearings that are initiated for a student in placement at the state residential schools before the end of the school year, must be completed within the required time period, even if that time period extends beyond the end of the official school year. In addition, applications for admission shall be processed in accordance with 5 MCAR § 1.0134 at any time during the year, even if these procedures extend beyond the end of the official school year.

5 MCAR § 1.0134 Admission procedures.

A. Referral and application.

1. Application for admission shall be made by the resident school district, hereinafter also referred to as the district, to the state residential schools' administrator on the appropriate forms provided by the commissioner and may be made at any time during the calendar year.

2. Prior to application for admission, the district shall have completed for each student for whom admission is sought, the following procedures as established by EDU 124-129 (5 MCAR §§ 1.0124-1.0129);

a. a formal educational assessment consistent with the provisions of EDU 124 (5 MCAR § 1.0124) shall have been conducted and the special education needs of the pupil determined;

b. a student staffing consistent with the provisions of EDU 125 (5 MCAR § 1.0125) shall have been conducted;

c. a review of the student's current level of performance and the determination of the special education service needs shall have been made and the district shall have developed a statement of annual goals and objectives for the student. The district shall have reviewed the programs and services available to the district and shall have stated reasons why an appropriate education in the least restrictive alternative cannot be provided or reasonably made available by the district; and

d. the parent and the district shall:

(1) have agreed that the district is unable to provide an appropriate program and that a referral for placement at the state residential schools is appropriate; or

(2) if the parent and district do not agree that a referral to the state residential schools is appropriate, a local due process hearing pursuant to EDU 129 (5 MCAR § 1.0129) shall have been held. Before the state residential schools shall consider the student for admission, the decision, resulting from the hearing process must be that the resident school district is unable to provide an appropriate program and that a referral for admission to the state residential schools is appropriate.

B. Referral, review and admission meeting.

1. Within seven days of receipt of a referral for admission, the residential schools' administrator shall:

a. review the referral information and determine whether additional assessment or other information is needed.

b. request in writing from the district any additional information that is needed.

2. The residential schools' administrator shall:

a. schedule the team meeting which shall be conducted within 30 days of receipt of complete referral information pursuant to 5 MCAR § 1.0134 A.2. and at a time that is mutually acceptable to the state residential schools and the parent; and,

b. serve a written notice of the team meeting to the parent and the district in accordance with the provisions of 5 MCAR § 1.0136 prior to conducting the admission meeting.

3. To determine whether an appropriate individual educational program plan can be developed by the state residential schools to appropriately meet the educational needs of the student in the least restrictive alternative, the state residential schools' administrator shall:

a. appoint participants from the state residential schools' staff to serve on the admission and transfer team. The team shall include at a minimum an administrator of the appropriate education program or his/her designee, an administrator of the appropriate residential program or his/her designee, one appropriate teaching staff person, and other related services staff persons as deemed appropriate by the state residential schools' administrator.

b. schedule an admission and transfer team meeting which shall include the state residential schools' required participants, the parent, the student if appropriate, and other persons as deemed appropriate by the residential schools' administrator and may include a representative of the resident school district if the district chooses to participate.

c. upon request of the parent, determine whether it is appropriate to involve additional state schools' staff on the admission and transfer team; and whether it is appropriate to include someone who is a member of the same minority, or cultural background or who is knowledgeable concerning the racial, cultural or handicapping differences of the student. This statement shall not be read to limit the parent's right to include participants, other than the schools' employees, of his/her own choosing at the scheduled meeting.

4. If the parent cannot attend the admission meeting:

a. the state residential schools' administrator shall use and document other methods to ensure parent participation including individual or conference telephone calls; and

b. an admission meeting shall be conducted without a parent in attendance if the residential schools' administrator is unable to convince the parent to attend.

5. The admission and transfer team shall determine whether placement at the state residential schools will appropriately meet the educational needs of the student in the least restrictive alternative. This determination shall be based on:

a. the complete referral information;

b. any additional information supplied by the parent;

c. other relevant information and reports;

d. the record of the decision of the student's resident school district pursuant to Minn. Stat. § 120.17, subd. 3 b. and Minn. Stat. § 128A.05, subd. 1 and 2;

e. interpretation of the data in accordance with the requirements of nondiscrimination pursuant to EDU 120 B.16. (5 MCAR § 1.0120 B.16.) and recognized professional standards; and

f. the team's development of an appropriate individual educational program plan, or the team's determination that an appropriate individual educational program plan cannot be developed by the state residential schools.

C. Admission procedures and development of program.

1. The admission and transfer team shall recommend to the state residential schools' administrator that:

a. the state residential schools can appropriately meet the educational needs of the student in the least restrictive alternative and that the student be admitted pursuant to the parent's written approval of the team's proposed individual educational program plan; or

b. the state residential schools cannot appropriately meet the educational needs of the student as the least restrictive alternative and that the student not be admitted to the state residential schools, based upon the team's determination that an appropriate individual educational program for the student at the state residential schools cannot be developed.

2. If the student is recommended to be admitted to the state residential schools, the admission and transfer team shall develop a proposed individual education program plan listing the services that the student will receive at the state residential schools.

The proposed individual educational program plan shall be prepared in writing; be based on the assessment data, the district's statement of goals and objectives, and other appropriate information; be consistent with the requirement of nondiscrimination and the principle of the least restrictive alternative; and shall include:

a. the names of the persons on the team;

b. a description of the education service needs of the student as determined by the team;

c. a statement of annual goals and periodic review objectives for the education services to be provided including the criteria for attainment of the objectives;

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

e. the reasons for the type of education program including type of services to be provided, the location, amount of time, starting date, anticipated duration of services, and the names and school telephone numbers of those personnel responsible for providing the services. In accordance with the principle of least restrictive alternatives, the proposed action shall be substantiated as the most appropriate in terms of the students' educational needs;

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

g. a description of any activities in which the student will participate in environments which include nonhandicapped students.

3. Based upon the recommendations of the admission and transfer team admission meeting, the state residential schools' administrator shall:

a. admit the student to the state residential schools pursuant to the parent's written approval of the individual educational program plan; or

b. deny the student admission to the state residential schools; and

c. provide formal notice to the parent and to the district of the determination to admit or to deny admission in accordance with the provisions of 5 MCAR § 1.0136. The notice shall be served within 14 days of the admission and transfer team admission meeting.

4. If the determination is to admit the student pursuant to the parent's written approval of the individual educational program plan, the initial notice shall include the proposed individual educational program plan and shall state that the parent shall agree in writing to this individual educational program plan.

5. If the parent does not give written approval to the individual educational program plan within 14 days after service of the notice, the state residential schools' administrator shall arrange for a conciliation conference pursuant to 5 MCAR § 1.0137 A.2.

6. If the parent continues to object to the proposed individual educational program plan, the parent may initiate an impartial due process hearing in accordance with 5 MCAR § 1.0138.

7. If within 30 days after serving the formal notice which shall include the proposed individual educational program plan, no response or objection is obtained from the parent, or if agreement has not been reached in conciliation conference and no hearing is requested in accordance with 5 MCAR § 1.0138, efforts to reach the parent shall be documented, and the state residential schools' administrator shall serve the parent and the resident school district written notice stating that effective the date of the notice the student shall not be admitted to the state residential schools under the current application for admission procedure. This action shall not be interpreted to mean that application for admission of the same student cannot be made at a future date if such application is deemed appropriate by the parent and the resident school district in accordance with procedures as established by EDU 124-129 (5 MCAR §§ 1.0124-1.0129).

8. If the determination is to deny the student admission to the state residential schools, the residential schools' administrator shall send a formal notice to the parent and the resident district which shall inform them of the decision to deny admission based upon the schools' determination that an appropriate individual educational program plan cannot be developed by the state residential schools.

9. If the parent objects to the action to deny admission, the state residential schools' administrator shall arrange for a conciliation conference pursuant to 5 MCAR § 1.0137 A.2.

10. If the parent continues to object to the action to deny admission, the parent may initiate an impartial due process hearing in accordance with 5 MCAR § 1.0138.

5 MCAR § 1.0135 Periodic review, reassessment and transfer procedures.

A. Periodic review and annual review.

1. The state residential schools shall conduct periodic reviews of the individual education program plan and shall determine:

a. the degree to which the goals and objectives as identified in the educational program plan are being achieved;

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

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

2. There shall be at a minimum one periodic review and one annual review each year; the initial periodic review shall be made at the time specified in the program plan.

3. Periodic reviews shall be made by those persons directly responsible for implementing the educational program and by other designees of the state residential schools as may be needed to insure an informed and adequate review.

4. The annual review shall be an admission and transfer team meeting held to review a student's individual educational program plan and if appropriate revise its provisions.

5. The results of periodic reviews and annual reviews shall be included in the student's school records and a copy sent to the parent and to the district. This copy shall inform the parent that he/she may request a conference to review the student's program plan at any time and the procedure to do so.

6. The reviews shall be conducted in accordance with the requirements for nondiscrimination pursuant to EDU 120 B. (5 MCAR § 1.0120 B.) and recognized professional standards.

B. Reassessment.

1. The state residential schools shall conduct an educational reassessment according to the procedures specified for formal educational assessments in EDU 124 B. (5 MCAR §1.0124 B.) at least once every two years. In the year that the reassessment is conducted the meeting following the reassessment may meet the requirement for one of the two reviews required pursuant to 5 MCAR § 1.0135 A.

2. A reassessment shall be conducted before the state residential schools propose a transfer from the schools.

3. A reassessment may be conducted at parent request, unless the state residential schools determine that there has been a recent and adequate assessment or reassessment.

C. Transfer.

1. The admission and transfer team shall recommend to the state residential schools' administrator that a student be dismissed from placement at the state residential schools when it has been determined that the appropriate program for the student in the least restrictive alternative is no longer placement at the state residential schools.

2. This determination shall be made based upon the results of an educational reassessment.

3. Based upon the recommendations of the admission and transfer team staffing, the state residential schools' administrator shall:

a. dismiss the student from placement at the state residential schools pursuant to the parent's written consent to this proposed action; and

b. provide written notice of the determination to transfer the student from placement at the state residential schools to the parent and the resident school district in accordance with the provisions of 5 MCAR § 1.0136 within 14 days of the admission and transfer team staffing. The notice shall state that no such change shall be made without written parental consent.

c. If the parent does not give written consent to the transfer of the student from educational placement at the state residential schools within 14 days after service of the notice, the state residential schools' administrator shall arrange for a conciliation conference pursuant to 5 MCAR § 1.0137 A.3.

d. if the parent continues to object to the proposed action, the parent may initiate an impartial due process hearing in accordance with the provisions of 5 MCAR § 1.0138; or

e. if the parent continues to refuse to provide written consent to the transfer, but does not initiate a due process hearing, the state residential school shall schedule a due process hearing in accordance with 5 MCAR § 1.0138.

D. Admission and transfer team meeting.

1. An admission and transfer team meeting shall include the required state residential schools participants, the parent, the student if appropriate, and may include a representative of the resident school district and other persons as deemed appropriate by the residential schools' administrator. This statement shall not be read to limit the parent's right to include participants, other than the schools' employees, of his/her own choosing at the scheduled meeting. An admission and transfer team meeting shall be conducted:

a. to develop a recommendation regarding a student's application for admission.

b. to develop a current individual educational program plan for each student in attendance;

c. to review the results of the required biennial reassessment or to review the results of reassessment that may be conducted in addition to the required biennial reassessment;

d. prior to the state residential schools proposing the transfer of a student from educational placement at the state residential schools based upon reassessment data and the determination that the appropriate program in the least restrictive alternative is not available at the state residential schools; and

e. to review the results of a reassessment within 30 days after the expiration of the period allowed for parental response, unless the parent objects to the reassessment through the procedures provided in these rules.

2. Formal notice in accordance with the provisions of 5 MCAR § 1.0136 shall be provided to the parent and the district 14 days prior to conducting an admission and transfer team meeting.

3. If the parent cannot attend the admission and transfer team meeting:

a. the state residential schools' administrator shall use and document other methods to ensure parent participation including individual or conference telephone calls; and

b. an admission and transfer team meeting shall be conducted without the parent in attendance if the residential schools' administrator is unable to convince the parent to attend.

5 MCAR § 1.0136 Formal notices to parents.

A. The provisions of EDU 127 A. (5 MCAR § 1.0127 A.) shall apply to formal notices served on parents of students enrolled at the state residential schools.

B. Prior to the admission meeting, pursuant to 5 MCAR § 1.0134 B. the state residential schools shall prepare and serve a formal notice on the parent and the resident school district which shall:

1. include the reasons for the meeting and the persons who have been asked to be in attendance;

2. inform the parent of his/her right to request and receive copies of all records or other written information that is in the state residential schools' possession regarding his/her child;

3. inform the parent of his/her right and the procedure and time to participate in developing his/her child's education program, and/or to provide information relative to the child's assessment and the development of the program plan;

4. inform the parent of his/her right and the procedure and time to request and to receive interpretations of assessment or reassessment procedures, instruments and data or results from a knowledgeable state residential schools' employee, and for that conference to be held in private;

5. inform the parent of his/her right and the procedure and time to include such person(s) described in EDU 125 A. (5 MCAR § 1.0125 A.), including a person who is a member of the same minority, or cultural background or who is knowledgeable concerning the racial, cultural, or handicapping differences of the student, on the team that interprets the assessment data and/or develops the individual education program plan; and

6. inform the parent that the state residential schools shall proceed with the admission and transfer team meeting in order to consider the student's application for admission unless the parent objects in writing on the response form within 14 days after service of the notice.

7. include a response form on which the parent may indicate his/her objection to the proposed admission and transfer team meeting and which identifies the designee of the state residential schools to whom the response form should be mailed or given and to whom questions may be directed.

8. state that if the parent objects in writing to the admission meeting, the state residential schools shall consider that the student's application for admission to the state residential schools has been withdrawn by the parent effective on the date of the signing of the objection response form; and

9. inform the parent that if the student's application is withdrawn, the decision regarding the placement of the student shall be determined by the parent and the resident school district in accordance with EDU 120-129 (5 MCAR §§ 1.0120-1.0129).

C. When the state residential schools propose to admit a student pursuant to the parent's written approval of the proposed individual educational program plan, the state residential schools shall prepare and serve a formal notice which shall:

1. include a copy of the student's proposed individual educational program plan as described in 5 MCAR § 1.0134 C.2.;

2. inform the parents of his/her right and time and procedure to request and to receive interpretation of the educational program plan from a knowledgeable school employee and for that conference to be held in private;

3. state that the parent's written consent shall be given to the individual educational program plan and the signed plan shall be returned to the state residential schools' administrator within 14 days of receipt of the notice if the student is to be admitted to the state residential schools;

4. state that the student shall be admitted to the state residential schools upon receipt by the state residential schools' administrator of the individual educational program plan with the parent's signature affixed;

5. inform the parent that the state residential schools shall not proceed to admit the student without the written consent of the parent to the proposed individual educational program plan;

6. inform the parent that if he/she objects to the proposed individual educational program plan that a conciliation conference pursuant to 5 MCAR § 1.0137 shall be held at a mutually convenient time;

7. inform the parent that if he/she objects to the educational plan during or after the initial conciliation conference, he/she has a right to initiate an impartial due process hearing in accordance with procedures set forth in 5 MCAR § 1.0138;

8. inform the parent that he/she has the right to be represented by counsel or another person of their choosing at the conciliation conference or the impartial due process hearing;

9. inform the parent that he/she may obtain an independent educational assessment at his/her own expense and that at his/her request, the results of this independent assessment shall be considered in the development of an appropriate educational program for the student.

10. include a response form on which the parent may indicate his/her objection to the proposed individual educational program plan and identify the designee of the state residential schools to whom the response form should be mailed or given and to whom questions should be directed.

D. When the state residential schools deny a student admission to placement at the state residential schools based on the school's determination that an appropriate individual educational program plan cannot be developed by the state residential schools, the state residential schools shall prepare and serve a formal notice which shall:

1. state that based on the admission and transfer team's review of the student's complete referral information, and the school's determination that an appropriate individual program plan cannot be developed by the state residential schools, the team's recommendation is that placement at the state residential schools cannot appropriately meet the educational needs of the student in the least restrictive alternative and the student is denied admission;

2. inform the parent that if he/she objects to the action of the state residential schools to deny admission, a conciliation conference pursuant to 5 MCAR § 1.0137 shall be held; and

3. inform the parent that if he/she objects to the action to deny admission during or after the initial conciliation conference, he/she has the right to initiate an impartial due process hearing in accordance with the procedures set forth in 5 MCAR § 1.0138.

E. Prior to conducting an assessment or reassessment, refusing to conduct an assessment or reassessment, initiating a significant change in or refusing to make a significant change in a state residential schools' student's individual educational program plan, the state residential schools shall prepare and serve a formal notice which shall:

1. if the proposed action pertains to assessment or reassessment, include the reasons for assessment or the refusal to assess, how the results may be used if the assessment is conducted, a general description of the procedures to be used, and where and by whom the assessment will be conducted;

2. include a copy of the student's current individual educational program plan;

3. inform the parent of his/her rights to review and receive copies of all records or other written information regarding his/her child in the state residential schools' possession;

4. inform the parent of his/her right and the procedure and time to request and to receive interpretations of assessment or reassessment procedures, instruments and data or results from a knowledgeable state residential schools' employee and for that conference to be held in private;

5. inform the parent of his/her right and the procedure and time for him/her to participate as a team member in developing and determining the child's educational program and/or to provide information relative to his/her assessment and the development of the educational program plan;

6. inform the parent of his/her right, the procedures, and the time within which to have included on the team that interprets the assessment data and/or develops the individual educational program plan, such person(s) as described in EDU 125 A. (5 MCAR § 1.0125 A.) including a person who is a member of the same minority, or cultural background or who is knowledgeable concerning the racial, cultural, or handicapping differences of the student;

7. inform the parent that he/she may obtain an independent assessment at his/her own expense and that at his/her request, the results of this independent assessment shall be considered in the development of an appropriate educational program for the student;

8. inform the parent that the state residential schools shall proceed with the proposed action unless the parent objects on the enclosed response form or otherwise in writing within 14 days after service of the notice;

9. inform the parent that if he/she objects to the proposed assessment or reassessment or proposed change in the educational program in writing, the state residential schools' administrator shall arrange for a conciliation conference pursuant to 5 MCAR § 1.0137;

10. inform the parent that if the parent objects to the proposed action during or after the initial conciliation conference they may have an impartial due process hearing in accordance with 5 MCAR § 1.0138;

11. inform the parent that he/she has the right to be represented by counsel or another person of his/her choosing at the conciliation conference or the impartial due process hearing;

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

13. include a response form on which the parent may indicate his/her approval of or objection to the proposed action and identify the state residential schools' employee to whom the response form should be sent and to whom questions may be directed;

F. When the state residential schools propose the transfer of the student out of educational placement at the state residential schools pursuant to 5 MCAR § 1.0135 C., the state residential schools shall prepare and serve formal notice to the parent and the resident school district which shall:

1. state that based on reassessment of the student and the recommendations of an admission and transfer team meeting, the state residential schools propose to dismiss the student from placement at the state residential schools pursuant to the written consent of the parent to this proposed action;

2. inform the parent of his/her right to request and to receive copies of all records or other written information regarding his/her child in the state residential schools' possession;

3. inform the parent of his/her right and the procedure and time period within which to request and to receive interpretations of assessment or reassessment procedures, instruments and data on results from a knowledgeable state residential schools' employee and for that conference to be held in private;

4. inform the parent that he/she may obtain an independent assessment at his/her own expense and that at his/her request, the results of this independent assessment shall be considered in the development of an appropriate educational program for the student.

5. include a response form on which the parent may indicate his/her approval of or objection to the proposed transfer from placement at the state residential schools and which states that the form shall be returned to the state residential schools' administrator within 14 days of receipt of the notice;

6. inform the parent that the state residential schools shall not proceed with the proposed transfer from placement of the student without prior written consent of the parent;

7. inform the parent that if he/she gives written consent the student shall be dismissed from placement at the state residential schools at the time specifically stated in the proposed transfer from placement;

8. inform the parent that if he/she objects to the proposed transfer from placement in writing, a conciliation conference pursuant to 5 MCAR § 1.0137 shall be held;

9. inform the parent that if he/she objects to the proposed transfer from placement during or after the initial conciliation conference, he/she has the right to initiate an impartial due process hearing in accordance with the procedures set forth in 5 MCAR § 1.0138; and

10. inform the parent that if he/she continues to refuse to provide written permission to the transfer, the state residential schools shall schedule a hearing in accordance with 5 MCAR § 1.0138;

11. state that the child's educational placement will not be changed as long as the parent objects to the proposed transfer from placement in the manner prescribed in these rules.

G. The state residential schools' administrator shall notify the district of residence whenever:

1. the parent determines that the student's application to the state residential schools is withdrawn prior to the student being admitted;

2. the student is denied admission to the state residential schools' programs;

3. the parent has removed the student from the state residential schools' program after he/she has been admitted; and

4. a student is graduated from the state residential schools or will not continue attending the school because he/she has attained the age of 21 years prior to September 1 of the next official school year.

5 MCAR § 1.0137 Conciliation conference.

A. When a conciliation conference shall occur:

1. If the parent does not object in writing to a proposed action within 14 days after service of a notice pursuant to 5 MCAR § 1.0136 and the proposed action is not admission to or transfer from the state residential schools, the proposed action shall take place. If such written objection is made, the state residential schools' administrator 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 mutually convenient to the parent and the state residential schools' representatives and shall be held within 14 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 § 1.0138 at any time after the first conciliation conference is held.

2. If the parent does not given written approval to the proposed individual educational program plan developed in accordance with 5 MCAR § 1.0134 C.2. within 14 days after the service of the notice, the residential schools' administrator shall arrange for a conference with the parent for the purpose of reviewing the plan and conciliating the matter. The conference shall be held at a time mutually convenient to the parent and state residential schools' representatives and shall be held within 14 days after the expiration of the 14 day period for parent response.

3. If the parent does not give written consent to the proposed transfer of the student from placement at the state residential schools in accordance with 5 MCAR § 1.0135 C. within 14 days after service of the notice pursuant to 5 MCAR § 1.0136 F., the residential schools' administrator shall arrange for a conference with the parent for the purpose of conciliating the matter. The conference shall be held at a time mutually convenient to the parent and state residential schools' representatives and shall be held within 14 days after the expiration of the 14 day period for parent response.

B. Memorandum

Within seven days of the final conciliation conference the state residential schools shall serve the parent with a written memorandum which shall:

1. inform the parent of the state residential schools' proposed action following the conference;

2. inform the parent that if he/she continues to object to the proposed action he/she has a right to an impartial due process hearing in accordance with the provisions of 5 MCAR § 1.0138 and state the procedure and time in

which to request the hearing, including a request form on which the parent may request the hearing, and the identification of the state residential schools' employee to whom the written request form or other written request for hearing is to be mailed, and to whom questions and documents or requests relating to the hearing may be directed; and

3. inform the parent that if he/she does not request a hearing on the written request form or otherwise in writing pursuant to 5 MCAR § 1.0138, within seven days after receipt of the notice, the state residential schools shall proceed with the proposed action unless the proposed action is to admit the student to or to transfer the student from placement at the state residential schools; and

4. inform the parent that if the proposed action is to admit the student pursuant to the parent's written consent of the proposed individual educational program plan, and agreement has not been reached in conciliation conference and no hearing is requested in accordance with 5 MCAR § 1.0138, efforts to reach the parent shall be documented, and the state residential schools' administrator shall serve the parent and the resident school district written notice stating that effective the date of the notice the student shall not be admitted to the state residential schools under the current application for admission procedure;

5. inform the parent that if the proposed action is transfer of the student from placement at the state residential schools, when the parent continues to refuse to provide written permission, the state residential schools shall schedule a hearing within seven days after the expiration of the seven days allowed for parent response.

5 MCAR § 1.0138 The hearing.

A. Initiation of the hearing.

A parent or the state residential schools may initiate an impartial due process hearing when either party continues to object to a proposed action and conciliation has not been achieved through one or more conciliation conferences pursuant to 5 MCAR § 1.0137. The resident school district may be party to the hearing. The decision of the hearing officer shall be rendered not more than 45 days from the date of the receipt of the request for the hearing. The hearing officer may grant specific extensions of time beyond the 45 day period at the written request of either party.

B. Notice.

1. Written notice of the time, date and place of all hearings shall be given to all parties by the state residential schools at least 14 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 seven days of receipt of the parent's written request for a hearing, the state residential schools shall serve the parties with a written notice of rights and procedures relative to the hearing which shall inform the parent:

a. that the hearing shall take place before an impartial hearing officer appointed by the commissioner;

b. that they will receive notice of time, date and place of the hearing 14 days in advance of the hearing which will be held within 30 days after the written request;

c. of the hearing rights of the respective parties including the following:

(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 in preparation of and at the hearing. The state residential schools shall inform the parent of any free or low cost legal or relevant services available in the area.

(3) Not less than seven days prior to the hearing, the parent or his/her representative(s), as the case may be, shall be given access to all of the state residential schools' records and such other records pertaining to the child that are authorized to be disclosed, including but not limited to all tests, evaluations, assessments, reports, and other written information concerning the educational assessment or reassessment upon which the proposed action may be based.

(4) At least seven calendar days prior to the hearing the parent shall receive from the state residential schools 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 § 1.0136 or 5 MCAR § 1.0137 B. If such material allegations 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 seven 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 shall be filed with the person(s) conducting the hearing. Such lists may be modified at any time but each party shall be notified if modification occurs.

(6) All parties or their representatives, as the case may be, shall have the right to request the attendance of any employee of the state residential schools, resident school district 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 shall be made to the state residential schools, and to the person whose attendance is requested at least seven days in advance of the hearing. Such written requests shall also be filed with the hearing officer at the time of hearing.

(7) The parent shall have the right to call his/her own witnesses and to present evidence, including expert medical, psychological, and educational testimony and relevant records, tests, assessments, reports or other information.

(8) All parties shall have the right to confront and cross examine witnesses.

(9) 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 14 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.

d. that at the hearing the burden of proof is on the state residential schools to show that the proposed action is justified on the basis of the student's educational needs or his/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 shall be kept of the hearing and a copy of the transcribed record shall be available to the parent, upon request, at the cost of the copy.

f. that the hearing officer shall make a written decision based only on evidence received and introduced into the record at the hearing. Such decisions shall be rendered not more than 45 days from the receipt of the request for the hearing. The proposed action will be upheld only upon showing by the state residential schools of a preponderance of the evidence. A proposed action that would result in the child being removed from a 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 regular educational programs shall also be given;

g. that the decision of the hearing officer is binding on all parties;

h. that pending the decision, the student's education program shall not be changed unless the parent and the parties agree otherwise;

i. that the parent has the right to have the child present at the hearing; and

j. that the parent shall receive a copy of the hearing officer's written findings, conclusion and decision.

C. Hearing officers.

1. The hearing shall take place before an impartial hearing officer appointed by the commissioner.

2. The hearing officer shall not be a member of the state board of education, state department of education, an employee of either the student's resident school district or the state residential schools or any person with a personal or professional interest which would conflict with his objectivity at the hearing. A person who otherwise qualifies as a hearing officer is not an employee of the state solely because the person is paid by the state department of education or the state residential schools to serve as a hearing officer.

3. If a hearing officer requests an independent educational assessment of a child, the cost of the assessment shall be at state residential schools' expense. All expenses of the hearing, except for the parent's and resident school district's attorney's fees; the cost of a copy of the record of the hearing if requested by the parent; or other expenses incidental to the parent's, child's, or resident school district's participation in the hearing, shall be paid by the state residential schools.

4. The hearing officer shall be empowered to subpoena any persons or papers he/she deems necessary for an adequate review of the appropriateness of the proposed action which is the subject of the hearing.

D. Prehearing review by the hearing officer.

1. Not less than seven days prior to the hearing, the person conducting the hearing shall be mailed copies of:

a. notices and memoranda prepared by the state residential schools pursuant to 5 MCAR § 1.0137 sent to the parent;

b. written information concerning the 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. other information from the state residential schools, 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. do not apply when the hearing concerns a proposed action to assess or reassess.

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 meet with the parties together prior to the hearing;

c. may require the state residential schools to perform an additional educational assessment or reassessment;

d. may require an independent educational assessment of the student at the expense of the state residential schools;

e. may require the state residential schools to propose an alternative individual educational program plan;

f. may require the state residential schools to send additional notice to the parent;

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

h. may extend the hearing date for up to 15 days to achieve the purposes of this paragraph;

i. may grant specific extension of time beyond the 45 day period at the request of either party.

E. 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 state residential schools 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 they relate to the need 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.

5. As appropriate to the pending matter, the hearing officer shall consider evidence related to:

a. the state residential schools' decision to deny admission to the student for the purpose of providing an educational program. The state residential schools shall demonstrate by a preponderance of the evidence that based upon the schools' determination an appropriate individual educational program plan cannot be developed by the state residential schools.

b. the state residential schools' proposal to assess or reassess or refusal to assess or reassess as set forth in 5 MCAR § 1.0135 B. The state residential schools shall demonstrate by a preponderance of the evidence that the educational assessment or reassessment is justified as a step toward the possible initiation of or change in the student's educational placement or provision of services; or the state residential schools shall demonstrate by a preponderance of the evidence that refusal to assess or reassess is justified by the proximity in time, appropriateness and adequacy of the most recent assessment or reassessment.

c. the state residential schools' proposal to initiate or refusal to initiate services as set out in the student's individual educational program plan. The state residential schools shall demonstrate by a preponderance of the evidence that the proposed action is consistent with the current educational needs of the student.

d. the state residential schools' proposal to transfer the student. The state residential schools shall demonstrate by a preponderance of the evidence that the proposed transfer is consistent with the current educational needs and presenting handicapping conditions of the student.

6. The hearing officer shall sustain, modify or reject a proposed action based on consideration of all the evidence received at the hearing.

F. The decision of the hearing officer.

Not more than 45 days from the receipt of the request for a hearing, except where extensions of time have been granted and then at a time not to exceed 45 days plus the number of days added by the extensions, 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 admission.

The hearing officer shall sustain the decision to deny admission of the student to the state residential schools upon a showing by the state residential schools by a preponderance of evidence that an appropriate individual educational program plan cannot be developed by the state residential schools.

2. Decisions regarding assessment or reassessment:

a. the hearing officer shall sustain a proposed assessment or reassessment of the student as set forth in 5 MCAR § 1.0135 B. upon showing by the state residential schools by a preponderance of the evidence which demonstrates that there are facts, relating to the student's performance in his/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 student's educational placement or program, including special education services, which will provide an educational program appropriately suited to the student's needs;

b. the hearing officer shall sustain the refusal to assess or reassess upon a showing by the state residential schools by a preponderance of evidence which demonstrates that there are facts which indicate reasonable grounds to believe that there has been recent and adequate assessment or reassessment of the student by qualified professionals; and

c. 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 procedures in order to insure compliance with the requirement of nondiscrimination.

3. Decisions regarding individual educational program plan:

a. in deciding if the proposed action is to be sustained, in whole or part, the educational needs of the student 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;

b. the hearing officer shall sustain the individual educational program plan of the state residential schools upon a showing by the state residential schools by a preponderance of evidence that the student's individual educational program plan represents educational services appropriate to the student's educational needs in the least restrictive alternative. This decision shall be made in accordance with the principle of least restrictive alternative; and

4. Decisions regarding transfer:

The hearing officer shall sustain the decision to transfer the student from placement at the state residential schools upon a showing by the state residential schools by a preponderance of evidence that the appropriate program for the student in the least restrictive alternative is no longer placement at the state residential schools.

5. All 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 on the basis and reason for the decision;

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

c. be based on the standards and principles set forth in Minn. Stat. § 120.17, subd. 3a.; and

d. be binding on all parties.

6. All decisions shall be filed with the commissioner of education and shall be sent by mail to the parties.

G. Effective date of the action and appeals.

1. The decision of the hearing officer shall be binding on all parties and shall become effective 30 days after service of the decision unless the decision is appealed in a civil action.

2. The hearing officer may grant specific extensions of time beyond the 45 day period set out in these rules at the request of any party provided that no extension may be granted for the filing of a civil action.

APPROVED AS TO FORM AND LEGALITY

SEP 22 1980 19____

WARREN SPANNAUS, ATTORNEY GENERAL

BY Jerry S Anderson

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
SEP 22 1980
Joan Anderson Growe
Secretary of State
3:35 PM

ADMIN 1000 (Rev. 1/78)
SF-00006-01

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT Education

TO : Jerry S. Anderson
Special Assistant
Attorney General

DATE: September 16, 1980

FROM : Howard B. Casmey, Secretary
State Board of Education

PHONE: 296-2358

SUBJECT: In the Matter of the Proposed Adoption of the Rules of the State Board of Education Governing the Requirements and Procedures for Student Admission to, Program and Evaluation During Attendance at, and Transfer from the State Residential Schools for Deaf, Blind, and Multiply-Handicapped Sensory Impaired Students

The rules in the above entitled matter have been amended to remediate the errors in cross-referencing and grammar that were identified in your memorandum of August 19, 1980.

Enclosed are the original and two copies of the Order Adopting and the Adopted Rules. The rules are being resubmitted at this time for your review.

Our File #622

ADMIN 1000 (Rev. 7-78)
SF-00003-07

STATE OF MINNESOTA

DEPARTMENT: ATTORNEY GENERAL

Office Memorandum

TO : HOWARD B. CASMEY, Secretary
State Board of Education

DATE: 9/23/80

Attn: CHARLES T. MOTTL
Special Assistant
Attorney General

FROM : JERRY S. ANDERSON
Special Assistant
Attorney General

PHONE: 296-1288

SUBJECT: Rules as Approved In the Matter of the Proposed Adoption of the Rules of the State Board of Education Governing the Requirements and Procedures for Student Admission to, Program and Evaluation During Attendance at, and Transfer from the State Residential Schools for Deaf, Blind, and Multiply-Handicapped Sensory Impared Students

Enclosed herewith are the rules you have submitted for approval. These rules have been approved by this office and filed with the Secretary of State. Note that they have NOT been filed with the State Register; this must be done promptly by your agency.

Upon receipt and before transmittal to your agency, however, it is important that you recheck these rules as to:

1. Affixation of the stamps of the Attorney General and Secretary of State to the last page of the rules;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages of the rules in the approved set.

Directly following the approved rules is a complete set of required documents and transcript which must be retained with the rules by you or your agency.

If you have any questions in this regard, please contact me.

JSA/bw
Encl.
cc: Duane Harves
Susan Robertson

ADMIN 1000 (Rev. 1 78) Our File #[redacted]
SE-00006-01

STATE OF [redacted]NESOTA

Office Memorandum

DEPARTMENT ATTORNEY GENERAL

TO : HOWARD B. CASMEY, Secretary
State Board of Education

DATE: 8/19/80

Attn: CHARLES T. MOTTL
Special Assistant
Attorney General

FROM : JERRY S. ANDERSON
Special Assistant
Attorney General

PHONE: 296-1288

SUBJECT: In the Matter of the Proposed Adoption of the Rules of the State Board of Education Governing the Requirements and Procedures for Student Admission to, Program and Evaluation During Attendance at, and Transfer from the State Residential Schools for Deaf, Blind, and Multiply-Handicapped Sensory Impared Students

The rules in the above-entitled matter have not been approved by this office and are being returned for the following reasons.

1. In Section 1.0135 C. 3. c. the cross-reference to Section 1.0137 A. 2. apparently should be a reference to Section 1.0137 A. 3.

2. Section 1.0135 D. 1. The second sentence, which was added pursuant to the hearing, interrupts the flow from the colon to the list of items subject to the colon. Therefore, D. 1. should be rewritten.

3. In Section 1.0136 C. 1. the reference to Section 1.0134 C. 3. apparently should be to 5 MCAR sec. 1.0134 C. 2.

4. In Section 1.0136 G. 1. the word "students'" should be "student's."

5. Section 1.0137 A. 2. The reference to Section 1.0134 C. 3. d. apparently should be to Section 1.0134 C. 2.

6. Section 1.0137 A. 3. The reference to Section 1.0136 E. apparently should be to Section 1.0136 F.

7. Section 1.0138 F. 3. b. In the second to the last line, in the phrase "with the principal at least restrictive alternatives," the "at" should be "of."

8. In Section 1.0138 F. 5. c. the cross-reference to 5 MCAR sec. 1.0138 G. is apparently incorrect and should be changed or deleted.

Upon consideration of the comments made herein and remedial action, if any, these rules may be resubmitted to this office for review and approval. Please submit the original and at least two copies of the Order Adopting and the Adopted Rules. Also, please indicate in the transmittal memo that the rules are being resubmitted for our review.

Because none of the above comments go to legality or to substantial change, but only to form, it is not necessary to return these rules to the Chief Hearing Examiner before resubmitting them to this office.

JSA/bw

AG. copy.

Rules as Adopted

Chapter Seven-A: Requirements and Procedures for Student Admission to, Program and Evaluation During Attendance at, and Transfer from the State Residential Schools for Deaf, Blind, and Multiply Handicapped Sensory Impaired Students

5 MCAR § 1.0133 Definitions. The following terms used throughout these rules shall have the following meanings ascribed to them.

A. The definitions of these terms shall be as stated in EDU 120 B. (5 MCAR § 1.0120 B.)

1. Special education services;

2. Handicapped persons;

3. Least restrictive alternatives;

4. Recognized professional standards;

5. Proposed action;

6. Nondiscrimination;

7. Formal educational assessment; and

8. Individual educational program plan.

B. In addition, these terms shall have the following meanings ascribed to them.

1. "State residential schools" as used in these rules shall mean either or both the Minnesota school for the deaf and the Minnesota braille and sight saving school, which are operated by the state board of education pursuant to Minn. Stat. ch. 128A.

2. "Residential schools' administrator" shall mean the administrator of the Minnesota state residential schools as defined in Minn. Stat. § 128A.02., subd. 3., or his/her designee.

3. "Resident school district", also referred to as "district," shall mean the district where the handicapped student's parent or legal guardian resides or the district designated by the commissioner as provided in Minn. Stat. § 120.17, subd. 6., 7.a., and 8.a. The cost of transporting the student to and from the state residential school shall be borne by the student's resident district as provided in Minn. Stat. § 128A.07.

addition per HE #9a

4. "Admit" shall mean the action taken by the state residential schools in accepting the placement of a student and agreeing to provide appropriate educational services to the student.

5. "Transfer" shall mean the action taken by the state residential schools in dismissing a student from placement and the termination of the responsibility for providing the appropriate educational services to the student.

6. "Periodic review" as used in these rules shall mean a review which shall be conducted by the state residential schools, at least twice a year, to determine the appropriateness of a student's individual education plan and if appropriate, revise its provisions.

7. "Annual review" as used in these rules shall mean a review which shall be conducted by the state residential schools and reviewed at a formal meeting. The review shall be held at least once a year to examine a student's individual education program and if appropriate, revise its provisions. This may be counted as one of the required periodic reviews during the year in which it is conducted.

8. "Admission and transfer team" as referred to in these rules shall mean the individuals who are required to participate in a formal meeting to develop, review or revise a handicapped student's individual education program and/or to determine whether to admit or transfer the student to or from the state residential schools.

9. "Formal notice" as used in these rules shall mean a written statement served upon the student's parent or guardian so as to fulfill the requirements of procedural safeguards.

10. "Serve" or "service" as used in these rules shall mean the in hand delivery or the first class mailing to the last known address of a written notice. Service by mail is complete upon mailing.

11. "Parent" shall mean a parent, a guardian, a person acting as a parent of a child, or a legally appointed guardian. The term does not include the state if the child is a ward of the state.

12. "Days" shall mean calendar days between the official beginning and ending dates of the school year at the state residential schools. All procedures relating to but not limited to assessments, reassessments, individual education program plans, periodic reviews, conciliation conferences and hearings that are initiated for a student in placement at the state residential schools before the end of the school year, must be completed within the required time period, even if that time period extends beyond the end of the official school year. In addition, applications for admission shall be processed in accordance with 5 MCAR § 1.0134 at any time during the year, even if these procedures extend beyond the end of the official school year.

5 MCAR § 1.0134 Admission procedures.

A. Referral and application.

1. Application for admission shall be made by the resident school district, hereinafter also referred to as the district, to the state residential schools' administrator on the appropriate forms provided by the commissioner and may be made at any time during the calendar year.

2. Prior to application for admission, the district shall have completed for each student for whom admission is sought, the following procedures as established by EDU 124-129 (5 MCAR §§ 1.0124-1.0129);

a. a formal educational assessment consistent with the provisions of EDU 124 (5 MCAR § 1.0124) shall have been conducted and the special education needs of the pupil determined;

b. a student staffing consistent with the provisions of EDU 125 (5 MCAR § 1.0125) shall have been conducted;

c. a review of the student's current level of performance and the determination of the special education service needs shall have been made and the district shall have developed a statement of annual goals and objectives for the student. The district shall have reviewed the programs and services available to the district and shall have stated reasons why an appropriate education in the least restrictive alternative cannot be provided or reasonably made available by the district; and

d. the parent and the district shall:

(1) have agreed that the district is unable to provide an appropriate program and that a referral for placement at the state residential schools is appropriate; or

(2) if the parent and district do not agree that a referral to the state residential schools is appropriate, a local due process hearing pursuant to EDU 129 (5 MCAR § 1.0129) shall have been held. Before the state residential schools shall consider the student for admission, the decision, resulting from the hearing process must be that the resident school district is unable to provide an appropriate program and that a referral for admission to the state residential schools is appropriate.

B. Referral, review and admission meeting.

1. Within seven days of receipt of a referral for admission, the residential schools' administrator shall:

a. review the referral information and determine whether additional assessment or other information is needed.

b. request in writing from the district any additional information that is needed.

2. The residential schools' administrator shall:

a. schedule the team meeting which shall be conducted within 30 days of receipt of complete referral information pursuant to 5 MCAR § 1.0134 A.2. and at a time that is mutually acceptable to the state residential schools and the parent; and,

b. serve a written notice of the team meeting to the parent and the district in accordance with the provisions of 5 MCAR § 1.0136 prior to conducting the admission meeting.

3. To determine whether an appropriate individual educational program plan can be developed by the state residential schools to appropriately meet the educational needs of the student in the least restrictive alternative, the state residential schools' administrator shall:

a. appoint participants from the state residential schools' staff to serve on the admission and transfer team. The team shall include at a minimum an administrator of the appropriate education program or his/her designee, an administrator of the appropriate residential program or his/her designee, one appropriate teaching staff person, and other related services staff persons as deemed appropriate by the state residential schools' administrator.

b. schedule an admission and transfer team meeting which shall include the state residential schools' required participants, the parent, the student if appropriate, and other persons as deemed appropriate by the residential schools' administrator and may include a representative of the resident school district if the district chooses to participate.

c. upon request of the parent, determine whether it is appropriate to involve additional state schools' staff on the admission and transfer team; and whether it is appropriate to include someone who is a member of the same minority, or cultural background or who is knowledgeable concerning the racial, cultural or handicapping differences of the student. This statement shall not be read to limit the parent's right to include participants, other than the schools' employees, of his/her own choosing at the scheduled meeting.

addition HE P10a

4. If the parent cannot attend the admission meeting:

a. the state residential schools' administrator shall use and document other methods to ensure parent participation including individual or conference telephone calls; and

b. an admission meeting shall be conducted without a parent in attendance if the residential schools' administrator is unable to convince the parent to attend.

5. The admission and transfer team shall determine whether placement at the state residential schools will appropriately meet the educational needs of the student in the least restrictive alternative. This determination shall be based on:

a. the complete referral information;

b. any additional information supplied by the parent;

c. other relevant information and reports;

d. the record of the decision of the student's resident school district pursuant to Minn. Stat. § 120.17, subd. 3 b. and Minn. Stat. § 128A.05, subd. 1 and 2;

e. interpretation of the data in accordance with the requirements of nondiscrimination pursuant to EDU 120 B.16. (5 MCAR § 1.0120 B.16.) and recognized professional standards; and

f. the team's development of an appropriate individual educational program plan, or the team's determination that an appropriate individual educational program plan cannot be developed by the state residential schools.

C. Admission procedures and development of program.

1. The admission and transfer team shall recommend to the state residential schools' administrator that:

a. the state residential schools can appropriately meet the educational needs of the student in the least restrictive alternative and that the student be admitted pursuant to the parent's written approval of the team's proposed individual educational program plan; or

b. the state residential schools cannot appropriately meet the educational needs of the student as the least restrictive alternative and that the student not be admitted to the state residential schools, based upon the team's determination that an appropriate individual educational program for the student at the state residential schools cannot be developed.

2. If the student is recommended to be admitted to the state residential schools, the admission and transfer team shall develop a proposed individual education program plan listing the services that the student will receive at the state residential schools.

The proposed individual educational program plan shall be prepared in writing; be based on the assessment data, the district's statement of goals and objectives, and other appropriate information; be consistent with the requirement of nondiscrimination and the principle of the least restrictive alternative; and shall include:

a. the names of the persons on the team;

b. a description of the education service needs of the student as determined by the team;

c. a statement of annual goals and periodic review objectives for the education services to be provided including the criteria for attainment of the objectives;

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

e. the reasons for the type of education program including type of services to be provided, the location, amount of time, starting date, anticipated duration of services, and the names and school telephone numbers of those personnel responsible for providing the services. In accordance with the principle of least restrictive alternatives, the proposed action shall be substantiated as the most appropriate in terms of the students' educational needs;

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

g. a description of any activities in which the student will participate in environments which include nonhandicapped students.

3. Based upon the recommendations of the admission and transfer team admission meeting, the state residential schools' administrator shall:

a. admit the student to the state residential schools pursuant to the parent's written approval of the individual educational program plan; or

b. deny the student admission to the state residential schools; and

c. provide formal notice to the parent and to the district of the determination to admit or to deny admission in accordance with the provisions of 5 MCAR § 1.0136. The notice shall be served within 14 days of the admission and transfer team admission meeting.

4. If the determination is to admit the student pursuant to the parent's written approval of the individual educational program plan, the initial notice shall include the proposed individual educational program plan and shall state that the parent shall agree in writing to this individual educational program plan.

5. If the parent does not give written approval to the individual educational program plan within 14 days after service of the notice, the state residential schools' administrator shall arrange for a conciliation conference pursuant to 5 MCAR § 1.0137 A.2.

6. If the parent continues to object to the proposed individual educational program plan, the parent may initiate an impartial due process hearing in accordance with 5 MCAR § 1.0138.

7. If within 30 days after serving the formal notice which shall include the proposed individual educational program plan, no response or objection is obtained from the parent, or if agreement has not been reached in conciliation conference and no hearing is requested in accordance with 5 MCAR § 1.0138, efforts to reach the parent shall be documented, and the state residential schools' administrator shall serve the parent and the resident school district written notice stating that effective the date of the notice the student shall not be admitted to the state residential schools under the current application for admission procedure. This action shall not be interpreted to mean that application for admission of the same student cannot be made at a future date if such application is deemed appropriate by the parent and the resident school district in accordance with procedures as established by EDU 124-129 (5 MCAR §§ 1.0124-1.0129).

8. If the determination is to deny the student admission to the state residential schools, the residential schools' administrator shall send a formal notice to the parent and the resident district which shall inform them of the decision to deny admission based upon the schools' determination that an appropriate individual educational program plan cannot be developed by the state residential schools.

9. If the parent objects to the action to deny admission, the state residential schools' administrator shall arrange for a conciliation conference pursuant to 5 MCAR § 1.0137 A.2.

10. If the parent continues to object to the action to deny admission, the parent may initiate an impartial due process hearing in accordance with 5 MCAR § 1.0138.

5 MCAR § 1.0135 Periodic review, reassessment and transfer procedures.

A. Periodic review and annual review.

1. The state residential schools shall conduct periodic reviews of the individual education program plan and shall determine:

a. the degree to which the goals and objectives as identified in the educational program plan are being achieved;

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

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

2. There shall be at a minimum one periodic review and one annual review each year; the initial periodic review shall be made at the time specified in the program plan.

3. Periodic reviews shall be made by those persons directly responsible for implementing the educational program and by other designees of the state residential schools as may be needed to insure an informed and adequate review.

4. The annual review shall be an admission and transfer team meeting held to review a student's individual educational program plan and if appropriate revise its provisions.

5. The results of periodic reviews and annual reviews shall be included in the student's school records and a copy sent to the parent and to the district. This copy shall inform the parent that he/she may request a conference to review the student's program plan at any time and the procedure to do so.

6. The reviews shall be conducted in accordance with the requirements for nondiscrimination pursuant to EDU 120 B. (5 MCAR § 1.0120 B.) and recognized professional standards.

B. Reassessment.

1. The state residential schools shall conduct an educational reassessment according to the procedures specified for formal educational assessments in EDU 124 B. (5 MCAR §1.0124 B.) at least once every two years. In the year that the reassessment is conducted the meeting following the reassessment may meet the requirement for one of the two reviews required pursuant to 5 MCAR § 1.0135 A.

2. A reassessment shall be conducted before the state residential schools propose a transfer from the schools.

3. A reassessment may be conducted at parent request, unless the state residential schools determine that there has been a recent and adequate assessment or reassessment.

C. Transfer.

1. The admission and transfer team shall recommend to the state residential schools' administrator that a student be dismissed from placement at the state residential schools when it has been determined that the appropriate program for the student in the least restrictive alternative is no longer placement at the state residential schools.

2. This determination shall be made based upon the results of an educational reassessment.

3. Based upon the recommendations of the admission and transfer team staffing, the state residential schools' administrator shall:

a. dismiss the student from placement at the state residential schools pursuant to the parent's written consent to this proposed action; and

b. provide written notice of the determination to transfer the student from placement at the state residential schools to the parent and the resident school district in accordance with the provisions of 5 MCAR § 1.0136 within 14 days of the admission and transfer team staffing. The notice shall state that no such change shall be made without written parental consent.

c. If the parent does not give written consent to the transfer of the student from educational placement at the state residential schools within 14 days after service of the notice, the state residential schools' administrator shall arrange for a conciliation conference pursuant to 5 MCAR § 1.0137 A.2.

d. if the parent continues to object to the proposed action, the parent may initiate an impartial due process hearing in accordance with the provisions of 5 MCAR § 1.0138; or

e. if the parent continues to refuse to provide written consent to the transfer, but does not initiate a due process hearing, the state residential school shall schedule a due process hearing in accordance with 5 MCAR § 1.0138.

D. Admission and transfer team meeting.

1. A meeting which shall include the required state residential schools participants, the parent, the student if appropriate, and may include a representative of the resident school district and other persons as deemed appropriate by the residential schools' administrator, shall be conducted: This statement shall not be read to limit the parent's right to include participants, other than the schools' employees, of his/her own choosing at the scheduled meeting.

added per HE #10a

and persons, other than the schools employees, chosen by the parent,

a. to develop a recommendation regarding a student's application for admission.

b. to develop a current individual educational program plan for each student in attendance;

c. to review the results of the required biennial reassessment or to review the results of reassessment that may be conducted in addition to the required biennial reassessment;

d. prior to the state residential schools proposing the transfer of a student from educational placement at the state residential schools based upon reassessment data and the determination that the appropriate program in the least restrictive alternative is not available at the state residential schools; and

e. to review the results of a reassessment within 30 days after the expiration of the period allowed for parental response, unless the parent objects to the reassessment through the procedures provided in these rules.

2. Formal notice in accordance with the provisions of 5 MCAR § 1.0136 shall be provided to the parent and the district 14 days prior to conducting an admission and transfer team meeting.

3. If the parent cannot attend the admission and transfer team meeting:

a. the state residential schools' administrator shall use and document other methods to ensure parent participation including individual or conference telephone calls; and

b. an admission and transfer team meeting shall be conducted without the parent in attendance if the residential schools' administrator is unable to convince the parent to attend.

5 MCAR § 1.0136 Formal notices to parents.

A. The provisions of EDU 127 A. (5 MCAR § 1.0127 A.) shall apply to formal notices served on parents of students enrolled at the state residential schools. change per HE 125.

B. Prior to the admission meeting, pursuant to 5 MCAR § 1.0134 B. the state residential schools shall prepare and serve a formal notice on the parent and the resident school district which shall: change per HE 125

1. include the reasons for the meeting and the persons who have been asked to be in attendance;

2. inform the parent of his/her right to request and receive copies of all records or other written information that is in the state residential schools' possession regarding his/her child;

3. inform the parent of his/her right and the procedure and time to participate in developing his/her child's education program, and/or to provide information relative to the child's assessment and the development of the program plan;

4. inform the parent of his/her right and the procedure and time to request and to receive interpretations of assessment or reassessment procedures, instruments and data or results from a knowledgeable state residential schools' employee, and for that conference to be held in private;

5. inform the parent of his/her right and the procedure and time to include such person(s) described in EDU 125 A. (5 MCAR § 1.0125 A.), including a person who is a member of the same minority, or cultural background or who is knowledgeable concerning the racial, cultural, or handicapping differences of the student, on the team that interprets the assessment data and/or develops the individual education program plan; and

6. inform the parent that the state residential schools shall proceed with the admission and transfer team meeting in order to consider the student's application for admission unless the parent objects in writing on the response form within 14 days after service of the notice.

7. include a response form on which the parent may indicate his/her objection to the proposed admission and transfer team meeting and which identifies the designee of the state residential schools to whom the response form should be mailed or given and to whom questions may be directed.

8. state that if the parent objects in writing to the admission meeting, the state residential schools shall consider that the student's application for admission to the state residential schools has been withdrawn by the parent effective on the date of the signing of the objection response form; and

9. inform the parent that if the student's application is withdrawn, the decision regarding the placement of the student shall be determined by the parent and the resident school district in accordance with EDU 120-129 (5 MCAR §§ 1.0120-1.0129).

C. When the state residential schools propose to admit a student pursuant to the parent's written approval of the proposed individual educational program plan, the state residential schools shall prepare and serve a formal notice which shall:

1. include a copy of the student's proposed individual educational program plan as described in § 1.0134 C.3.;

2. inform the parents of his/her right and time and procedure to request and to receive interpretation of the educational program plan from a knowledgeable school employee and for that conference to be held in private;

3. state that the parent's written consent shall be given to the individual educational program plan and the signed plan shall be returned to the state residential schools' administrator within 14 days of receipt of the notice if the student is to be admitted to the state residential schools;

4. state that the student shall be admitted to the state residential schools upon receipt by the state residential schools' administrator of the individual educational program plan with the parent's signature affixed;

5. inform the parent that the state residential schools shall not proceed to admit the student without the written consent of the parent to the proposed individual educational program plan;

6. inform the parent that if he/she objects to the proposed individual educational program plan that a conciliation conference pursuant to 5 MCAR § 1.0137 shall be held at a mutually convenient time;

7. inform the parent that if he/she objects to the educational plan during or after the initial conciliation conference, he/she has a right to initiate an impartial due process hearing in accordance with procedures set forth in 5 MCAR § 1.0138;

8. inform the parent that he/she has the right to be represented by counsel or another person of their choosing at the conciliation conference or the impartial due process hearing;

9. inform the parent that he/she may obtain an independent educational assessment at his/her own expense and that at his/her request, the results of this independent assessment shall be considered in the development of an appropriate educational program for the student.

change per HE 12a

10. include a response form on which the parent may indicate his/her objection to the proposed individual educational program plan and identify the designee of the state residential schools to whom the response form should be mailed or given and to whom questions should be directed.

D. When the state residential schools deny a student admission to placement at the state residential schools based on the school's determination that an appropriate individual educational program plan cannot be developed by the state residential schools, the state residential schools shall prepare and serve a formal notice which shall: HE 7

1. state that based on the admission and transfer team's review of the student's complete referral information, and the school's determination that an appropriate individual program plan cannot be developed by the state residential schools, the team's recommendation is that placement at the state residential schools cannot appropriately meet the educational needs of the student in the least restrictive alternative and the student is denied admission;

2. inform the parent that if he/she objects to the action of the state residential schools to deny admission, a conciliation conference pursuant to 5 MCAR § 1.0137 shall be held; and

3. inform the parent that if he/she objects to the action to deny admission during or after the initial conciliation conference, he/she has the right to initiate an impartial due process hearing in accordance with the procedures set forth in 5 MCAR § 1.0138.

E. Prior to conducting an assessment or reassessment, refusing to conduct an assessment or reassessment, initiating a significant change in or refusing to make a significant change in a state residential schools' student's individual educational program plan, the state residential schools shall prepare and serve a formal notice which shall:

1. if the proposed action pertains to assessment or reassessment, include the reasons for assessment or the refusal to assess, how the results may be used if the assessment is conducted, a general description of the procedures to be used, and where and by whom the assessment will be conducted;

2. include a copy of the student's current individual educational program plan;

3. inform the parent of his/her rights to review and receive copies of all records or other written information regarding his/her child in the state residential schools' possession;

4. inform the parent of his/her right and the procedure and time to request and to receive interpretations of assessment or reassessment procedures, instruments and data or results from a knowledgeable state residential schools' employee and for that conference to be held in private;

5. inform the parent of his/her right and the procedure and time for him/her to participate as a team member in developing and determining the child's educational program and/or to provide information relative to his/her assessment and the development of the educational program plan;

6. inform the parent of his/her right, the procedures, and the time within which to have included on the team that interprets the assessment data and/or develops the individual educational program plan, such person(s) as described in EDU 125 A. (5 MCAR § 1.0125 A.) including a person who is a member of the same minority, or cultural background or who is knowledgeable concerning the racial, cultural, or handicapping differences of the student;

7. inform the parent that he/she may obtain an independent assessment at his/her own expense and that at his/her request, the results of this independent assessment shall be considered in the development of an appropriate educational program for the student. added see HE 12a

8. inform the parent that the state residential schools shall proceed with the proposed action unless the parent objects on the enclosed response form or otherwise in writing within 14 days after service of the notice;

9. inform the parent that if he/she objects to the proposed assessment or reassessment or proposed change in the educational program in writing, the state residential schools' administrator shall arrange for a conciliation conference pursuant to 5 MCAR § 1.0137;

10. inform the parent that if the parent objects to the proposed action during or after the initial conciliation conference they may have an impartial due process hearing in accordance with 5 MCAR § 1.0138;

11. inform the parent that he/she has the right to be represented by counsel or another person of his/her choosing at the conciliation conference or the impartial due process hearing;

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

13. include a response form on which the parent may indicate his/her approval of or objection to the proposed action and identify the state residential schools' employee to whom the response form should be sent and to whom questions may be directed;

F. When the state residential schools propose the transfer of the student out of educational placement at the state residential schools pursuant to 5 MCAR § 1.0135 C., the state residential schools shall prepare and serve formal notice to the parent and the resident school district which shall:

1. state that based on reassessment of the student and the recommendations of an admission and transfer team meeting, the state residential schools propose to dismiss the student from placement at the state residential schools pursuant to the written consent of the parent to this proposed action;

2. inform the parent of his/her right to request and to receive copies of all records or other written information regarding his/her child in the state residential schools' possession;

3. inform the parent of his/her right and the procedure and time period within which to request and to receive interpretations of assessment or reassessment procedures, instruments and data on results from a knowledgeable state residential schools' employee and for that conference to be held in private;

4. inform the parent that he/she may obtain an independent assessment at his/her own expense and that at his/her request, the results of this independent assessment shall be considered in the development of an appropriate educational program for the student.

5. include a response form on which the parent may indicate his/her approval of or objection to the proposed transfer from placement at the state residential schools and which states that the form shall be returned to the state residential schools' administrator within 14 days of receipt of the notice;

6. inform the parent that the state residential schools shall not proceed with the proposed transfer from placement of the student without prior written consent of the parent;

7. inform the parent that if he/she gives written consent the student shall be dismissed from placement at the state residential schools at the time specifically stated in the proposed transfer from placement;

8. inform the parent that if he/she objects to the proposed transfer from placement in writing, a conciliation conference pursuant to 5 MCAR § 1.0137 shall be held;

9. inform the parent that if he/she objects to the proposed transfer from placement during or after the initial conciliation conference, he/she has the right to initiate an impartial due process hearing in accordance with the procedures set forth in 5 MCAR § 1.0138; and

10. inform the parent that if he/she continues to refuse to provide written permission to the transfer, the state residential schools shall schedule a hearing in accordance with 5 MCAR § 1.0138;

11. state that the child's educational placement will not be changed as long as the parent objects to the proposed transfer from placement in the manner prescribed in these rules.

G. The state residential schools' administrator shall notify the district of residence whenever:

1. the parent determines that the students' application to the state residential schools is withdrawn prior to the student being admitted;

2. the student is denied admission to the state residential schools' programs;

3. the parent has removed the student from the state residential schools' program after he/she has been admitted; and

4. a student is graduated from the state residential schools or will not continue attending the school because he/she has attained the age of 21 years prior to September 1 of the next official school year.

5 MCAR § 1.0137 Conciliation conference.

A. When a conciliation conference shall occur:

1. If the parent does not object in writing to a proposed action within 14 days after service of a notice pursuant to 5 MCAR § 1.0136 and the proposed action is not admission to or transfer from the state residential schools, the proposed action shall take place. If such written objection is made, the state residential schools' administrator 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 mutually convenient to the parent and the state residential schools' representatives and shall be held within 14 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 § 1.0138 at any time after the first conciliation conference is held.

2. If the parent does not given written approval to the proposed individual educational program plan developed in accordance with 5 MCAR § 1.0134 C.3.d. within 14 days after the service of the notice, the residential schools' administrator shall arrange for a conference with the parent for the purpose of reviewing the plan and conciliating the matter. The conference shall be held at a time mutually convenient to the parent and state residential schools' representatives and shall be held within 14 days after the expiration of the 14 day period for parent response.

3. If the parent does not give written consent to the proposed transfer of the student from placement at the state residential schools in accordance with 5 MCAR § 1.0135 C. within 14 days after service of the notice pursuant to 5 MCAR § 1.0136 E., the residential schools' administrator shall arrange for a conference with the parent for the purpose of conciliating the matter. The conference shall be held at a time mutually convenient to the parent and state residential schools' representatives and shall be held within 14 days after the expiration of the 14 day period for parent response.

B. Memorandum

Within seven days of the final conciliation conference the state residential schools shall serve the parent with a written memorandum which shall:

1. inform the parent of the state residential schools' proposed action following the conference;

2. inform the parent that if he/she continues to object to the proposed action he/she has a right to an impartial due process hearing in accordance with the provisions of 5 MCAR § 1.0138 and state the procedure and time in

which to request the hearing, including a request form on which the parent may request the hearing, and the identification of the state residential schools' employee to whom the written request form or other written request for hearing is to be mailed, and to whom questions and documents or requests relating to the hearing may be directed; and

3. inform the parent that if he/she does not request a hearing on the written request form or otherwise in writing pursuant to 5 MCAR § 1.0138, within seven days after receipt of the notice, the state residential schools shall proceed with the proposed action unless the proposed action is to admit the student to or to transfer the student from placement at the state residential schools; and

4. inform the parent that if the proposed action is to admit the student pursuant to the parent's written consent of the proposed individual educational program plan, and agreement has not been reached in conciliation conference and no hearing is requested in accordance with 5 MCAR § 1.0138, efforts to reach the parent shall be documented, and the state residential schools' administrator shall serve the parent and the resident school district written notice stating that effective the date of the notice the student shall not be admitted to the state residential schools under the current application for admission procedure;

5. inform the parent that if the proposed action is transfer of the student from placement at the state residential schools, when the parent continues to refuse to provide written permission, the state residential schools shall schedule a hearing within seven days after the expiration of the seven days allowed for parent response.

5 MCAR § 1.0138 The hearing.

A. Initiation of the hearing.

A parent or the state residential schools may initiate an impartial due process hearing when either party continues to object to a proposed action and conciliation has not been achieved through one or more conciliation conferences pursuant to 5 MCAR § 1.0137. The resident school district may be party to the hearing. The decision of the hearing officer shall be rendered not more than 45 days from the date of the receipt of the request for the hearing. The hearing officer may grant specific extensions of time beyond the 45 day period at the written request of either party.

B. Notice.

1. Written notice of the time, date and place of all hearings shall be given to all parties by the state residential schools at least 14 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 seven days of receipt of the parent's written request for a hearing, the state residential schools shall serve the parties with a written notice of rights and procedures relative to the hearing which shall inform the parent:

a. that the hearing shall take place before an impartial hearing officer appointed by the commissioner;

b. that they will receive notice of time, date and place of the hearing 14 days in advance of the hearing which will be held within 30 days after the written request; change per HE 7

c. of the hearing rights of the respective parties including the following:

(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 in preparation of and at the hearing. The state residential schools shall inform the parent of any free or low cost legal or relevant services available in the area.

(3) Not less than seven days prior to the hearing, the parent or his/her representative(s), as the case may be, shall be given access to all of the state residential schools' records and such other records pertaining to the child that are authorized to be disclosed, including but not limited to all tests, evaluations, assessments, reports, and other written information concerning the educational assessment or reassessment upon which the proposed action may be based.

(4) At least seven calendar days prior to the hearing the parent shall receive from the state residential schools 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 § 1.0136 or 5 MCAR § 1.0137 B. If such material allegations 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 seven 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 shall be filed with the person(s) conducting the hearing. Such lists may be modified at any time but each party shall be notified if modification occurs.

(6) All parties or their representatives, as the case may be, shall have the right to request the attendance of any employee of the state residential schools, resident school district 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 shall be made to the state residential schools, and to the person whose attendance is requested at least seven days in advance of the hearing. Such written requests shall also be filed with the hearing officer at the time of hearing.

(7) The parent shall have the right to call his/her own witnesses and to present evidence, including expert medical, psychological, and educational testimony and relevant records, tests, assessments, reports or other information.

(8) All parties shall have the right to confront and cross examine witnesses.

(9) 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 14 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.

d. that at the hearing the burden of proof is on the state residential schools to show that the proposed action is justified on the basis of the student's educational needs or his/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 shall be kept of the hearing and a copy of the transcribed record shall be available to the parent, upon request, at the cost of the copy.

change per HE 14(a)

f. that the hearing officer shall make a written decision based only on evidence received and introduced into the record at the hearing. Such decisions shall be rendered not more than 45 days from the receipt of the request for the hearing. The proposed action will be upheld only upon showing by the state residential schools of a preponderance of the evidence. A proposed action that would result in the child being removed from a 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 regular educational programs shall also be given;

g. that the decision of the hearing officer is binding on all parties;

h. that pending the decision, the student's education program shall not be changed unless the parent and the parties agree otherwise;

i. that the parent has the right to have the child present at the hearing; and

j. that the parent shall receive a copy of the hearing officer's written findings, conclusion and decision.

C. Hearing officers.

1. The hearing shall take place before an impartial hearing officer appointed by the commissioner.

2. The hearing officer shall not be a member of the state board of education, state department of education, an employee of either the student's resident school district or the state residential schools or any person with a personal or professional interest which would conflict with his objectivity at the hearing. A person who otherwise qualifies as a hearing officer is not an employee of the state solely because the person is paid by the state department of education or the state residential schools to serve as a hearing officer.

3. If a hearing officer requests an independent educational assessment of a child, the cost of the assessment shall be at state residential schools' expense. All expenses of the hearing, except for the parent's and resident school district's attorney's fees; the cost of a copy of the record of the hearing if requested by the parent; or other expenses incidental to the parent's, child's, or resident school district's participation in the hearing, shall be paid by the state residential schools.

4. The hearing officer shall be empowered to subpoena any persons or papers he/she deems necessary for an adequate review of the appropriateness of the proposed action which is the subject of the hearing.

D. Prehearing review by the hearing officer.

1. Not less than seven days prior to the hearing, the person conducting the hearing shall be mailed copies of:

a. notices and memoranda prepared by the state residential schools pursuant to 5 MCAR § 1.0137 sent to the parent;

b. written information concerning the 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. other information from the state residential schools, 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. do not apply when the hearing concerns a proposed action to assess or reassess.

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 meet with the parties together prior to the hearing;

c. may require the state residential schools to perform an additional educational assessment or reassessment;

d. may require an independent educational assessment of the student at the expense of the state residential schools;

e. may require the state residential schools to propose an alternative individual educational program plan;

f. may require the state residential schools to send additional notice to the parent;

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

h. may extend the hearing date for up to 15 days to achieve the purposes of this paragraph;

i. may grant specific extension of time beyond the 45 day period at the request of either party.

E. 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 state residential schools 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 they relate to the need 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.

5. As appropriate to the pending matter, the hearing officer shall consider evidence related to:

a. the state residential schools' decision to deny admission to the student for the purpose of providing an educational program. The state residential schools shall demonstrate by a preponderance of the evidence that based upon the schools' determination an appropriate individual educational program plan cannot be developed by the state residential schools.

b. the state residential schools' proposal to assess or reassess or refusal to assess or reassess as set forth in 5 MCAR § 1.0135 B. The state residential schools shall demonstrate by a preponderance of the evidence that the educational assessment or reassessment is justified as a step toward the possible initiation of or change in the student's educational placement or provision of services; or the state residential schools shall demonstrate by a preponderance of the evidence that refusal to assess or reassess is justified by the proximity in time, appropriateness and adequacy of the most recent assessment or reassessment.

c. the state residential schools' proposal to initiate or refusal to initiate services as set out in the student's individual educational program plan. The state residential schools shall demonstrate by a preponderance of the evidence that the proposed action is consistent with the current educational needs of the student.

d. the state residential schools' proposal to transfer the student. The state residential schools shall demonstrate by a preponderance of the evidence that the proposed transfer is consistent with the current educational needs and presenting handicapping conditions of the student.

6. The hearing officer shall sustain, modify or reject a proposed action based on consideration of all the evidence received at the hearing.

F. The decision of the hearing officer.

Not more than 45 days from the receipt of the request for a hearing, except where extensions of time have been granted and then at a time not to exceed 45 days plus the number of days added by the extensions, 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 admission.

The hearing officer shall sustain the decision to deny admission of the student to the state residential schools upon a showing by the state residential schools by a preponderance of evidence that an appropriate individual educational program plan cannot be developed by the state residential schools.

2. Decisions regarding assessment or reassessment:

a. the hearing officer shall sustain a proposed assessment or reassessment of the student as set forth in 5 MCAR § 1.0135 B. upon showing by the state residential schools by a preponderance of the evidence which demonstrates that there are facts, relating to the student's performance in his/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 student's educational placement or program, including special education services, which will provide an educational program appropriately suited to the student's needs;

b. the hearing officer shall sustain the refusal to assess or reassess upon a showing by the state residential schools by a preponderance of evidence which demonstrates that there are facts which indicate reasonable grounds to believe that there has been recent and adequate assessment or reassessment of the student by qualified professionals; and

c. 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 procedures in order to insure compliance with the requirement of nondiscrimination.

3. Decisions regarding individual educational program plan:

a. in deciding if the proposed action is to be sustained, in whole or part, the educational needs of the student 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;

b. the hearing officer shall sustain the individual educational program plan of the state residential schools upon a showing by the state residential schools by a preponderance of evidence that the student's individual educational program plan represents educational services appropriate to the student's educational needs in the least restrictive alternative. This decision shall be made in accordance with the principle at least restrictive alternatives; and

4. Decisions regarding transfer:

The hearing officer shall sustain the decision to transfer the student from placement at the state residential schools upon a showing by the state residential schools by a preponderance of evidence that the appropriate program for the student in the least restrictive alternative is no longer placement at the state residential schools.

5. All 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 on the basis and reason for the decision;

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

c. be based on the standards and principles set forth in Minn. Stat. § 120.17, subd. 3a., and 5 MCAR § 1.0138 G.; and

d. be binding on all parties.

6. All decisions shall be filed with the commissioner of education and shall be sent by mail to the parties.

G. Effective date of the action and appeals.

1. The decision of the hearing officer shall be binding on all parties and shall become effective 30 days after service of the decision unless the decision is appealed in a civil action.

2. The hearing officer may grant specific extensions of time beyond the 45 day period set out in these rules at the request of any party provided that no extension may be granted for the filing of a civil action.

EDU-80-004-PE

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE BOARD OF EDUCATION

In the Matter of the Proposed Adoption of Rules of the State Board of Education Governing the Requirements and Procedures for Student Admission to, Program and Evaluation During Attendance at, and Transfer from the State Residential Schools for Deaf, Blind, and Multiply Handicapped Sensory Impaired Students 5 MCAR §§ 1.0133 - 1.0138.

REPORT OF THE HEARING EXAMINER

The above-entitled matter came on for hearing before Hearing Examiner Peter C. Erickson of the State Office of Hearing Examiners at 9:00 a.m. on Wednesday, April 23, 1980, in the Huckleberry Inn, Faribault, Minnesota.

Charles Mottl, Special Assistant Attorney General, appeared as counsel for the Board of Education. Mary Lynne McAlonie, manager of special programs; Jeanne Dorle, assistant director of special education; Melvin Brasel, residential schools administrator; and Robert Wedl, manager of the Office of Monitoring, appeared and testified on behalf of the Board of Education in support of the proposed rules. The hearing continued until all interested groups or persons had had an opportunity to be heard concerning the adoption of the proposed rules.

Pursuant to Minn. Stat. § 15.0412, subd. 4 (1978), this Report shall be available for review to all affected individuals upon request for at least five days. Thereafter, the Board of Education shall, if it proposes to adopt the rules as originally proposed or amended, submit a copy of the Order Adopting Rules, a copy of any additional agency findings, a copy of the rules as originally proposed, and a copy of the rules as adopted to the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.052, subd. 4 (1978). The submission to the Chief Hearing Examiner shall precede review by the Attorney General. The Chief Hearing Examiner shall complete his review and submit his report to the Board on the issues of substantial changes in the rule and compliance with Minn. Stat. § 15.0412 (1978) within ten calendar days. The Board will be responsible for filing the rules with the Attorney General and for notifying persons who have indicated that they wish to be notified of such filing.

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

FINDINGS OF FACT

1. On January 23, 1980, the Board filed the following documents with the Chief Hearing Examiner:

(a) A copy of the proposed rules.
(b) The Order for Hearing proposed to be issued.
(c) The Notice of Hearing proposed to be issued.
(d) A Statement of the number of persons expected to attend the hearing and estimated length of the Agency's presentation.

2. On March 10, 1980, a Notice of Hearing and a copy of the proposed rules were published at 4 State Register 1448.

3. On March 13, 1980, the Board mailed the Notice of Hearing to all persons and associations who had registered their names with the Secretary of State for the purpose of receiving such notice.

4. On March 28, 1980, the Board filed the following documents:

(a) The Order for Hearing and authorizing resolution.
(b) The Notice of Hearing as mailed.
(c) The Affidavit of Receipt of the Secretary of State's list.
(d) The Affidavit of Mailing the Notice to all persons on the Secretary of State's list.
(e) The Secretary of State's Certificate and list.
(f) The Statement of Need and Reasonableness.
(g) All materials received following a Notice of Intent to Solicit Outside Opinion published at 2 State Register 1429 (January 30, 1978), and 2 State Register 2102 (May 22, 1978)
(h) The names of Board personnel who will represent the Agency at the hearing together with the names of any other witnesses solicited by the Agency to appear on its behalf.

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

5. The record remained open through May 13, 1980 for the receipt of written comments and statements, the period having been extended by order of the Hearing Examiner to 20 calendar days following the hearing.

6. Statutory authority to promulgate the proposed rules is contained in Minn. Stat. § 128A.02, subd. 6, as amended by Laws of 1979, Ch. 339, Art. III, § 17.

7. At hearing, the Department made the following clerical amendments to the proposed rules:

5 MCAR § 1.0133 (page 3 of Rule)

B.3. should include a statutory reference to Minn. Stat. § 120.17, subd. 7.a., which applies directly to the resident district of a handicapped student in attendance at the state residential schools. The statutory reference should read ". . . as provided in Minn. Stat. § 120.17, subds. 6., 7.a., and 8.a." This addition is a correction of an omission and does not affect the substantive meaning of this rule.

5 MCAR § 1.0134 (page 6 of Rule)

B.5.e. The reference to EDU 120 B. should be narrowed by the addition of the number 16, to read, ". . . pursuant to EDU 120 B.16 (5 MCAR § 1.0120 B.16) and recognized professional standards; . . ." This addition is included to clarify the reference. The correction does not affect the substantive meaning of the rule, but is included to correct an omission.

5 MCAR § 1.0135 (page 13 of Rule)

D. The two sentences should be combined to complete the thought and the period should be replaced by a comma. The change shall read, ". . . can not be developed by the state residential schools, the state residential schools shall . . ." This change reflects a correction in grammar but does not substantively affect the rule.

5 MCAR § 1.0137 (page 17 of Rule)

B.4. The statement shall read, ". . . inform the parent if the proposed action is to admit the student pursuant to the parent's written consent of the proposed individual educational program plan, and agreement has not been reached in conciliation conference. . ." This correction has been made to correct the omission

of this phrase which clarifies the section, but is not meant to substantively affect the meaning of the rule.

5 MCAR § 1.0138 (page 18 of Rule)

B.2.b. This statement should read, ". . . that they will receive notice of time, date and place, of the hearing 14 days in advance of the hearing . . ." This correction is necessary to ensure consistency with the time period set out in Chapter 7, which has been modified to meet the definition of calendar days used throughout this set of rules. This change has been made to correct an error and does not affect the substantive meaning of this rule.

This Report will discuss the proposed rules as amended above.

8. The 1978 Minnesota State Legislaturae enacted Minn. Stat. Ch. 128A transferring the control, management and administration of the Minnesota School for the Deaf, and the Minnesota Braille and Sight Saving School, defined in the proposed rules as the state residential schools, from the Department of Public Welfare to the jurisdiction of the State Board of Education. This transfer of authority was intended to ensure that the two state residential schools, which provide a level six special education placement option for hearing impaired and visually handicapped students, were integrated with the special education services provided by school districts throughout Minnesota and that the same procedures and procedural safeguards are applied to the students in attendance at the schools that are applied to all handicapped students in Minnesota. EDU 120-129 (5 MCAR §§ 1.0120 - 1.0129) govern those procedures and safeguards which are currently in effect for handicapped students.

Minn. Stat. § 128A.02, subd. 2 (Supp. 1977), authorizes the State Board of Education to promulgate rules relating to the ". . . operation of both schools and the individuals in attendance." Minn. Stat. § 128.02, subd. 6 (1978) mandates that such rules address (1) admission to and discharge from the schools; (2) decisions on a child's program at the schools; (3) evaluation of children enrolled in the schools; and (4) procedural safeguards to protect student and parent rights. In addition, Federal Law (P.L. 94-142), the Education of All Handicapped Children Act, and Minn. Stat. § 120.17 mandate a free appropriate public education for all handicapped children in Minnesota and set out requirements and procedural safeguards that shall be met. The proposed rules have been developed to be in compliance with Minn. Stat. § 120.17 and P.L. 94-142 and to be consistent with EDU 120-129 (5 MCAR §§ 1.0120-1.0129).

9. Proposed 5 MCAR § 1.0133, Definitions, incorporates by reference eight definitions contained in Edu 120 B. (5 MCAR § 1.0120 B.) and defines twelve other terms which apply more specifically to the residential school framework.

a. Marge Goldberg, co-director of the Parents' Advocacy Coalition for Educational Rights (P.A.C.E.R.), and Marie Saunders each suggested that the responsibility of the home school district to pay transportation costs to residential schools should be clarified in the rules. The Board responded as follows:

The Department supports this recommendation and suggests the following modification through a note attached to the definition of a "resident school district", 5 MCAR 1.0133 B.3. This note, for informational purposes but not to be part of the rule, should read: Transportation costs, between the child's resident district and the state residential schools, shall be borne by the child's resident district as specified in Minn. Stat.

128A.07 which requires that, ". . . the school district of residence shall be liable for the actual transportation of the pupil to and from the school in which he is a pupil."

Inclusion of a "note" in the rule, as the Board suggests above, is inappropriate. Any clarification of the payment of transportation costs must be in rule form. The Department could simply add a sentence to 5 MCAR § 1.0133 B.3. which would read:

complied p.1

> The cost of transporting the student to and from the state residential school shall be borne by the student's resident district as provided in Minn. Stat. § 128A.07.

b. The Minnesota State Council for the Handicapped suggested that the definition of "serve" or "service" should require "in-hand delivery or receipt of a certified letter." The Board stated that it has followed the definition of "service" as set out in the Minnesota Rules of Civil Procedure which requires only mailing. Additionally, other procedures in the proposed rules ensure that parents are adequately notified regarding decisions on their child's education program. See 5 MCAR §§ 1.0134 C.3., 1.0135 C.3., 1.0134 B.4. and 1.0135 D.3.

no change p.2

c. The Examiner finds that proposed 5 MCAR § 1.0133 is both needed and reasonable. An amendment as set forth in paragraph a. above would be appropriate if the Board so chooses.

10. Proposed 5 MCAR § 1.0134, Admission Procedures, details all the procedural steps which must be taken by the resident school district to secure the admission of a student into a state residential school. These steps include the possible denial of acceptance by the resident school administrator and the right of a parent to contest that denial.

a. The Council for the Handicapped and P.A.C.E.R. suggested that 5 MCAR §§ 1.0134 B.3.c. and 1.0135 D.1. should be amended to ensure that the language of those sections does not limit the parents' ability to include participants of his/her own choosing at a team meeting. The Department concurred in that suggestion and proposed that the sections be amended by adding the following language:

added p.4 and p.9

> This statement shall not be read to limit the parents' right to include participants, other than the school's employees, of his/her own choosing at the scheduled meeting.

b. Robert I. Harris, Ph.D., suggested that a school psychologist should be a required participant on the admission and transfer team. The Department stated that the composition of the team is consistent with the team membership set forth in 5 MCAR § 1.0125 A.1. The rule provides that the choice of team members is left to the determination of the residential school administrator.

c. The Examiner finds that proposed 5 MCAR § 1.0134, as amended in paragraph a. above, is both needed and reasonable. Other proposals for rule amendments submitted by P.A.C.E.R. and the Council for the Handicapped were considered by the Department but rejected in posthearing comments.

11. Proposed 5 MCAR § 1.0135, Periodic Review, Reassessment and Transfer Procedures, sets forth requirements for review of the individual education program (IEP), and reassessment of each student, transfer standards and policies, and requirements for staff team meetings with notice to parents when admission or transfer decisions are made.

a. The Council for the Handicapped commented that the "school administrator should not have unilateral power to decide whether an assessment or reassessment was 'recent and adequate'" as provided in 5 MCAR § 1.0135 B.3. The Department stated that:

> The state residential schools must be given the discretion to exercise professional judgement and the responsibility to deny a reassessment if the decision to deny the reassessment is based on the fact that a recent and adequate reassessment has been performed. This assures that unnecessary and duplicative reassessments are not performed; this is intended to prevent undue delay in service to the student and unnecessary cost to the state. The parent is provided with procedural safeguards if they question the state residential schools' decision not to reassess, including the availability of a conciliation conference and due process hearing.

b. The Examiner finds that proposed 5 MCAR § 1.0135 is both needed and reasonable.

12. Proposed 5 MCAR § 1.0136, Formal Notices to Parents, incorporates the provisions of Edu 127 A. (5 MCAR § 1.0127 A.) for consistency and details notice requirements for parents and the resident school district: (a) prior to admission meetings; (b) when a student is admitted pursuant to the parents' written approval; (c) when the student is denied admission; (d) prior to assessment, reassessment or IEP modifications; (e) prior to transfer; and (f) placement decisions regarding the student. These notice requirements are designed to comply with the mandates of federal law and Minn. Stat. § 120.17.

a. P.A.C.E.R. suggested that 5 MCAR § 1.0136 C.9. be amended by adding a statement to read: and that at his/her request, the results of this independent assessment shall be included for the development or revision of the student's individual educational program plan. This statement would clarify the intended use of the independent assessment. The Department concurred in and supports this amendment.

b. The Council for the Handicapped recommended that certain language changes be made to comply with the definitions of "serve" and "service". The Department supports changing the word "sent" to serve in 5 MCAR § 1.0136 A. and B. for consistency but stated that other proposed changes were inappropriate.

c. The Council for the Handicapped suggested that the rules mandate that a qualified interpreter be provided for any party upon request. The Department stated that, if needed, an interpreter would be provided by the residential school and that Chapter 579 of 1980 Laws establishes this right. Although the rule cannot be found to be unreasonable because of the inadequacy alleged by the Council, the Examiner suggests that an "interpreter provision" be included in the rule to put parties on notice of the availability of that service.

d. A concern was expressed regarding the provision of information to parents about procedures and rights available under the proposed rules. The Department stated that copies of the rules will be available to parents upon the receipt of a student's application for admission and that all rights are also included within the required notices sent to parents.

e. The Examiner finds that proposed 5 MCAR § 1.0136, as amended in paragraph a. and b. above, is both needed and reasonable.

13. Proposed 5 MCAR § 1.0137, Conciliation Conference, establishes the requirements for a conciliation conference between the state residential schools and the parent. The rule states the circumstances which mandate that a conference be held and the responsibility of the school to inform the parents of the proposed action and parental rights within seven days of the conference. The Examiner finds that proposed 5 MCAR § 1.0137 is both needed and reasonable.

14. Proposed 5 MCAR § 1.0138, The Hearing, sets forth all procedural hearing requirements including the right to initiate a hearing, notice requirements, who may serve as a hearing officer, the type of decision to be rendered and appeal procedures.

a. Several comments were received which objected to the rule provisions which require that parents pay for the cost of a transcript if the Hearing Officer's decision is appealed. Additionally, that the language regarding transcript cost contained in 5 MCAR §§ 1.0138 B.2.e. and C.3. is inconsistent. The Department proposed the following amendment to § 1.0138 B.2.e:

> A record shall be kept of the hearing and a copy of the transcribed record shall be available to the parent upon request at the cost of the copy.

p. 18.

b. As amended above, the Examiner finds that proposed 5 MCAR § 1.0138 is both needed and reasonable. An "interpreter provision" may also be appropriate in this rule regarding hearing procedures and rights.

15. Barbara Nelson, Advocate for the Blind, commented extensively regarding procedural problems with the transfer of a student from a state residential facility to a placement in a less restrictive setting. Ms. Nelson suggests that parents should be specifically informed that they have the opportunity to object to continued placement at the residential school at each time they are given the opportunity to object to a proposed IEP. The Department responded to these concerns as follows:

> These proposed rules reflect the policy of placement in the least restrictive alternative; they are designed to ensure a student is served in an appropriate placement in the least restrictive alternative. These proposed rules require annual and periodic reviews to be made of a student's progress. The results of these reviews are sent to the parent and the resident district. 5 MCAR 1.0135 A.5. ensures that these results contain information which informs the parent how to request a conference for the review of a child's program plan. These provisions are included to ensure that when a parent feels placement is inappropriate he/she may object. These proposed rules require that reassessments (5 MCAR 1.0135 B.) be conducted to ensure that the placement is in the least restrictive alternative. Such reassessment serves as the basis for the state residential schools' recommendation to transfer. A reassessment may be requested by the parent if placement at the state residential schools is no longer appropriate in the least restrictive alternative. The resident district receives notice of all hearings between the state residential schools and a parent and is notified whenever a child's application is withdrawn, a child is denied admission, the parent removes the child from placement or the child's placement is changed through graduation or reaching the age of 21. The Department believes through the scheduled reviews and scheduled or requested reassessments proposed in these rules, adequate safeguards are provided to ensure placement in the least restrictive alternative.

16. This Report does not address all of the issues raised in either oral testimony or written comments concerning the proposed rules. All testimony

and comments do remain a part of this record and should be reviewed by the Department prior to final action on the proposed rules.

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

CONCLUSIONS

1. Due, timely and adequate legal notice of the hearing was properly given by the Department of Education. All substantive and procedural requirements of law or rule have been met.

2. The Department has documented its statutory authority to promulgate the proposed rules.

3. The Department has demonstrated the need for and reasonableness of the proposed rules, as amended herein, by an affirmative presentation of facts.

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

RECOMMENDATION

That the Department of Education adopt the proposed rules as amended herein.

Dated this 28 day of May, 1980.

Peter C. Erickson

PETER C. ERICKSON
Hearing Examiner

Changes in the Proposed Rules

Chapter Seven-A: Requirements and Procedures for Student Admission to, Program and Evaluation During Attendance at, and Transfer from the State Residential Schools for Deaf, Blind, and Multiply Handicapped Sensory Impaired Students

5 MCAR § 1.0133 Definitions. The following terms used throughout these rules shall have the following meanings ascribed to them.

A. The definitions of these terms shall be as stated in EDU 120 B. (5 MCAR § 1.0120 B.)

1. Special education services;

2. Handicapped persons;

3. Least restrictive alternatives;

4. Recognized professional standards;

5. Proposed action;

6. Nondiscrimination;

7. Formal educational assessment; and

8. Individual educational program plan.

B. In addition, these terms shall have the following meanings ascribed to them.

1. "State residential schools" as used in these rules shall mean either or both the Minnesota school for the deaf and the Minnesota braille and sight saving school, which are operated by the state board of education pursuant to Minn. Stat. ch. 128A.

2. "Residential schools' administrator" shall mean the administrator of the Minnesota state residential schools as defined in Minn. Stat. § 128A.02., subd. 3., or his/her designee.

3. "Resident school district", also referred to as "district," shall mean the district where the handicapped student's parent or legal guardian resides or the district designated by the commissioner as provided in Minn. Stat. § 120.17, subd. 6, ~~and 8a~~ 7.a., and 8.a. The cost of transporting the student to and from the state residential school shall be borne by the student's resident district as provided in Minn. Stat. § 128A.07.

addition per HE 9a

4. "Admit" shall mean the action taken by the state residential schools in accepting the placement of a student and agreeing to provide appropriate educational services to the student.

5. "Transfer" shall mean the action taken by the state residential schools in dismissing a student from placement and the termination of the responsibility for providing the appropriate educational services to the student.

6. "Periodic review" as used in these rules shall mean a review which shall be conducted by the state residential schools, at least twice a year, to determine the appropriateness of a student's individual education plan and if appropriate, revise its provisions.

7. "Annual review" as used in these rules shall mean a review which shall be conducted by the state residential schools and reviewed at a formal meeting. The review shall be held at least once a year to examine a student's individual education program and if appropriate, revise its provisions. This may be counted as one of the required periodic reviews during the year in which it is conducted.

8. "Admission and transfer team" as referred to in these rules shall mean the individuals who are required to participate in a formal meeting to develop, review or revise a handicapped student's individual education program and/or to determine whether to admit or transfer the student to or from the state residential schools.

9. "Formal notice" as used in these rules shall mean a written statement served upon the student's parent or guardian so as to fulfill the requirements of procedural safeguards.

10. "Serve" or "service" as used in these rules shall mean the in hand delivery or the first class mailing to the last known address of a written notice. Service by mail is complete upon mailing.

11. "Parent" shall mean a parent, a guardian, a person acting as a parent of a child, or a legally appointed guardian. The term does not include the state if the child is a ward of the state.

12. "Days" shall mean calendar days between the official beginning and ending dates of the school year at the state residential schools. All procedures relating to but not limited to assessments, reassessments, individual education program plans, periodic reviews, conciliation conferences and hearings that are initiated for a student in placement at the state residential schools before the end of the school year, must be completed within the required time period, even if that time period extends beyond the end of the official school year. In addition, applications for admission shall be processed in accordance with 5 MCAR § 1.0134 at any time during the year, even if these procedures extend beyond the end of the official school year.

5 MCAR § 1.0134 Admission procedures.

A. Referral and application.

1. Application for admission shall be made by the resident school district, hereinafter also referred to as the district, to the state residential schools' administrator on the appropriate forms provided by the commissioner and may be made at any time during the calendar year.

2. Prior to application for admission, the district shall have completed for each student for whom admission is sought, the following procedures as established by EDU 124-129 (5 MCAR §§ 1.0124-1.0129);

a. a formal educational assessment consistent with the provisions of EDU 124 (5 MCAR § 1.0124) shall have been conducted and the special education needs of the pupil determined;

b. a student staffing consistent with the provisions of EDU 125 (5 MCAR § 1.0125) shall have been conducted;

c. a review of the student's current level of performance and the determination of the special education service needs shall have been made and the district shall have developed a statement of annual goals and objectives for the student. The district shall have reviewed the programs and services available to the district and shall have stated reasons why an appropriate education in the least restrictive alternative cannot be provided or reasonably made available by the district; and

d. the parent and the district shall:

(1) have agreed that the district is unable to provide an appropriate program and that a referral for placement at the state residential schools is appropriate; or

(2) if the parent and district do not agree that a referral to the state residential schools is appropriate, a local due process hearing pursuant to EDU 129 (5 MCAR § 1.0129) shall have been held. Before the state residential schools shall consider the student for admission, the decision, resulting from the hearing process must be that the resident school district is unable to provide an appropriate program and that a referral for admission to the state residential schools is appropriate.

B. Referral, review and admission meeting.

1. Within seven days of receipt of a referral for admission, the residential schools' administrator shall:

a. review the referral information and determine whether additional assessment or other information is needed.

b. request in writing from the district any additional information that is needed.

2. The residential schools' administrator shall:

a. schedule the team meeting which shall be conducted within 30 days of receipt of complete referral information pursuant to 5 MCAR § 1.0134 A.2. and at a time that is mutually acceptable to the state residential schools and the parent; and,

b. serve a written notice of the team meeting to the parent and the district in accordance with the provisions of 5 MCAR § 1.0136 prior to conducting the admission meeting.

3. To determine whether an appropriate individual educational program plan can be developed by the state residential schools to appropriately meet the educational needs of the student in the least restrictive alternative, the state residential schools' administrator shall:

a. appoint participants from the state residential schools' staff to serve on the admission and transfer team. The team shall include at a minimum an administrator of the appropriate education program or his/her designee, an administrator of the appropriate residential program or his/her designee, one appropriate teaching staff person, and other related services staff persons as deemed appropriate by the state residential schools' administrator.

b. schedule an admission and transfer team meeting which shall include the state residential schools' required participants, the parent, the student if appropriate, and other persons as deemed appropriate by the residential schools' administrator and may include a representative of the resident school district if the district chooses to participate.

c. upon request of the parent, determine whether it is appropriate to involve additional state schools' staff on the admission and transfer team; and whether it is appropriate to include someone who is a member of the same minority, or cultural background or who is knowledgeable concerning the racial, cultural or handicapping differences of the student. <u>This statement shall not be read to limit the parent's right to include participants, other than the schools' employees, of his/her own choosing at the scheduled meeting.</u> addition HE 10a

4. If the parent cannot attend the admission meeting:

a. the state residential schools' administrator shall use and document other methods to ensure parent participation including individual or conference telephone calls; and

b. an admission ~~staffing~~ <u>meeting</u> shall be conducted without a parent in attendance if the residential schools' administrator is unable to convince the parent to attend. FofF VIII A

5. The admission and transfer team shall determine whether placement at the state residential schools will appropriately meet the educational needs of the student in the least restrictive alternative. This determination shall be based on:

a. the complete referral information;

b. any additional information supplied by the parent;

c. other relevant information and reports;

d. the record of the decision of the student's resident school district pursuant to Minn. Stat. § 120.17, subd. 3 b. and Minn. Stat. § 128A.05, subd. 1 and 2;

e. interpretation of the data in accordance with the requirements of nondiscrimination pursuant to EDU 120 B.16. (5 MCAR § 1.0120 B.16.) and recognized professional standards; and

f. the team's development of an appropriate individual educational program plan, or the team's determination that an appropriate individual educational program plan cannot be developed by the state residential schools.

C. Admission procedures and development of program.

1. The admission and transfer team shall recommend to the state residential schools' administrator that:

a. the state residential schools can appropriately meet the educational needs of the student in the least restrictive alternative and that the student be admitted pursuant to the parent's written approval of the team's proposed individual educational program plan; or

b. the state residential schools cannot appropriately meet the educational needs of the student as the least restrictive alternative and that the student not be admitted to the state residential schools, based upon the team's determination that an appropriate individual educational program for the student at the state residential schools cannot be developed.

2. If the student is recommended to be admitted to the state residential schools, the admission and transfer team shall develop a proposed individual education program plan listing the services that the student will receive at the state residential schools.

The proposed individual educational program plan shall be prepared in writing; be based on the assessment data, the district's statement of goals and objectives, and other appropriate information; be consistent with the requirement of nondiscrimination and the principle of the least restrictive alternative; and shall include:

a. the names of the persons on the team;

b. a description of the education service needs of the student as determined by the team;

c. a statement of annual goals and periodic review objectives for the education services to be provided including the criteria for attainment of the objectives;

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

e. the reasons for the type of education program including type of services to be provided, the location, amount of time, starting date, anticipated duration of services, and the names and school telephone numbers of those personnel responsible for providing the services. In accordance with the principle of least restrictive alternatives, the proposed action shall be substantiated as the most appropriate in terms of the students' educational needs;

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

g. a description of any activities in which the student will participate in environments which include nonhandicapped students.

3. Based upon the recommendations of the admission and transfer team admission meeting, the state residential schools' administrator shall:

a. admit the student to the state residential schools pursuant to the parent's written approval of the individual educational program plan; or

b. deny the student admission to the state residential schools; and

c. provide formal notice to the parent and to the district of the determination to admit or to deny admission in accordance with the provisions of 5 MCAR § 1.0136. The notice shall be served within 14 days of the admission and transfer team admission meeting.

4. If the determination is to admit the student pursuant to the parent's written approval of the individual educational program plan, the initial notice shall include the proposed individual educational program plan and shall state that the parent shall agree in writing to this individual educational program plan.

5. If the parent does not give written approval to the individual educational program plan within 14 days after service of the notice, the state residential schools' administrator shall arrange for a conciliation conference pursuant to 5 MCAR § 1.0137 A.2.

6. If the parent continues to object to the proposed individual educational program plan, the parent may initiate an impartial due process hearing in accordance with 5 MCAR § 1.0138.

7. If within 30 days after serving the formal notice which shall include the proposed individual educational program plan, no response or objection is obtained from the parent, or if agreement has not been reached in conciliation conference and no hearing is requested in accordance with 5 MCAR § 1.0138, efforts to reach the parent shall be documented, and the state residential schools' administrator shall serve the parent and the resident school district written notice stating that effective the date of the notice the student shall not be admitted to the state residential schools under the current application for admission procedure. This action shall not be interpreted to mean that application for admission of the same student cannot be made at a future date if such application is deemed appropriate by the parent and the resident school district in accordance with procedures as established by EDU 124-129 (5 MCAR §§ 1.0124-1.0129).

8. If the determination is to deny the student admission to the state residential schools, the residential schools' administrator shall send a formal notice to the parent and the resident district which shall inform them of the decision to deny admission based upon the schools' determination that an appropriate individual educational program plan cannot be developed by the state residential schools.

9. If the parent objects to the action to deny admission, the state residential schools' administrator shall arrange for a conciliation conference pursuant to 5 MCAR § 1.0137 A.2.

10. If the parent continues to object to the action to deny admission, the parent may initiate an impartial due process hearing in accordance with 5 MCAR § 1.0138.

5 MCAR § 1.0135 Periodic review, reassessment and transfer procedures.

A. Periodic review and annual review.

1. The state residential schools shall conduct periodic reviews of the individual education program plan and shall determine:

a. the degree to which the goals and objectives as identified in the educational program plan are being achieved;

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

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

2. There shall be at a minimum one periodic review and one annual review each year; the initial periodic review shall be made at the time specified in the program plan.

3. Periodic reviews shall be made by those persons directly responsible for implementing the educational program and by other designees of the state residential schools as may be needed to insure an informed and adequate review.

4. The annual review shall be an admission and transfer team meeting held to review a student's individual educational program plan and if appropriate revise its provisions.

5. The results of periodic reviews and annual reviews shall be included in the student's school records and a copy sent to the parent and to the district. This copy shall inform the parent that he/she may request a conference to review the student's program plan at any time and the procedure to do so.

6. The reviews shall be conducted in accordance with the requirements for nondiscrimination pursuant to EDU 120 B. (5 MCAR § 1.0120 B.) and recognized professional standards.

B. Reassessment.

1. The state residential schools shall conduct an educational reassessment according to the procedures specified for formal educational assessments in EDU 124 B. (5 MCAR §1.0124 B.) at least once every two years. In the year that the reassessment is conducted the meeting following the reassessment may meet the requirement for one of the two reviews required pursuant to 5 MCAR § 1.0135 A.

2. A reassessment shall be conducted before the state residential schools propose a transfer from the schools.

3. A reassessment may be conducted at parent request, unless the state residential schools determine that there has been a recent and adequate assessment or reassessment.

C. Transfer.

1. The admission and transfer team shall recommend to the state residential schools' administrator that a student be dismissed from placement at the state residential schools when it has been determined that the appropriate program for the student in the least restrictive alternative is no longer placement at the state residential schools.

2. This determination shall be made based upon the results of an educational reassessment.

3. Based upon the recommendations of the admission and transfer team staffing, the state residential schools' administrator shall:

a. dismiss the student from placement at the state residential schools pursuant to the parent's written consent to this proposed action; and

b. provide written notice of the determination to transfer the student from placement at the state residential schools to the parent and the resident school district in accordance with the provisions of 5 MCAR § 1.0136 within 14 days of the admission and transfer team staffing. The notice shall state that no such change shall be made without written parental consent.

c. If the parent does not give written consent to the transfer of the student from educational placement at the state residential schools within 14 days after service of the notice, the state residential schools' administrator shall arrange for a conciliation conference pursuant to 5 MCAR § 1.0137 A.2.

d. if the parent continues to object to the proposed action, the parent may initiate an impartial due process hearing in accordance with the provisions of 5 MCAR § 1.0138; or

e. if the parent continues to refuse to provide written consent to the transfer, but does not initiate a due process hearing, the state residential school shall schedule a due process hearing in accordance with 5 MCAR § 1.0138.

D. Admission and transfer team meeting.

1. A meeting which shall include the required state residential schools participants, the parent, the student if appropriate, and may include a representative of the resident school district and other persons as deemed appropriate by the residential schools' administrator shall be conducted: This statement shall not be read to limit the parent's right to include participants, other than the schools' employees, of his/her own choosing at the scheduled meeting. added-HE 10a

a. to develop a recommendation regarding a student's application for admission.

b. to develop a current individual educational program plan for each student in attendance;

c. to review the results of the required biennial reassessment or to review the results of reassessment that may be conducted in addition to the required biennial reassessment;

d. prior to the state residential schools proposing the transfer of a student from educational placement at the state residential schools based upon reassessment data and the determination that the appropriate program in the least restrictive alternative is not available at the state residential schools; and

e. to review the results of a reassessment within 30 days after the expiration of the period allowed for parental response, unless the parent objects to the reassessment through the procedures provided in these rules.

2. Formal notice in accordance with the provisions of 5 MCAR § 1.0136 shall be provided to the parent and the district 14 days prior to conducting an admission and transfer team meeting.

3. If the parent cannot attend the admission and transfer team meeting:

a. the state residential schools' administrator shall use and document other methods to ensure parent participation including individual or conference telephone calls; and

b. an admission and transfer team meeting shall be conducted without the parent in attendance if the residential schools' administrator is unable to convince the parent to attend.

5 MCAR § 1.0136 Formal notices to parents.

A. The provisions of EDU 127 A. (5 MCAR § 1.0127 A.) shall apply to formal notices ~~sent to~~ served on parents of students enrolled at the state residential schools. HE 12b

B. Prior to the admission meeting, pursuant to 5 MCAR § 1.0134 B. the state residential schools shall prepare and ~~send a~~ serve a formal notice ~~to~~ on the parent and the resident school district which shall: HE 12b

1. include the reasons for the meeting and the persons who have been asked to be in attendance;

2. inform the parent of his/her right to request and receive copies of all records or other written information that is in the state residential schools' possession regarding his/her child;

3. inform the parent of his/her right and the procedure and time to participate in developing his/her child's education program, and/or to provide information relative to the child's assessment and the development of the program plan;

4. inform the parent of his/her right and the procedure and time to request and to receive interpretations of assessment or reassessment procedures, instruments and data or results from a knowledgeable state residential schools' employee, and for that conference to be held in private;

5. inform the parent of his/her right and the procedure and time to include such person(s) described in EDU 125 A. (5 MCAR § 1.0125 A.), including a person who is a member of the same minority, or cultural background or who is knowledgeable concerning the racial, cultural, or handicapping differences of the student, on the team that interprets the assessment data and/or develops the individual education program plan; and

6. inform the parent that the state residential schools shall proceed with the admission and transfer team meeting in order to consider the student's application for admission unless the parent objects in writing on the response form within 14 days after service of the notice.

7. include a response form on which the parent may indicate his/her objection to the proposed admission and transfer team meeting and which identifies the designee of the state residential schools to whom the response form should be mailed or given and to whom questions may be directed.

8. state that if the parent objects in writing to the admission meeting, the state residential schools shall consider that the student's application for admission to the state residential schools has been withdrawn by the parent effective on the date of the signing of the objection response form; and

9. inform the parent that if the student's application is withdrawn, the decision regarding the placement of the student shall be determined by the parent and the resident school district in accordance with EDU 120-129 (5 MCAR §§ 1.0120-1.0129).

C. When the state residential schools propose to admit a student pursuant to the parent's written approval of the proposed individual educational program plan, the state residential schools shall prepare and serve a formal notice which shall:

1. include a copy of the student's proposed individual educational program plan as described in § 1.0134 C.3.;

2. inform the parents of his/her right and time and procedure to request and to receive interpretation of the educational program plan from a knowledgeable school employee and for that conference to be held in private;

3. state that the parent's written consent shall be given to the individual educational program plan and the signed plan shall be returned to the state residential schools' administrator within 14 days of receipt of the notice if the student is to be admitted to the state residential schools;

4. state that the student shall be admitted to the state residential schools upon receipt by the state residential schools' administrator of the individual educational program plan with the parent's signature affixed;

5. inform the parent that the state residential schools shall not proceed to admit the student without the written consent of the parent to the proposed individual educational program plan;

6. inform the parent that if he/she objects to the proposed individual educational program plan that a conciliation conference pursuant to 5 MCAR § 1.0137 shall be held at a mutually convenient time;

7. inform the parent that if he/she objects to the educational plan during or after the initial conciliation conference, he/she has a right to initiate an impartial due process hearing in accordance with procedures set forth in 5 MCAR § 1.0138;

8. inform the parent that he/she has the right to be represented by counsel or another person of their choosing at the conciliation conference or the impartial due process hearing;

9. inform the parent that he/she may obtain an independent educational assessment at his/her own expense; and <u>that at his/her request, the results of this independent assessment shall be considered in the development of an appropriate educational program for the student.</u> HE 12a

10. include a response form on which the parent may indicate his/her objection to the proposed individual educational program plan and identify the designee of the state residential schools to whom the response form should be mailed or given and to whom questions should be directed.

D. When the state residential schools deny a student admission to placement at the state residential schools based on the school's determination that an appropriate individual educational program plan cannot be developed by the state residential schools, the state residential schools shall prepare and serve a formal notice which shall: HE 7

1. state that based on the admission and transfer team's review of the student's complete referral information, and the school's determination that an appropriate individual program plan cannot be developed by the state residential schools, the team's recommendation is that placement at the state residential schools cannot appropriately meet the educational needs of the student in the least restrictive alternative and the student is denied admission;

2. inform the parent that if he/she objects to the action of the state residential schools to deny admission, a conciliation conference pursuant to 5 MCAR § 1.0137 shall be held; and

3. inform the parent that if he/she objects to the action to deny admission during or after the initial conciliation conference, he/she has the right to initiate an impartial due process hearing in accordance with the procedures set forth in 5 MCAR § 1.0138.

E. Prior to conducting an assessment or reassessment, refusing to conduct an assessment or reassessment, initiating a significant change in or refusing to make a significant change in a state residential schools' student's individual educational program plan, the state residential schools shall prepare and serve a formal notice which shall:

1. if the proposed action pertains to assessment or reassessment, include the reasons for assessment or the refusal to assess, how the results may be used if the assessment is conducted, a general description of the procedures to be used, and where and by whom the assessment will be conducted;

2. include a copy of the student's current individual educational program plan;

3. inform the parent of his/her rights to review and receive copies of all records or other written information regarding his/her child in the state residential schools' possession;

4. inform the parent of his/her right and the procedure and time to request and to receive interpretations of assessment or reassessment procedures, instruments and data or results from a knowledgeable state residential schools' employee and for that conference to be held in private;

5. inform the parent of his/her right and the procedure and time for him/her to participate as a team member in developing and determining the child's educational program and/or to provide information relative to his/her assessment and the development of the educational program plan;

6. inform the parent of his/her right, the procedures, and the time within which to have included on the team that interprets the assessment data and/or develops the individual educational program plan, such person(s) as described in EDU 125 A. (5 MCAR § 1.0125 A.) including a person who is a member of the same minority, or cultural background or who is knowledgeable concerning the racial, cultural, or handicapping differences of the student;

7. inform the parent that he/she may obtain an independent assessment at his/her own expense; and that at his/her request, the results of this independent assessment shall be considered in the development of an appropriate educational program for the student. see HE 12a

8. inform the parent that the state residential schools shall proceed with the proposed action unless the parent objects on the enclosed response form or otherwise in writing within 14 days after service of the notice;

9. inform the parent that if he/she objects to the proposed assessment or reassessment or proposed change in the educational program in writing, the state residential schools' administrator shall arrange for a conciliation conference pursuant to 5 MCAR § 1.0137;

10. inform the parent that if the parent objects to the proposed action during or after the initial conciliation conference they may have an impartial due process hearing in accordance with 5 MCAR § 1.0138;

11. inform the parent that he/she has the right to be represented by counsel or another person of his/her choosing at the conciliation conference or the impartial due process hearing;

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

13. include a response form on which the parent may indicate his/her approval of or objection to the proposed action and identify the state residential schools' employee to whom the response form should be sent and to whom questions may be directed;

F. When the state residential schools propose the transfer of the student out of educational placement at the state residential schools pursuant to 5 MCAR § 1.0135 C., the state residential schools shall prepare and serve formal notice to the parent and the resident school district which shall:

1. state that based on reassessment of the student and the recommendations of an admission and transfer team meeting, the state residential schools propose to dismiss the student from placement at the state residential schools pursuant to the written consent of the parent to this proposed action;

2. inform the parent of his/her right to request and to receive copies of all records or other written information regarding his/her child in the state residential schools' possession;

3. inform the parent of his/her right and the procedure and time period within which to request and to receive interpretations of assessment or reassessment procedures, instruments and data on results from a knowledgeable state residential schools' employee and for that conference to be held in private;

4. inform the parent that he/she may obtain an independent assessment at his/her own expense; and that at his/her request, the results of this independent assessment shall be considered in the development of an appropriate educational program for the student.

5. include a response form on which the parent may indicate his/her approval of or objection to the proposed transfer from placement at the state residential schools and which states that the form shall be returned to the state residential schools' administrator within 14 days of receipt of the notice;

6. inform the parent that the state residential schools shall not proceed with the proposed transfer from placement of the student without prior written consent of the parent;

7. inform the parent that if he/she gives written consent the student shall be dismissed from placement at the state residential schools at the time specifically stated in the proposed transfer from placement;

8. inform the parent that if he/she objects to the proposed transfer from placement in writing, a conciliation conference pursuant to 5 MCAR § 1.0137 shall be held;

9. inform the parent that if he/she objects to the proposed transfer from placement during or after the initial conciliation conference, he/she has the right to initiate an impartial due process hearing in accordance with the procedures set forth in 5 MCAR § 1.0138; and

10. inform the parent that if he/she continues to refuse to provide written permission to the transfer, the state residential schools shall schedule a hearing in accordance with 5 MCAR § 1.0138;

11. state that the child's educational placement will not be changed as long as the parent objects to the proposed transfer from placement in the manner prescribed in these rules.

G. The state residential schools' administrator shall notify the district of residence whenever:

1. the parent determines that the students' application to the state residential schools is withdrawn prior to the student being admitted;

2. the student is denied admission to the state residential schools' programs;

3. the parent has removed the student from the state residential schools' program after he/she has been admitted; and

4. a student is graduated from the state residential schools or will not continue attending the school because he/she has attained the age of 21 years prior to September 1 of the next official school year.

5 MCAR § 1.0137 Conciliation conference.

A. When a conciliation conference shall occur:

1. If the parent does not object in writing to a proposed action within 14 days after service of a notice pursuant to 5 MCAR § 1.0136 and the proposed action is not admission to or transfer from the state residential schools, the proposed action shall take place. If such written objection is made, the state residential schools' administrator 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 mutually convenient to the parent and the state residential schools' representatives and shall be held within 14 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 § 1.0138 at any time after the first conciliation conference is held.

2. If the parent does not given written approval to the proposed individual educational program plan developed in accordance with 5 MCAR § 1.0134 C.3.d. within 14 days after the service of the notice, the residential schools' administrator shall arrange for a conference with the parent for the purpose of reviewing the plan and conciliating the matter. The conference shall be held at a time mutually convenient to the parent and state residential schools' representatives and shall be held within 14 days after the expiration of the 14 day period for parent response.

3. If the parent does not give written consent to the proposed transfer of the student from placement at the state residential schools in accordance with 5 MCAR § 1.0135 C. within 14 days after service of the notice pursuant to 5 MCAR § 1.0136 E., the residential schools' administrator shall arrange for a conference with the parent for the purpose of conciliating the matter. The conference shall be held at a time mutually convenient to the parent and state residential schools' representatives and shall be held within 14 days after the expiration of the 14 day period for parent response.

B. Memorandum

Within seven days of the final conciliation conference the state residential schools shall serve the parent with a written memorandum which shall:

1. inform the parent of the state residential schools' proposed action following the conference;

2. inform the parent that if he/she continues to object to the proposed action he/she has a right to an impartial due process hearing in accordance with the provisions of 5 MCAR § 1.0138 and state the procedure and time in

which to request the hearing, including a request form on which the parent may request the hearing, and the identification of the state residential schools' employee to whom the written request form or other written request for hearing is to be mailed, and to whom questions and documents or requests relating to the hearing may be directed; and

3. inform the parent that if he/she does not request a hearing on the written request form or otherwise in writing pursuant to 5 MCAR § 1.0138, within seven days after receipt of the notice, the state residential schools shall proceed with the proposed action unless the proposed action is to admit the student to or to transfer the student from placement at the state residential schools; and

4. inform the parent that if the proposed action is to admit the student pursuant to the parent's written consent of the proposed individual educational program plan, and agreement has not been reached in conciliation conference and no hearing is requested in accordance with 5 MCAR § 1.0138, efforts to reach the parent shall be documented, and the state residential schools' administrator shall serve the parent and the resident school district written notice stating that effective the date of the notice the student shall not be admitted to the state residential schools under the current application for admission procedure; HE 7

5. inform the parent that if the proposed action is transfer of the student from placement at the state residential schools, when the parent continues to refuse to provide written permission, the state residential schools shall schedule a hearing within seven days after the expiration of the seven days allowed for parent response.

5 MCAR § 1.0138 The hearing.

A. Initiation of the hearing.

A parent or the state residential schools may initiate an impartial due process hearing when either party continues to object to a proposed action and conciliation has not been achieved through one or more conciliation conferences pursuant to 5 MCAR § 1.0137. The resident school district may be party to the hearing. The decision of the hearing officer shall be rendered not more than 45 days from the date of the receipt of the request for the hearing. The hearing officer may grant specific extensions of time beyond the 45 day period at the written request of either party.

B. Notice.

1. Written notice of the time, date and place of all hearings shall be given to all parties by the state residential schools at least 14 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 seven days of receipt of the parent's written request for a hearing, the state residential schools shall serve the parties with a written notice of rights and procedures relative to the hearing which shall inform the parent:

a. that the hearing shall take place before an impartial hearing officer appointed by the commissioner;

b. that they will receive notice of time, date and place of the hearing ~~seven~~ 14 days in advance of the hearing which will be held within 30 days after the written request; change per HE7

c. of the hearing rights of the respective parties including the following:

(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 in preparation of and at the hearing. The state residential schools shall inform the parent of any free or low cost legal or relevant services available in the area.

(3) Not less than seven days prior to the hearing, the parent or his/her representative(s), as the case may be, shall be given access to all of the state residential schools' records and such other records pertaining to the child that are authorized to be disclosed, including but not limited to all tests, evaluations, assessments, reports, and other written information concerning the educational assessment or reassessment upon which the proposed action may be based.

(4) At least seven calendar days prior to the hearing the parent shall receive from the state residential schools 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 § 1.0136 or 5 MCAR § 1.0137 B. If such material allegations 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 seven 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 shall be filed with the person(s) conducting the hearing. Such lists may be modified at any time but each party shall be notified if modification occurs.

(6) All parties or their representatives, as the case may be, shall have the right to request the attendance of any employee of the state residential schools, resident school district 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 shall be made to the state residential schools, and to the person whose attendance is requested at least seven days in advance of the hearing. Such written requests shall also be filed with the hearing officer at the time of hearing.

(7) The parent shall have the right to call his/her own witnesses and to present evidence, including expert medical, psychological, and educational testimony and relevant records, tests, assessments, reports or other information.

(8) All parties shall have the right to confront and cross examine witnesses.

(9) 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 14 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.

d. that at the hearing the burden of proof is on the state residential schools to show that the proposed action is justified on the basis of the student's educational needs or his/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 shall be kept of the hearing and ~~shall be made available at cost to the parent if the decision is appealed;~~ a copy of the transcribed record shall be available to the parent, upon request, at the cost of the copy. change per HE 14a

f. that the hearing officer shall make a written decision based only on evidence received and introduced into the record at the hearing. Such decisions shall be rendered not more than 45 days from the receipt of the request for the hearing. The proposed action will be upheld only upon showing by the state residential schools of a preponderance of the evidence. A proposed action that would result in the child being removed from a 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 regular educational programs shall also be given;

g. that the decision of the hearing officer is binding on all parties;

h. that pending the decision, the student's education program shall not be changed unless the parent and the parties agree otherwise;

i. that the parent has the right to have the child present at the hearing; and

j. that the parent shall receive a copy of the hearing officer's written findings, conclusion and decision.

C. Hearing officers.

1. The hearing shall take place before an impartial hearing officer appointed by the commissioner.

2. The hearing officer shall not be a member of the state board of education, state department of education, an employee of either the student's resident school district or the state residential schools or any person with a personal or professional interest which would conflict with his objectivity at the hearing. A person who otherwise qualifies as a hearing officer is not an employee of the state solely because the person is paid by the state department of education or the state residential schools to serve as a hearing officer.

3. If a hearing officer requests an independent educational assessment of a child, the cost of the assessment shall be at state residential schools' expense. All expenses of the hearing, except for the parent's and resident school district's attorney's fees; the cost of a copy of the record of the hearing if requested by the parent; or other expenses incidental to the parent's, child's, or resident school district's participation in the hearing, shall be paid by the state residential schools.

4. The hearing officer shall be empowered to subpoena any persons or papers he/she deems necessary for an adequate review of the appropriateness of the proposed action which is the subject of the hearing.

D. Prehearing review by the hearing officer.

1. Not less than seven days prior to the hearing, the person conducting the hearing shall be mailed copies of:

a. notices and memoranda prepared by the state residential schools pursuant to 5 MCAR § 1.0137 sent to the parent;

b. written information concerning the 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. other information from the state residential schools, 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. do not apply when the hearing concerns a proposed action to assess or reassess.

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 meet with the parties together prior to the hearing;

c. may require the state residential schools to perform an additional educational assessment or reassessment;

d. may require an independent educational assessment of the student at the expense of the state residential schools;

e. may require the state residential schools to propose an alternative individual educational program plan;

f. may require the state residential schools to send additional notice to the parent;

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

h. may extend the hearing date for up to 15 days to achieve the purposes of this paragraph;

i. may grant specific extension of time beyond the 45 day period at the request of either party.

E. 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 state residential schools 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 they relate to the need 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.

5. As appropriate to the pending matter, the hearing officer shall consider evidence related to:

a. the state residential schools' decision to deny admission to the student for the purpose of providing an educational program. The state residential schools shall demonstrate by a preponderance of the evidence that based upon the schools' determination an appropriate individual educational program plan cannot be developed by the state residential schools.

b. the state residential schools' proposal to assess or reassess or refusal to assess or reassess as set forth in 5 MCAR § 1.0135 B. The state residential schools shall demonstrate by a preponderance of the evidence that the educational assessment or reassessment is justified as a step toward the possible initiation of or change in the student's educational placement or provision of services; or the state residential schools shall demonstrate by a preponderance of the evidence that refusal to assess or reassess is justified by the proximity in time, appropriateness and adequacy of the most recent assessment or reassessment.

c. the state residential schools' proposal to initiate or refusal to initiate services as set out in the student's individual educational program plan. The state residential schools shall demonstrate by a preponderance of the evidence that the proposed action is consistent with the current educational needs of the student.

d. the state residential schools' proposal to transfer the student. The state residential schools shall demonstrate by a preponderance of the evidence that the proposed transfer is consistent with the current educational needs and presenting handicapping conditions of the student.

6. The hearing officer shall sustain, modify or reject a proposed action based on consideration of all the evidence received at the hearing.

F. The decision of the hearing officer.

Not more than 45 days from the receipt of the request for a hearing, except where extensions of time have been granted and then at a time not to exceed 45 days plus the number of days added by the extensions, 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 admission.

The hearing officer shall sustain the decision to deny admission of the student to the state residential schools upon a showing by the state residential schools by a preponderance of evidence that an appropriate individual educational program plan cannot be developed by the state residential schools.

2. Decisions regarding assessment or reassessment:

a. the hearing officer shall sustain a proposed assessment or reassessment of the student as set forth in 5 MCAR § 1.0135 B. upon showing by the state residential schools by a preponderance of the evidence which demonstrates that there are facts, relating to the student's performance in his/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 student's educational placement or program, including special education services, which will provide an educational program appropriately suited to the student's needs;

b. the hearing officer shall sustain the refusal to assess or reassess upon a showing by the state residential schools by a preponderance of evidence which demonstrates that there are facts which indicate reasonable grounds to believe that there has been recent and adequate assessment or reassessment of the student by qualified professionals; and

c. 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 procedures in order to insure compliance with the requirement of nondiscrimination.

3. Decisions regarding individual educational program plan:

a. in deciding if the proposed action is to be sustained, in whole or part, the educational needs of the student 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;

b. the hearing officer shall sustain the individual educational program plan of the state residential schools upon a showing by the state residential schools by a preponderance of evidence that the student's individual educational program plan represents educational services appropriate to the student's educational needs in the least restrictive alternative. This decision shall be made in accordance with the principle at least restrictive alternatives; and

4. Decisions regarding transfer:

The hearing officer shall sustain the decision to transfer the student from placement at the state residential schools upon a showing by the state residential schools by a preponderance of evidence that the appropriate program for the student in the least restrictive alternative is no longer placement at the state residential schools.

5. All 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 on the basis and reason for the decision;

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

c. be based on the standards and principles set forth in Minn. Stat. § 120.17, subd. 3a., and 5 MCAR § 1.0138 G.; and

d. be binding on all parties.

6. All decisions shall be filed with the commissioner of education and shall be sent by mail to the parties.

G. Effective date of the action and appeals.

1. The decision of the hearing officer shall be binding on all parties and shall become effective 30 days after service of the decision unless the decision is appealed in a civil action.

2. The hearing officer may grant specific extensions of time beyond the 45 day period set out in these rules at the request of any party provided that no extension may be granted for the filing of a civil action.

Rules as Proposed (all new material)

Chapter Seven-A: Requirements and Procedures for Student Admission to, Program and Evaluation During Attendance at, and Transfer from the State Residential Schools for Deaf, Blind, and Multiply Handicapped Sensory Impaired Students

5 MCAR § 1.0133 Definitions. The following terms used throughout these rules shall have the following meanings ascribed to them.

A. The definitions of these terms shall be as stated in EDU 120 B. (5 MCAR § 1.0120 B.)

1. Special education services;

2. Handicapped persons;

3. Least restrictive alternatives;

4. Recognized professional standards;

5. Proposed action;

6. Nondiscrimination;

7. Formal educational assessment; and

8. Individual educational program plan.

B. In addition, these terms shall have the following meanings ascribed to them.

1. "State residential schools" as used in these rules shall mean either or both the Minnesota school for the deaf and the Minnesota braille and sight saving school, which are operated by the state board of education pursuant to Minn. Stat. ch. 128A.

2. "Residential schools' administrator" shall mean the administrator of the Minnesota state residential schools as defined in Minn. Stat. § 128A.02., subd. 3., or his/her designee.

3. "Resident school district", also referred to as "district," shall mean the district where the handicapped student's parent or legal guardian resides or the district designated by the commissioner as provided in Minn. Stat. § 120.17, subd. 6 and 8a.

4. "Admit" shall mean the action taken by the state residential schools in accepting the placement of a student and agreeing to provide appropriate educational services to the student.

5. "Transfer" shall mean the action taken by the state residential schools in dismissing a student from placement and the termination of the responsibility for providing the appropriate educational services to the student.

6. "Periodic review" as used in these rules shall mean a review which shall be conducted by the state residential schools, at least twice a year, to determine the appropriateness of a student's individual education plan and if appropriate, revise its provisions.

7. "Annual review" as used in these rules shall mean a review which shall be conducted by the state residential schools and reviewed at a formal meeting. The review shall be held at least once a year to examine a student's individual education program and if appropriate, revise its provisions. This may be counted as one of the required periodic reviews during the year in which it is conducted.

8. "Admission and transfer team" as referred to in these rules shall mean the individuals who are required to participate in a formal meeting to develop, review or revise a handicapped student's individual education program and/or to determine whether to admit or transfer the student to or from the state residential schools.

9. "Formal notice" as used in these rules shall mean a written statement served upon the student's parent or guardian so as to fulfill the requirements of procedural safeguards.

10. "Serve" or "service" as used in these rules shall mean the in hand delivery or the first class mailing to the last known address of a written notice. Service by mail is complete upon mailing.

11. "Parent" shall mean a parent, a guardian, a person acting as a parent of a child, or a legally appointed guardian. The term does not include the state if the child is a ward of the state.

12. "Days" shall mean calendar days between the official beginning and ending dates of the school year at the state residential schools. All procedures relating to but not limited to assessments, reassessments, individual education program plans, periodic reviews, conciliation conferences and hearings that are initiated for a student in placement at the state residential schools before the end of the school year, must be completed within the required time period, even if that time period extends beyond the end of the official school year. In addition, applications for admission shall be processed in accordance with 5 MCAR § 1.0134 at any time during the year, even if these procedures extend beyond the end of the official school year.

5 MCAR § 1.0134 Admission procedures.

A. Referral and application.

1. Application for admission shall be made by the resident school district, hereinafter also referred to as the district, to the state residential schools' administrator on the appropriate forms provided by the commissioner and may be made at any time during the calendar year.

2. Prior to application for admission, the district shall have completed for each student for whom admission is sought, the following procedures as established by EDU 124-129 (5 MCAR §§ 1.0124-1.0129);

a. a formal educational assessment consistent with the provisions of EDU 124 (5 MCAR § 1.0124) shall have been conducted and the special education needs of the pupil determined;

b. a student staffing consistent with the provisions of EDU 125 (5 MCAR § 1.0125) shall have been conducted;

c. a review of the student's current level of performance and the determination of the special education service needs shall have been made and the district shall have developed a statement of annual goals and objectives for the student. The district shall have reviewed the programs and services available to the district and shall have stated reasons why an appropriate education in the least restrictive alternative cannot be provided or reasonably made available by the district; and

d. the parent and the district shall:

(1) have agreed that the district is unable to provide an appropriate program and that a referral for placement at the state residential schools is appropriate; or

(2) if the parent and district do not agree that a referral to the state residential schools is appropriate, a local due process hearing pursuant to EDU 129 (5 MCAR § 1.0129) shall have been held. Before the state residential schools shall consider the student for admission, the decision, resulting from the hearing process must be that the resident school district is unable to provide an appropriate program and that a referral for admission to the state residential schools is appropriate.

B. Referral, review and admission meeting.

1. Within seven days of receipt of a referral for admission, the residential schools' administrator shall:

a. review the referral information and determine whether additional assessment or other information is needed.

b. request in writing from the district any additional information that is needed.

2. The residential schools' administrator shall:

a. schedule the team meeting which shall be conducted within 30 days of receipt of complete referral information pursuant to 5 MCAR § 1.0134 A.2. and at a time that is mutually acceptable to the state residential schools and the parent; and,

b. serve a written notice of the team meeting to the parent and the district in accordance with the provisions of 5 MCAR § 1.0136 prior to conducting the admission meeting.

3. To determine whether an appropriate individual educational program plan can be developed by the state residential schools to appropriately meet the educational needs of the student in the least restrictive alternative, the state residential schools' administrator shall:

a. appoint participants from the state residential schools' staff to serve on the admission and transfer team. The team shall include at a minimum an administrator of the appropriate education program or his/her designee, an administrator of the appropriate residential program or his/her designee, one appropriate teaching staff person, and other related services staff persons as deemed appropriate by the state residential schools' administrator.

b. schedule an admission and transfer team meeting which shall include the state residential schools' required participants, the parent, the student if appropriate, and other persons as deemed appropriate by the residential schools' administrator and may include a representative of the resident school district if the district chooses to participate.

c. upon request of the parent, determine whether it is appropriate to involve additional state schools' staff on the admission and transfer team; and whether it is appropriate to include someone who is a member of the same minority, or cultural background or who is knowledgeable concerning the racial, cultural or handicapping differences of the student.

4. If the parent cannot attend the admission meeting:

a. the state residential schools' administrator shall use and document other methods to ensure parent participation including individual or conference telephone calls; and

b. an admission staffing shall be conducted without a parent in attendance if the residential schools' administrator is unable to convince the parent to attend.

5. The admission and transfer team shall determine whether placement at the state residential schools will appropriately meet the educational needs of the student in the least restrictive alternative. This determination shall be based on:

a. the complete referral information;

b. any additional information supplied by the parent;

c. other relevant information and reports;

d. the record of the decision of the student's resident school district pursuant to Minn. Stat. § 120.17, subd. 3 b. and Minn. Stat. § 128A.05, subd. 1 and 2;

e. interpretation of the data in accordance with the requirements of nondiscrimination pursuant to EDU 120 B. (5 MCAR § 1.0120 B.) and recognized professional standards; and

f. the team's development of an appropriate individual educational program plan, or the team's determination that an appropriate individual educational program plan cannot be developed by the state residential schools.

C. Admission procedures and development of program.

1. The admission and transfer team shall recommend to the state residential schools' administrator that:

a. the state residential schools can appropriately meet the educational needs of the student in the least restrictive alternative and that the student be admitted pursuant to the parent's written approval of the team's proposed individual educational program plan; or

b. the state residential schools cannot appropriately meet the educational needs of the student as the least restrictive alternative and that the student not be admitted to the state residential schools, based upon the team's determination that an appropriate individual educational program for the student at the state residential schools cannot be developed.

2. If the student is recommended to be admitted to the state residential schools, the admission and transfer team shall develop a proposed individual education program plan listing the services that the student will receive at the state residential schools.

The proposed individual educational program plan shall be prepared in writing; be based on the assessment data, the district's statement of goals and objectives, and other appropriate information; be consistent with the requirement of nondiscrimination and the principle of the least restrictive alternative; and shall include:

a. the names of the persons on the team;

b. a description of the education service needs of the student as determined by the team;

c. a statement of annual goals and periodic review objectives for the education services to be provided including the criteria for attainment of the objectives;

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

e. the reasons for the type of education program including type of services to be provided, the location, amount of time, starting date, anticipated duration of services, and the names and school telephone numbers of those personnel responsible for providing the services. In accordance with the principle of least restrictive alternatives, the proposed action shall be substantiated as the most appropriate in terms of the students' educational needs;

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

g. a description of any activities in which the student will participate in environments which include nonhandicapped students.

3. Based upon the recommendations of the admission and transfer team admission meeting, the state residential schools' administrator shall:

a. admit the student to the state residential schools pursuant to the parent's written approval of the individual educational program plan; or

b. deny the student admission to the state residential schools; and

c. provide formal notice to the parent and to the district of the determination to admit or to deny admission in accordance with the provisions of 5 MCAR § 1.0136. The notice shall be served within 14 days of the admission and transfer team admission meeting.

4. If the determination is to admit the student pursuant to the parent's written approval of the individual educational program plan, the initial notice shall include the proposed individual educational program plan and shall state that the parent shall agree in writing to this individual educational program plan.

5. If the parent does not give written approval to the individual educational program plan within 14 days after service of the notice, the state residential schools' administrator shall arrange for a conciliation conference pursuant to 5 MCAR § 1.0137 A.2.

6. If the parent continues to object to the proposed individual educational program plan, the parent may initiate an impartial due process hearing in accordance with 5 MCAR § 1.0138.

7. If within 30 days after serving the formal notice which shall include the proposed individual educational program plan, no response or objection is obtained from the parent, or if agreement has not been reached in conciliation conference and no hearing is requested in accordance with 5 MCAR § 1.0138, efforts to reach the parent shall be documented, and the state residential schools' administrator shall serve the parent and the resident school district written notice stating that effective the date of the notice the student shall not be admitted to the state residential schools under the current application for admission procedure. This action shall not be interpreted to mean that application for admission of the same student cannot be made at a future date if such application is deemed appropriate by the parent and the resident school district in accordance with procedures as established by EDU 124-129 (5 MCAR §§ 1.0124-1.0129).

8. If the determination is to deny the student admission to the state residential schools, the residential schools' administrator shall send a formal notice to the parent and the resident district which shall inform them of the decision to deny admission based upon the schools' determination that an appropriate individual educational program plan cannot be developed by the state residential schools.

9. If the parent objects to the action to deny admission, the state residential schools' administrator shall arrange for a conciliation conference pursuant to 5 MCAR § 1.0137 A.2.

10. If the parent continues to object to the action to deny admission, the parent may initiate an impartial due process hearing in accordance with 5 MCAR § 1.0138.

5 MCAR § 1.0135 Periodic review, reassessment and transfer procedures.

A. Periodic review and annual review.

1. The state residential schools shall conduct periodic reviews of the individual education program plan and shall determine:

a. the degree to which the goals and objectives as identified in the educational program plan are being achieved;

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

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

2. There shall be at a minimum one periodic review and one annual review each year; the initial periodic review shall be made at the time specified in the program plan.

3. Periodic reviews shall be made by those persons directly responsible for implementing the educational program and by other designees of the state residential schools as may be needed to insure an informed and adequate review.

4. The annual review shall be an admission and transfer team meeting held to review a student's individual educational program plan and if appropriate revise its provisions.

5. The results of periodic reviews and annual reviews shall be included in the student's school records and a copy sent to the parent and to the district. This copy shall inform the parent that he/she may request a conference to review the student's program plan at any time and the procedure to do so.

6. The reviews shall be conducted in accordance with the requirements for nondiscrimination pursuant to EDU 120 B. (5 MCAR § 1.0120 B.) and recognized professional standards.

B. Reassessment.

1. The state residential schools shall conduct an educational reassessment according to the procedures specified for formal educational assessments in EDU 124 B. (5 MCAR §1.0124 B.) at least once every two years. In the year that the reassessment is conducted the meeting following the reassessment may meet the requirement for one of the two reviews required pursuant to 5 MCAR § 1.0135 A.

2. A reassessment shall be conducted before the state residential schools propose a transfer from the schools.

3. A reassessment may be conducted at parent request, unless the state residential schools determine that there has been a recent and adequate assessment or reassessment.

C. Transfer.

1. The admission and transfer team shall recommend to the state residential schools' administrator that a student be dismissed from placement at the state residential schools when it has been determined that the appropriate program for the student in the least restrictive alternative is no longer placement at the state residential schools.

2. This determination shall be made based upon the results of an educational reassessment.

3. Based upon the recommendations of the admission and transfer team staffing, the state residential schools' administrator shall:

a. dismiss the student from placement at the state residential schools pursuant to the parent's written consent to this proposed action; and

b. provide written notice of the determination to transfer the student from placement at the state residential schools to the parent and the resident school district in accordance with the provisions of 5 MCAR § 1.0136 within 14 days of the admission and transfer team staffing. The notice shall state that no such change shall be made without written parental consent.

c. If the parent does not give written consent to the transfer of the student from educational placement at the state residential schools within 14 days after service of the notice, the state residential schools' administrator shall arrange for a conciliation conference pursuant to 5 MCAR § 1.0137 A.2.

d. if the parent continues to object to the proposed action, the parent may initiate an impartial due process hearing in accordance with the provisions of 5 MCAR § 1.0138; or

e. if the parent continues to refuse to provide written consent to the transfer, but does not initiate a due process hearing, the state residential school shall schedule a due process hearing in accordance with 5 MCAR § 1.0138.

D. Admission and transfer team meeting.

1. A meeting which shall include the required state residential schools participants, the parent, the student if appropriate, and may include a representative of the resident school district and other persons as deemed appropriate by the residential schools' administrator shall be conduced:

a. to develop a recommendation regarding a student's application for admission.

b. to develop a current individual educational program plan for each student in attendance;

c. to review the results of the required biennial reassessment or to review the results of reassessment that may be conducted in addition to the required biennial reassessment;

d. prior to the state residential schools proposing the transfer of a student from educational placement at the state residential schools based upon reassessment data and the determination that the appropriate program in the least restrictive alternative is not available at the state residential schools; and

e. to review the results of a reassessment within 30 days after the expiration of the period allowed for parental response, unless the parent objects to the reassessment through the procedures provided in these rules.

2. Formal notice in accordance with the provisions of 5 MCAR § 1.0136 shall be provided to the parent and the district 14 days prior to conducting an admission and transfer team meeting.

3. If the parent cannot attend the admission and transfer team meeting:

a. the state residential schools' administrator shall use and document other methods to ensure parent participation including individual or conference telephone calls; and

b. an admission and transfer team meeting shall be conducted without the parent in attendance if the residential schools' administrator is unable to convince the parent to attend.

5 MCAR § 1.0136 Formal notices to parents.

A. The provisions of EDU 127 A. (5 MCAR § 1.0127 A.) shall apply to formal notices sent to parents of students enrolled at the state residential schools.

B. Prior to the admission meeting, pursuant to 5 MCAR § 1.0134 B. the state residential schools shall prepare and send a formal notice to the parent and the resident school district which shall:

1. include the reasons for the meeting and the persons who have been asked to be in attendance;

2. inform the parent of his/her right to request and receive copies of all records or other written information that is in the state residential schools' possession regarding his/her child;

3. inform the parent of his/her right and the procedure and time to participate in developing his/her child's education program, and/or to provide information relative to the child's assessment and the development of the program plan;

4. inform the parent of his/her right and the procedure and time to request and to receive interpretations of assessment or reassessment procedures, instruments and data or results from a knowledgeable state residential schools' employee, and for that conference to be held in private;

5. inform the parent of his/her right and the procedure and time to include such person(s) described in EDU 125 A. (5 MCAR § 1.0125 A.), including a person who is a member of the same minority, or cultural background or who is knowledgeable concerning the racial, cultural, or handicapping differences of the student, on the team that interprets the assessment data and/or develops the individual education program plan; and

6. inform the parent that the state residential schools shall proceed with the admission and transfer team meeting in order to consider the student's application for admission unless the parent objects in writing on the response form within 14 days after service of the notice.

7. include a response form on which the parent may indicate his/her objection to the proposed admission and transfer team meeting and which identifies the designee of the state residential schools to whom the response form should be mailed or given and to whom questions may be directed.

8. state that if the parent objects in writing to the admission meeting, the state residential schools shall consider that the student's application for admission to the state residential schools has been withdrawn by the parent effective on the date of the signing of the objection response form; and

9. inform the parent that if the student's application is withdrawn, the decision regarding the placement of the student shall be determined by the parent and the resident school district in accordance with EDU 120-129 (5 MCAR §§ 1.0120-1.0129).

C. When the state residential schools propose to admit a student pursuant to the parent's written approval of the proposed individual educational program plan, the state residential schools shall prepare and serve a formal notice which shall:

1. include a copy of the student's proposed individual educational program plan as described in § 1.0134 C.3.;

2. inform the parents of his/her right and time and procedure to request and to receive interpretation of the educational program plan from a knowledgeable school employee and for that conference to be held in private;

3. state that the parent's written consent shall be given to the individual educational program plan and the signed plan shall be returned to the state residential schools' administrator within 14 days of receipt of the notice if the student is to be admitted to the state residential schools;

4. state that the student shall be admitted to the state residential schools upon receipt by the state residential schools' administrator of the individual educational program plan with the parent's signature affixed;

5. inform the parent that the state residential schools shall not proceed to admit the student without the written consent of the parent to the proposed individual educational program plan;

6. inform the parent that if he/she objects to the proposed individual educational program plan that a conciliation conference pursuant to 5 MCAR § 1.0137 shall be held at a mutually convenient time;

7. inform the parent that if he/she objects to the educational plan during or after the initial conciliation conference, he/she has a right to initiate an impartial due process hearing in accordance with procedures set forth in 5 MCAR § 1.0138;

8. inform the parent that he/she has the right to be represented by counsel or another person of their choosing at the conciliation conference or the impartial due process hearing;

9. inform the parent that he/she may obtain an independent educational assessment at his/her own expense; and

10. include a response form on which the parent may indicate his/her objection to the proposed individual educational program plan and identify the designee of the state residential schools to whom the response form should be mailed or given and to whom questions should be directed.

D. When the state residential schools deny a student admission to placement at the state residential schools based on the school's determination that an appropriate individual educational program plan cannot be developed by the state residential schools. The state residential schools shall prepare and serve a formal notice which shall:

1. state that based on the admission and transfer team's review of the student's complete referral information, and the school's determination that an appropriate individual program plan cannot be developed by the state residential schools, the team's recommendation is that placement at the state residential schools cannot appropriately meet the educational needs of the student in the least restrictive alternative and the student is denied admission;

2. inform the parent that if he/she objects to the action of the state residential schools to deny admission, a conciliation conference pursuant to 5 MCAR § 1.0137 shall be held; and

3. inform the parent that if he/she objects to the action to deny admission during or after the initial conciliation conference, he/she has the right to initiate an impartial due process hearing in accordance with the procedures set forth in 5 MCAR § 1.0138.

E. Prior to conducting an assessment or reassessment, refusing to conduct an assessment or reassessment, initiating a significant change in or refusing to make a significant change in a state residential schools' student's individual educational program plan, the state residential schools shall prepare and serve a formal notice which shall:

1. if the proposed action pertains to assessment or reassessment, include the reasons for assessment or the refusal to assess, how the results may be used if the assessment is conducted, a general description of the procedures to be used, and where and by whom the assessment will be conducted;

2. include a copy of the student's current individual educational program plan;

3. inform the parent of his/her rights to review and receive copies of all records or other written information regarding his/her child in the state residential schools' possession;

4. inform the parent of his/her right and the procedure and time to request and to receive interpretations of assessment or reassessment procedures, instruments and data or results from a knowledgeable state residential schools' employee and for that conference to be held in private;

5. inform the parent of his/her right and the procedure and time for him/her to participate as a team member in developing and determining the child's educational program and/or to provide information relative to his/her assessment and the development of the educational program plan;

6. inform the parent of his/her right, the procedures, and the time within which to have included on the team that interprets the assessment data and/or develops the individual educational program plan, such person(s) as described in EDU 125 A. (5 MCAR § 1.0125 A.) including a person who is a member of the same minority, or cultural background or who is knowledgeable concerning the racial, cultural, or handicapping differences of the student;

7. inform the parent that he/she may obtain an independent assessment at his/her own expense;

8. inform the parent that the state residential schools shall proceed with the proposed action unless the parent objects on the enclosed response form or otherwise in writing within 14 days after service of the notice;

9. inform the parent that if he/she objects to the proposed assessment or reassessment or proposed change in the educational program in writing, the state residential schools' administrator shall arrange for a conciliation conference pursuant to 5 MCAR § 1.0137;

10. inform the parent that if the parent objects to the proposed action during or after the initial conciliation conference they may have an impartial due process hearing in accordance with 5 MCAR § 1.0138;

11. inform the parent that he/she has the right to be represented by counsel or another person of his/her choosing at the conciliation conference or the impartial due process hearing;

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

13. include a response form on which the parent may indicate his/her approval of or objection to the proposed action and identify the state residential schools' employee to whom the response form should be sent and to whom questions may be directed;

F. When the state residential schools propose the transfer of the student out of educational placement at the state residential schools pursuant to 5 MCAR § 1.0135 C., the state residential schools shall prepare and serve formal notice to the parent and the resident school district which shall:

1. state that based on reassessment of the student and the recommendations of an admission and transfer team meeting, the state residential schools propose to dismiss the student from placement at the state residential schools pursuant to the written consent of the parent to this proposed action;

2. inform the parent of his/her right to request and to receive copies of all records or other written information regarding his/her child in the state residential schools' possession;

3. inform the parent of his/her right and the procedure and time period within which to request and to receive interpretations of assessment or reassessment procedures, instruments and data on results from a knowledgeable state residential schools' employee and for that conference to be held in private;

4. inform the parent that he/she may obtain an independent assessment at his/her own expense;

5. include a response form on which the parent may indicate his/her approval of or objection to the proposed transfer from placement at the state residential schools and which states that the form shall be returned to the state residential schools' administrator within 14 days of receipt of the notice;

6. inform the parent that the state residential schools shall not proceed with the proposed transfer from placement of the student without prior written consent of the parent;

7. inform the parent that if he/she gives written consent the student shall be dismissed from placement at the state residential schools at the time specifically stated in the proposed transfer from placement;

8. inform the parent that if he/she objects to the proposed transfer from placement in writing, a conciliation conference pursuant to 5 MCAR § 1.0137 shall be held;

9. inform the parent that if he/she objects to the proposed transfer from placement during or after the initial conciliation conference, he/she has the right to initiate an impartial due process hearing in accordance with the procedures set forth in 5 MCAR § 1.0138; and

10. inform the parent that if he/she continues to refuse to provide written permission to the transfer, the state residential schools shall schedule a hearing in accordance with 5 MCAR § 1.0138;

11. state that the child's educational placement will not be changed as long as the parent objects to the proposed transfer from placement in the manner prescribed in these rules.

G. The state residential schools' administrator shall notify the district of residence whenever:

1. the parent determines that the students' application to the state residential schools is withdrawn prior to the student being admitted;

2. the student is denied admission to the state residential schools' programs;

3. the parent has removed the student from the state residential schools' program after he/she has been admitted; and

4. a student is graduated from the state residential schools or will not continue attending the school because he/she has attained the age of 21 years prior to September 1 of the next official school year.

5 MCAR § 1.0137 Conciliation conference.

A. When a conciliation conference shall occur:

1. If the parent does not object in writing to a proposed action within 14 days after service of a notice pursuant to 5 MCAR § 1.0136 and the proposed action is not admission to or transfer from the state residential schools, the proposed action shall take place. If such written objection is made, the state residential schools' administrator 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 mutually convenient to the parent and the state residential schools' representatives and shall be held within 14 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 § 1.0138 at any time after the first conciliation conference is held.

2. If the parent does not given written approval to the proposed individual educational program plan developed in accordance with 5 MCAR § 1.0134 C.3.d. within 14 days after the service of the notice, the residential schools' administrator shall arrange for a conference with the parent for the purpose of reviewing the plan and conciliating the matter. The conference shall be held at a time mutually convenient to the parent and state residential schools' representatives and shall be held within 14 days after the expiration of the 14 day period for parent response.

3. If the parent does not give written consent to the proposed transfer of the student from placement at the state residential schools in accordance with 5 MCAR § 1.0135 C. within 14 days after service of the notice pursuant to 5 MCAR § 1.0136 E., the residential schools' administrator shall arrange for a conference with the parent for the purpose of conciliating the matter. The conference shall be held at a time mutually convenient to the parent and state residential schools' representatives and shall be held within 14 days after the expiration of the 14 day period for parent response.

B. Memorandum

Within seven days of the final conciliation conference the state residential schools shall serve the parent with a written memorandum which shall:

1. inform the parent of the state residential schools' proposed action following the conference;

2. inform the parent that if he/she continues to object to the proposed action he/she has a right to an impartial due process hearing in accordance with the provisions of 5 MCAR § 1.0138 and state the procedure and time in

which to request the hearing, including a request form on which the parent may request the hearing, and the identification of the state residential schools' employee to whom the written request form or other written request for hearing is to be mailed, and to whom questions and documents or requests relating to the hearing may be directed; and

3. inform the parent that if he/she does not request a hearing on the written request form or otherwise in writing pursuant to 5 MCAR § 1.0138, within seven days after receipt of the notice, the state residential schools shall proceed with the proposed action unless the proposed action is to admit the student to or to transfer the student from placement at the state residential schools; and

4. inform the parent if agreement has not been reached in conciliation conference and no hearing is requested in accordance with 5 MCAR § 1.0138, efforts to reach the parent shall be documented, and the state residential schools' administrator shall serve the parent and the resident school district written notice stating that effective the date of the notice the student shall not be admitted to the state residential schools under the current application for admission procedure;

5. inform the parent that if the proposed action is transfer of the student from placement at the state residential schools, when the parent continues to refuse to provide written permission, the state residential schools shall schedule a hearing within seven days after the expiration of the seven days allowed for parent response.

5 MCAR § 1.0138 The hearing.

A. Initiation of the hearing.

A parent or the state residential schools may initiate an impartial due process hearing when either party continues to object to a proposed action and conciliation has not been achieved through one or more conciliation conferences pursuant to 5 MCAR § 1.0137. The resident school district may be party to the hearing. The decision of the hearing officer shall be rendered not more than 45 days from the date of the receipt of the request for the hearing. The hearing officer may grant specific extensions of time beyond the 45 day period at the written request of either party.

B. Notice.

1. Written notice of the time, date and place of all hearings shall be given to all parties by the state residential schools at least 14 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 seven days of receipt of the parent's written request for a hearing, the state residential schools shall serve the parties with a written notice of rights and procedures relative to the hearing which shall inform the parent:

a. that the hearing shall take place before an impartial hearing officer appointed by the commissioner;

b. that they will receive notice of time, date and place of the hearing seven days in advance of the hearing which will be held within 30 days after the written request;

c. of the hearing rights of the respective parties including the following:

(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 in preparation of and at the hearing. The state residential schools shall inform the parent of any free or low cost legal or relevant services available in the area.

(3) Not less than seven days prior to the hearing, the parent or his/her representative(s), as the case may be, shall be given access to all of the state residential schools' records and such other records pertaining to the child that are authorized to be disclosed, including but not limited to all tests, evaluations, assessments, reports, and other written information concerning the educational assessment or reassessment upon which the proposed action may be based.

(4) At least seven calendar days prior to the hearing the parent shall receive from the state residential schools 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 § 1.0136 or 5 MCAR § 1.0137 B. If such material allegations 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 seven 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 shall be filed with the person(s) conducting the hearing. Such lists may be modified at any time but each party shall be notified if modification occurs.

(6) All parties or their representatives, as the case may be, shall have the right to request the attendance of any employee of the state residential schools, resident school district 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 shall be made to the state residential schools, and to the person whose attendance is requested at least seven days in advance of the hearing. Such written requests shall also be filed with the hearing officer at the time of hearing.

(7) The parent shall have the right to call his/her own witnesses and to present evidence, including expert medical, psychological, and educational testimony and relevant records, tests, assessments, reports or other information.

(8) All parties shall have the right to confront and cross examine witnesses.

(9) 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 14 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.

d. that at the hearing the burden of proof is on the state residential schools to show that the proposed action is justified on the basis of the student's educational needs or his/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 shall be kept of the hearing and shall be made available at cost to the parent if the decision is appealed;

f. that the hearing officer shall make a written decision based only on evidence received and introduced into the record at the hearing. Such decisions shall be rendered not more than 45 days from the receipt of the request for the hearing. The proposed action will be upheld only upon showing by the state residential schools of a preponderance of the evidence. A proposed action that would result in the child being removed from a 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 regular educational programs shall also be given;

g. that the decision of the hearing officer is binding on all parties;

h. that pending the decision, the student's education program shall not be changed unless the parent and the parties agree otherwise;

i. that the parent has the right to have the child present at the hearing; and

j. that the parent shall receive a copy of the hearing officer's written findings, conclusion and decision.

C. Hearing officers.

1. The hearing shall take place before an impartial hearing officer appointed by the commissioner.

2. The hearing officer shall not be a member of the state board of education, state department of education, an employee of either the student's resident school district or the state residential schools or any person with a personal or professional interest which would conflict with his objectivity at the hearing. A person who otherwise qualifies as a hearing officer is not an employee of the state solely because the person is paid by the state department of education or the state residential schools to serve as a hearing officer.

3. If a hearing officer requests an independent educational assessment of a child, the cost of the assessment shall be at state residential schools' expense. All expenses of the hearing, except for the parent's and resident school district's attorney's fees; the cost of a copy of the record of the hearing if requested by the parent; or other expenses incidental to the parent's, child's, or resident school district's participation in the hearing, shall be paid by the state residential schools.

4. The hearing officer shall be empowered to subpoena any persons or papers he/she deems necessary for an adequate review of the appropriateness of the proposed action which is the subject of the hearing.

D. Prehearing review by the hearing officer.

1. Not less than seven days prior to the hearing, the person conducting the hearing shall be mailed copies of:

a. notices and memoranda prepared by the state residential schools pursuant to 5 MCAR § 1.0137 sent to the parent;

b. written information concerning the 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. other information from the state residential schools, 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. do not apply when the hearing concerns a proposed action to assess or reassess.

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 meet with the parties together prior to the hearing;

c. may require the state residential schools to perform an additional educational assessment or reassessment;

d. may require an independent educational assessment of the student at the expense of the state residential schools;

e. may require the state residential schools to propose an alternative individual educational program plan;

f. may require the state residential schools to send additional notice to the parent;

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

h. may extend the hearing date for up to 15 days to achieve the purposes of this paragraph;

i. may grant specific extension of time beyond the 45 day period at the request of either party.

E. 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 state residential schools 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 they relate to the need 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.

5. As appropriate to the pending matter, the hearing officer shall consider evidence related to:

a. the state residential schools' decision to deny admission to the student for the purpose of providing an educational program. The state residential schools shall demonstrate by a preponderance of the evidence that based upon the schools' determination an appropriate individual educational program plan cannot be developed by the state residential schools.

b. the state residential schools' proposal to assess or reassess or refusal to assess or reassess as set forth in 5 MCAR § 1.0135 B. The state residential schools shall demonstrate by a preponderance of the evidence that the educational assessment or reassessment is justified as a step toward the possible initiation of or change in the student's educational placement or provision of services; or the state residential schools shall demonstrate by a preponderance of the evidence that refusal to assess or reassess is justified by the proximity in time, appropriateness and adequacy of the most recent assessment or reassessment.

c. the state residential schools' proposal to initiate or refusal to initiate services as set out in the student's individual educational program plan. The state residential schools shall demonstrate by a preponderance of the evidence that the proposed action is consistent with the current educational needs of the student.

d. the state residential schools' proposal to transfer the student. The state residential schools shall demonstrate by a preponderance of the evidence that the proposed transfer is consistent with the current educational needs and presenting handicapping conditions of the student.

6. The hearing officer shall sustain, modify or reject a proposed action based on consideration of all the evidence received at the hearing.

F. The decision of the hearing officer.

Not more than 45 days from the receipt of the request for a hearing, except where extensions of time have been granted and then at a time not to exceed 45 days plus the number of days added by the extensions, 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 admission.

The hearing officer shall sustain the decision to deny admission of the student to the state residential schools upon a showing by the state residential schools by a preponderance of evidence that an appropriate individual educational program plan cannot be developed by the state residential schools.

2. Decisions regarding assessment or reassessment:

a. the hearing officer shall sustain a proposed assessment or reassessment of the student as set forth in 5 MCAR § 1.0135 B. upon showing by the state residential schools by a preponderance of the evidence which demonstrates that there are facts, relating to the student's performance in his/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 student's educational placement or program, including special education services, which will provide an educational program appropriately suited to the student's needs;

b. the hearing officer shall sustain the refusal to assess or reassess upon a showing by the state residential schools by a preponderance of evidence which demonstrates that there are facts which indicate reasonable grounds to believe that there has been recent and adequate assessment or reassessment of the student by qualified professionals; and

c. 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 procedures in order to insure compliance with the requirement of nondiscrimination.

3. Decisions regarding individual educational program plan:

a. in deciding if the proposed action is to be sustained, in whole or part, the educational needs of the student 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;

b. the hearing officer shall sustain the individual educational program plan of the state residential schools upon a showing by the state residential schools by a preponderance of evidence that the student's individual educational program plan represents educational services appropriate to the student's educational needs in the least restrictive alternative. This decision shall be made in accordance with the principle at least restrictive alternatives; and

4. Decisions regarding transfer:

The hearing officer shall sustain the decision to transfer the student from placement at the state residential schools upon a showing by the state residential schools by a preponderance of evidence that the appropriate program for the student in the least restrictive alternative is no longer placement at the state residential schools.

5. All 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 on the basis and reason for the decision;

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

c. be based on the standards and principles set forth in Minn. Stat. § 120.17, subd. 3a., and 5 MCAR § 1.0138 G.; and

d. be binding on all parties.

6. All decisions shall be filed with the commissioner of education and shall be sent by mail to the parties.

G. Effective date of the action and appeals.

1. The decision of the hearing officer shall be binding on all parties and shall become effective 30 days after service of the decision unless the decision is appealed in a civil action.

2. The hearing officer may grant specific extensions of time beyond the 45 day period set out in these rules at the request of any party provided that no extension may be granted for the filing of a civil action.

State Board of Education
Minnesota Department of Education
Division of Special and Compensatory Education

Statement of Need and Reasonableness
for Proposed Rules 5 MCAR §§ 1.0133-1.0138

Concerning Chapter Seven A: Requirements and Procedures for Student Admission to, Program and Evaluation During Attendance at, and Transfer from the State Residential Schools for Deaf, Blind, and Multiply Handicapped Sensory Impaired Students.

Background

The 1976 Minnesota State Legislature enacted Minn. Stat. Ch. 128A transferring the control, management and administration of the Minnesota School for the Deaf and the Minnesota Braille and Sight Saving School, defined in the proposed rules as the state residential schools, from the Department of Public Welfare to the jurisdiction of the State Board of Education. This transfer of authority was intended to ensure that the two state residential schools, which provide a level six special education EDU 120 B.11. (5 MCAR § 1.0120 B.11.) placement option for hearing impaired and visually handicapped students, were integrated with the special education services provided by school districts throughout Minnesota and that the same procedures and procedural safeguards are applied to the students in attendance at the schools that are applied to all handicapped students in Minnesota.

Minn. Stat. § 128A.02, subd. 2 (Supp. 1977) authorizes the State Board of Education to promulgate rules relating to the "... operation of both schools and the individuals in attendance." Minn. Stat. § 128A.02, subd. 6 (1978) mandates that such rules address (1) admission to and discharge from the schools; (2) decisions on a child's program at the schools; (3) evaluation of children enrolled in the schools; and (4) procedural safeguards to protect student and parent rights.

In addition, Federal Law (P.L. 94-142) the Education of All Handicapped Children Act, and Minn. Stat. § 120.17 mandate a free appropriate public education for all handicapped children in Minnesota and set out requirements and procedural safeguards that shall be met. The proposed rules have been developed to be in compliance with Minn. Stat. § 120.17 and P.L. 94-142 and to be consistent with EDU 120-129 (5 MCAR §§ 1.0120-1.0129).

The procedural provisions of Minn. Stat. § 120.17 have been made applicable to the state residential schools through their incorporation in Minn. Stat. § 128A.05, subds. 1 and 2 and Minn. Stat. § 128A.02, subd. 6 thereby further directing consistency in special education services throughout Minnesota. Furthermore, the state residential schools are subject to the requirements of Federal Law P.L. 94-142. Minn. Stat. § 120.17 is Minnesota's statement of compliance with that federal law; therefore, the proposed rules have been drafted to meet the requirements of both the state and federal laws for the education of handicapped children.

The proposed rules are in many instances the same as or similar to the Rules of the State Board of Education Governing Standards and Procedures of Special Education Instruction and Services for Children and Youth Who are Handicapped EDU 120-129 (5 MCAR §§ 1.0120-1.0129); however, they have been written to accommodate the basic differences in the organizational and authority structure that exist between a local school district and these state residential schools that are operated as an activity within the State Department of Education.

The proposed rules have been developed to guarantee parents and students their rights and to ensure that consistent procedures are applied to all handicapped students in Minnesota so that appropriate due process is afforded to the students in attendance at the state residential schools and their parents.

In the development of the proposed rules, a number of studies that had been conducted regarding the state residential schools were reviewed for background information. The state residential schools' staff; State Department of Education Special Education Section staff; and the two Advisory Councils from the Minnesota School for the Deaf and the Minnesota Braille and Sight Saving School on which there are representatives of parents of visually handicapped and hearing impaired students, representatives from groups representing the interests of visually disabled or hearing impaired individuals, and other individuals with knowledge, experience and interest in the problems of visually handicapped and hearing impaired children as required and Minn. Stat. § 128A.03, subd. 2 were consulted.

Two reasons can be stated as the underlying rationale for the proposed rules.

The first is that the 1976 Legislature enacted Chapter 128A in which the State Board of Education was authorized (Minn. Stat. § 128A.02, subd. 2.) to promulgate rules regarding the state residential schools and in 1978 amended Minn. Stat. § 128A.02 with the addition of subd. 6, directing the State Board of Education as to the content of such rules.

In 1979 the Legislature gave further direction regarding the promulgation of such rules by amending Minn. Stat. § 128A.02, subd. 6 to read "... proceedings concerning admission to and discharge from the schools, a child's program at the schools, and a child's progress at the schools shall not be deemed to be a contested case subject to sections 15.041 to 15.052 but shall be governed instead by the rules of the State Board pursuant to this section."

This 1979 amendment of Minn. Stat. § 128A.02, subd. 6 mandates the development of a hearing procedure for the state residential schools and parents to follow that is consistent with the procedure offered parents under Minn. Stat. § 120.17 and EDU 129 (5 MCAR § 1.0129) and removes the requirement for the state residential schools to follow the hearing procedures set out in Minn. Stat. §§ 15.041 - 15.052.

The Legislature has clearly directed that rules be developed for the state residential schools and has also provided direction as to the content of such rules so that all hearing impaired and visually impaired students in Minnesota are ensured the same procedures and procedural safeguards.

While the first reason is the most compelling for the promulgation of these rules, the second recognizes the federal mandate (P.L. 94-142) which requires consistent standards and procedural safeguards for all handicapped children. The state residential schools must comply with federal regulation (45 C.F.R. 121a.) as well as the Minn. Stat. § 120.17. Federal law requires specific procedures, adequate notice of all actions that require due process, and procedural safeguards. If Minnesota did not adhere to federal regulation under P.L. 94-142, the state would be placed in the position of depriving its citizens of $18-20 million in federal aid annually.

For these reasons the proposed rules have been developed in compliance with Minn. Stat. Ch. 128A, Minn. Stat. § 120.17 and federal regulations (45 C.F.R. 121a.)

The proposed rules (5 MCAR §§ 1.0133-1.0138) were presented to the State Board of Education on January 15, 1980 at which time they were approved for public hearing.

STATEMENT OF NEEDS AND REASONABLENESS

5 MCAR § 1.0133 Definitions.

5 MCAR § 1.0133 A.1-8. are defined in EDU 120 B. (5 MCAR § 1.0120 B.) and are incorporated by reference into these rules. Such incorporation is appropriate because these terms are utilized broadly in special education throughout Minnesota and no revisions are needed for purposes of the state residential schools.

5 MCAR § 1.0133 B.1.-12. are needed to define terms for which additional clarification is necessary in the context of the state residential schools.

5 MCAR § 1.0133 B.1. is needed to clarify that the Minnesota School for the Deaf and the Minnesota Braille and Sight Saving School, located in Faribault, Minnesota (Minn. Stat. § 128A.01) are referred to consistently in practice and in the proposed rules as the "state residential schools". This definition is also needed to clarify the fact that the proposed rules apply to each of the state residential schools equally. These are the only state operated residential schools in Minnesota; the proposed rules apply to these schools only.

5 MCAR § 1.0133 B.2. is needed to clarify the term "residential schools' administrator", which is referenced frequently throughout the proposed rules as the responsible party for the execution of specific actions. The residential schools' administrator, as referenced as Minn. Stat. § 128A.02, subd. 3, is responsible for administering all activities at the state residential schools.

5 MCAR § 1.0133 B.3. defines "resident school district" as established by Minn. Stat. § 120.17, subd. 6 and 8a and reiterated here to clarify the meaning in the proposed rules and to incorporate the alternate term "district" which is

used throughout the proposed rules as an effort toward brevity. Since the state residential schools are not referred to as a school district, the only referent for the term "district" in these proposed rules is the resident school district of a student. It is therefore believed to be unnecessary to continuously describe the "district" as the "resident school district" throughout the proposed rules.

5 MCAR § 1.0133 B.4. is needed to establish that the term "admit" is used to describe the action taken by the state residential schools to accept the responsibility to deliver educational programs and services to the student.

5 MCAR § 1.0133 B.5. is needed to establish that the term "transfer" is used to denote the action taken by the state residential schools that terminates the state residential schools' responsibility for providing educational services to the student.

5 MCAR § 1.0133 B.6. defines "periodic review" as established in EDU 126 (5 MCAR § 1.0126) and is included to clarify that the responsiblity for conducting the periodic review mandated by 45 C.F.R. 121a.346(e) is that of the state residential schools with regard to the students enrolled at said schools.

5 MCAR § 1.0133 B.7. defines "annual review" as established by 45 C.F.R. 121a.343(d) and is included here to clarify that the responsibility for conducting annual reviews is that of the state residential schools with regard to the students enrolled at said schools.

5 MCAR § 1.0133 B.8. is needed to establish that the term "admission and transfer team" is unique to the proposed rules and that it is consistent with the concept of and term of "team" as established by EDU 125 (5 MCAR § 1.0125) and 45 C.F.R. 121a.344, as those individuals who shall and who may be present to carry out a formal meeting when such is required.

5 MCAR § 1.0133 B.9. defines "formal notice" to clarify that which is required by 45 C.F.R. 121a.504 and Minn. Stat. § 120.17, subd. 3b(a). This is needed to ensure that such notice shall be in writing and shall be appropriately served to the parent in order to promote informed participation and consent on behalf of the parent and to meet the requirements of due process.

5 MCAR § 1.0133 B.10. is needed to clarify that the term "serve" is the action on the part of the state residential schools which constitutes compliance with the requirement to serve notice on parents. This definition is consistent with Minnesota Rules of Civil Procedure 5.01.

5 MCAR § 1.0133 B.11. is needed to clarify to whom formal notices and copies of reviews are to be sent and who is recognized as representing the child's rights. This is consistent with 45 C.F.R. 121a.10 and included to clarify usage of the term "parent" in the proposed rules.

5 MCAR § 1.0133 B.12. is needed to identify the time constraints placed on the state residential schools and the parents throughout the proposed rules and to clarify that "days" are defined as calendar days for the purposes of the proposed rules. This differs from the definition of "days" in EDU 120 (5 MCAR § 1.0120) which excludes "Saturdays, Sundays, and days school is not is session". Calendar days are used in the proposed rules in recognition of the

fact that the state residential schools serve students from districts statewide whose official school calendars differ. Therefore, the most consistent and accommodating standard is deemed to be the use of calendar days. Adjustments in the required time periods have been made so that, for example, a time requirement of five school days in EDU 120-129 (5 MCAR §§ 1.0120-1.0129) appears as seven calendar days in the proposed rules. The additional statements regarding activities that must be completed or initiated outside of the official school year at the state residential schools are needed to clarify that time requirements must be applied in these instances by the state residential schools. This requirement is deemed necessary to ensure that procedures for determining and providing appropriate educational programs to the student are not unduly delayed or left in an incomplete status due to the ending of the official school at the state residential schools. This has particular impact in this setting based on past practice which demonstrates that the large majority of applications for placement at the state residential schools occur during the summer months.

5 MCAR § 1.0134 Admission Procedures.

5 MCAR § 1.0134 A.1. is needed to clarify that only the resident school district may submit a student's application for admission to the state residential schools since the legal responsibility for the educational placement of a student under Minn. Stat. 120.17, subd. 2 "... shall remain with the district of the child's residence regardless of which method of providing special instruction or training and service is used." The district is required to use the application form provided by the Commissioner to ensure that required procedures have been completed by the resident district and that the parent has agreed in writing to this decision prior to application; these requirements are included on this official department form to ensure that the appropriate procedural safeguards have been met including a "review of the placement decision made pursuant to Sections 120.17 and 128A.02," as is the intent of Minn. Stat. § 128A.02, subd. 6.

5 MCAR § 1.0134 A.2.a.-c. is needed to clarify the procedures which are required to ensure that the district's decision to refer the student to the state residential schools is a team decision based upon all current available information and that prior to referral, the district has considered all placement options available to the district and determined that the state residential schools offer an appropriate placement in the least restrictive alternative. This is in compliance with Minn. Stat. § 128A.05, subds. 1 and 2; Minn. Stat. § 128A.02, subd. 6 and consistent with the policy determined in EDU 120 A.2. (5 MCAR § 1.0120 A.2.) that when a child is removed from a peer group, it must be justified that the alternative selected is more appropriate than a program which is less restrictive. These requirements are necessary to ensure that all procedural safeguards have been met by the resident district in its determination that the student's educational needs can appropriately be served by application to the state residential schools as required by Minn. Stat. § 120.17, subd. 3a(c).

5 MCAR § 1.0134 A.2.d.(1) and (2) are needed to ensure that the parent and resident district are in agreement regarding the placement decision prior to an application for admission being made to the school. This is consistent with

the intent of EDU 127 C.7. (5 MCAR § 1.0127C.7.). This section is also included to ensure that the residential schools do not become involved in processing an application until any disagreements at the local level regarding placement have been resolved at a local due process hearing, and unless the resultant decision has been that application to the state residential schools is appropriate.

5 MCAR § 1.0134 B.1. is needed to set a seven day time limit as a reasonable amount of time for the state residential schools' administrator to complete the task of determining that all required information has been submitted and that all procedures have been followed, while ensuring that neither undue delay nor a serious disruption of a student's educational program occurs.

5 MCAR § 1.0134 B.1.a and b are necessary to ensure that the state residential schools' administrator requests from the resident district all information required and necessary to process the application. This establishes that the state residential schools' administrator must request documents to ensure procedural requirements for application as set out in 5 MCAR § 1.0134 A.2; and to provide information pertinent to placement and program decisions.

5 MCAR § 1.0134 B.2.a. is included to establish the time period in which the admission team meeting must be conducted. Thirty days is considered to be a reasonable amount of time to review all application information, determine a mutually convenient meeting time and contact all participants. The clause requiring the meeting to be held at a time mutually convenient to the parent and state residential schools' representative is consistent with the intent of maximizing the opportunity for the parent to attend and participate. Based on the rationale that the state residential schools serve a statewide clientele and that numbers of state residential schools' representatives could not reasonably be expected to travel statewide for meetings, it is assumed that the meeting place would be at the state residential schools; the clause requiring the conference to be held at the mutually agreed upon place, which is included in EDU 125 A.5. (5 MCAR § 1.0125 A.5.) is omitted here. While such meetings may occur in locations other than the state residential schools, setting the location is left to the discretion of the state residential schools' administrator. This section also provides that the state residential schools are not required to evaluate any application until the resident district has carried out all procedures required by Minn. Stat. § 120.17, subd. 3a(c) and 5 MCAR § 1.0134 A.2. as required by the proposed rules and that the burden to ensure no undue delay is not that of the state residential schools until the complete referral information is received.

5 MCAR § 1.0134 B.2.b. is needed to ensure that the required procedural safeguards are met. These requirements are found in Minn. Stat. § 120.17, subd. 3b(a) and 45 C.F.R. 121a.504(a)(1) both of which require formal notice be sent to a parent prior to the change of the educational placement of their child.

5 MCAR § 1.0134 B.3.a. is needed to ensure that the membership of the admission and transfer team, which determines if placement at the school is appropriate to the student's needs, is consistent with the state rule as found in EDU 125 A.1. (5 MCAR § 1.0125 A.1.) and meets the requirements of 45 C.F.R. 121a.344(a)(1)-(5). A team determination is required at the state residential schools to ensure consistency in the decision making procedures which are

followed throughout the state for handicapped children. The composition of the team reflects that required in EDU 125 (5 MCAR § 1.0125) with the additional requirement of an administrator of the residential program which is determined to be an essential area to be represented in decision making regarding placement in a residential setting.

5 MCAR § 1.0134 B.3.b. is necessary to establish that it is the responsibility of the state residential schools' administrator to schedule the team meeting within the time period required in 5 MCAR § 1.0134 B.2.a. This section is supported by Minn. Stat. § 120.17, subd. 3a(b) which requires the involvement of parents in the decision making process. The presence of other team members is supported in 5 MCAR § 1.0134 B.3.a. A representative of the resident district may be a participant in the admission and transfer team meeting; this is believed desirable to enhance informational input regarding the student's current educational abilities and needs. The resident district's participation is also encouraged since it maintains the primary responsibility for the student's educational placement prior to and after enrollment at the state residential schools and therefore, should be kept informed of the student's status. However, the presence of the resident district is not required for the state residential schools to proceed with the required procedures to determine if an appropriate individualized educational program plan can be developed. The meeting will not be delayed or denied if the resident district cannot supply a representative, since the student's right to be appropriately served without undue delay must be ensured by the state residential schools.

5 MCAR § 1.0134 B.3.c. is consistent with EDU 125 A.4. (5 MCAR § 1.0125 A.4.) and is needed to ensure reasonable, discretionary power so that the residential schools' administrator may determine the need for the inclusion of additional state residential schools' staff members on the admission and transfer team. This discretion also exists to preclude any delay which could arise due to the unavailability of such staff if not requested to attend by the schools' administrator. The second clause of this section charges the state residential schools with accountability for the inclusion of some one of knowledge concerning the cultural or handicap condition as deemed appropriate. This section shall not be read to limit the parent's ability to include participants of their own choosing at the scheduled meeting.

5 MCAR § 1.0134 B.4.a. and b. are necessary to ensure that the state residential schools' administrator shall follow procedures consistent with 45 C.F.R. 121a.345 (c) and (d) and EDU 125 A.5. (5 MCAR § 1.0125 A.5.) which require that the team meeting shall proceed without the parent in attendance. These procedures are established to ensure that a parent is kept informed and involved in his/her child's educational program even though the parent's attendance at the meeting is not possible. If the parent does not object in accordance with the procedures of 5 MCAR § 1.0136 B.6. of the proposed rules, the admission and transfer team meeting shall proceed to ensure that appropriate service for the student is not unduly delayed.

5 MCAR § 1.0134 B.5.a.-d. are needed to ensure that all required referral information and additional relevant information is thoroughly reviewed to determine the student educational needs and that, consistent with the requirements of EDU 125 A.2. (5 MCAR § 1.0125 A.2.) every effort is made to

guarantee that placement of a student at the state residential schools is appropriate and in the least restrictive alternative as clarified in EDU 120 A.2. (5 MCAR § 1.0120 A.2.); established by Minn. Stat. § 120.17, subd. 3a(c); and required by 45 C.F.R. 121a.132.

5 MCAR § 1.0134 B.5.e. is needed to comply with Minn. Stat. § 120.17, subd. 3a.(d) and to be consistent with EDU 125 A.3. (5 MCAR § 1.0125 A.3.).

5 MCAR § 1.0134 B.5.f. is needed to ensure that the individual educational program plan is used as the vehicle for determination of appropriateness of placement at the state residential schools consistent with school district decision making procedures for placement for all handicapped students as set out in EDU 125 A. and B. (5 MCAR § 1.0125 A. and B.). This ensures that a set of procedures are observed in the decision to admit or deny admission. These procedures will observe assessment data, the student level of performance, and the student's educational needs as set out in actual goals and objectives. This ensures compliance with Minn. Stat. § 128A.02, subd. 6. The development of an individual educational program plan will demonstrate that an appropriate educational program can be provided at the state residential schools.

5 MCAR § 1.0134 C.1.a. and b. are needed to establish that the admission and transfer team determines if the state residential schools can appropriately meet the educational needs of the student in the least restrictive alternative and recommends admission or denial of admission to the state residential schools' administrator. This provision is in compliance with 45 C.F.R. 121a.533 (a)(3) and (4) and EDU 125 A.1. (5 MCAR § 1.0125 A.1.). The state residential schools do not carry the burden of providing a total program for all handicapped pupils with sensory handicaps. This is based on a rationale that some students may have severe emotional, mental or physical illnesses and need services that are not within the scope of the purpose of the educational institution thereby making placement at the state residential schools inappropriate.

5 MCAR § 1.0134 C.2.a.-g. are needed to ensure that the individual educational program plan developed by the admission team is written so as to be consistent with the requirements for individual educational program plans written by school districts under EDU 125 B. and C. (5 MCAR § 1.0125 B. and C.). These requirements ensure comparable procedures for handicapped students throughout Minnesota. The requirement of a fully developed individual educational program plan prior to the initiation of services in a new placement is intended by 45 C.F.R. 121A.342 to ensure no undue delay in the implementation of services.

5 MCAR § 1.0134 C.3.(a) and (b) are needed to clarify that the state residential schools' administrator acts to admit or deny admission, based on the team's recommendation in accordance with the authority granted the state residential schools' administrator by the State Board of Education. This ensures that the act to admit or deny admission is made by a duly authorized person, since this decision results in the placement of a student in an educational program under the direct jurisdiction of the State Board of Education.

5 MCAR § 1.0134 C.3.(a) is also necessary to clarify that the student is not considered to be admitted until written parental consent is obtained on the child's proposed individual educational program plan, evidencing parental

consent and knowledge of the placement in the residential setting. This provision to require written consent of the parent on the individual educational program is consistent with the requirement of procedural safeguards regarding parental knowledge as intended by 45 C.F.R. 121a.504 (a) and closely follows the procedures required of the state school districts when initial placement is in question (Minn. Stat. § 120.17, subd. 3b(a)). This provision is more restrictive in the fact that the student's placement cannot be changed through admission to the state residential schools without the written consent of the parent. This is needed to ensure the active involvement and consent on the part of the parent to placement which requires the removal of the student from the home.

5 MCAR § 1.0134 C.3.c. is needed to ensure that formal and timely notice is given to the parent and resident district to ensure that all the parties are made aware of the state residential schools' placement decision and that the implementation of services to the student may proceed without undue delay. This notice is required to be in compliance with Minn. Stat. § 120.17, subd. 3b(a) and 45 C.F.R. 121a.504(a), which require notice to parents prior to the proposed change in placement of the student. This notice also ensures that the student's resident school district is aware of whether appropriate placement for the student has been achieved or whether the district must resume in a timely manner procedures to provide appropriate placement to meet the educational needs in the least restrictive alternative.

5 MCAR § 1.0134 C.4. is needed to establish that the individual educational program plan, which has been developed by the admission and transfer team as a basis for recommendation to admit the student, is included in the notice to ensure that the parent is adequately apprised of the placement decision and the student's proposed educational program. This notice shall also state that the signed individual program plan is the final step in the admission process in order to clarify that after the parent signs the individual educational program plan, the student is admitted to placement at the state residential schools and may begin in attendance. This provision is consistent with EDU 125 E. (5 MCAR § 1.0125 E.).

5 MCAR § 1.0134 C.5. is needed to establish the responsibility of the state residential schools to initiate the opportunity for a conciliation conference consistent with the requirements of Minn. Stat. § 120.17, subd. 3b(c). The conciliation conference provides an opportunity for all parties to present their views as to the proposed placement and proposed individual educational program plan and provides an opportunity to resolve disagreements.

5 MCAR § 1.0134 C.6. is needed to ensure the provision of a due process hearing as required by Minn. Stat. § 120.17, subd. 3b(d) and 45 C.F.R. 121a.506. This hearing allows the parents all procedural safeguards required by law and is consistent with the hearing rights afforded parents of all handicapped students in Minnesota under EDU 129 (5 MCAR § 1.0129) whenever the parent objects to a student's individual education plan.

5 MCAR § 1.0134 C.7. is needed to clarify that a 30 day time limit has been set on the holding of nonactive applications in order to ensure that no undue delay occurs in achieving an appropriate placement for a student. This provision is also necessary to ensure that the resident district is informed that the student is not to be admitted for educational placement at the state residential schools so that the district may initiate procedures to ensure appropriate placement of the student. The last sentence is necessary to ensure that the parent and the district may apply to the state residential schools at a future date if it is agreed to be an appropriate placement in the least restrictive alternative.

5 MCAR § 1.0134 C.8. is needed to ensure that the parent and resident district are notified of the state residential schools' decision to deny the student placement so that procedures to ensure the student's appropriate educational placement is resumed by the resident district without undue delay; and that the parent is informed of the decision so that he/she shall be able to make an informed decision as to whether or not to pursue his/her rights as set out in Minn. Stat. § 120.17, subd. 3b(c) and (d). Written notice of a denial of placement is required by Minn. Stat. § 120.17, subd. 3b(a) and 45 C.F.R. 121a.504(a)(2).

5 MCAR § 1.0134 C.9. is needed to clarify that a conciliation conference shall be scheduled if the parent objects to the denial of admission of the student and that the responsibility to schedule this conciliation conference is that of the state residential schools' administrator. This is consistent with the requirements of Minn. Stat. § 120.17, subd. 3b(c).

5 MCAR § 1.0134 C. 10. is needed to clarify that a parent may request a due process hearing after one conciliation conference has been held if no agreement has been reached. This provision is in compliance with the requirements of 45 C.F.R. 121a.506 and Minn. Stat. § 120.17, subd. 3b(d).

5 MCAR § 1.0135 Periodic review, assessment and transfer procedures.

5 MCAR § 1.0135 A.1.a.-c. are needed to ensure periodic reviews are scheduled consistent with the provisions of EDU 126 A.1. (5 MCAR § 1.0126 A.1.) and 45 C.F.R. Chapter 121a.346(e). To ensure the appropriateness of the educational program, this provision clarifies the procedure by which placement is to be reviewed to determine effectiveness. This review ensures the accountability of the state residential schools to those children presumed to have benefited from the educational services provided by said schools.

5 MCAR § 1.0135 A. 2. is necessary to ensure that the state residential schools conduct two reviews annually, consistent with EDU 126 A.2. (5 MCAR § 1.0126 A.2.), so that the same procedures are ensured to all handicapped students in the state of Minnesota. This is also consistent with the federal requirements for periodic review at least once a year as set out in 45 C.F.R. 121a.343(d). This provision is further needed to clarify that one of the required periodic reviews may be considered to be replaced by the annual review; this is consistent with current practice in school districts. In addition, an annual review contains all of the required procedures of a periodic review plus the additional requirement that the results will be reviewed in a formal team meeting providing the basis for this clarification of the relationship between the requirements for periodic reviews and annual reviews.

5 MCAR § 1.0135 A.3. is needed to ensure that the periodic reviews at the state residential schools are conducted in a manner consistent with such reviews carried out by school districts under EDU 126 A.3. (5 MCAR § 1.0126 A.3.).

5 MCAR § 1.0135 A.4. is needed to clarify that the annual review is to be a formal meeting as required by 45 C.F.R. 121a.343(a) and (d). The formal meeting process ensures that all procedural safeguards are met in the annual review and that the appropriate revision of a student's individual educational program plan will occur in accord with 45 C.F.R. 121a.552(a).

5 MCAR § 1.0135 A.5. is needed to ensure consistency of practice at the state residential schools with the procedures that districts must follow under EDU 126 a.4. (5 MCAR § 1.0126 A.4.). A copy shall be sent to the resident district so that they are kept informed of the student's performance; this is consistent with EDU 126 A.4. (5 MCAR § 1.0126 A.4.) which requires that the resident district receive a copy if different from the providing district. The parent shall be informed of the right to request a conference to ensure that they are encouraged to participate in the child's education pursuant to the intent of Minn. Stat. § 120.17, subd. 3a(b).

5 MCAR § 1.0135 A.6. is needed to ensure consistency with the requirements of EDU 126 A.5. (5 MCAR § 1.0126 A.5.) so that procedures are consistent for all handicapped students throughout Minnesota.

5 MCAR § 1.0135 B.1. is necessary to ensure that reassessment procedures applied to students in attendance at the state residential schools are consistent with assessment and reassessment procedures ensured to all handicapped students and consistent with EDU 126 B. (5 MCAR § 1.0126 B.). This provision is in compliance with 45 C.F.R. 121a.534(b). The second sentence of this provision is needed to clarify that the reassessment may serve as one of the required reviews to prevent an unnecessary duplication of effort.

5 MCAR § 1.0135 B.2. is necessary to ensure that the decision to transfer, which is interpreted to be a change of placement, is based upon current information which demonstrates that the state residential schools are no longer the appropriate placement for the student. This is consistent with the requirements set out in EDU 124 B.1.a. (5 MCAR § 1.0124 B.1.a.).

5 MCAR § 1.0135 B.3. is needed to ensure consistency with EDU 124 B.1.c. (5 MCAR § 1.0124 B.1.c.) and compliance with the intent of Minn. Stat. § 120.17, subd. 3a(b). This provision is also needed to establish that the state residential schools may refuse to conduct a reassessment, based on the belief that a recent and adequate assessment of the student has been accomplished.

5 MCAR § 1.0135 C.1. is needed to establish that it is the responsibility of the state residential schools to ensure that a student does not remain in a placement which is not appropriate to the student's educational needs in the least restrictive alternative. This complies with the intent of 45 C.F.R. 121a.552.

5 MCAR § 1.0135 C.2. is established in 5 MCAR § 1.0135 B.2. and is consistent with EDU 124 B.1.a. (5 MCAR § 1.0124 B.1.a.). This section is reiterated here for clarification.

5 MCAR § 1.0135 C.3. is needed to establish the procedure by which a student is dismissed from placement at the state residential school when the placement is determined to be no longer appropriate in the least restrictive alternative.

5 MCAR § 1.0135 C.3.a. is needed to establish that written consent of the parent is required prior to the actual change in placement of the student. It is more restrictive to require written consent for this change of placement than is required in 45 C.F.R. 121a.504(a) and Minn. Stat. § 120.17, subd. 3b(a); however, this is deemed to be reasonable because the child's residence is being changed as well as the educational placement and dismissal without certain evidence of parental consent would be irresponsible.

5 MCAR § 1.0135 C.3.b. is needed to ensure that formal notice of a decision to transfer is sent to the parent to comply with Minn. Stat. § 120.17, subd. 3b(a) and 45 C.F.R. 121a.504.

5 MCAR § 1.0135 C.3.c. is needed to clarify that a conciliation conference must be scheduled if the parent does not give written approval to the transfer of the student from educational placement at the state residential schools and that the responsibility to schedule this conciliation conference is that of the residential schools' administrator. This is consistent with the requirement of Minn. Stat. § 120.17, subd. 3b(c) and EDU 128 A. (5 MCAR § 1.0128 A.).

5 MCAR § 1.0135 C.3.d. is needed to ensure that a due process hearing is available to the parent when the parent does not give written consent to a proposed transfer of a student from placement and a resolution has not been reached in conciliation conference. This ensures compliance with Minn. Stat. § 120.17, subd. 3b(d) and 45 C.F.R. 121a.506.

5 MCAR § 1.0135 C.3.e. is needed to establish that the state residential schools will initiate a hearing when it has been determined, pursuant to 5 MCAR § 1.0135 C.1., that the state residential schools are no longer an appropriate placement in the least restrictive alternative and the parent refuses to provide written consent to the proposed transfer but does not initiate a hearing to contest the state residential schools proposed action. Without this provision a student could remain at the state residential schools for an extended period of time after it has been determined to be an inappropriate placement and not in the least restrictive alternative. This provision is needed to ensure that the student is receiving educational services appropriate to his/her assessed needs in an appropriate placement in the least restrictive alternative in compliance with 45 C.F.R. 121a.552; Minn. Stat. § 120.17, subd. 3a(c); and consistent with EDU 120 B.11. (5 MCAR § 1.0120 B.11.).

5 MCAR § 1.0135 D.1. reiterates the required participants for the admission and transfer team meeting as established in 5 MCAR § 1.0134 B.3.a.

5 MCAR § 1.0135 D.1.a.-e. are needed to establish the instances when a team meeting must occur for decision making regarding the student's educational program. These instances are in compliance with 45 C.F.R. 121a.343(a).

5 MCAR § 1.0135 D.2. is necessary to ensure that parents receive adequate written notice as to when admission and transfer team meetings will occur. Formal notice must be sent in all these cases to ensure that the student's and parent's rights are protected as defined in 45 C.F.R. 121a.345(a)(1) and Minn. Stat. § 120.17, subd. 3b(a).

5 MCAR § 1.0135 D.3.a. and b. are necessary to ensure that educational services will be provided to the student, even if a parent is unable to attend, if the parent has not objected in the manner prescribed by 5 MCAR § 1.0136. This is in compliance with 45 C.F.R. 121a.345 to guarantee that procedural safeguards are met and consistent with EDU 125 A.5. (5 MCAR § 1.0125 A.5.).

5 MCAR § 1.0136 Formal notice to parents.

5 MCAR § 1.0136 A. is needed to ensure that the content of all required notices sent by the state residential schools is consistent with notices sent by the districts throughout the state and that such notices meet the requirements of Minn. Stat. § 120.17, subd. 3a(b) and 3b(a) and are consistent with EDU 127 A. (5 MCAR § 1.0127 A.). The notice section has been developed to ensure that all procedural safeguards are met and to ensure that parents are informed of their rights in order to participate in any actions involving a student. The requirements for notice are set out in 45 C.F.R. 121a.504 which requires written notice prior to any change or denial of change in educational placement, identification, or evaluation. The need for this section is based on the rationale that not only must the notice procedures meet state and federal law, but should also be consistent with the procedures in EDU 127 (5 MCAR § 1.0127), so that all handicapped students and their parents in Minnesota receive protections of their rights afforded in the same manner.

5 MCAR § 1.0136 B.1.-5. and 7. are needed to establish the content of notice prior to an admission and transfer team meeting and to ensure that, any time a formal meeting is called for the purpose of determining admission, the parent has been adequately informed by the state residential schools consistent with the requirements contained in 45 C.F.R. 121a.505 and EDU 127 C. (5 MCAR § 1.0127 C.). The provision to send notice of the admission meeting to the resident district is needed to establish that the state residential schools must inform a student's resident school district of this team meeting so that the district may attend to contribute information and so that the district is informed that the decision on the placement of a student, for which the district has educational responsibility, is proceeding in a timely manner.

5 MCAR § 1.0136 B.6. is needed to establish that the state residential schools must proceed to process the student's application which has been submitted with the joint signatures of the parent and an authorized agent of the district attesting to their agreement that seeking placement at the state residential schools is appropriate unless the parent objects in writing within the time limit set. This provision is in compliance with the requirements of 45 C.F.R. 121a.345 and EDU 127 C.4. (5 MCAR § 1.0127 C.4.). This ensures that the student's due process rights are protected by requiring the state residential schools to hold the team meeting without a parent in attendance to determine the appropriateness of placement unless the parent exercises his/her right to object.

5 MCAR § 1.0136 B.8. is needed to clarify that a written objection to the admission meeting, which must be held to consider the student's application for admission, shall be considered as a withdrawal of the written consent given by the parent on the application form.

5 MCAR § 1.0136 B.9. is needed to ensure that the parent is informed that if a student's application is withdrawn, the resident district has the responsibility to resume appropriate procedures to determine and provide appropriate placement for the student in accordance with Minn. Stat. § 120.17, subd. 2.

5 MCAR § 1.0136 C.1., 2., 6., 7., 8., 9., & 10. are needed to establish that the state residential schools must serve the parent notice when the state residential schools propose to admit the student pursuant to the parent's written consent to the student's proposed individual educational program and to establish that the minimum content of this notice must be consistent with the requirements of EDU 127 C. (5 MCAR § 1.0127 C.) and 45 C.F.R. 121a.508(a)(1).

5 MCAR § 1.0136 C.3. is needed to inform the parent of the time period within which the parent's written consent is to be given and that the signed individual educational program plan must be returned to the state residential schools administrator before the student is considered to be admitted to the state residential schools as required by 5 MCAR § 1.0134 C.3.a.

5 MCAR § 1.0136 C.4. is necessary to clarify and inform the parent that the student is considered to be admitted to and may begin attendance at the state residential schools when the signed individual educational program is received by the state residential schools' administrator.

5 MCAR § 1.0136 C.5. is needed to clarify that no change of placement will occur until the parent's written consent is gained. This is consistent with 45 C.F.R. 121a.513(a), EDU 127 C.7. (5 MCAR § 1.0127 C.7.), and Minn. Stat. § 120.17, subd. 3b(h).

5 MCAR § 1.0136 D.1.-3. are needed to ensure that when a student is denied admission to the state residential schools, the parent is informed of the determination to deny admission and his/her due process rights in compliance with Minn. Stat. § 120.17, subd. 3b and 45 C.F.R. 121a.505 and consistent with EDU 127 C.6. and 7. (5 MCAR 1.0127 C.6. and 7.).

5 MCAR § 1.0136 E.1.-13. are needed to establish that the state residential schools must send formal notice whenever conducting or refusing to conduct an assessment or reassessment or initiating or refusing to initiate a significant change in a child's educational program so that the parents may make an informed decision regarding their child's educational program consistent with EDU 127 B. and C.1. (5 MCAR § 1.0127 B. and C.1.) and in compliance with 45 C.F.R. 121a.504(a).

5 MCAR § 1.0136 F.1., 2., 3., 4., 5., 6., 8., 9., and 11. are needed to establish that the state residential schools must send formal notice whenever the proposed transfer of a child from placement is the decision following a reassessment and to establish the minimum content of this notice consistent with EDU 127 C. (5 MCAR § 1.0127 C.). This notice shall inform the parent of all available rights and procedures so that the parent may make an informed decision as is the intent of Minn. Stat. § 120.17, subd. 3a(b) and subd. 3b(a) and 45 C.F.R. 121a.504(a).

5 MCAR § 1.0136 F.7. is needed to inform the parent that a specific time is stated for the student to be dismissed from placement after the parent's written consent is given so that the parent may make reasonable plans for the child after the state residential schools' responsibility for educational programming and residential care is terminated.

5 MCAR § 1.0136 F.10. is necessary to inform the parent that the state residential schools will initiate a hearing if it is determined that placement at the state residential schools is no longer an appropriate placement in the least restrictive alternative pursuant to 5 MCAR § 1.0135 C.3.a.

5 MCAR § 1.0136 G.1. is needed to establish that the state residential schools must inform the resident school district of a withdrawn application so that the district is informed of the student's educational status, and can initiate procedures to provide appropriate educational services for the student without delay as consistent with Minn. Stat. § 120.17, subd. 2.

5 MCAR § 1.0136 G.2. is necessary to establish that the state residential schools must notify the resident district if the student is denied admission since the responsibility for providing the pupil's education service remains with the district as required by Minn. Stat. § 120.17, subds. 1 and 2, and procedures must be carried out without undue delay.

5 MCAR § 1.0136 G.3. is needed to establish that if the parent removes the student from placement at the state residential schools, the resident district resumes the primary responsibility for providing the student with educational services, as required by Minn. Stat. § 120.17, subd. 2, and for compulsory attendance as provided by Minn. Stat. § 120.10.

5 MCAR § 1.0136 G.4. is necessary to establish that if the student reaches age 21 or is graduated from the state residential schools, said schools must notify the resident district since the district's responsibility for the student is terminated, consistent with Minn. Stat. § 120.17, subd. 1.

5 MCAR § 1.0137 Conciliation conference.

5 MCAR § 1.0137 is needed to establish when a conciliation conference must be held between the state residential schools and the parent.

5 MCAR § 1.0137 A.1. is in compliance with Minn. Stat. § 120.17, 3b(c) and consistent with EDU 128 A. (5 MCAR § 1.0128 A.) which establishes that, when a parent objects in writing to a proposed action, a conciliation conference shall be held. The clause requiring the conference to be held at a time mutually convenient to the parent and state residential schools is consistent with the intent of maximizing the opportunity for the parent to attend and participate. Based on the rationale that the state residential schools serve a statewide clientele and that numbers of state residential schools' representatives could not reasonably be expected to travel statewide to be available for conciliation conferences, it is assumed the meeting place would be at the state residential schools. The clause requiring the conference to be held at the mutually agreed upon place which is included in EDU 128 A. (5 MCAR § 1.0128 A.) is omitted here. While the conciliation conferences may occur in locations other than the state residential schools, the setting of the place is left to the discretion of the state residential schools' administrator.

5 MCAR § 1.0137 A.2. and 3. are needed to establish that the state residential schools shall consider the withholding of a parent's written consent in the instances that it is required to admit, pursuant to 5 MCAR § 1.0134 C.3.a., or transfer, pursuant to 5 MCAR § 1.0135 C.3.a., to be cause for scheduling a conciliation conference in the same manner as a written objection. These provisions are needed to clarify that it is the state residential schools' administrator's responsibility to arrange the conference within the time period set out in order to ensure that no undue delay occurs in the procedures to provide appropriate placement to a student.

5 MCAR § 1.0137 B.1. and 2. are needed to establish the responsibility for notifying the parent of the outcome of the conciliation conference. The minimum content of that notice must inform the parent of action that will be taken regarding his/her child's educational program, of his/her parental rights, and the procedures to be followed to exercise the right to a hearing. These provisions are consistent with Minn. Stat. § 120.17, subd. 3b(d). and EDU 128 B.1. and 2. (5 MCAR § 1.0128 B.1. and 2.).

5 MCAR § 1.0137 B.3. is needed to ensure that the parent is informed that the proposed action if it is not action to admit the student to or transfer the student from placement at the state residential schools, will occur if a hearing is not requested by the parent. This is consistent with EDU 128 B.3. (5 MCAR § 1.0128 B.3.) and 5 MCAR § 1.0134 C.3.a. and 5 MCAR § 1.0135 C.3.a.

5 MCAR § 1.0137 B.4. is needed to ensure that the parent is informed that if agreement on the proposed action to admit the student pursuant to the parent's written consent to the student's proposed individual educational plan is not reached and no hearing is requested, the student's application will be considered withdrawn. The clause which requires that the resident school district also receive notice is needed to ensure that the district is informed that the student is not admitted to placement at the state residential schools and so that the district can initiate procedures to provide appropriate educational services to the student in compliance with Minn. Stat. § 120.17, subd. 2.

5 MCAR § 1.0137 B.5. is needed to ensure that the parent is informed that if the proposed action is to transfer the student from placement at the state residential schools and the parent continues to refuse written consent after the conciliation conference, the state residential schools must act within seven days after the period allowed for parent response to schedule a hearing. This requirement is established to ensure the student's right to an appropriate education in the least restrictive alternative is protected in compliance with Minn. Stat. § 120.17, subd. 3.a.(c). and 45 C.F.R. 121a.550(b).

5 MCAR § 1.0138 The hearing.

5 MCAR § 1.0138 A. is needed to establish that the state residential schools or the parent may initiate a hearing in compliance with Minn. Stat. § 120.17, subd. 3.b.(d). and 45 C.F.R. 121a.506(a) and consistent with the procedures throughout EDU 129 (5 MCAR § 1.0129). The 45 day time period is established here to meet the requirements of 45 C.F.R. 121a.512(a). The second sentence is needed to establish that the resident district may participate in the hearing.

This is based upon the rationale that there can be a very closely timed transfer of responsibility for the delivery of educational services to a student between the resident school district and the state residential schools. Therefore, it may be in the best interests of the student to have the resident district informed and involved in order to ensure minimal disruption in services to the student. The last sentence is necessary to meet the requirements of 45 C.F.R. 121a.512(c).

5 MCAR § 1.0138 B.1. is needed to establish the requirement to serve notice in a manner consistent with Minn. Stat. § 120.17, subd. 3b(a) and EDU 129 B.1. (5 MCAR § 1.0129 B.1.). The time period is needed to clarify that the implementation of these procedures must occur in a period consistent with the 45 day time limit.

5 MCAR § 1.0138 B.2. is needed to establish that it is the responsibility of the state residential schools to serve notice of rights and procedures relative to the hearing consistent with the procedures in EDU 129 B.2. (5 MCAR § 1.0129 B.2.). This requirement is also needed to clarify the content of the notice which is intended to fully inform the parent of his/her rights and the procedures relative to the hearing so that the parent may exercise his/her due process rights in a meaningful fashion.

5 MCAR § 1.0138 B.2.(a). is needed to comply with Minn. Stat. § 120.17, subd. 3b(d) and the requirements of 45 C.F.R. 121a.507. This provision is also necessary to establish that it is the Commissioner who is responsible for appointing the hearing officer. This is consistent with the organizational structure of the state residential school under the jurisdiction of the State Board of Education.

5 MCAR § 1.0138 B.2.b. is consistent with EDU 129 B.2.b. (5 MCAR § 1.0129 B.2.b.) and is necessary for implementation purposes.

5 MCAR § 1.0138 B.2.c.(1).-(9). are required to insure that the rights of the respective parties are known by all parties. These rights are consistent with EDU 129 (5 MCAR § 1.0129), 45 C.F.R. 121a.508, and 45 C.F.R. 121a.506.

5 MCAR § 1.0138 B.2.d. is needed so that the parent is aware that the burden of proof is on the governmental agency, the state residential schools; and that the state residential schools must be able to justify their proposed action based on the needs of the student as provided in Minn. Stat. § 120.17, subd. 3a(a). The last clause relating to the least restrictive alternative emphasizes the need to comply with Minn. Stat. § 120.17, subd. 3a(c) and 45 C.F.R. 121a.550(b).

5 MCAR § 1.0138 B.2.e. is consistent with 5 MCAR § 1.0129 B.2.e. and is needed to comply with Minn. Stat. § 120.17, subd. 3b(f) and 45 C.F.R. 121a.508(4).

5 MCAR § 1.0138 B.2.f. is consistent with EDU 129 B.2.f. (5 MCAR § 1.0129 B.2.f.) and meets the requirements of 45 C.F.R. 121a.508 (a)(5). The time guideline is consistent with Minn. Stat. § 120.17, subd. 3b(e). and 45 C.F.R. 121a.512(a).

5 MCAR § 1.0138 B.2.g. is needed to establish that the hearing officer's decision is final with no appeal to the Commissioner available because the state residential schools are under the direct management and supervision of the Department of Education and any review given could not be considered impartial as required by 45 C.F.R. 121a.510. The option to appeal to the district court as required by 45 C.F.R. 121a.511 is established in 5 MCAR § 1.0138 G.1.

5 MCAR § 1.0138 B.2.h. is needed to ensure this basic procedural safeguard. The current status of a student will not be changed until a parent has an opportunity to be heard. This section is in compliance with Minn. Stat. § 120.17, subd. 3b(h) and 45 C.F.R. 121a.513(a), and is consistent with EDU 129 B.2.j. (5 MCAR § 1.0129 B.2.j.).

5 MCAR § 1.0138 B.2.i. is needed to ensure that the student who may be able to contribute to the decision making process is able to attend the hearing if the parent wishes to include him/her. This is consistent with 45 C.F.R. 121a.508(b)(1).

5 MCAR § 1.0138 B.2.j. is needed to ensure that the parent is fully informed of the decision of the hearing officer. This is consistent with EDU 129 G.4. and 5. (5 MCAR § 1.0129 G.4. and 5.) and the requirements of 45 C.F.R. 121a.512(a)(2).

5 MCAR § 1.0138 C.1. is consistent with 5 MCAR § 1.0138 C.1. of the above proposed rules and the provisions of Minn. Stat. § 120.17, subd. 3b(d).

5 MCAR § 1.0138 C.2. is necessary to clarify those persons deemed not to be impartial by definition of their role and association with the state education agency or the resident school district as is the intent of Minn. Stat. § 120.17, subd. 3b(d) and 45 C.F.R. 121a.507.

5 MCAR § 1.0138 C.3. is needed to establish that any independent assessments required by the hearing officer are to be paid by the state residential schools so that cost does not prevent a parent from pursuing their rights as is the intent of 45 C.F.R. 121a.503(d). The second sentence is needed to further clarify those expenses for which the state residential schools are responsible.

5 MCAR § 1.0138 C.4. is needed to establish that the hearing officer has subpoena power so that he/she may ensure that all relevant information and data are provided at the hearing. This provision is based on the rationale that since there is no provision for appeal to the Commissioner, this measure should be available to ensure that all persons and information necessary for a thorough review of the facts are available for consideration prior to the hearing decision.

5 MCAR § 1.0138 D.1. is needed to establish a time period in which the hearing officer must be provided with the information required in 5 MCAR § 1.0138 D.1.a.(3), so that he/she will have an adequate amount of time in which to review the information pertinent to the hearing while ensuring that no undue delay occurs as is the intent of the total time period set by 45 C.F.R. 121a.512(a) and Minn. Stat. § 120.17, subd. 3b(e).

5 MCAR § 1.0138 D.1.a.-e. are required to ensure that the hearing officer has appropriate information available so that a thorough review of procedural requirements, the student's educational needs, the services being provided and the unresolved issues of the parties can be made. This is consistent with EDU 129 D.1.a.-e. (5 MCAR § 1.0129 D.1.a.-e.).

5 MCAR § 1.0138 D.2.a.-i. are required to define procedures that will permit the hearing officer to ensure that the state residential schools have complied with all applicable laws and regulations; to resolve questions concerning the hearing; to settle the entire matter if possible; and to avoid unnecessary hearings particularly where the state residential schools have not complied with other provisions of the regulations. The provisions of a., b., c., e., f., g., and h. are consistent with EDU 129 D.2. (5 MCAR § 1.0129 D.2.). The provision in 5 MCAR § 1.0138 D.2.d. is consistent with 45 C.F.R. 121a.503(d). The provision in 5 MCAR § 1.0138 D.2.i. is consistent with 45 C.F.R. 121a.512(a) and Minn. Stat. § 120.17, subd. 3b(e).

5 MCAR § 1.0138 E.1. is necessary to identify how the hearing officer shall preside over the hearing and that the decision will be based on information at the hearing or introduced into the record. This is consistent with the procedures in EDU 129 F.1. (5 MCAR § 1.0129 F.1.).

5 MCAR § 1.0138 E.2. is necessary to identify that the state residential schools bear the burden of proof and justify the proposed action at the hearing. This is consistent with EDU 129 F.2. (5 MCAR § 1.0129 F.2.).

5 MCAR § 1.0138 E.3. is needed to set the tone for the hearing which is that the hearing is conducted to determine whether there are facts which support the proposed action. This is consistent with EDU 129 F.3. (5 MCAR § 1.0129 F.3.).

5 MCAR § 1.0138 E.4. is necessary to ensure that the requirements of 45 C.F.R. 121a.508(4) are met and to guarantee that a reviewable transcript of the hearing is available to the parent as is the intent of Minn. Stat. § 120.17, subd. 3b(f).

5 MCAR § 1.0138 E.5.a.-d. are needed to identify the evidence that will be considered by the hearing officer at the hearing. These provisions establish the degree of proof required and clarify that the burden of proof remains on the state residential schools consistent with EDU 129 F.2. (5 MCAR § 1.0129 F.2.) and as set out in 5 MCAR § 1.0138 E.2.

5 MCAR § 1.0138 E.6. is needed to ensure that the decision of the hearing officer is based upon the needs of the student as shown by the evidence at the hearing. This provision is consistent with EDU 129 G.1.b. and 2.b. (5 MCAR § 1.0129 G.1.b. and 2.b.).

5 MCAR § 1.0138 F. is needed to establish a time limit to comply with the requirements of 45 C.F.R. 121a.512(a) and Minn. Stat. § 120.17, subd. 3b(e).

5 MCAR § 1.0138 F.1. is needed to identify that in decisions regarding a denial of admission the hearing officer must sustain the decision to deny admission when there are reasonable grounds to believe that attendance at the state residential schools is not an appropriate placement in the least restrictive alternative. The decision should be based on the state residential schools showing by a preponderance of the evidence that an individual educational program plan could not be developed in accordance with appropriate placement in the least restrictive alternative as is required by Minn. Stat. § 120.17, subd. 3a(c) and 45 C.F.R. 121a.550(b).

5 MCAR § 1.0138 F.2.a. is needed to identify that in decisions regarding assessment or reassessment, the hearing officer must sustain the proposed action when there are reasonable grounds to believe that an assessment or reassessment is justified as a possible step toward a change in the educational placement to provide an appropriate program to the student as required by Minn. Stat. § 120.17, subd. 3a(a) and 45 C.F.R. 121a.4. This provision is also necessary to establish that if the state residential schools can demonstrate proximity in time, appropriateness, and adequacy of assessment or reassessment, the hearing officer must sustain the state residential school's refusal to assess or reassess. This is needed to establish consistency with the procedures of EDU 129 G.1. (5 MCAR § 1.0129 G.1.b.).

5 MCAR § 1.0138 F.3.a. and b. are needed to identify that decisions regarding proposed action with regard to the student's individual educational program are based upon a showing that the individual educational program represents education services appropriate to the student as in the least restrictive alternative required by Minn. Stat. § 120.17, subd. 3.a.(a). The second sentence of this provision is necessary to establish that the principle of least restrictive alternative must be applied to the decision to ensure compliance with 45 C.F.R. 121a.550(b) and Minn. Stat. § 120.17, subd. 3a(c).

5 MCAR § 1.0138 F.4. is needed to identify that the decision regarding a proposal to transfer the student from placement at the state residential schools is based on a showing by the state residential schools by a preponderance of the evidence that placement at the schools is no longer an appropriate placement in the least restrictive alternative as required by Minn. Stat. § 120.17, subd. 3a(c) and 45 C.F.R. 121a.550(b).

5 MCAR § 1.0138 F.5.a. is necessary to ensure that the parent receives a written copy of the hearing officer's decision so that they are fully informed as to their child's educational status. This is consistent with Minn. Stat. § 120.17, subd. 3b(e) and 45 C.F.R. 121a.512(a) and is established in EDU 129 G.4. (5 MCAR § 1.0129 G.4.).

5 MCAR § 1.0138 F.5.b. is needed to comply with Minn. Stat. § 120.17, subd. 3b(e)(4).

5 MCAR § 1.0138 F.5.c. is needed to comply with requirements of fairness and nondiscrimination as required by Minn. Stat. § 120.17, subd. 3a(d).

5 MCAR § 1.0138 F.5.d. is needed to establish that the decision is binding unless appealed in accordance with 5 MCAR § 1.0138 G.1. This provision is in compliance with 45 C.F.R. 121a.511.

5 MCAR § 1.0138 F.6. is needed to ensure that the Commissioner is informed of all hearing decisions consistent with the intent of Minn. Stat. § 120.17, subd. 3b(e).

5 MCAR § 1.0138 G.1. is necessary to inform the parties of the time in which an appeal for the decision must be made. Providing this information ensures due process rights. This provision is consistent with EDU 129 H.5. (5 MCAR § 1.0129 H.5.). The time period allowed for filing an appeal is established to be a reasonable length of time to accomplish procedures necessary to initiate an appeal in district court. This time period is consistent with that allowed for such action in Minn. Stat. § 15.0424, subd. 2.

5 MCAR § 1.0138 G.2. is needed to clarify that the hearing officer does not have the power to extend the 30 day period for filing a civil action. This provision ensures that no undue delay occurs in procedures necessary to execute an appropriate educational placement for the child.

Listing Of Persons To Provide
Testimony Regarding Proposed Rules 5 MCAR § 1.0133-1.0138

To Be Called As Needed

I. Department Employees

Name	Title
Will Antell	Assistant Commissioner of Education
Mary Lynne McAlonie	Manager, Special Projects, Division of Special and Compensatory Education
Melvin Brasel	Residential Schools' Administrator
Robert Wedl	Manager, Office of Monitoring
Jeanne Dorle	Assistant Director, Special Education
Patricia Strang	Education Specialist, Office of Monitoring

II. Expert Witness

Name	Title
Jan Proehl	Consultant for Low Incidence Programs, St. Paul Public Schools
Arlene Gable	Lead Teacher, Vision Services, District #287
Wayne Erickson	Director of Special Education, Faribault Public Schools
Dennis Becchetti	Special Education Regional Consultant, Regions 5 and 7
James Geary	Former Principal of Special Programs, Como School, St. Paul Public Schools
Joyce Scanlan	Chairperson, Minnesota Braille and Sight Saving School Advisory Council
Robert Harris	Chairperson, Minnesota School for the Deaf Advisory Council
Marge Goldberg	Co-Director, P.A.C.E.R. (Parents' Advocacy Coalition for Educational Rights)

Department of Education
Special Education Division

In the Matter of Proposed Adoption
of Rules of the State Board of
Education Governing the Requirements
and Procedures for Student Admission
to, Program and Evaluation During
Attendance at, and Transfer from
the State Residential Schools for
Deaf, Blind, and Multiply Handi-
capped Sensory Impaired Students
5 MCAR §§ 1.0133 - 1.0138.

Notice of Hearing

Notice is hereby given that a public hearing will be held in the above entitled matter at the Huckleberry Inn, 2519 North Lyndale in Faribault, Minnesota, 55021, on April 23, 1980, commencing at 9:00 a.m. The proposed rules are subject to change as a result of the rule hearing process. The agency therefore strongly urges those who are potentially affected in any manner by the substance of the proposed rules to participate in the rule hearing process.

Following the agency's presentation at the hearing all representatives of associations or other interested groups and all interested and affected persons will have an opportunity to be heard concerning the adoption of the proposed rules captioned above by submitting either oral or written data, statements or arguments. In addition, whether or not an appearance is made at the hearing, written statements may be submitted to Peter C. Erickson, Hearing Examiner, Room 300, 1745 University Avenue, St. Paul, MN, 55104, telephone (612) 296-8118 either before the hearing or within five (5) working days after the close of the hearing. The hearing examiner may, at the hearing, order that the record be kept open for a longer period not to exceed 20 calendar days. The rule hearing procedure is governed by Minn. Stat. §§ 15.0411-15.0417 and 15.052 and by 9 MCAR §§ 2.101-2.112 (Minnesota Code of Agency Rules). If you have any questions about the procedure, call or write the hearing examiner.

The Board estimates that there will be no cost to local bodies in the State to implement the rule for the two years immediately following its adoption within the meaning of Minn. Stat. § 15.0412, subd. 7 (1978).

Twenty-five days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the agency and at the Office of Hearing Examiners. This Statement of Need and Reasonableness will present evidence to justify both the need for and the reasonableness of the rule/rules as proposed. The agency intends to present only a short summary of the Statement of Need and Reasonableness at the hearing but will answer questions raised by interested persons. You are therefore urged to review the Statement of Need and Reasonableness before the hearing. Additional copies will be available at the hearing.

Any person may request notification of the date on which the hearing examiner's report will be available, after which date the agency may not take any final action on the rules for a period of five (5) working days. Any person may request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the agency.

If you desire to be so notified, you may so indicate at the hearing. After the hearing you may request notification by sending a written request to the hearing examiner (in case of the hearing examiner's report) or to the agency (in the case of the agency's submission or resubmission to the Attorney General).

A copy of the rules is attached hereto. One free copy may be obtained by writing to Wilfred D. Antell, Ed.D., Assistant Commissioner of Education, 802 Capitol Square Building, 550 Cedar Street, St. Paul, Minnesota, 55101. Additional copies will be available at the door on the date of the hearing.

The Board's statutory authority to promulgate these rules is provided by Minn. Stat. § 128A.02, subd. 6, as amended by Laws of 1979, ch. 339, Art. III, § 17.

Minn. Stat., ch. 10A, requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11, as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any one month or more than $250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250, not including his own traveling expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, MN 55155, telephone (612) 296-5615.

State of Minnesota
State Board of Education

Date January 15, 1980

Howard B. Casmey, Secretary

ADMIN 1000 (Rev. 1/78)
SF-00006-01

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT Education
736 Capitol Square Bldg.

TO : Joanne E. Hinderaker
Special Ass't. Attorney General
G25 Administration Bldg.

DATE: 7-30-80

FROM : Lois E. Steinhaus
Education Statistics Section

PHONE: 6-4428

SUBJECT: Approval for Rules Governing the Requirements and Procedures for Student Admission to, Program and Evaluation During Attendance at, and Transfer from the State Residential Schools for Deaf, Blind, and Multiply Handicapped Sensory Impaired Students 5 MCAR §§ 1.0133-1.0138.

Enclosed is the complete record of the hearing.

Also enclosed are four copies of the Rules as Adopted and four copies of the Order for Hearing. In addition, are three copies each of the following:

1. Proposed Rules
2. Notice of Hearing
3. Affidavit of Receipt of Secretary of State's List
4. Certificate of Delivery of Secretary of State's List
5. Affidavit of Mailing
6. Statement of Need and Reasonableness
7. Findings of Fact and Order Adopting.....
8. Certificate of Board's Authorizing Resolution
9. Certificate of Board's Adoption of Rules Resolution
10. Chief Hearing Examiner's and Hearing Examiner's Reports
11. One copy of the mailing list
12. One copy indicating changes from the Proposed Rules to the Adopted Rules

Please call me when this is ready to be returned, so that I can send some one to pick it up. Thank you.

PRINTED ON RECYCLED PAPER

STATE OF MINNESOTA

DEPARTMENT OF EDUCATION

STATE BOARD OF EDUCATION

DIVISION OF SPECIAL EDUCATION

In the Matter of the Proposed Adoption of Rules of the State Board of Education Governing the Requirements and Procedures for Student Admission to, Program and Evaluation During Attendance at, and Transfer from the State Residential Schools for the Deaf, Blind, and Multiply Handicapped Sensory Impaired Students
5 MCAR §§ 1.0133-1.0138

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

CHARLES T. MOTTL
Special Assistant Attorney General

Dated: 7/31/80

EDU-80-004-PE

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE BOARD OF EDUCATION

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE STATE BOARD OF EDUCATION GOVERNING THE REQUIREMENTS AND PROCEDURES FOR STUDENT ADMISSION TO, PROGRAM AND EVALUATION DURING ATTENDANCE AT, AND TRANSFER FROM THE STATE RESIDENTIAL SCHOOLS FOR DEAF, BLIND, AND MULTIPLY HANDICAPPED SENSORY IMPAIRED STUDENTS 5 MCAR §§ 1.0133 - 1.0138.

ORDER OF THE CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on April 23, 1980, before Peter C. Erickson, a Hearing Examiner of the State Office of Hearing Examiners, on the above-entitled matter in compliance with Minn. Stat. § 15.0412, subd. 4; and

WHEREAS, the Report of the Hearing Examiner made pursuant to Minn. Stat. § 15.052, subd. 3, was issued to the Board of Education (hereinafter "Board") on May 28, 1980; and

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

WHEREAS, the Board has submitted said rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.052, subd. 4, and 9 MCAR § 2.110; and

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

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

Dated this 29th day
of July, 1980.

DUANE R. HARVES
Chief Hearing Examiner

CERTIFICATE OF BOARD'S
AUTHORIZING 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 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 14th day of January, 1980; that a quorum was present at said meeting; and that a majority of those present voted for the resolution; that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> RESOLVED, that the board of education shall call a hearing for the purpose of informing the public concerning the proposed rules of the board governing the requirements and procedures for student admission to, program and evaluation during attendance at, and transfer from the state residential schools for the deaf, blind, and multiply handicapped sensory impaired students; and that the commissioner or his deputy is authorized to sign an order and notice of such hearing to be conducted pursuant to Minnesota Statutes, chapter 15 and rules of the Hearing Examiner.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 14th day of January, 1980.

Howard B. Casmey
Secretary, Board of Education

Ruth A. Myers
Member, Board of Education

State of Minnesota
Department of Education

State Board of Education
Special and Compensatory Education
Division

IN THE MATTER OF: The proposed adoption of rules of the state board of education governing requirements and procedures for student admission to, program and evaluation during attendance at, and transfer from the state residential schools for deaf, blind, and multiply handicapped sensory impaired students

Affidavit of Mailing

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

That on the 18 day of March, 1980, at the City of St. Paul, County of Ramsey, State of Minnesota, he served the attached Notice of Hearing by depositing in the United States mail at said City of St. Paul, a true and correct copy thereof, properly enveloped, with postage prepaid, to all persons and associations at the addresses listed on the attached Certificate of the Secretary of State.

Harold E. Klecker

Subscribed and sworn to before me

this 18th day of March,

1980.

Betty King
Notary Public

Dakota, County, Minnesota

My Commission expires 6-13-83.

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

State of Minnesota
Department of Education

State Board of Education
Special and Compensatory Education
Division

IN THE MATTER OF: The proposed adoption of rules of the state board of education governing requirements and procedures for student admission to, program and evaluation during attendance at, and transfer from the state residential schools for deaf, blind, and multiply handicapped sensory impaired students

Affidavit of Receipt of Secretary of State's List

Harold E. Klecker, being duly sworn on oath deposes and says:

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

2) That on the 13th day of March, he went to the Secretary of State's office for the State of Minnesota and requested a current list of all representatives of associations or other interested groups or persons who had registered their names with the Secretary of State for the purpose of obtaining notices of public hearings relating to the promulgation of rules pursuant to Minn. Stat. § 15.0412.

3) That on the 17th day of March, in response to the above request, the Secretary of State provided him with such a list, a copy of which is attached hereto and incorporated by reference.

Further affiant sayeth not.

Harold E Klecker

Subscribed and sworn to before me
this 17th day of March,
1980.

Betty King
Notary Public

Dakota, County, Minnesota

My Commission expires 6-13-83.

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

State of Minnesota
Department of Education

State Board of Education
Special and Compensatory Education
Division

IN THE MATTER OF: The proposed adoption of rules of the state board of education governing requirements and procedures for student admission to, program and evaluation during attendance at, and transfer from the state residential schools for deaf, blind, and multiply handicapped sensory impaired students

Certificate of Delivery
Secretary of State List

I hereby certify that the attached 9 sheets (347 labels) constitute the complete list of persons, associations, and other interested groups who as of 10:40 o'clock AM, this 17th day of March, 1980, have requested pursuant to Minn. Stat. § 15.0412, subd. 4, (1978) that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearing on proposed rules on the subject captioned above.

SECRETARY OF STATE

Joan Anderson Growe

By Diana Scott

State of Minnesota
Department of Education

State Board of Education
Division of Special Education

Order for Hearing

IN THE MATTER OF: The Proposed Adoption of Rules of the State Board of Education Governing the Requirements and Procedures for Student Admission to, Program and Evaluation During Attendance at, and Transfer from the State Residential Schools for the Deaf, Blind, and Multiply Handicapped Sensory Impaired Student

IT IS HEREBY ORDERED that a public hearing on the above-captioned rules be held in the Huckleberry Inn, 2519 North Lyndale, Faribault, Minnesota 55021 on Wednesday, April 23, commencing at 9:00 a.m. and continuing until all persons have had an opportunity to be heard.

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

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

State of Minnesota
Board of Education

Secretary

Date: January 14, 1980