

Minnesota Attorney General: Administrative Rules Proceedings

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Our File #638

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

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : LOIS STEINHAUS
Department of Education

DATE: 10/20/80

FROM : H. THEODORE GRINDAL HTG
Special Assistant
Attorney General

PHONE: 297-3471

SUBJECT: Rules as Approved of the State Board of Education Governing Standards and Procedures in Special Education Instruction and Services for Children and Youth Who Are Handicapped, 5 MCAR § 1.0120 through 1.0129.

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.

HTG/bw
Encl.
cc: Duane Harves
Susan Robertson

State of Minnesota
County of Ramsey

Before Jon L. Lunde
Hearing Examiner
Office of Hearing Examiners

In the Matter of Proposed Adoption of Rules of the State Board of Education Governing Standards and Procedures in Special Education Instruction and Services for Children and Youth Who Are Handicapped, 5 MCAR § 1.0120 through 1.0129.

Findings of Fact and Order Adopting the Rules

The above entitled matter came up for hearing before Jon L. Lunde, Hearing Examiner assigned by the Chief Hearing Examiner, on Thursday, April 3, 1980, in St. Paul, Minnesota, after proper notice as 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 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 the Findings of Fact of the Hearing Examiner accurately reflect the facts in the record.

NOW THEREFORE, BE IT RESOLVED that the State Board of Education accepts as its own, rejects or modifies the Report of the Hearing Examiner dated May 9, 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 3, 5 through 11 and 14 through 23 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. In Section 4 the Hearing Examiner states "The Board did not submit the names of its personnel who would represent it at the hearing ..." This statement is incorrect. The Board did submit the names of its witnesses on the same day the Statement of Need and Reasonableness was submitted. Both of these documents were available for inspection from March 7, 1980, until the date of the hearing. The list of witnesses is attached to the Statement of Need and Reasonableness and is part of the record.

IV. Sections 12 and 13 discuss the proposed modifications to 5 MCAR § 1.0122 relating to the establishment of a standard for review of licenses held by staff working in public school programs for prekindergarten handicapped children. A careful review of the 17 written comments addressing this provision reveals lengthy discussion regarding the specific standards, skills and training which should be included in a license to work with young, handicapped children. Because of the weight of public testimony on this issue, the Board finds that the entire matters should be referred to the Board of Teaching for consideration in the Board of Teaching's proposal for a license in Special Education : Early Education. The Board of Teaching anticipates holding a public hearing on the proposed Special Education : Early Education license within the next seven months. The Board finds that 5 MCAR § 1.0122 should not be amended at this time.

V. The Board finds the clarification discussed in Section 24 necessary and reasonable and proposes the amendment to 5 MCAR § 1.0129 B.2.c.(1) read as follows:

> (1) of their right to receive a list of persons who will testify on behalf of the district concerning the proposed action within five days of the date the district receives their written request for the list of persons testifying.

VI. The Boards finds the clarification discussed in Section 25 necessary and reasonable and proposes the amendment to 5 MCAR § 1.0129 D.2.h. to read as follows:

h. May grant specific extensions of time beyond the 45 day period established in 5 MCAR § 1.0129 B.2.e. at the request of either party.

VII. The Boards find the renumbering discussed in Section 26 necessary and reasonable and proposes that 5 MCAR § 1.0129 E. read as follows:

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

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

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

4. At least five days prior to the hearing the parents shall receive from the school districts, who are parties of the hearing, a brief resume of "additional material allegations" referring to conduct, situations or conditions which are discovered and found to be relevant to the issues to be contested at the hearing and which are not contained in the

original notice or memorandum provided pursuant to 5 MCAR §§ 127 A., B. or C. or 5 MCAR § 1.0128 B. ~~EDU-127-B.-or-C.-or-128-B.~~ ~~And-that-if~~ If such material allegation or information relating thereto are not so disclosed, it shall be left to the person conducting the hearing to determine if those material allegations may be introduced or considered.

5. Within five days after the written request is received, any party shall receive from the other parties a list of witnesses who may be called to testify at the hearing. Such lists may be modified at any time but each party should be notified immediately if possible.

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

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

VIII. 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 §§ 1.0120 - 1.0129, as amended be adopted this 4th day of August, 1980, pursuant to the statutory authority vested in us by Minn. Stat. 120.17, subd. 3.

Howard B. Casmey
Secretary, State Board of Education

Member, State Board of Education

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

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : LOIS STEINHAUS
Department of Education

DATE: 10-17-80

FROM : H. THEODORE GRINDAL
Special Assistant Attorney General

PHONE: 297-3471

SUBJECT: Standards and Procedures for the Provision of Special Education Instruction and Services for Children and Youth who are Handicapped 5 MCAR Section 1.01209

There are several typographical errors that must be corrected before this rule may be approved.

I would suggest that you have your clerical staff look at pages 14, 18, 19, 20, 21, 22, and 23 for errors I have indicated with red ink. If you correct these problems, then I will be able to complete my review of the rules.

Because of the timing involved, I need to have the corrections made and three copies of the final corrected version by Monday, Oct. 20th. Please strive to have the three completed copies back to me early Monday morning the 20th or sooner if time permits.

Because these errors go only to form and not legality, you will not have to submit the rules to the Chief Hearing Examiner before returning them to us.

Thank you much for your cooperation. If you have any additional questions, please feel free to call me.

AEG:bw

Our File # 638

Permanent Rule X

Temporary Rule _____

RULES REVIEW CHECKLIST

DATE RULES RECEIVED 9/30 DUE DATE 10/20

Resubmitted and Received _____

a. Returned to Agency w/o Filing w/Secretary of State 10/20/80
b. Approved 10/20/80 Date Sent Back to Agency 10/20/80

- -

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 ✓ 1.3.80
   Sufficiency ✓
6. Secretary of State's List ✓ (one copy only)
7. Certificate of Acquisition of Secretary of State's List ✓
8. Secretary of State's Certification of Delivery of Secretary of State's List to Agency ✓
9. Affidavit of Mailing ✓
   At least 30 days prior to hearing ✓ 2.26.80
10. Publication in State Register ✓ copy not submitted but see HEP 2
    At least 30 days prior to hearing ✓ 2.18.80
11. Statement of Need and Evidence ✓
12. Hearing Examiner's Report ✓
13. Agency's Findings of Fact ✓ incorporated with #15 - Order Adopting
14. Certificate of Board's Resolution Adopting Rules, where applicable ✓
15. Order Adopting ✓ incorporated with #13 - F of F.
16. Report of Chief Hearing Examiner ✓
17. Order Approving Incorporation by Reference, where applicable N/A
18. Certificate of Compliance with Rulemaking Procedures _____
19. Copy of Notice of Intent to Solicit Outside Opinion, where applicable ✓ copy not submitted but see SBE Ex. 11 - SR 1.14.80
20. Petition by Public, where applicable N/A

To: Lois Steinhaus
Department of Education

From: H. Theodore Grindal
Special Assistant Attorney General

Re: Standards and Procedures for the Provision of Special Education Instruction and Services for Children and Youth who are Handicapped
5 MCAR Section 1.01209

Date: Oct. 16, 1980

There are several typographical errors that must be corrected before this rule may be approved.

I would suggest that you have your clerical staff look at pages 14, 18, 19, 20, 21, 22, and 23 for errors I have indicated with red ink. If you correct these problems, then I will be able to complete my review of the rules.

Because of the timing involved, I need to have the corrections made and three copies of the final corrected version by Monday, Oct. 20th. Please strive to have the three completed copies back to me early Monday morning the 20th or sooner if time permits.

Because these errors go only to form and not legality, you will not have to submit the rules to the Chief Hearing Examiner before returning them to us.

Thank you much for your cooperation. If you have any additional questions, please feel free to call me.

EDU-80-005-JL

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE BOARD OF EDUCATION

In the Matter of Proposed Adoption of Rules of the State Board of Education Governing Standards and Procedures in Special Education Instruction and Services for Children and Youth who are Handicapped, 5 MCAR §§ 1.0120 through 1.0129.

REPORT OF THE HEARING EXAMINER

The above-entitled matter came on for hearing before Jon L. Lunde, duly appointed Hearing Examiner, on Thursday, April 3, 1980, at 8:30 a.m. at the School Administration Building, Auditorium Rooms A and B, 360 Colborne Street, St. Paul, Minnesota, 55102, pursuant to a Notice of Hearing dated January 15, 1980.

Charles Mottl, Special Assistant Attorney General, appeared as counsel for the Minnesota State Board of Education (hereinafter the "Board"). Will Antell, Ed.D., Assistant Commissioner of Education, Minnesota State Department of Education, 802 Capitol Square Building, 550 Cedar Street, St. Paul, Minnesota, 55101, and Jeanne Dorle, Ph.D., Assistant Director of the Special Education Section of the Minnesota Department of Education, Capitol Square Building, 550 Cedar Street, St. Paul, Minnesota, 55101, appeared on behalf of the Board. Other witnesses solicited by the Board to appear on its behalf at the hearing and who did present testimony were Robert Wedl, Al Baas, Betty Christenson, Marjorie Goldberg, Paula Goldberg and Ann Henry. Some of these witnesses testified both for the Board and separately on their own behalf. In addition to agency personnel and interpreters, approximately 40 persons attended the hearing, 22 of whom signed the hearing register. The hearing continued until all interested groups and persons had had an opportunity to be heard concerning the adoption of the proposed rule amendments.

This was a rules hearing held pursuant to Minn. Stat. Ch. 15 to determine whether the rules proposed by the Board are authorized, necessary and reasonable and should be adopted. Subsequent to the hearing, and while the record remained open, 28 written comments were received from interested groups and persons. The Board responded to these comments in writing on April 10, 1980. One comment was received late and has not been considered.

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 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

Procedural Requirements

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.
(e) A copy of the Resolution of the Board authorizing its Secretary to order the hearing.

2. On Monday, February 18, 1980, a Notice of Hearing and a copy of the proposed rules were published at 4 State Register 1289-1305.

3. On February 26, 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 7, 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 4 State Register 1134.

The Board did not submit the names of its personnel who would represent it at the hearing on this matter or the names of any other witnesses it had solicited to appear on its behalf and as required pursuant to 9 MCAR § 2.105 H. However, that failure apparently did not prejudice anyone present at the hearing and no objections to any testimony offered by such witnesses were made by anyone present.

The documents submitted by the Board 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 Thursday, April 10, 1980 for the receipt of written comments and statements.

Statutory Authority

6. In its Notice of Hearing, the Board cited Minn. Stat. § 120.17, subd. 3 (1978), as its specific authority for the adoption of the rules it is proposing. That statute provides for the promulgation of rules pertaining to handicapped children. It provides as follows:

> Rules of the state board. The state board shall promulgate rules relative to qualifications of essential personnel, courses of study or training, methods of instruction and training, pupil eligibility, size of classes, rooms, equipment, supervision, parent consultation and any other rules and standards it deems necessary, for instruction of handicapped children. These rules shall provide standards and procedures appropriate for the implementation of and within the limitations of subdivisions 3a and 3b. These rules shall also provide standards for the discipline,

control, management and protection of handicapped children. (Emphasis added)

Subdivisions 3a and 3b, which the Board is required to implement, pertain to local school districts' obligations to handicapped children and procedures which must be followed in the identification, assessment and educational placement of handicapped children and hearing procedures required to resolve any disputes which might arise between the school district and the handicapped child's parent or other guardian.

The rules proposed by the Board in this matter were all within the areas of its rule-making authority under § 127.17, subd. 3. While the Board did not state its opinion on the nature of these rules, under the holdings of the Minnesota Supreme Court in Minnesota-Dakotas Retail Hardware Assn. v. State, 279 N.W.2d 360 (Minn. 1979), and Can Manufacturers Institute, Inc. v. State, 289 N.W. 2d 416 (Minn. 1979), they should probably be considered as interpretive in nature.

7. The amendments proposed by the Board consist both of the recodification of former board rules, EDU-120 through EDU-129 and substantive changes proposed to clarify ambiguities which arose under the prior rule and to conform the rules of the board to statutory provisions enacted by the 1979 Legislature, Laws of 1979, Ch. 334, Art. III, § 18, amending Minn. Stat. § 120.17 (1978), (hereinafter the "1979 amendment") and those legislative changes in Public Law 94-142, 20 U.S.C. § 1401 et seq., and Federal Regulations enacted thereunder. See 45 C.F.R. 121a. et seq.

Insofar as the Board's rules are concerned, the 1979 amendment resulted, as stated in the Board's Statement of Need and Reasonableness, in four broad areas of new requirements:

> (1) Written permission must be obtained from parents before a district can proceed with the initial assessment, or initial placement and provision of service to a handicapped child. (2) A hearing officer must be impartial, thus school board members and district employees are prohibited from serving as hearing officers. (3) The decision of the hearing officer is final and subject to appeal by either the local school district or the parent. (4) The impartial due process hearing must be completed within 45 calendar days of the date the hearing was requested.

These new requirements are considered herein, not on a subject-by-subject basis, but chronologically on a rule-by-rule basis.

8. It is important to note at the outset that the Board does not intend, during these proceedings, to undertake any major revision of its rules regarding the special education of handicapped children, and both Dr. Antell and Dr. Dorle specifically so stated. Since the Board's rules are currently being studied in-depth, in preparation for a report to the Legislature in 1981, and since major changes in the rules may be necessary then, only those amendments required to make the rules consistent with state and federal laws, with some minor clarifications, have been proposed.

Nonetheless, testimony was presented at the hearing and written comments were submitted offering comments on and suggesting amendments to portions of the Board's rules which were not proposed for modification or amendment by the Board. In addition to being instructive and informative, most of these proposals have merit and the Board is urged to consider them in its current deliberations and it has, by the way, expressed its intention to do so. In its April

10, 1980 reply to public comments received by the Hearing Examiner which were addressed to amendments not initially proposed by the Board, and which are out-outside the proper scope of the hearing.[1] Dr. Antell stated:

> "The Department of Education appreciates the careful review provided by the commenters and has recorded their concerns and recommendations for consideration the next time rule modifications are proposed."

9. The specific areas of comment which were unrelated to any amendments proposed by the Board covered a wide range of subjects from important matters of substance and policy to minor grammatical changes. Since they cover matters outside the scope of the hearing, they are not discussed and evaluated herein or considered in connection with a specific rule.

As was previously stated (see Fn. No. 1, supra), the rule hearing process is intended to provide notice to all interested persons of rules or amendments proposed for adoption and the language of the rule or amendment proposed prior to the holding of a rule-making hearing. No substantive changes in the rule as originally proposed can be made by the rule-making agency, either on its own motion, or at the suggestion of the public, for the simple reason that notice of such changes was not given prior to the hearing and potentially interested persons would be deprived of an opportunity to comment on the additional materials.

While this may be frustrating for those individuals and associations who feel that their proposals are necessary and proper, or even immediate and compelling, they must, if the agency fails to consider items of concern to them, file a petition for the adoption of a rule and cannot force consideration of such proposals at hearings scheduled to consider other matters.[2]

Those matters outside the proper scope of the hearing and not considered further in this Report include the following:

> (1) The suggestion by Legal Advocacy for developmentally Disabled Persons in Minnesota and others, including the Minnesota State Council for the Handicapped, to adopt a policy statement on transportation in 5 MCAR § 1.0120A.
>
> (2) The suggestion by the Parent Advocacy Coalition for Educational Rights (PACER) and others to replace the term "special education services" as defined in 5 MCAR § 1.0120 B.3. and used in at least seven places throughout the rule with the term "special education instruction and related services."

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[1] Pursuant to Minn. Stat. § 15.0412, subd. 4 (1978), the Chief Hearing Examiner is required to review the final rules as proposed to be adopted by an agency to determine whether the final version of the rules is substantially different than the rules as originally proposed. To that extent, he has adopted a rule requiring such a review by him. 9 MCAR § 2.111. In the event a rule is substantially different in its final form than as originally proposed, the rule cannot be adopted, at least without further hearings on those provisions which constitute the substantial change.

[2] Minn. Stat. § 15.0415 (1978), pertaining to such petitions, provides in part as follows:

> Any interested person may petition an agency requesting the adoption, suspension, amendment or repeal of any rule. The petition shall be specific as to what action is requested and the need for the action. Upon receipt of such a petition an agency shall have 60 days in which to make a specific and detailed reply in writing as to its planned disposition of the request. If the agency states its intention to hold a public hearing on the subject of the request, it shall proceed according to section 15.0412. . . .

(3) The suggestion by Legal Advocacy for Developmentally Disabled Persons in Minnesota and others to adopt rules for the home and hospital instruction of students to replace current guidelines.

(4) The suggestion by the Minnesota Association for Children with Learning Disabilities (MACLD) and others to amend 5 MCAR § 1.0123 pertaining to "surrogate parents" to clarify their responsibiity and authority and for other purposes.

(5) The suggestion by the Minnesota School Psychologists Association and the Minnesota School Counselors Association and various individuals to include psychologists and counselors on the team created under 5 MCAR § 1.0125.

(6) The prehearing suggestion of Amy M. Silberberg, Esq., of the Coalition for the Protection of Youth Rights for schools to consider handicaps in all disciplinary proceedings under 5 MCAR § 1.0120 A.7.

(7) Other suggestions pertaining to the identification of preschool age handicapped children (comments 23 and 24), the examination by a physician of all special education students at specified times (comment 28), and changes to the language of other previously adopted rules (comments 23, 25, 18 et al.)[3]

[3] All public comments received after the hearing and within the time limits established for the filing of written remarks have been made a part of the file and have been numbered for identification from 1 through 28. A list of these comments by the name of the commenter is attached to the end of this Report.

10. 5 MCAR § 1.0120 contains the policies and definitions applicable to the Board's rules on special education for the handicapped. Several amendments to this section were proposed by the Board. The Board proposed first to amend the definition of "School age" to conform to Minn. Stat. § 120.03 (1978) and to delete limiting language which expired on August 15, 1977. This is a necessary and reasonable housekeeping amendment to which no one objected.

5 MCAR § 1.0120 B.15. was originally proposed to be amended as follows: (Strike marks indicate proposed deletions)

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

However, proposed section 5 MCAR 1.0129 I., pertaining to the hearing process, provides as follows:

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

In addition, proposed 5 MCAR § 1.0128 C., pertaining to the conciliation conference provides as follows:

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

Subsection I. was enacted to comply with the calendar-day time limitations imposed on the hearing process under the 1979 amendments to Minn. Stat. § 120.17, subd. 3b., and a calendar-day definition was adopted under proposed subsection C. to eliminate any unnnecessary delays in the conciliation process. In view of the different policies and requirements behind these various rules, the use of different methods for calculating days is necessary and not unreasonable. It is, however, confusing as several persons mentioned (comments 23-25), and who suggested a reference in the original definition contained in § 1.0120 B.15. to those other sections where the definition was inapplicable.

The Department was persuaded by those suggestions and now proposes to amend proposed § 1.0120 B.15. to read as follows:

> When used in 5 MCAR §§ 1.0121-1.0127, "days" shall be construed to exclude Saturdays, Sundays, and days school is not in session. When used in 5 MCAR §§ 1.0128 and 1.0129, "days" shall be construed to mean calendar days.

p.5.

As amended, the definition is a necessary and reasonable exercise of the Board's authority and should help to avoid unnecessary misunderstandings that might otherwise have arisen. While the Board did not state its intention to do so, this amendment makes 5 MCAR §§ 1.0128 C. and 1.0129 I. redundant and unnecessary, and those latter sections should, therefore, be deleted from the rules.

11. The Board also proposes to amend § 1.0120 by adding two new definitions: Subsection B.20., defining "initial formal assessment", and subsection B.21., defining "initial placement and provision of services." These definitions are proposed as a result of the 1979 amendments to Minn. Stat. § 120.17, subd. 3b, requiring the prior written consent of a child's parent or guardian or the order of a proper appellate authority before the "initial formal assessment", the "initial placement" or the "initial provision of special education services" may be provided to a child. In view of this statutory amendment, definitions of these terms in the Board's rules are necessary and the definition proposed is reasonable.

The meaning of the word "initial" as stated by the Board in its Statement of Need and Reasonableness is:

> . . . In both definitions "initial" means the first time assessment or placement takes place in a specific district. Any activity after the first assessment or the first placement and provision of service within a district is not considered initial. If a child who has been assessed and/or placed in a special education program in one district moves to another district, the first time he was assessed and/or placed into special services in the second district would be considered initial for the second district.

Dennis N. Becchutti, a special education regional consultant for the East Central Minnesota Special Education Regional Office, on behalf of the Directors of Special Education in the Governor's Planning Regions 5 and 7, believed that a different meaning should be applied to the word "initial". He stated (comment 26) as follows:

> The word "first" in the definition of "initial formal assessment" should be interpreted by the Department of Education to mean the "first" assessment by disability area of handicap being assessed (speech and language, learning disability, etc.).
>
> The word "first" in the definition of "Initial placement and provision of service(s)" should be interpreted by the Department of Education to mean the "first" placement in a service delivery area (speech and language, learning disability, etc.).
>
> The above interpretations will result in a school district being required to seek written consent from parents at all major points in the decision-making process affecting their child.

Dr. Antell's response to Mr. Becchutti's comment was as follows:

> "Initial" is defined to specify those situations where a district may not proceed without obtaining written permission from parents. To require written permission any time additional assessment or service is required could result in substantial delay in meeting the needs of the handicapped child. Furthermore, Title 45 of the Code of Federal Regulations, Part 121 a. 504 (b)

(2) states, "Except for preplacement evaluation and initial placement, consent may not be required as a condition of any benefit to the parent or child." No change in the proposed language is recommended.

In lieu of the requirements contained in the Federal Regulation and the necessity for avoiding unnecessary delays in meeting a handicapped child's needs, the Board's interpretation of the rule is not unreasonable and the two definitions proposed are necessary to implement the 1979 amendments to § 120.17 as was previously stated.

Carol Cole of the South Central Special Education Cooperative stated that in rural parts of the state: "Children often move from one district to another, but remain in the same program, with the same teacher." and that in such a situation, a child should not be required to be reassessed and that the Board's proposed rule which requires reassessment in such a situation should be amended (comment 19). Unfortunately, the 1979 amendments require each district to get prior written approval regardless of its regional affiliations or the constancy in programs and teachers. Consequently, the Board's rule is proper and a different requirement cannot be made by rule but only by a statutory amendment.

Proposed 5 MCAR § 1.0122 B.1., which generated the greatest amount of adverse criticism and disagreement reads as follows:

> 1. Teachers. Every teacher who teaches a special class must hold a special class license appropriate to the type of handicapped children she or he is teaching. Until the requirement to hold an early childhood special education license becomes effective in accordance with board of teaching rules, special class teachers licensed to teach kindergarten age handicapped children shall be considered qualified to teach pre-kindergarten handicapped children. [Underlineation indicates new material]

The Board's Statement of the Need for and the Reasonableness of the Proposed Amendment reads in part as follows:

> . . . Since the fall of 1978, school districts have been required to serve handicapped four year olds. Since none of the existing special class licenses are currently issued below the kindergarten level, it was unclear how pre-kindergarten handicapped teachers could be in compliance with the provisions of 5 MCAR § 1.0122 B.1. In order to establish a standard for pre-kindergarten handicapped teachers, the State Board of Education adopted language in August, 1979, which stipulated that until the requirement to hold on (sic) early childhood special education becomes effective in accordance with board of teaching rules, special class teachers licensed to teach kindergarten age handicapped children shall be considered qualified to teach pre-kindergarten handicapped children. In adopting this standard, the State Board of Education instructed the Department of Education to incorporate the standard into the special education rules specifying the requirements for teaching special classes. The standard is included here for that reason.

The Board appears to be saying that the proposed amendment is necessary and reasonable because it has determined that it should be adopted. Its conclusions in that respect were widely criticized, however, and no less than 17 written comments criticizing this amendment were received subsequent to the hearing. The comments uniformly questioned the reasonableness of restricting the teaching of pre-kindergarten, handicapped students to only those persons licensed to teach elementary special education and thereby excluding those persons whose training is in early childhood education, and jeopardizing the jobs

of many pre-school handicapped teachers (as many as 40% of those currently employed). In addition, it was frequently suggested that this amendment was premature since the Board of Teaching has not yet acted to license pre-kindergarten teachers of the handicapped and because those professionals in the field have not been given an adequate opportunity to participate in the development of the rule itself and further that the rule was confusing to colleges and universities trying to develop appropriate programs.

13. The comments of the Minnesota Association for the Education of Young Children (Mn-AEYC) were typical. It stated in part (Comment 17) as follows:

> MnAEYC is a state chapter of the National Association for the Education of Young Children, a recognized professional organization of pre-kindergarten and kindergarten teachers, college and university faculty, day care personnel, social work and health personnel, government workers, and students. Major concerns of MnAEYC are the stimulation and encouragement of growth in the quality of programs serving young children, and the qualifications of personnel working in programs for young children. The proposed amendments directly impact the early childhood community, specifically in the requirements to be met by teachers considered qualified to teach pre-kindergarten handicapped children. The proposed rule jeopardizes quality in programs by inadequately addressing the skills and training necessary for professionals working with pre-kindergarten handicapped children. Special preparation and training in child development (both typical and atypical) and in early childhood education is necessary to the provision of developmentally appropriate early education services. The proposed rule does not reflect this critical component of training for professionals working with young handicapped children, nor does it recognize the expertise and qualifications of early childhood professionals currently teaching in pre-kindergarten handicapped programs. An appropriate license to work with pre-kindergarten handicapped children would require pre-service training and experience in both early childhood and special education. This philosophy is reflected in the Bureau for Education for the Handicapped emphasis on dual training and experience, is endorsed by national and state professional groups, and has been recognized in other Department of Education policies.
>
> The draft of an early childhood special education license prepared for the Minnesota Board of Teaching encompasses the entire existing requirements for pre-kindergarten licensure. The proposed rule, by considering only special class licenses as appropriate, is in direct conflict with the efforts made thus far to ensure that pre-kindergarten is in direct conflict with the efforts made thus far to ensure that pre-kindergarten handicapped children will be served by professional (sic) trained with a dual emphasis in early childhood and special education. While MnAEYC recognizes the importance of special education training, early childhood training is believed to be critical for professionals striving to meet the unique needs of young handicapped children.
>
> The "need for and reasonableness" of this portion of the rules is unclear. The Department of Education has not provided any rationalization or justification for considering only special class licensed teachers as qualified to work with pre-kindergarten handicapped children. There is no documentation available from the Department supporting the Department's position that special class licensed teachers are, in fact, more appropriately qualified to work with pre-kindergarten handicapped children than early childhood teachers are.

Its concern, and others, was echoed by the Minnesota Early Childhood Teacher Educators (MECTE) (Comment 15) which stated in part:

> MECTE (Minnesota Early Childhood Teacher Educators) is an organization basically of faculty from Minnesota Colleges and Universities that prepare teaching personnel to work with young children. . . . MECTE urges deletion or revision of this amendment.

There is no clear justification for any need for this amendment. Professionally there is a widespread acceptance of the need for personnel who have dual backgrounds in normal and a typical (sic) development. This amendment which only allows for special education background is philosophically indefensible. This amendment also places a great many teachers of preschool age handicapped children either in jeopardy of their jobs or in the position of being forced to take training that is not appropriate to the particular job they hold. Our Minnesota teacher training institutions have been left in a very difficult position because of the abrupt change that was instituted on a temporary basis last fall. Finally, we must express sincere concern about the process that was used to propose this amendment. We believe that there was little or no effort made to involve the early childhood professional community in the process. . . .

Philosophy: The proposed amendment considers only and all special class licenses as appropriate to work with prekindergarten handicapped children. Prior to the adoption of the temporary standard . . . persons who were licensed in nursery school or prekindergarten were also considered "appropriately licensed" to work with young special needs children. This consideration apparently tried to address the issue that an appropriate license to work with prekindergarten handicapped children would require background in BOTH early childhood and in special education. The emphasis on dual training and experience with normal and a typical (sic) prekindergarten is clearly specified by the Bureau for Education for the Handicapped in their training grants to colleges and universities. The dual emphasis has also been endorsed wholeheartedly by professional groups within Minnesota . . . . In fact, the draft of a prekindergarten special education license that has been prepared by the special education section for the MN Board of Teaching proposed that the appropriate license to teach in this area would encompass the entire existing requirements for a prekindergarten license. The same draft does not require a comparable amount of coursework of the nature required by the present special education special class licenses. Therefore, this amendment violates all of the efforts thus far to ensure that prekindergarten handicapped children will be taught by persons with a dual emphasis in special education and early childhood. Minnesota licensure rules for elementary education and secondary education clearly indicate that to work with children younger than first grade, a teacher needs additional training and another license or at least a licensure endorsement. Young handicapped children also have the right to be taught by personnel who have experience and/or training working with young children.

Similar remarks were submitted by the Minnesota Council for Exceptional Children, Division for Early Childhood (Comment 22), the East Central Special Education Regional Office (Comment 26), and others.

Dr. Antell's response to these comments was:

No change in the proposed language is recommended. The proposed language is currently a standard of the State Board of Education which was adopted on August 7 , 1979. Rationale for this action is provided in the October 10, 1979, memorandum to superintendents which is attached. The Department of Education has a long history of requiring special training for teachers to work with handicapped children. Until the Board of Teaching approves a license in this area, teachers licensed to work with handicapped kindergarten pupils should also be considered qualified to work with pre-kindergarten handicapped children.

Although Dr. Antell referred to his memorandum of October 10, 1979 implementing a new "standard" for the approval of teachers for pre-kindergarten handicapped programs, and while some amendment to § 1.0122 B.1. might be advisable or arguably necessary, the record as a whole does not support the reasonableness of restricting those positions only to those special class teachers licensed to teach kindergarten-age handicapped children. The reasonableness of

such a limitation is not demonstrated because the Board has adopted such a standard or because the Department of Education has a "long history of requiring special training for teachers who work with handicapped children." The reasonableness of including special education teachers is not the issue. Rather, the issue is the exclusion of early childhood education teachers who have been teaching handicapped preschool children, and doing so prior to any Board of Teaching action in the area. There is simply no evidence indicating that early education teachers should not be permitted to teach pre-kindergarten handicapped children or that they should be excluded from performing that function under the Board's rules. Moreover, there is no evidence showing that proper teaching credentials for elementary school children are also proper for pre-kindergarten children.

14. Proposed 5 MCAR § 1.0124 B.2.d. would clarify the time period within which the school district must conduct the assessment of a handicapped child from 30 days after the need therefore is determined by the district to 30 days after the happening of specific events. This amendment generally received favorable comment and is a necessary and reasonable exercise of the Board's discretion in order to eliminate unnecessary delays that resulted under the prior rule.

15. Proposed 5 MCAR § 1.0124 B.4.a. changes the situations when a district must report its decisions on written parental request for assessments from only those cases where the request is denied to cases where the request is denied or accepted and such decisions must be submitted to parents within ten days of receipt of the parents' request. This amendment was uniformly applauded and is a necessary and reasonable exercise of the Board's informed discretion to give parents prompt notice of the status of requests for the assessment of their handicapped children.

16. 5 MCAR § 1.0127, which pertains to the content of all notices to parents, has been thoroughly recodified. It includes 20 specific notice requirements, three are completely new, two are modifications of prior amendments, and the other 15 have not been changed.

Subsection A.5. was amended to make it clear that "regardless of the specific action being proposed in the given notice, parents are informed of the entire set of procedural safeguards available to them each time a notice is sent." While this requirement was questioned (Comment 26), it is clearly a necessary and reasonable exercise of the Board's discretion. The decision of how much notice or due process should be afforded to a parent is precisely the kind of policy determinations which are left to agency discretion and the exercise of that discretion in this case does not appear to be unreasonable. Except as otherwise discussed below, the other notice provisions, some of which were required by federal laws and regulations, are reasonable and necessary exercise of the Board's authority and responsibility.

17. 5 MCAR § 1.0127 A.5.e., as originally proposed, provided:

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

At the hearing, the Board offered a new version to provide as follows:

> e. inform the parents that they may:
>
> (1) obtain an independent assessment at their own expense;
>
> (2) request from the district information about where an independent assessment may be obtained;

(3) request that an idependent assessment be conducted at public expense in which case the district has the option of denying such a request

However, in view of Anne L. Henry's suggestion (Comment 23), that this matter should be subject to hearing under 45 C.F.R. § 121a.503, the Board now proposes the following language for 5 MCAR § 1.0127 A.5.e.(3):

> request that an independent assessment be conducted at public expense in which case the district has the option of denying such a request. When a district denies such a request, the parent may request a conciliation conference and due process hearing to resolve the disagreement.

p. 18

As so amended, the subsection is a necessary and reasonable provision consistent with federal regulations.

18. 5 MCAR § 1.0127 A.5.t. was ostensibly amended to make it clear that parents have a right to obtain a hearing transcript and a copy of the decision whether or not they intend to or do appeal. However, the proposed rule does not specifically so provide and it is recommended that the following language be added to the very end of that provision: "whether or not they appeal." This would accomplish the alleged purpose of this provision in no uncertain terms.

complied p. 19

19. 5 MCAR § 1.0127 B.4. and 5. and 5 MCAR § 1.0127 C., C.2., and C.3., consist of technical amendments bringing the notice requirements of the rules into conformity with the 1979 amendments and other provisions of the rules and delete requirements now covered elsewhere. These are all necessary and reasonable amendments to the proposed rules.

20. As a result of a typographical error in not deleting a negative, and as a result of public comments to clarify a school district's right to request a hearing after conciliation, the Board now proposes to amend the last sentence of 5 MCAR § 1.0128 A.1. to read as follows:

> There may be more than one such conference and the parent or district may request a hearing under 5 MCAR § 1.0129 A. at any time after the first conciliation conference is convened.

As amended, this section properly and clearly states the rights of the parties and it is a necessary and reasonable amendment of the Board's rules.

21. Proposed 5 MCAR § 1.0128 A.2. provides for the scheduling a conciliation conference between the district and the parents who have refused written consent to initial formal assessment or initial placement and provision of services and it gives the district an opportunity to re-schedule such conferences where parents fail to attend the initial conference. This section implements the 1979 amendments and is a necessary and reasonable exercise of the Board's authority.

22. 5 MCAR § 1.0129 pertains to the hearing which is held whenever the district and the parents of a handicapped child disagree on the initial assessment, placement or provision of services to such a child, the details and notice a parent is to receive, the appointment of a hearing officer, time limits for certain actions, and related matters, primarily as required by the 1979 amendments. All these amendments, though not individually discussed in this Report, are a necessary and reasonable exercise of the Board's authority consistent with the 1979 amendments, and they were substantially uncontroversial.

23. 5 MCAR § 1.0129 A.2., which requires a hearing whenever a parent has refused initial assessment, placement or provision of services, contains no

time limitation for the scheduling of a hearing. In that respect, Anne Henry remarked:

> This section should reflect a time line for the district so that a child whose parents refuse permission for initial assessment or placement does not remain indefinitely without a determination of the issue. Under the rules as proposed by the Department, a district could conceivably consider the refusal of a parent to provide written permission for an initial assessment or placement or provision of special education services as "in conciliation". This is true because currently a district has discretion on the number of conciliation conferences requested. Some districts refuse to request a hearing in a situation where a parent will not allow assessment or placement, but the best professional opinion is that such assessment or placement is necessary. A time limit on the district in such a case must be required in order to protect the rights of a handicapped student.

Her suggestion has merit, but the specific time limits, if any, which should be imposed on the district in conducting a hearing is a matter over which reasonable minds might differ and which is particularly within the policy-making discretion of the Board. In the absence of any specific time limitations, a reasonable standard consistent with the spirit of the rules, is probably applicable.

24. 5 MCAR § 1.0129 B.2.c.(1) originally required a district to provide parents with a list of all persons who would testify on its behalf within five days of the parents' request for a hearing. Objections to this five-day requirement (Comment 26) were received by the Hearing Examiner and the Board now proposes the amendment of that section to read as follows:

> (1) of their right to receive a list of persons who will testify on behalf of the district concerning the proposed action with in five days of the date the district receives their written request.

p. 24

This is a necessary and reasonable amendment and places a more realistic time limitation on the district in its compilation of a witness list. In addition, it places the district on an equal footing with parents who have the same five-day period in which to respond to a request for a witness list from the district. See 5 MCAR § 1.0129 B.2.c.(2). However, the word "request" is confusing by itself since there is a "request" for hearing and a "request" for a witness list. To clarify the apparent intent of the rule to reference the latter request, the word "therefor" could be added to the very end of the subsection.

"therefor" not added

25. 5 MCAR § 1.0129 D.2.h. which permits the hearing officer to grant certain extensions of time is not clear as written. It could reference the prior section establishing the 45-day limitation (5 MCAR § 1.0129 B.2.e.) or indicate that the extension allowed pertains to the 45-day period established for the issuance of his decision. An amendment in either manner would clarify the type of extension involved and reduce the chance of unnecessary misunderstandings.

complied p. 24

26. In its technical amendments proposed at the hearing on April 3rd, the Board noted that the language requiring a hearing to be closed unless the parents request an open meeting was crossed out in error and that 5 MCAR § 1.129 E.1. should state as follows:

> 1. The hearing shall be closed unless the parents request an open hearing ~~or if the hearing takes place before the school board~~. [Strike marks indicate deletions]

However, the Board did not indicate what would happen to former EDU 129 E.2. also recodified as 5 MCAR § 1.0129 E.1. which stated as follows:

> 1. ~~2.~~ The parties shall have the right to representatives of their own choosing, including legal counsel.

If subsection 1. is to be amended as the Board proposes in its technical amendments, it appears that the other subsection 1 will either have to be renumbered or deleted. The deletion of the material contained in the Board's technical amendments, as proposed at the hearing, is a reasonable and necessary implementation of the 1979 amendments. complied p. 24, 25.

Based on the foregoing Findings of Fact, the Hearing Examiner makes the following

CONCLUSIONS

1. The Department gave due, timely and adequate notice of the hearing.

2. Pursuant to Minn. Stat. § 15.052, subd. 3 (1978), it is the duty of the Hearing Examiner to: ". . . (4) make a report on each proposed agency action . . . taking notice of the degree to which the agency has (i) documented its statutory authority to take the proposed action; (ii) fulfilled all relevant, substantive and procedural requirements of law or rule, and (iii) demonstrated the need for and reasonableness of its proposed action with an affirmative presentation of facts".

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

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

5. The Department has demonstrated the need for and the reasonableness of each of the proposed rules, with the exception noted in the Findings pertaining to the amendment of 5 MCAR S 1.0122 B.1., with an affirmative presentation of facts.

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

RECOMMENDATION

That the proposed Rules be modified as suggested in the Findings and that as so modified, they be adopted.

Dated this 9th day of May, 1980.

JON L. LUNDE
Hearing Examiner

Public Comments Submitted to the Hearing Examiner in Writing Subsequent to the Close of the Hearing on the State Board of Education's Rules Regarding Special Education for Handicapped Children.
HE Docket No. EDU-80-005-JL

1. Letter from Amy M. Silberberg on behalf of the Coalition for the Protection of Youth Rights.

2. Letter submitted by Kay S. Zwernik, Executive Director for the Metropolitan Developmental Achievement Center Council, Inc. (M-DACC).

3. Letter submitted by W. Gary Winget, President, Childrens Lobby.

4. Letter from Suzanne Erickson on her own behalf.

5. Letter from Roger Whitcomb, Director, South Washington County Schools.

6. Letter from Dan Gartrell, Ed.D. and Stephen W. Regan, Ph.D., on behalf of Bemidji State University.

7. Letter from J. Larry Smith, President, Minnesota School Psychologists' Association.

8. Letter from Ethel S. Johnson on her own behalf.

9. Letter from Jean Peterson, Director, Mankato State University School of Education.

10. Letter from Sara Robertson on her own behalf.

11. Letter from Evy Fischlowitz on her own behalf.

12. Letter from Laurie Lindahl, Coordinator, Program Services Department, on behalf of the Greater Minneapolis Day Care Association.

13. Letter from Kathleen McNellis on her own behalf.

14. Letter from Elizabeth S. Hambridge on her own behalf.

15. Letter from Pamela Mattick, President, Minnesota Early Childhood Teacher Education.

16. Letter from Nancy J. Shaner on her own behalf.

17. Letter from Naomi Sherlock, President, and the Board of Directors of the Minnesota Association for the Education Young Children (MN-AEYC).

18. Letter from James Omdal, Director of Special Education for Independent School District No. 196.

19. Letter from Carol Cole on her own behalf.

20. Letter from Janet Whitcraft on her own behalf.

21. Letter from Marlene Pinten, President, on behalf of the Minnesota School Counselors Association.

22. Letter from Virginia M. Bunker, Chairperson, on behalf of the Minnesota Council for Exceptional Children, Division for Early Childhood (MCEC/DEC).

23. Letter from Anne L. Henry, Attorney, on behalf of Legal Advocacy for Developmentally Disabled Persons in Minnesota.

24. Letter from Marge Goldberg, Co-Director on behalf of the Parent Advocacy Coalition for Educational Rights (PACER).

25. Letter from Paula F. Goldberg, member, on behalf of the Minnesota State Council for the Handicapped.

26. Letter from Dennis N. Becchetti, Special Education Regional Consultant on behalf of the East Central Minnesota Special Education Regional Office.

27. Letter from Gene L. Maus on his own behalf.

28. Letter from Lynn R. Gruber, Director, Department of Medical Services and Research on behalf of the Minnesota Medical Association.

Amendments as Proposed

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

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

A. Policies.

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

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

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

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

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

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

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

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

B. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

"Continuum of Placement Model"

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 MCAR § 1.0121 ~~EDU-121~~ Application.

A. District special education plan.

On or before September 1, 1977, each district shall submit to the commissioner the district's plan for providing special instruction and services for all handicapped pupils as required by Minn. Stat. §120.17. The plan may represent the plan of a single district or a plan for all of the member districts of a formal special education cooperative. The plan shall be considered as part of the annual school district application for program review, but will not be required to be resubmitted annually. The plan shall include descriptions of:

1. the district's study procedures for the identification and assessment of handicapped pupils.

2. the district's methods of providing the special instruction and services for the identified handicapped pupils.

3. the district's administration and management plan to assure effective and efficient results of 1 and 2 above.

4. procedures to assure compliance with state statutes and rules relating to the education of handicapped pupils.

B. On or before January 1, 1978, the commissioner shall approve or implement appropriate procedures for modification of the district plan. The commissioner may grant the district a reasonable period of time to make necessary modifications of the plan provided that the commissioner has satisfactory assurances of compliance with standards for the education of handicapped pupils.

C. Annual application for programs and budget.

1. Regular school term - On or before May 1 of each year school districts shall submit to the commissioner an annual application for program and budget approval necessary for determining the special education aids during the next school year. On or before July 1 the commissioner shall approve, disapprove, or modify each application and notify each applying district of his action and the estimated level of education aid to be paid.

2. Summer school term - On or before March 15 districts shall submit separate applications for program and budget approval for summer school. The commissioner shall approve, disapprove, or modify each application and notify the district of his action and the estimated level of special education aid by May 1.

3. Amendment to applications - School districts shall apply to amend applications as needed during the school term to reflect program and budget changes necessary to meet the changing needs of handicapped pupils in the district.

D. A district may request a variance from the standards provided in 5 MCAR § 1.0122 ~~EDU-122~~ by submitting supportive rationale in the application. The commissioner shall review this request for variance from standards in accordance with recognized professional standards and shall inform the district of the decision.

5 MCAR § 1.0122 ~~EDU-122~~ Facilities, staff and supervision.

A. Facilities.

1. Housing space. Housing space for each class shall be adequate.

2. Equipment and materials. Each special class and group shall be supplied with the necessary special equipment and instructional materials.

B. Staff.

1. Teachers. Every teacher who teaches a special class must hold a special class license appropriate to the type of handicapped children she or he is teaching. Until the requirement to hold an early childhood special education license becomes effective in accordance with board of teaching rules, special class teachers licensed to teach kindergarten age handicapped children shall be considered qualified to teach pre-kindergarten handicapped children. deleted HE 12-13

2. Administrators and supervisors. Every administrator and supervisor of any special education program shall hold appropriate licensure.

3. Other professional or essential personnel. The qualifications of other professional or essential personnel who are not licensed teachers, administrators or supervisors shall be based upon recognized professional standards and documented by the school district in their application as provided for in 5 MCAR § 1.0121 ~~EDU-121~~. The commissioner or his designee shall review requests for approval of such personnel assigned to programs for handicapped children.

4. Special and vocational education. Staff responsible for vocational training of handicapped students shall meet the following criteria if the program is to qualify for special education approval.

a. Coordinator of special needs.

(1) Licensure in special education.

(2) Licensed as a coordinator of special needs in vocational education.

b. Support service manager.

(1) Licensure in any special education disability area.

(2) Licensed as a support service manager in vocational education.

c. Vocational instructor of special needs students.

(1) Licensure in the appropriate disability area of special education or have a plan for working toward licensure.

(2) Licensed as a vocational instructor of special needs students in vocational education.

d. Teacher/coordinator of work experience.

(1) A special education license appropriate for the type of handicapped students being taught.

(2) Licensed as an instructor/coordinator for work experience in vocational education.

e. Teacher/coordinator of vocational education work experience.

(1) Must be coordinated with a special education director or coordinator/lead teacher licensed for the type of handicapped students being taught.

(2) Must be working cooperatively with a special education licensed teacher who is responsible for the nonvocational instruction.

(3) Licensed as an instructor/coordinator for work experience in vocational education.

f. Vocational evaluator.

(1) Licensed as a vocational evaluator in vocational education.

(2) Working cooperatively with special education licensed personnel to insure that special consideration is related to the students handicapped condition are included in the evaluation and program plan.

g. Vocational technical tutor.

(1) Licensed as a technical tutor in vocational education.

(2) Working cooperatively with a special education licensed teacher who is responsible for the nonvocational academic area of instruction.

C. Staff to student ratios.

1. When persons are in need of special education services in level 5 or 6 of the "Continuum of Placement" model where the primary placement is in a special education program such as a full-time class, special station, special school or residential school, the staff to student ratio shall not exceed:

a. one teacher for each eight handicapped persons for all categories except as provided in b.

b. one teacher for six handicapped persons who are autistic or who are deaf/blind providing that two management aides are employed to assist the teacher.

2. When persons are in need of special education services in level 4 of the "Continuum of Placement" model where the primary placement is in a special education program such as a resource room or part-time special class the staff to student ratio shall not exceed:

a. one teacher for every 15 handicapped persons for all categories except as provided in b.

b. one teacher for every eight handicapped persons who are trainable mentally retarded or visually impaired.

3. When persons are in need of special education services in level 3 of the "Continuum of Placement" model where the primary placement is in a regular education program, such as a resource room or special class, the staff to student ratio shall not exceed:

a. one teacher for every 15 persons for all categories except as provided in b.

Each person must receive special education service for a minimum of one hour per day. When the needs of the student warrants such action, persons may receive less than one hour per day during the initial or phase out stages.

b. one teacher for every 40 persons who are speech and/or language impaired.

4. When persons are in need of special education services in level 1 or 2 of the "Continuum of Placement" model where the student is full-time in a regular education program and the special education teacher provides consultation and indirect service to the regular classroom teacher and/or assessment, monitoring or follow-up of the student, the staff to student ratio shall not exceed:

a. one teacher for every 30 persons who are handicapped except as provided in b.

b. one teacher for every 60 persons who are speech impaired.

5. Whenever a professional is serving children representing a range of severity of problems, is providing more than one level of service, or is providing service at more than one site, the staff to student ratios shall be adjusted accordingly.

6. When persons are receiving services from vocational staff involved in "special and vocational" programs except as provided in 5 MCAR § 1.0122 B.4.d. ~~EDU-122-B.4.d.~~, the staff to student ratios of the "Continuum of Placement" model do not apply to that staff.

D. Supervision.

Supervision consistent with the commissioner's recommendations and meeting the following standards shall be provided for each type of special education program.

1. Overall supervision.

a. Full-time supervision. The school board in every district with an enrollment of 15,000 or more pupils, and in every district in which 20 or more full-time professional personnel are employed in the special education program, shall employ or designate a qualified person, under an appropriate title, to devote full-time to directing the special education program.

b. Part-time supervision. The school board shall employ or designate a qualified person to devote part-time to directing the special education program when (a) the enrollment in the school district is 7,500 or more pupils but less than 15,000 pupils; or (b) the number of full-time personnel employed in the special education program is at least 10 but less than 20.

This position shall be reimbursable when the person directing the program on a part-time basis spends the remainder of his time in some area of special education.

School authorities of districts that are required to meet the standard for part-time supervision shall consult periodically with the special education section in regard to full-time supervision.

c. Other. School boards of districts not required to have full-time or part-time supervision as outlined above shall study the feasibility of cooperative interdistrict sharing of special education supervisory personnel or some other approach aimed at providing direction to the program. See item 4 following.

2. Individual program supervision.

a. For the following disability categories or areas: (1) deaf and hard of hearing, (2) crippled, (3) visually impaired, (4) emotional disturbance, learning disability, or special behavior problems.

The board of every school district in which 15 or more full-time professional personnel are employed in any one of the above disability areas shall employ or designate a full-time person to supervise the program in that area.

The board of every school district in which less than 15 but 5 or more professional personnel are employed in any one of the above disability areas shall consult with the special education section and make provisions for supervision of the program in that area.

b. For the mentally retarded.

The school board in every district in which 30 or more full-time professional personnel are employed in the above disability area shall employ or designate a full-time supervisor of the program in that area.

The school board in every district in which less than 30 but 10 or more professional personnel are employed in the above disability areas shall consult with the special education section and make provisions for supervision of the program.

c. The school board in every district in which speech therapists are employed in the special education program shall submit a plan which will describe and provide appropriate amounts of time for program development, program coordination, program evaluation, in-service training, and individual supervision.

d. For the following service areas: (1) school social work, and (2) school psychology:

(1) The school board in every district in which level 1 personnel in either the social work or psychology program are employed for special education programs shall submit a plan which will describe and provide appropriate amounts of time for each level 1 person for individual observation, performance evaluation, consultation, and in-service training by a licensed level 2 person from the respective field.

(2) The school board in every school district in which level 2 personnel in either the social work or psychology area are employed in the special education program shall submit a plan which will describe and provide appropriate amounts of time for program development, program coordination, program evaluation, in-service training, and individual supervision.

e. The school boards of two or more districts may cooperatively employ and share supervisory personnel. See item 4 following.

f. Supervision of programs in any of the aforementioned disability areas shall be provided at both the elementary and secondary level.

3. Cooperative inter-district agreements.

a. Two or more school districts may enter into an agreement to provide supervision of programs for handicapped children, provided that none of the participating districts is required, as outlined in items 1 and 2 above, to employ such supervisory personnel on a full-time basis.

b. When a group of districts enter into such cooperative agreement, one of the participating districts shall serve as the employing unit.

Each participating district shall pay to the employing district a prorata amount of the net cost of providing such supervisory services. The net cost to be prorated shall be the actual cost less state reimbursement.

State reimbursement for the cost of such services shall be paid to the employing district.

4. The school board of any district unable to comply with the above rules shall consult with the special education section.

E. School day.

Deviations from the normal school day for any type of handicapped children shall be approved by the commissioner of education.

5 MCAR § 1.0123 ~~EDU-123~~ Surrogate parents.

When a child is the ward of the commissioner of public welfare, when the parent or guardian is unknown or unavailable, or when parental rights have been terminated, the district shall insure that the rights of the child to a free and appropriate education are protected by contacting the local county welfare department and requesting that the public welfare system intervene on behalf of the child. The district shall suggest to the local county welfare system that a contact with the county attorneys office be made to determine whether a guardian ad litem should be appointed.

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

A. Identification of handicapped children.

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

a. preschool age handicapped children;

b. handicapped persons attending school;

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

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

B. Formal educational assessment.

1. An assessment:

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

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

c. may be conducted if the parent requests.

2. Prior to conducting an assessment the district shall:

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

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

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

d. conduct the assessment within a reasonable period of time not to exceed 30 days ~~after-the-need-for-an-assessment-is-determined-by-the-district~~ from (1) the date the district receives parental permission to conduct the assessment or (2) the expiration of the ten day parental response time in cases other than initial assessment, unless a conciliation conference or hearing is requested. ~~by-the-parent.~~

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

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

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

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

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

4. Notice before assessment:

a. must be provided in accordance with the provisions of 5 MCAR §§ 1.0127 A. and B. ~~127-B.~~ prior to conducting a formal educational assessment or reassessment or when the district receives ~~refuses~~ a parent's written request to conduct a formal educational assessment or reassessment. In cases ~~of refusal the notice shall be served within ten days after the refusal.~~ where a district receives a parent's written request to conduct a formal assessment or reassessment, the district shall serve notice of their decision within ten days of their receipt of the written request;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 MCAR § 1.0126 ~~EDU-126~~ Periodic reviews, reassessment and follow-up.

A. Periodic reviews.

1. The providing school district shall conduct periodic reviews of the program plan and shall determine:

a. the degree to which the periodic review 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.

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

2. The initial review shall be made at the time specified in the program plan, but at least twice a year following placement.

3. These periodic reviews shall be made by those persons directly responsible for implementing the educational program and by other school district agents as may be needed to insure an informed and adequate review.

4. The results of such periodic reviews shall be included in the student's school records and a copy sent to the parent and to the resident district if different from the providing district. This copy shall inform the parents or the resident district that they may request a conference to review the student's program plan at any time and the procedure to do so.

5. The reviews shall be made in accordance with the requirements for nondiscrimination and recognized professional standards.

B. Requirements for reassessment.

When a student is continued in his or her primary placement in a special education program, the providing district shall conduct an educational reassessment according to the procedures specified in 5 MCAR § 1.0124 B. ~~EDU 124 B.~~, at least once every two years.

C. Requirements for follow-up review.

The responsible school district shall conduct a follow-up review of the student's current performance no later than twelve calendar months after special education services are discontinued to determine if progress is satisfactory.

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

A. General notice provisions.

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

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

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

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

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

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

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

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

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

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

f. inform the parents that the district will not proceed with proposed actions defined in 5 MCAR §§1.0120 B. 20 and 21 without prior written consent;

g. inform the parents that if they object to the proposed action in writing a conciliation conference will be held at a mutually convenient time and place, but that if the parent refuses to attend the conference and the proposed action is not an initial action as defined in 5 MCAR §§1.0120 B. 20 and 21, the school district will proceed with the proposed action;

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

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

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

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

l. inform the parents of their right to be represented in preparation of and at the hearing by legal counsel or other representative of their choice ;

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

n. inform the parents of their right to call their own witnesses and to present evidence, including expert medical, psychological, and educationanal testimony and relevant records, tests, assessments, reports, or other information;

o. inform the parents of their right to request the attendance of any official or employee of the providing or resident school district or any other person, who may have evidence relating to the proposed action and the manner and time in which to do so;

p. inform the parents of their right to present evidence and cross examine any employee of the school district(s) or other persons who present evidence at the hearing;

q. inform the parents of any free or low cost legal services available in the area;

r. inform the parents of their right to have the child who is the subject of the hearing present at the hearing;

s. inform the parents that the hearing shall be closed unless the parent requests an open hearing;

t. inform the parents that they have a right to obtain a record of the hearing including the written findings of fact and decisions.

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

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

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

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

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

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

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

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

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

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

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

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

10. Inform the parents that if they object to the proposed action in writing a conciliation conference will be held at a mutually convenient time and place, but that if the parent refuses to attend the conference the school district will proceed with the proposed action;

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

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

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

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

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

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

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

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

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

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

~~5. inform the parents that if they object to the proposed action, a conciliation conference will be held at a mutually convenient time and place but that if the parent refuses to attend the conciliation conference the school district will proceed with the proposed action;~~

~~6. inform the parents that if they still object to the proposed action after the final conciliation conference that they have a right to voice that objection at an informal due process hearing;~~

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

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

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

A. When a conciliation conference must occur:

1. If the parent does not object in writing, to a proposed action as set forth in 5 MCAR § 1.0124 B. ~~EDU-124-B.~~ or 5 MCAR § 1.0125 E. ~~EDU-125-E.,~~ within 14 ~~ten~~ days after receipt of the notice, and the proposed action is not an initial action as defined in 5 MCAR § 1.0120 B. 20 and 21, the proposed action shall take place. If such written objection is made, the providing school district shall arrange for a conference with the parent for the purpose of reviewing the reasons for the proposed action and conciliating the matter. The conference shall be held at a time and place mutually convenient to the parent and the school district representatives and shall be held within ten days after receipt of the written objection. There may be more than one such conference and the parent may not request a hearing under 5 MCAR § 1.0129 A. ~~EDU-129-A.~~ at anytime after the first conciliation conference is convened. ~~until at least one conciliation conference has been held;~~

2. If the parent refuses to provide prior written consent as set forth in 5 MCAR § 1.0127 B.4. and 5 MCAR § 1.0127 C.2. within ten days after the receipt of the notice and response form, the providing school district shall arrange for a conference with the parent for the purposes of reviewing the reasons for the proposed action, reviewing the parent's suggestions and concerns and conciliating the matter. Each conference shall be held at a time and place mutually convenient to the parent and school district representatives and the initial conference shall be held within ten days after the expiration of the ten day period for parent response. In cases where the parents fail to attend the initial conciliation conference, the district may choose to schedule additional conciliation conferences.

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

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

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

3. that if they do not request a hearing on the written "request form" or otherwise in writing pursuant to 5 MCAR § 1.0129 A. ~~EDU-129-A.~~ within seven days after receipt of the notice, the district will proceed with the proposed action; unless the proposed action is an initial action as defined in 5 MCAR § 1.0120 B. 20 and 21. In cases of such proposed initial actions, when a parent continues to refuse to provide written permission, the district shall schedule a hearing within seven days after the expiration of the seven days allowed for parent response;

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

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

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

A. When a hearing must be held.

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

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

B. Notice.

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

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

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

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

c. inform the parent of ~~their~~ the following rights ~~or~~ and responsibilityies:

(1) of their right to receive from the school district(s), within five days of the district's receipt of the parent's written request for a hearing, a list of persons who will testify on behalf of the district concerning the proposed action;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

g. ~~j.~~ that unless the district and parent agree otherwise, the student shall not be denied initial admission to school and that the student's education program shall ~~will~~ not be changed, as long as the parents object to the proposed action in the manner prescribed by these rules.~~, or until after the decision is finally made at the hearing, or an appeal.~~

C. Hearing officers.

1. ~~At the option of the school board,~~ The hearing shall take place ~~either~~ before ~~the school board, or (1) its designee, (2) a person~~ an impartial hearing officer mutually agreed to by the school board and the parents~~, or (3) a person appointed by the commissioner. The school board shall exercise its option and a person to conduct the hearing must be selected at least ten days prior to the hearing. The parties by agreement may continue the time and date of the hearing for not more than ten days for the purpose of mutually agreeing to a person to conduct the hearing. All expenses of the hearing, except for the parents' and resident school district's attorney's fees or other expenses incidental to the parents or resident school district participation in the hearing, shall be paid by the providing school district.~~

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

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

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

D. Prehearing review by the hearing officer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

E. Hearing rights of the respective parties.

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

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

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

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

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

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

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

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

F. Hearing procedures.

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

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

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

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

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

1. Decisions regarding assessment or reassessment.

a. The hearing officer ~~person conducting the hearing~~ may sustain a proposed assessment or reassessment of the person as set forth in 5 MCAR § 1.0124 B. ~~EDU 124 B,~~ upon a showing by the school district(s) by a preponderance of the evidence which demonstrates that there are facts, relating to the person's performance in his or her present education placement or presenting handicapping conditions, which indicate reasonable grounds to believe that the educational assessment or reassessment procedures are justified, as a step toward the possible initiation of or change in the person's educational placement or program, including special education services, which will provide an educational program, including special education services, appropriately suited to the person's needs.

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

2. Decisions regarding educational placement.

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

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

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

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

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

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

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

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

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

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

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

H. Effective date of the action and appeals.

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

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

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

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

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

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

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

3. The school board shall be a party to any appeal. The commissioner shall issue a final decision based on a review of the local decision(s) and the entire records within 30 calendar days after ~~receipt of the local decision(s) and the transcript.~~ the filing of the appeal. A written transcript of the hearing shall be made by the district; the transcript and entire record shall be accessible to the parties and provided to the commissioner within five calendar days after the filing of the appeal. If the transcript and record is not provided to the commissioner within five days of the filing of the appeal, the district shall request an extension of the time beyond the 30 day period equal to the number of days which exceeded the five day period for filing the transcript and entire record. ~~However, in appeals of local decisions wherein the parent has properly requested a chapter 15 due process hearing, the commissioner shall issue a final decision within 30 days after that hearing and the final decision shall be based on the report of the hearing examiner.~~ The commissioner shall seek additional evidence if necessary and may afford the parties an opportunity for written or oral argument; provided any hearing held to seek additional evidence shall be impartial due process hearing but shall be deemed not to be a contested case hearing. The commissioner may grant specific extensions of time beyond the 30 day period at the request of any party.

4. The commissioner's final decision shall:

a. be in writing;

b. include findings and conclusions; and

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

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

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

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

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: 9-25-80

FROM : Lois E. Steinhaus LES
Education Statistics Section

PHONE: 6-4428

SUBJECT: Approval for Rules Governing Standards and Procedures of Special Education Instruction..... EDU 80-005-~~PE~~ JL

Enclosed is the complete record of the hearing.

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

1. Proposed rule
2. Notice of hearing
3. Affidavit of receipt of secretary of state's list
4. Certificate of delivery secretary of state's list
5. Affidavit of mailing
6. Statement of need 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

changes made after the hearing are in blue PP

Changes in the Proposed Rules to the Adopted Rules

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

5 7 18 19 23 24 27 28 32

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

A. Policies.

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

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

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

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

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

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

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

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

B. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

"Continuum of Placement Model"

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

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

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

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

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

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

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

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

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

15. "Days" ~~and "months"~~ shall be construed to exclude Saturdays, Sundays, and days school is not in session ~~unless otherwise provided herein.~~ when used in 5 MCAR §§ 1.0121-1.0127. "Days" shall be construed to mean calendar days when used in 5 MCAR §§ 1.0128 and 1.0129.

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

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

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

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

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

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

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

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

5 MCAR § 1.0121 ~~EDU-121~~ Application.

A. District special education plan.

On or before September 1, 1977, each district shall submit to the commissioner the district's plan for providing special instruction and services for all handicapped pupils as required by Minn. Stat. §120.17. The plan may represent the plan of a single district or a plan for all of the member districts of a formal special education cooperative. The plan shall be considered as part of the annual school district application for program review, but will not be required to be resubmitted annually. The plan shall include descriptions of:

1. the district's study procedures for the identification and assessment of handicapped pupils.

2. the district's methods of providing the special instruction and services for the identified handicapped pupils.

3. the district's administration and management plan to assure effective and efficient results of 1 and 2 above.

4. procedures to assure compliance with state statutes and rules relating to the education of handicapped pupils.

B. On or before January 1, 1978, the commissioner shall approve or implement appropriate procedures for modification of the district plan. The commissioner may grant the district a reasonable period of time to make necessary modifications of the plan provided that the commissioner has satisfactory assurances of compliance with standards for the education of handicapped pupils.

C. Annual application for programs and budget.

1. Regular school term - On or before May 1 of each year school districts shall submit to the commissioner an annual application for program and budget approval necessary for determining the special education aids during the next school year. On or before July 1 the commissioner shall approve, disapprove, or modify each application and notify each applying district of his action and the estimated level of education aid to be paid.

2. Summer school term - On or before March 15 districts shall submit separate applications for program and budget approval for summer school. The commissioner shall approve, disapprove, or modify each application and notify the district of his action and the estimated level of special education aid by May 1.

3. Amendment to applications - School districts shall apply to amend applications as needed during the school term to reflect program and budget changes necessary to meet the changing needs of handicapped pupils in the district.

D. A district may request a variance from the standards provided in 5 MCAR § 1.0122 ~~EDU-122~~ by submitting supportive rationale in the application. The commissioner shall review this request for variance from standards in accordance with recognized professional standards and shall inform the district of the decision.

5 MCAR § 1.0122 ~~EDU-122~~ Facilities, staff and supervision.

A. Facilities.

1. Housing space. Housing space for each class shall be adequate.

2. Equipment and materials. Each special class and group shall be supplied with the necessary special equipment and instructional materials.

B. Staff.

1. Teachers. Every teacher who teaches a special class must hold a special class license appropriate to the type of handicapped children she or he is teaching. ~~Until the requirement to hold an early childhood special education license becomes effective in accordance with board of teaching rules, special class teachers licensed to teach kindergarten age handicapped children shall be considered qualified to teach pre-kindergarten handicapped children.~~ out

2. Administrators and supervisors. Every administrator and supervisor of any special education program shall hold appropriate licensure.

3. Other professional or essential personnel. The qualifications of other professional or essential personnel who are not licensed teachers, administrators or supervisors shall be based upon recognized professional standards and documented by the school district in their application as provided for in 5 MCAR § 1.0121 ~~EDU-121~~. The commissioner or his designee shall review requests for approval of such personnel assigned to programs for handicapped children.

4. Special and vocational education. Staff responsible for vocational training of handicapped students shall meet the following criteria if the program is to qualify for special education approval.

a. Coordinator of special needs.

(1) Licensure in special education.

(2) Licensed as a coordinator of special needs in vocational education.

b. Support service manager.

(1) Licensure in any special education disability area.

(2) Licensed as a support service manager in vocational education.

c. Vocational instructor of special needs students.

(1) Licensure in the appropriate disability area of special education or have a plan for working toward licensure.

(2) Licensed as a vocational instructor of special needs students in vocational education.

d. Teacher/coordinator of work experience.

(1) A special education license appropriate for the type of handicapped students being taught.

(2) Licensed as an instructor/coordinator for work experience in vocational education.

e. Teacher/coordinator of vocational education work experience.

(1) Must be coordinated with a special education director or coordinator/lead teacher licensed for the type of handicapped students being taught.

(2) Must be working cooperatively with a special education licensed teacher who is responsible for the nonvocational instruction.

(3) Licensed as an instructor/coordinator for work experience in vocational education.

f. Vocational evaluator.

(1) Licensed as a vocational evaluator in vocational education.

(2) Working cooperatively with special education licensed personnel to insure that special consideration is related to the students handicapped condition are included in the evaluation and program plan.

g. Vocational technical tutor.

(1) Licensed as a technical tutor in vocational education.

(2) Working cooperatively with a special education licensed teacher who is responsible for the nonvocational academic area of instruction.

C. Staff to student ratios.

1. When persons are in need of special education services in level 5 or 6 of the "Continuum of Placement" model where the primary placement is in a special education program such as a full-time class, special station, special school or residential school, the staff to student ratio shall not exceed:

a. one teacher for each eight handicapped persons for all categories except as provided in b.

b. one teacher for six handicapped persons who are autistic or who are deaf/blind providing that two management aides are employed to assist the teacher.

2. When persons are in need of special education services in level 4 of the "Continuum of Placement" model where the primary placement is in a special education program such as a resource room or part-time special class the staff to student ratio shall not exceed:

a. one teacher for every 15 handicapped persons for all categories except as provided in b.

b. one teacher for every eight handicapped persons who are trainable mentally retarded or visually impaired.

3. When persons are in need of special education services in level 3 of the "Continuum of Placement" model where the primary placement is in a regular education program, such as a resource room or special class, the staff to student ratio shall not exceed:

a. one teacher for every 15 persons for all categories except as provided in b.

Each person must receive special education service for a minimum of one hour per day. When the needs of the student warrants such action, persons may receive less than one hour per day during the initial or phase out stages.

b. one teacher for every 40 persons who are speech and/or language impaired.

4. When persons are in need of special education services in level 1 or 2 of the "Continuum of Placement" model where the student is full time in a regular education program and the special education teacher provides consultation and indirect service to the regular classroom teacher and/or assessment, monitoring or follow-up of the student, the staff to student ratio shall not exceed:

a. one teacher for every 30 persons who are handicapped except as provided in b.

b. one teacher for every 60 persons who are speech impaired.

5. Whenever a professional is serving children representing a range of severity of problems, is providing more than one level of service, or is providing service at more than one site, the staff to student ratios shall be adjusted accordingly.

6. When persons are receiving services from vocational staff involved in "special and vocational" programs except as provided in 5 MCAR § 1.0122 B.4.d. ~~EDU 122 B.4.d.~~, the staff to student ratios of the "Continuum of Placement" model do not apply to that staff.

D. Supervision.

Supervision consistent with the commissioner's recommendations and meeting the following standards shall be provided for each type of special education program.

1. Overall supervision.

a. Full-time supervision. The school board in every district with an enrollment of 15,000 or more pupils, and in every district in which 20 or more full-time professional personnel are employed in the special education program, shall employ or designate a qualified person, under an appropriate title, to devote full-time to directing the special education program.

b. Part-time supervision. The school board shall employ or designate a qualified person to devote part-time to directing the special education program when (a) the enrollment in the school district is 7,500 or more pupils but less than 15,000 pupils; or (b) the number of full-time personnel employed in the special education program is at least 10 but less than 20.

This position shall be reimbursable when the person directing the program on a part-time basis spends the remainder of his time in some area of special education.

School authorities of districts that are required to meet the standard for part-time supervision shall consult periodically with the special education section in regard to full-time supervision.

c. Other. School boards of districts not required to have full-time or part-time supervision as outlined above shall study the feasibility of cooperative interdistrict sharing of special education supervisory personnel or some other approach aimed at providing direction to the program. See item 4 following.

2. Individual program supervision.

a. For the following disability categories or areas: (1) deaf and hard of hearing, (2) crippled, (3) visually impaired, (4) emotional disturbance, learning disability, or special behavior problems.

The board of every school district in which 15 or more full-time professional personnel are employed in any one of the above disability areas shall employ or designate a full-time person to supervise the program in that area.

The board of every school district in which less than 15 but 5 or more professional personnel are employed in any one of the above disability areas shall consult with the special education section and make provisions for supervision of the program in that area.

b. For the mentally retarded.

The school board in every district in which 30 or more full-time professional personnel are employed in the above disability area shall employ or designate a full-time supervisor of the program in that area.

The school board in every district in which less than 30 but 10 or more professional personnel are employed in the above disability areas shall consult with the special education section and make provisions for supervision of the program.

c. The school board in every district in which speech therapists are employed in the special education program shall submit a plan which will describe and provide appropriate amounts of time for program development, program coordination, program evaluation, in-service training, and individual supervision.

d. For the following service areas: (1) school social work, and (2) school psychology:

(1) The school board in every district in which level 1 personnel in either the social work or psychology program are employed for special education programs shall submit a plan which will describe and provide appropriate amounts of time for each level 1 person for individual observation, performance evaluation, consultation, and in-service training by a licensed level 2 person from the respective field.

(2) The school board in every school district in which level 2 personnel in either the social work or psychology area are employed in the special education program shall submit a plan which will describe and provide appropriate amounts of time for program development, program coordination, program evaluation, in-service training, and individual supervision.

e. The school boards of two or more districts may cooperatively employ and share supervisory personnel. See item 4 following.

f. Supervision of programs in any of the aforementioned disability areas shall be provided at both the elementary and secondary level.

3. Cooperative inter-district agreements.

a. Two or more school districts may enter into an agreement to provide supervision of programs for handicapped children, provided that none of the participating districts is required, as outlined in items 1 and 2 above, to employ such supervisory personnel on a full-time basis.

b. When a group of districts enter into such cooperative agreement, one of the participating districts shall serve as the employing unit.

Each participating district shall pay to the employing district a prorata amount of the net cost of providing such supervisory services. The net cost to be prorated shall be the actual cost less state reimbursement.

State reimbursement for the cost of such services shall be paid to the employing district.

4. The school board of any district unable to comply with the above rules shall consult with the special education section.

E. School day.

Deviations from the normal school day for any type of handicapped children shall be approved by the commissioner of education.

5 MCAR § 1.0123 ~~EDU-123~~ Surrogate parents.

When a child is the ward of the commissioner of public welfare, when the parent or guardian is unknown or unavailable, or when parental rights have been terminated, the district shall insure that the rights of the child to a free and appropriate education are protected by contacting the local county welfare department and requesting that the public welfare system intervene on behalf of the child. The district shall suggest to the local county welfare system that a contact with the county attorneys office be made to determine whether a guardian ad litem should be appointed.

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

A. Identification of handicapped children.

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

a. preschool age handicapped children;

b. handicapped persons attending school;

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

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

B. Formal educational assessment.

1. An assessment:

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

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

c. may be conducted if the parent requests.

2. Prior to conducting an assessment the district shall:

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

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

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

d. conduct the assessment within a reasonable period of time not to exceed 30 days ~~after the need for an assessment is determined by the district~~ from (1) the date the district receives parental permission to conduct the assessment or (2) the expiration of the ten day parental response time in cases other than initial assessment, unless a conciliation conference or hearing is requested. ~~by the parent.~~

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

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

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

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

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

4. Notice before assessment:

a. must be provided in accordance with the provisions of 5 MCAR §§ 1.0127 A. and B. ~~127 B.~~ prior to conducting a formal educational assessment or reassessment or when the district receives ~~refuses~~ a parent's written request to conduct a formal educational assessment or reassessment. In cases ~~of refusal the notice shall be served within ten days after the refusal.~~ where a district receives a parent's written request to conduct a formal assessment or reassessment, the district shall serve notice of ~~their~~ its decision within ten days of their receipt of the written request;

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

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

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

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

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

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

4. upon request of the parent, determine whether it is appropriate to involve additional staff or other persons on the team including someone who is a member of the same minority or cultural background or who is knowledgeable concerning the racial, cultural, or handicapping differences of the student~~.~~;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 MCAR § 1.0126 ~~EDU-126~~ Periodic reviews, reassessment and follow-up.

A. Periodic reviews.

1. The providing school district shall conduct periodic reviews of the program plan and shall determine:

a. the degree to which the periodic review 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.

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

2. The initial review shall be made at the time specified in the program plan, but at least twice a year following placement.

3. These periodic reviews shall be made by those persons directly responsible for implementing the educational program and by other school district agents as may be needed to insure an informed and adequate review.

4. The results of such periodic reviews shall be included in the student's school records and a copy sent to the parent and to the resident district if different from the providing district. This copy shall inform the parents or the resident district that they may request a conference to review the student's program plan at any time and the procedure to do so.

5. The reviews shall be made in accordance with the requirements for nondiscrimination and recognized professional standards.

B. Requirements for reassessment.

When a student is continued in his or her primary placement in a special education program, the providing district shall conduct an educational reassessment according to the procedures specified in 5 MCAR § 1.0124 B. ~~EDU-124-B.~~, at least once every two years.

C. Requirements for follow-up review.

The responsible school district shall conduct a follow-up review of the student's current performance no later than twelve calendar months after special education services are discontinued to determine if progress is satisfactory.

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

A. General notice provisions.

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

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

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

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

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

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

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

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

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

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

e. inform the parents that they may:

(1) obtain an independent assessment at their own expense;

(2) request from the district information about where an independent assessment may be obtained;

(3) request that an independent assessment be conducted at public expense in which case the district has the option of denying such a request. When a district denies such a request, the parents may request a conciliation conference and due process hearing to resolve the disagreement.

f. inform the parents that the district will not proceed with proposed actions defined in 5 MCAR §§1.0120 B. 20 and 21 without prior written consent.

g. inform the parents that if they object to the proposed action in writing a conciliation conference will be held at a mutually convenient time and place, but that if the parents refuses to attend the conference and the proposed action is not an initial action as defined in 5 MCAR §§1.0120 B. 20 and 21, the school district will proceed with the proposed action;

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

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

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

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

l. inform the parents of their right to be represented in preparation of and at the hearing by legal counsel or other representative of their choice;

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

n. inform the parents of their right to call their own witnesses and to present evidence, including expert medical, psychological, and educational testimony and relevant records, tests, assessments, reports, or other information;

o. inform the parents of their right to request the attendance of any official or employee of the providing or resident school district or any other person, who may have evidence relating to the proposed action and the manner and time in which to do so;

p. inform the parents of their right to present evidence and cross examine any employee of the school district(s) or other persons who present evidence at the hearing;

q. inform the parents of any free or low cost legal services available in the area;

r. inform the parents of their right to have the child who is the subject of the hearing present at the hearing;

s. inform the parents that the hearing shall be closed unless the parent requests an open hearing;

t. inform the parents that they have a right to obtain a record of the hearing including the written findings of fact and decisions whether or not they appeal.

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

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

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

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

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

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

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

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

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

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

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

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

~~10. Inform the parents that if they object to the proposed action in writing a conciliation conference will be held at a mutually convenient time and place, but that if the parent refuses to attend the conference the school district will proceed with the proposed action;~~

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

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

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

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

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

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

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

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

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

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

~~5. inform the parents that if they object to the proposed action, a conciliation conference will be held at a mutually convenient time and place but that if the parent refuses to attend the conciliation conference the school district will proceed with the proposed action;~~

~~6. Inform the parents that if they still object to the proposed action after the final conciliation conference that they have a right to voice that objection at an informal due process hearing.~~

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

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

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

A. When a conciliation conference must occur:

1. If the parent does not object in writing, to a proposed action as set forth in 5 MCAR § 1.0124 B. ~~EDU-124-B.~~ or 5 MCAR § 1.0125 E. ~~EDU-125-E.,~~ within 14 ~~ten~~ days after receipt of the notice, and the proposed action is not an initial action as defined in 5 MCAR § 1.0120 B. 20 and 21, the proposed action shall take place. If such written objection is made, the providing school district shall arrange for a conference with the parent for the purpose of reviewing the reasons for the proposed action and conciliating the matter. The conference shall be held at a time and place mutually convenient to the parent and the school district representatives and shall be held within ten days after receipt of the written objection. There may be more than one such conference and the parent or district may not request a hearing under 5 MCAR § 1.0129 A. ~~EDU-129-A.~~ at anytime after the first conciliation conference is convened. ~~until at least one conciliation conference has been held.~~

2. If the parent refuses to provide prior written consent as set forth in 5 MCAR § 1.0127 B.4. and 5 MCAR § 1.0127 C.2. within ten days after the receipt of the notice and response form, the providing school district shall arrange for a conference with the parent for the purposes of reviewing the reasons for the proposed action, reviewing the parent's suggestions and concerns and conciliating the matter. Each conference shall be held at a time and place mutually convenient to the parent and school district representatives and the initial conference shall be held within ten days after the expiration of the ten day period for parent response. In cases where the parents fail to attend the initial conciliation conference, the district may choose to schedule additional conciliation conferences.

omit (5)

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

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

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

3. that if they do not request a hearing on the written "request form" or otherwise in writing pursuant to 5 MCAR § 1.0129 A. ~~EDU-129-A.~~ within seven days after receipt of the notice, the district will proceed with the proposed action; unless the proposed action is an initial action as defined in 5 MCAR § 1.0120 B. 20 and 21. In cases of such proposed initial actions, when a parent continues to refuse to provide written permission, the district shall schedule a hearing within seven days after the expiration of the seven days allowed for parent response;

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

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

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

A. When a hearing must be held.

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

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

B. Notice.

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

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

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

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

c. inform the parent~~s~~ of ~~their~~ the following rights ~~or~~ and responsibilit~~y~~ies:

(1) of their right to receive a list of persons who will testify on behalf of the district concerning a proposed action within five days of the date the district receives their written request for the list of persons testifying.

~~(1) of their right to receive from the school district(s), within five days of the district's receipt of the parent's written request for a hearing, a list of persons who will testify on behalf of the district concerning the proposed action;~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

g. ~~j.~~ that unless the district and parents agree otherwise, the student shall not be denied initial admission to school and that the student's education program shall ~~will~~ not be changed, as long as the parents object to the proposed action in the manner prescribed by these rules.~~, or until after the decision is finally made at the hearing, or an appeal.~~

C. Hearing officers.

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

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

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

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

D. Prehearing review by the hearing officer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

h. may grant specific extensions of time beyond the 45 day period established in 5 MCAR §§ 1.0129 B.2.e. at the request of either party.

E. Hearing rights of the respective parties.

1. The hearing should be closed unless the parents request an open hearing. ~~or if the hearing takes place before the school board.~~

~~1.~~ 2. The parties shall have the right to representatives of their own choosing, including legal counsel.

~~2.~~ 3. At a reasonable time prior to the hearing, the parent or their representative(s), as the case may be, shall be given access to all of the providing and resident school districts' records and such other records pertaining to the child that are authorized by law to be disclosed, including but not limited to all tests, evaluations, assessments, reports, and other written information concerning the educational assessment or reassessment, conducted pursuant to 5 MCAR § 1.0124 B. ~~EDU 124 B.~~ upon which the proposed action may be based.

~~3.~~ 4. At least five days prior to the hearing the parents shall receive from the school districts, who are parties of the hearing, a brief resume of "additional material allegations" referring to conduct, situations or conditions which are discovered and found to be relevant to the issues to be contested at the hearing and which are not contained in the original notice or memorandum provided pursuant to 5 MCAR § 1.0127 A., B. or C. or 5 MCAR § 1.0128 B. ~~EDU 127 B. or C. or 128 B. And that if~~ If such material allegation or information relating thereto are not so disclosed, it shall be left to the person conducting the hearing to determine if those material allegations may be introduced or considered.

~~4.~~ 5. Within five days after the written request is received, any party shall receive from the other parties a list of witnesses who may be called to testify at the hearing. Such list must be filed with the person(s) conducting the hearing. Such lists may be modified at any time but each party should be notified immediately if possible.

~~5.~~ 6. All parties or their representatives, as the case may be, shall have the right to request the attendance of any employee of the school district(s), or any other person who may have evidence relating to the proposed action, and to confront, and to cross examine any such witness. Any such request must be made to the appropriate school district or to the person whose attendance is requested at least five days in advance of the hearing. Such written requests shall also be filed with the person(s) conducting the hearing at the time of hearing.

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

~~6.~~ 7. If the person conducting the hearing determines at the conclusion of the hearing that there remain disputes of fact which, in the interest of fairness and the child's educational needs, require the testimony of additional witnesses, or if the hearing officer concludes that alternative educational programs and opportunities have not been sufficiently considered, he or she may continue the hearing for not more than ten days, for the purpose of obtaining the attendance of such witnesses or considering such alternative programs and opportunities. The parties' right to cross examination and confrontation and other applicable rights and procedures set forth herein shall continue and be given full force and effect.

F. Hearing procedures.

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

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

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

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

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

1. Decisions regarding assessment or reassessment.

a. The hearing officer ~~person conducting the hearing~~ may sustain a proposed assessment or reassessment of the person as set forth in 5 MCAR § 1.0124 B. ~~EDU 124 B.~~ upon a showing by the school district(s) by a preponderance of the evidence which demonstrates that there are facts, relating to the person's performance in his or her present education placement or presenting handicapping conditions, which indicate reasonable grounds to believe that the educational assessment or reassessment procedures are justified, as a step toward the possible initiation of or change in the person's educational placement or program, including special education services, which will provide an educational program, including special education services, appropriately suited to the person's needs.

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

2. Decisions regarding educational placement.

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

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

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

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

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

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

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

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

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

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

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

H. Effective date of the action and appeals.

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

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

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

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

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

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

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

3. The school board shall be a party to any appeal. The commissioner shall issue a final decision based on a review of the local decision(s) and the entire records within 30 calendar days after ~~receipt of the local decision(s) and the transcript.~~ the filing of the appeal. A written transcript of the hearing shall be made by the district; the transcript and entire record shall be accessible to the parties and provided to the commissioner within five calendar days after the filing of the appeal. If the transcript and record is not provided to the commissioner within five days of the filing of the appeal, the district shall request an extension of the time beyond the 30 day period equal to the number of days which exceeded the five day period for filing the transcript and entire record. ~~However, in appeals of local decisions wherein the parent has properly requested a chapter 15 due process hearing, the commissioner shall issue a final decision within 30 days after that hearing and the final decision shall be based on the report of the hearing exainer.~~ The commissioner shall seek additional evidence if necessary and may afford the parties an opportunity for written or oral argument; provided any hearing held to seek additional evidence shall be impartial due process hearing but shall be deemed not to be a contested case hearing. The commissioner may grant specific extensions of time beyond the 30 day period at the request of any party.

4. The commissioner's final decision shall:

a. be in writing;

b. include findings and conclusions; and

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

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

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

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

Rules as Adopted

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

5 MCAR § 1.0120 Policies and definitions.

A. Policies.

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

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

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

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

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

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

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

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

B. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

"Continuum of Placement Model"

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

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

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

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

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

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

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

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

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

15. "Days" shall be construed to exclude Saturdays, Sundays, and days school is not in session when used in 5 MCAR §§ 1.0121-1.0127. "Days" shall be construed to mean calendar days when used in 5 MCAR §§ 1.0128 and 1.0129.

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

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

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

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

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

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

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

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

5 MCAR § 1.0121 Application.

A. District special education plan.

On or before September 1, 1977, each district shall submit to the commissioner the district's plan for providing special instruction and services for all handicapped pupils as required by Minn. Stat. §120.17. The plan may represent the plan of a single district or a plan for all of the member districts of a formal special education cooperative. The plan shall be considered as part of the annual school district application for program review, but will not be required to be resubmitted annually. The plan shall include descriptions of:

1. the district's study procedures for the identification and assessment of handicapped pupils.

2. the district's methods of providing the special instruction and services for the identified handicapped pupils.

3. the district's administration and management plan to assure effective and efficient results of 1 and 2 above.

4. procedures to assure compliance with state statutes and rules relating to the education of handicapped pupils.

B. On or before January 1, 1978, the commissioner shall approve or implement appropriate procedures for modification of the district plan. The commissioner may grant the district a reasonable period of time to make necessary modifications of the plan provided that the commissioner has satisfactory assurances of compliance with standards for the education of handicapped pupils.

C. Annual application for programs and budget.

1. Regular school term - On or before May 1 of each year school districts shall submit to the commissioner an annual application for program and budget approval necessary for determining the special education aids during the next school year. On or before July 1 the commissioner shall approve, disapprove, or modify each application and notify each applying district of his action and the estimated level of education aid to be paid.

2. Summer school term - On or before March 15 districts shall submit separate applications for program and budget approval for summer school. The commissioner shall approve, disapprove, or modify each application and notify the district of his action and the estimated level of special education aid by May 1.

3. Amendment to applications - School districts shall apply to amend applications as needed during the school term to reflect program and budget changes necessary to meet the changing needs of handicapped pupils in the district.

D. A district may request a variance from the standards provided in 5 MCAR § 1.0122 by submitting supportive rationale in the application. The commissioner shall review this request for variance from standards in accordance with recognized professional standards and shall inform the district of the decision.

5 MCAR § 1.0122 Facilities, staff and supervision.

A. Facilities.

1. Housing space. Housing space for each class shall be adequate.

2. Equipment and materials. Each special class and group shall be supplied with the necessary special equipment and instructional materials.

B. Staff.

1. Teachers. Every teacher who teaches a special class must hold a special class license appropriate to the type of handicapped children she or he is teaching.

2. Administrators and supervisors. Every administrator and supervisor of any special education program shall hold appropriate licensure.

3. Other professional or essential personnel. The qualifications of other professional or essential personnel who are not licensed teachers, administrators or supervisors shall be based upon recognized professional standards and documented by the school district in their application as provided for in 5 MCAR § 1.0121. The commissioner or his designee shall review requests for approval of such personnel assigned to programs for handicapped children.

4. Special and vocational education. Staff responsible for vocational training of handicapped students shall meet the following criteria if the program is to qualify for special education approval.

a. Coordinator of special needs.

(1) Licensure in special education.

(2) Licensed as a coordinator of special needs in vocational education.

b. Support service manager.

(1) Licensure in any special education disability area.

(2) Licensed as a support service manager in vocational education.

c. Vocational instructor of special needs students.

(1) Licensure in the appropriate disability area of special education or have a plan for working toward licensure.

(2) Licensed as a vocational instructor of special needs students in vocational education.

d. Teacher/coordinator of work experience.

(1) A special education license appropriate for the type of handicapped students being taught.

(2) Licensed as an instructor/coordinator for work experience in vocational education.

e. Teacher/coordinator of vocational education work experience.

(1) Must be coordinated with a special education director or coordinator/lead teacher licensed for the type of handicapped students being taught.

(2) Must be working cooperatively with a special education licensed teacher who is responsible for the nonvocational instruction.

(3) Licensed as an instructor/coordinator for work experience in vocational education.

f. Vocational evaluator.

(1) Licensed as a vocational evaluator in vocational education.

(2) Working cooperatively with special education licensed personnel to insure that special consideration is related to the students handicapped condition are included in the evaluation and program plan.

g. Vocational technical tutor.

(1) Licensed as a technical tutor in vocational education.

(2) Working cooperatively with a special education licensed teacher who is responsible for the nonvocational academic area of instruction.

C. Staff to student ratios.

1. When persons are in need of special education services in level 5 or 6 of the "Continuum of Placement" model where the primary placement is in a special education program such as a full-time class, special station, special school or residential school, the staff to student ratio shall not exceed:

a. one teacher for each eight handicapped persons for all categories except as provided in b.

b. one teacher for six handicapped persons who are autistic or who are deaf/blind providing that two management aides are employed to assist the teacher.

2. When persons are in need of special education services in level 4 of the "Continuum of Placement" model where the primary placement is in a special education program such as a resource room or part-time special class the staff to student ratio shall not exceed:

a. one teacher for every 15 handicapped persons for all categories except as provided in b.

b. one teacher for every eight handicapped persons who are trainable mentally retarded or visually impaired.

3. When persons are in need of special education services in level 3 of the "Continuum of Placement" model where the primary placement is in a regular education program, such as a resource room or special class, the staff to student ratio shall not exceed:

a. one teacher for every 15 persons for all categories except as provided in b.

Each person must receive special education service for a minimum of one hour per day. When the needs of the student warrants such action, persons may receive less than one hour per day during the initial or phase out stages.

b. one teacher for every 40 persons who are speech and/or language impaired.

4. When persons are in need of special education services in level 1 or 2 of the "Continuum of Placement" model where the student is full time in a regular education program and the special education teacher provides consultation and indirect service to the regular classroom teacher and/or assessment, monitoring or follow-up of the student, the staff to student ratio shall not exceed:

a. one teacher for every 30 persons who are handicapped except as provided in b.

b. one teacher for every 60 persons who are speech impaired.

5. Whenever a professional is serving children representing a range of severity of problems, is providing more than one level of service, or is providing service at more than one site, the staff to student ratios shall be adjusted accordingly.

6. When persons are receiving services from vocational staff involved in "special and vocational" programs except as provided in 5 MCAR § 1.0122 B.4.d., the staff to student ratios of the "Continuum of Placement" model do not apply to that staff.

D. Supervision.

Supervision consistent with the commissioner's recommendations and meeting the following standards shall be provided for each type of special education program.

1. Overall supervision.

a. Full-time supervision. The school board in every district with an enrollment of 15,000 or more pupils, and in every district in which 20 or more full-time professional personnel are employed in the special education program, shall employ or designate a qualified person, under an appropriate title, to devote full-time to directing the special education program.

b. Part-time supervision. The school board shall employ or designate a qualified person to devote part-time to directing the special education program when (a) the enrollment in the school district is 7,500 or more pupils but less than 15,000 pupils; or (b) the number of full-time personnel employed in the special education program is at least 10 but less than 20.

This position shall be reimbursable when the person directing the program on a part-time basis spends the remainder of his time in some area of special education.

School authorities of districts that are required to meet the standard for part-time supervision shall consult periodically with the special education section in regard to full-time supervision.

c. Other. School boards of districts not required to have full-time or part-time supervision as outlined above shall study the feasibility of cooperative interdistrict sharing of special education supervisory personnel or some other approach aimed at providing direction to the program. See item 4 following.

2. Individual program supervision.

a. For the following disability categories or areas: (1) deaf and hard of hearing, (2) crippled, (3) visually impaired, (4) emotional disturbance, learning disability, or special behavior problems.

The board of every school district in which 15 or more full-time professional personnel are employed in any one of the above disability areas shall employ or designate a full-time person to supervise the program in that area.

The board of every school district in which less than 15 but 5 or more professional personnel are employed in any one of the above disability areas shall consult with the special education section and make provisions for supervision of the program in that area.

b. For the mentally retarded.

The school board in every district in which 30 or more full-time professional personnel are employed in the above disability area shall employ or designate a full-time supervisor of the program in that area.

The school board in every district in which less than 30 but 10 or more professional personnel are employed in the above disability areas shall consult with the special education section and make provisions for supervision of the program.

c. The school board in every district in which speech therapists are employed in the special education program shall submit a plan which will describe and provide appropriate amounts of time for program development, program coordination, program evaluation, in-service training, and individual supervision.

d. For the following service areas: (1) school social work, and (2) school psychology:

(1) The school board in every district in which level 1 personnel in either the social work or psychology program are employed for special education programs shall submit a plan which will describe and provide appropriate amounts of time for each level 1 person for individual observation, performance evaluation, consultation, and in-service training by a licensed level 2 person from the respective field.

(2) The school board in every school district in which level 2 personnel in either the social work or psychology area are employed in the special education program shall submit a plan which will describe and provide appropriate amounts of time for program development, program coordination, program evaluation, in-service training, and individual supervision.

e. The school boards of two or more districts may cooperatively employ and share supervisory personnel. See item 4 following.

f. Supervision of programs in any of the aforementioned disability areas shall be provided at both the elementary and secondary level.

3. Cooperative inter-district agreements.

a. Two or more school districts may enter into an agreement to provide supervision of programs for handicapped children, provided that none of the participating districts is required, as outlined in items 1 and 2 above, to employ such supervisory personnel on a full-time basis.

b. When a group of districts enter into such cooperative agreement, one of the participating districts shall serve as the employing unit.

Each participating district shall pay to the employing district a prorata amount of the net cost of providing such supervisory services. The net cost to be prorated shall be the actual cost less state reimbursement.

State reimbursement for the cost of such services shall be paid to the employing district.

4. The school board of any district unable to comply with the above rules shall consult with the special education section.

E. School day.

Deviations from the normal school day for any type of handicapped children shall be approved by the commissioner of education.

5 MCAR § 1.0123 Surrogate parents.

When a child is the ward of the commissioner of public welfare, when the parent or guardian is unknown or unavailable, or when parental rights have been terminated, the district shall insure that the rights of the child to a free and appropriate education are protected by contacting the local county welfare department and requesting that the public welfare system intervene on behalf of the child. The district shall suggest to the local county welfare system that a contact with the county attorneys office be made to determine whether a guardian ad litem should be appointed.

5 MCAR § 1.0124 Identification and assessment procedures.

A. Identification of handicapped children.

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

a. preschool age handicapped children;

b. handicapped persons attending school;

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

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

B. Formal educational assessment.

1. An assessment:

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

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

c. may be conducted if the parent requests.

2. Prior to conducting an assessment the district shall:

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

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

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

d. conduct the assessment within a reasonable period of time not to exceed 30 days from (1) the date the district receives parental permission to conduct the assessment or (2) the expiration of the ten day parental response time in cases other than initial assessment, unless a conciliation conference or hearing is requested.

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

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

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

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

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

4. Notice before assessment:

a. must be provided in accordance with the provisions of 5 MCAR §§ 1.0127 A. and B. prior to conducting a formal educational assessment or reassessment or when the district receives a parent's written request to conduct a formal educational assessment or reassessment. In cases where a district receives a parent's written request to conduct a formal assessment or reassessment, the district shall serve notice of their decision within ten days of their receipt of the written request;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 MCAR § 1.0126 Periodic reviews, reassessment and follow-up.

A. Periodic reviews.

1. The providing school district shall conduct periodic reviews of the program plan and shall determine:

a. the degree to which the periodic review 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.

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

2. The initial review shall be made at the time specified in the program plan, but at least twice a year following placement.

3. These periodic reviews shall be made by those persons directly responsible for implementing the educational program and by other school district agents as may be needed to insure an informed and adequate review.

4. The results of such periodic reviews shall be included in the student's school records and a copy sent to the parent and to the resident district if different from the providing district. This copy shall inform the parents or the resident district that they may request a conference to review the student's program plan at any time and the procedure to do so.

5. The reviews shall be made in accordance with the requirements for nondiscrimination and recognized professional standards.

B. Requirements for reassessment.

When a student is continued in his or her primary placement in a special education program, the providing district shall conduct an educational reassessment according to the procedures specified in 5 MCAR § 1.0124 B., at least once every two years.

C. Requirements for follow-up review.

The responsible school district shall conduct a follow-up review of the student's current performance no later than twelve calendar months after special education services are discontinued to determine if progress is satisfactory.

5 MCAR § 1.0127 Formal notice to parents.

A. General notice provisions.

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

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

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

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

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

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

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

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

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

e. inform the parents that they may:

(1) obtain an independent assessment at their own expense;

(2) request from the district information about where an independent assessment may be obtained;

(3) request that an independent assessment be conducted at public expense in which case the district has the option of denying such a request. When a district denies such a request, the parent may request a conciliation conference and due process hearing to resolve the disagreement.

f. inform the parents that the district will not proceed with proposed actions defined in 5 MCAR §§1.0120 B. 20 and 21 without prior written consent;

g. inform the parents that if they object to the proposed action in writing a conciliation conference will be held at a mutually convenient time and place, but that if the parent refuses to attend the conference and the proposed action is not an initial action as defined in 5 MCAR §§1.0120 B. 20 and 21, the school district will proceed with the proposed action;

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

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

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

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

l. inform the parents of their right to be represented in preparation of and at the hearing by legal counsel or other representative of their choice;

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

n. inform the parents of their right to call their own witnesses and to present evidence, including expert medical, psychological, and educational testimony and relevant records, tests, assessments, reports, or other information;

o. inform the parents of their right to request the attendance of any official or employee of the providing or resident school district or any other person, who may have evidence relating to the proposed action and the manner and time in which to do so;

p. inform the parents of their right to present evidence and cross examine any employee of the school district(s) or other persons who present evidence at the hearing;

q. inform the parents of any free or low cost legal services available in the area;

r. inform the parents of their right to have the child who is the subject of the hearing present at the hearing;

s. inform the parents that the hearing shall be closed unless the parent requests an open hearing;

t. inform the parents that they have a right to obtain a record of the hearing including the written findings of fact and decisions whether or not they appeal.

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

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

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

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

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

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

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

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

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

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

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

5 MCAR § 1.0128 Conciliation conference.

A. When a conciliation conference must occur:

1. If the parent does not object in writing, to a proposed action as set forth in 5 MCAR § 1.0124 B. or 5 MCAR § 1.0125 E., within 14 days after receipt of the notice, and the proposed action is not an initial action as defined in 5 MCAR § 1.0120 B. 20 and 21, the proposed action shall take place. If such written objection is made, the providing school district shall arrange for a conference with the parent for the purpose of reviewing the reasons for the proposed action and conciliating the matter. The conference shall be held at a time and place mutually convenient to the parent and the school district representatives and shall be held within ten days after receipt of the written objection. There may be more than one such conference and the parent or district may request a hearing under 5 MCAR § 1.0129 A. at anytime after the first conciliation conference is convened.

2. If the parent refuses to provide prior written consent as set forth in 5 MCAR § 1.0127 B.4. and 5 MCAR § 1.0127 C.2. within ten days after the receipt of the notice and response form, the providing school district shall arrange for a conference with the parent for the purposes of reviewing the reasons for the proposed action, reviewing the parent's suggestions and concerns and conciliating the matter. Each conference shall be held at a time and place mutually convenient to the parent and school district representatives and the initial conference shall be held within ten days after the expiration of the ten day period for parent response. In cases where the parents fail to attend the initial conciliation conference, the district may choose to schedule additional conciliation conferences.

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

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

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

3. that if they do not request a hearing on the written "request form" or otherwise in writing pursuant to 5 MCAR § 1.0129 A. within seven days after receipt of the notice, the district will proceed with the proposed action; unless the proposed action is an initial action as defined in 5 MCAR § 1.0120 B. 20 and 21. In cases of such proposed initial actions, when a parent continues to refuse to provide written permission, the district shall schedule a hearing within seven days after the expiration of the seven days allowed for parent response;

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

5 MCAR § 1.0129 The hearing.

A. When a hearing must be held.

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

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

B. Notice.

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

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

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

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

c. inform the parent of the following rights and responsibilities:

(1) of their right to receive a list of persons who will testify on behalf of the district concerning the proposed action within five days of the date the district receives their written request for the list of persons testifying;

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

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

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

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

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

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

C. Hearing officers.

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

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

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

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

D. Prehearing review by the hearing officer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

h. may grant specific extensions of time beyond the 45 day period established in 5 MCAR § 1.0129 B.2.e. at the request of either party.

E. Hearing rights of the respective parties.

1. The hearing shall be closed unless the parents request an open hearing.

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

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

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

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

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

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

F. Hearing procedures.

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

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

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

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

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

1. Decisions regarding assessment or reassessment.

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

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

2. Decisions regarding educational placement.

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

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

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

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

3. All local decisions shall:

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

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

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

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

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

H. Effective date of the action and appeals.

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

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

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

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

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

4. The commissioner's final decision shall:

a. be in writing;

b. include findings and conclusions; and

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

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

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

STATE OF MINNESOTA

DEPARTMENT OF EDUCATION

STATE BOARD OF EDUCATION

DIVISION OF SPECIAL AND COMPENSATORY EDUCATION

In the Matter of the Proposed Adoption of Rules of the State Board of Education Governing Standards and Procedures of Special Education, Instruction and Services for Children and Youth who are Handicapped 5 MCAR §§ 1.0120-1.0129

STATEMENT OF COMPLIANCE WITH MANUAL OF RULE MAKING PROCEDURES

I, Special Assistant Attorney General Charles T. Mottl, do hereby declare that I have examined the proposed rules and all related documents and that, based upon them and my personal familiarity with the applicable procedures, the Manual of Rule Making Procedures has been followed. Any exceptions are noted below.

Charles T. Mottl

Special Assistant Attorney General

Dated: Sept. 26, 1983

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE BOARD OF EDUCATION

IN THE MATTER OF PROPOSED ADOPTION OF RULES OF THE STATE BOARD OF EDUCATION GOVERNING STANDARDS AND PROCEDURES IN SPECIAL EDUCATION INSTRUCTION AND SERVICES FOR CHILDREN AND YOUTH WHO ARE HANDICAPPED, 5 MCAR §§ 1.0120 THROUGH 1.0129.	ORDER OF THE CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on April 3, 1980, before Jon L. Lunde, a Hearing Examiner of the State Office of Administrative Hearings, 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 on May 9, 1980; and

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

WHEREAS, the Board of Education has submitted said rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.052, subd. 4, and Rule 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 of Education 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, notifying all persons who requested to be informed that the hearing record has been submitted to the Attorney General, and publishing in the State Register, all pursuant to Minn. Stat. § 15.0412, subd. 4.

Dated this 25th day
of September, 1980.

DUANE R. HARVES
Chief Hearing Examiner

STATEMENT OF NEED AND REASONABLENESS
FOR PROPOSED RULES 5 MCAR §§ 1.0120 - 1.0129

STANDARDS AND PROCEDURES OF SPECIAL EDUCATION INSTRUCTION
AND SERVICES FOR CHILDREN AND YOUTH WHO ARE HANDICAPPED

Division of Special and Compensatory Education
Minnesota Department of Education

BACKGROUND

The 1979 Minnesota State Legislature amended Minn. Stat. § 120.17 (1978) to strengthen the procedural safeguards available to handicapped children and their parents as they interact with local school districts. The 1979 statutory amendments resulted in four broad areas of new requirements: (1) Written permission must be obtained from parents before a district can proceed with the initial assessment, or initial placement and provision of service to a handicapped child. (2) A hearing officer must be impartial, thus school board members and district employees are prohibited from serving as hearing officers. (3) The decision of the hearing officer is final and subject to appeal by either the local school district or the parent. (4) The impartial due process hearing must be completed within 45 calendar days of the date the hearing was requested. The 1979 amendments to Minn. Stat. § 120.17 (1978) also provided the State Board of Education with the authority to adopt temporary rules relating to these changes which would remain in effect until June 30, 1980. (Laws of 1979, Ch. 334, Article III, Section 18) Temporary rules addressing these changes were developed and published in the State Register on October 1, 1979, for a twenty day comment period. On November 5, 1979, the State Board of Education approved the temporary rules as proposed. The temporary rules became effective in December, 1979 and will remain in effect until June 30, 1980.

The authority of the State Board of Education to promulgate the proposed permanent rules is provided in Minn. Stat. §§ 120.17, subd. 3 which stipulates that the state board shall promulgate rules relative to qualifications of essential personnel, courses of study or training, methods of instruction and training, pupil eligibility, size of classes, rooms, equipment, supervision, parent consultation and any other rules or standards it deems necessary for instruction of handicapped children.

The proposed permanent rules are very similar to the existing temporary rules and incorporate all the changes included in the temporary rules. In addition, the proposed permanent rules also include: (1) modification in the time line for the completion of assessment procedures; (2) some additional general notice requirements. The proposed permanent rules (5 MCAR §§ 1.0120 - 1.0129) were presented to the state board of education on January 15, 1980 at which time they were approved for public hearing.

5 MCAR § 1.0120 POLICIES AND DEFINITIONS

In 5 MCAR § 1.0120 B. 10 the definition of "school age" for handicapped children is modified to reflect the definition of school age currently in Minn. Stat. § 120.03. The portion of the definition which expired on August 15, 1977, is deleted.

Because the proposed rules require districts to secure written parental permission before conducting the initial formal assessment and before placing a child for the first time in a special education program, two new definitions are included in the proposed rules. 5 MCAR § 1.0120 B. 20. defines "initial formal assessment". 5 MCAR § 1.0120 B. 21. defines "initial placement and provision of services." In both definitions "initial" means the first time assessment or placement takes place in a specific district. Any activity after the first assessment or the first placement and provision of service within a district is not considered initial. If a child who has been assessed and/or placed in a special education program in one district moves to another district, the first time he was assessed and/or placed into special services in the second district would be considered initial for the second district.

5 MCAR § 1.0122 FACILITIES, STAFF AND SUPERVISION

The teacher requirements included in 5 MCAR § 1.0122 B. 1. have been expanded to specifically address special education teachers of pre-kindergarten handicapped children. Since the fall of 1978, school districts have been required to serve handicapped four year olds. Since none of the existing special class licenses are currently issued below the kindergarten level, it was unclear how pre-kindergarten handicapped teachers could be in compliance with the provisions of 5 MCAR § 1.0122 B. 1. In order to establish a standard for pre-kindergarten handicapped teachers, the State Board of Education adopted language in August, 1979, which stipulated that until the requirement to hold on early childhood special education becomes effective in accordance with board of teaching rules, special class teachers licensed to teach kindergarten age handicapped children shall be considered qualified to teach pre-kindergarten handicapped children. In adopting this standard, the State Board of Education instructed the Department of Education to incorporate the standard into the special education rules specifying the requirements for teaching special classes. The standard is included here for that reason.

5 MCAR § 1.0124 IDENTIFICATION AND ASSESSMENT PROCEDURES

Two changes are proposed in this section to more clearly define time line requirements for completing a comprehensive assessment. Particularly in cases where an assessment is conducted as a result of a parent request, parents need to have a clear understanding of the maximum amount of time allowed for the completion of that assessment. The language of 5 MCAR § 1.0124 B. 2. d. has been modified to clearly establish the point at which a district must begin counting the 30 days allowed for the completion of the assessment. Districts reported a variety of procedures for determining the date on which the need for assessment was determined. The variability in establishing the date when the need for an assessment was determined, resulted in some substantial delays in completing the assessment process.

The notice requirement specified in 5 MCAR § 1.0124 B. 4. is changed to require districts to report their decision in response to a parental request for assessment, regardless of whether that decision is to agree or refuse to conduct the assessment. Existing language requires a district to notify parents only when the parents' request for an assessment is denied by the district. When parents did not receive notification of denial, they automatically assumed that an assessment would be conducted. It was not clear, however, when that assessment would be conducted. The proposed language requires districts to notify parents, within ten days of the parent's written request, of their assessment decision.

5 MCAR § 1.0127 FORMAL NOTICE TO PARENTS

The general notice provision addressed in 5 MCAR § 1.0127 A. 5. requires that all notices contain a full explanation of all the procedural safeguards available to parents. This is to assure that regardless of the specific action being proposed in a given notice, parents are informed of the entire set of procedural safeguards available to them each time a notice is sent.

To assist districts in determining which notice requirements must be included in all notices, 5 MCAR § 1.0127 A. 5. is expanded into a list of twenty general notice statements. All twenty statements are underlined, indicating that each statement is a new addition to this section. It is important to realize, however, that only three of the notice statements are actually new, two statements are modifications of existing language and the remaining fifteen statements are existing notice requirements from other sections of these rules. For these fifteen statements, the only change is their location.

5 MCAR § 1.0127 A. 5. a. was formally EDU 127 B. 4.
5 MCAR § 1.0127 A. 5. b. was formerly EDU 127 B. 5.
5 MCAR § 1.0127 A. 5. c. was formerly EDU 127 B. 6.
5 MCAR § 1.0127 A. 5. d. was formerly EDU 127 B. 7.
5 MCAR § 1.0127 A. 5. e. was formerly EDU 127 B. 8.

5 MCAR § 1.0127 A. 5. f. is a new notice requirement informing parents that in cases of initial assessment and initial placement and provision of services, the district must have written permission before proceeding. This notice requirement is in response to the provision in Laws of 1979, ch. 334, Article III, subd. 3b (b), requiring districts to obtain prior written consent in those situations defined as initial.

5 MCAR § 1.0127 A. 5. g. modifies EDU 127 B. 10. by excluding proposed actions that are defined as initial.

5 MCAR § 1.0127 A. 5. h. was formerly EDU 127 B. 11.
5 MCAR § 1.0127 A. 5. i. was formerly EDU 127 B. 12.
5 MCAR § 1.0127 A. 5. j. was formerly EDU 127 B. 13.
5 MCAR § 1.0127 A. 5. k. was formerly EDU 127 B. 14.
5 MCAR § 1.0127 A. 5. l. was formerly EDU 129 B. 2. C. (1)
5 MCAR § 1.0127 A. 5. m. was formerly EDU 129 B. 2. C. (2)
5 MCAR § 1.0127 A. 5. n. was formerly EDU 129 B. 2. C. (3)
5 MCAR § 1.0127 A. 5. o. was formerly EDU 129 B. 2. C. (4)
5 MCAR § 1.0127 A. 5. p. was formerly EDU 129 B. 2. C. (5)

5 MCAR § 1.0127 A. 5. q. is a new notice requirement, consistent with P.L. 94-142, the Education For All Handicapped Children Act, to assure that parents are aware of available legal services which they may need to exercise their rights under the law.

5 MCAR § 1.0127 A. 5. r. is also a new notice requirement consistent with P.L. 94-142, the Education For All Handicapped Children Act. This notice requirement assures that parents understand that they may bring their child to the hearing.

5 MCAR § 1.0127 A. 5. s. was formerly EDU 129 E. 1.

5 MCAR § 1.0127 A. 5. t. is a modification of EDU 129 B. (8) e. The revised language makes it clear that the parents have a right to obtain a record of the hearing including the written findings of fact and decisions whether or not the parent appeals the decision.

5 MCAR § 1.0127 B. describes the statements in addition to the general notice statements which must be included in the notice prior to performance or refusal to perform a formal educational assessment or reassessment. Changes in this section involve: (1) deleting those statements which are now included in the general notice section in 5 MCAR § 1.0127 A. 5. (EDU 127 B. 4. - 8., 10 - 14); (2) adding 5 MCAR §§ 1.0127 B. 4. and 5. to address the need for prior written approval for the initial assessment. 5 MCAR §§ 1.0127 B. 4. and 5. make the proposed rules consistent with the Laws of 1979, ch. 334, Article III, subd. 3 b. (b). Prior written approval is required so that the district can assure that parents have been adequately informed and understand that the proposed assessment procedures could result in their child being considered handicapped and in need of special education instruction.

Changes in 5 MCAR § 1.0127 C. are similar to those in 5 MCAR § 1.0127 B. The statements which are now included in the general notice section of 5 MCAR § 1.0127 A. 5. (EDU 127 C. 2, 3, 5 - 8) have been deleted. 5 MCAR §§ 1.0127 C. 2. and 3. address the need for prior written approval for initial placement and provision of service. This change makes the proposed rule consistent with the Laws of 1979, ch. 334, Article III, subd. 3. b. (b). Prior written approval is required so that the district can assure that before a child is placed in a special education program for the first time, his/her parents fully understand and agree to the components of that program.

The requirement of written parental approval prior to the initial assessment and prior to the initial placement and provision of service brings Minnesota's rules into closer agreement with P.L. 94-142, the Education For All Handicapped Children Act.

5 MCAR § 1.0128 CONCILIATION CONFERENCE

Changes in this section of the proposed rule concern the effect of the requirement to obtain prior written consent in initial assessment and initial placement and provision of services on the conciliation process. Because a district may not proceed in those situations defined as initial without written consent, a district must be prepared to initiate at least one conciliation conference for the purpose of resolving any differences and obtaining written permission. 5 MCAR § 1.0128 A. 1. and 2. expand the existing language to address the convening of a conciliation conference in these "initial" situations. 5 MCAR § 1.0128 A. 2. specifically states that in cases where the parents fail to attend the initial conciliation conference, the district may choose to schedule additional conciliation conferences. This language is included to emphasize the discretion districts have in resolving this problem prior to moving to an impartial due process hearing.

5 MCAR § 1.0128 B. 3. is expanded to include the requirement for the district to schedule a hearing when a parent continues to refuse to provide written permission following the final conciliation conference. In those situations where a district is convinced of the need for an initial assessment or the initial special education placement and service, the district must be prepared to utilize the conciliation and hearing procedures when necessary to assure that the child's rights are met.

5 MCAR § 1.0128 C. defines "days" as calendar days rather than school days to assure that the conciliation conference is conducted without unnecessary delay. In addition, 5 MCAR § 1.0128 A. 1. stipulates that a parent may request a hearing at any time after the first conciliation conference is convened. This is to assure that a parent will experience a minimal amount of delay if they desire to request a hearing rather than fully participating in the conciliation conference procedures.

5 MCAR § 1.0129 THE HEARING

In general the changes in this section are necessary to make the provisions in rule agree with the changes adopted in the Laws of 1979, ch. 334, Article III, subd. 36., Procedures For Decisions.

In 5 MCAR § 1.0129 A. 1. the new language which is consistent with the statutory language assures that a parent can request a hearing any time after the initial conciliation conference is convened. This change in language allows Minnesota to retain the conciliation conference procedures and also assures that parents will not experience any unnecessary delays in requesting an impartial due process hearing.

Laws of 1979, ch. 334, Article III, subd. 3 b. (b) require a district to initiate a hearing whenever a parent refuses to provide written permission in those situations defined as initial. 5 MCAR § 1.0129 A. 2. adds that language to the proposed rule.

The notice requirements in 5 MCAR § 1.0129 B. are changed to reflect the language in the 1979 laws requiring that the due process hearing be held before an impartial hearing officer and stipulating that the commissioner appoint a hearing officer when the parent and school board cannot agree (Laws of 1979, ch. 334, Article III, subd. 3 b. (d)). The notice statements included in EDU 129 B. 2. c. (1) through (5) are deleted because they are now included in the general notice provisions in 5 MCAR § 1.0127 A. 5. EDU 129. B. 2. c. (6), (7) and (8) are now numbered 5 MCAR § 1.0129 B. 2. c. (1) to (3).

The changes in the notice requirements in 5 MCAR § 1.0129 B. 2. e. and f. are necessary to bring these statements into agreement with the provisions of the Laws of 1979 ch. 334, Article III, subd. 3. b. (e). EDU 129 B. 2. h. and i. are deleted because they are inconsistent with the 1979 statutory changes. 5 MCAR § 1.0129 B. g. is modified to include the language contained in the Laws of 1979, ch. 334, Article III, subd. 3. b. (f).

The changes in 5 MCAR § 129 C. define impartial hearing officer and stipulate that when a hearing officer requests an assessment, that assessment shall be at district expense. This is consistent with the requirements in the Laws of 1979, ch. 334, Article III, subd. 3. b. (d). 5 MCAR § 1.0129 D. 2. h. permits extensions beyond the 45 day period at the request of either party of the hearing. This language is consistent with the Laws of 1979, ch. 334, Article III, subd. 3. b. (e).

EDU 129 E. 1 and 7 are deleted since under the provision of Laws of 1979, ch. 334, Article III, subd. 3. b. (d) a hearing can no longer take place before a school board.

The additions in 5 MCAR § 1.0129 G. incorporate the requirements of the 1979 Laws, ch. 334, Article III, subd. 3.b. (e). EDU 129 G. e. is deleted because it is inconsistent with existing statutory language.

5 MCAR § 1.0129 H. relating to the effective date of the hearing action and appeals is modified to include the requirements contained in the Laws of 1979, ch. 334, Article III. subd. 3. b. (f). EDU 129 H. 2. a. is deleted because school boards are no longer approving hearing officer decisions. In 5 MCAR § 1.0129 H. 3. the 30 day time line for the issuance of a final decision by the commissioner is extended in those situations where the commissioner is not in receipt of the transcript and record of the hearing within five days of the filing of the appeal.

5 MCAR § 1.0129 I. defines "days" as calendar days so the time lines relating to impartial due process hearing procedures in the proposed rules agree with those in the Laws of 1979, ch. 334, Article III. subd. 3. b.

Listing Of Persons To Provide
Testimony Regarding Proposed Rules 5 MCAR § 1.0120-1.0129

I. Department Employees

Name	Title
Will Antell	Assistant Commissioner
Jeanne Dorle	Assistant Director, Special Education
Robert Wedl	Manager, Office of Monitoring

II. Expert Witnesses

Name	Title
Al Baas	Special Education Director Chisago County Special Education Cooperative
Betty Christensen	Special Education Regional Consultant Region 11W
Marge Goldberg	Chairperson, Minnesota Special Education Advisory Council
Paula Goldberg	Co-Director, PACER (Parents Advocacy Coalition For Educational Rights)
Anne Henry	Attorney, Legal Advocacy for the Developmentally Disabled

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 standards and procedures for the provision of special education instruction and services for children and youth who are handicapped; and the 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

Rick A. Myers
Member, Board of Education

CERTIFICATE OF BOARD'S
ADOPTION OF RULES RESOLUTION

I, Howard B. Casmey, do hereby certify that I am secretary of the State Board of Education, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the State Board of Education duly and properly called and held on the 4th day of August, 1980; that a quorum was present at said meeting; that a majority of those present voted for the resolution; that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

RESOLVED, that the rules governing the Standards and Procedures of Special Education Instruction and Services for Children and Youth Who are Handicapped hereby are approved as amended and are adopted pursuant to authority vested in us by Minn. Stat. § 120.17, subd. 3, and that one of the members of the Board of Education be and hereby is authorized to sign an order adopting these rules.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 4th day of August, 1980.

Howard B. Casmey
Secretary, State Board of Education

Ruth A. Myers
Member, State 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 standards and procedures for the provision of special education instruction and services for children and youth who are handicapped

Affidavit of Mailing

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

That on the 26th day of February, 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 28 day of February,
1980.

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

Betty King
Notary Public

Dakota, County, Minnesota

My Commission expires 6-13-83.

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 standards and procedures for the provision of special education instruction and services for children and youth who are handicapped

Certificate of Delivery
Secretary of State List

I hereby certify that the attached 9 + 338 labels sheets constitute the complete list of persons, associations, and other interested groups who as of 2:15 o'clock P.M., this 19th day of February, 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 Kathy Hjelsin

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 standards and procedures for the provision of special education instruction and services for children and youth who are handicapped

Affidavit of Receipt of Secretary of State's List

Harold 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 15 day of February, 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 19 day of February, 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 19 day of February,
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

Department of Education
Special and Compensatory Division

In the Matter of Proposed Adoption
of Rules of the State Board of
Education Governing Standards and
Procedures of Special Education
Instruction and Services for Children
and Youth Who are Handicapped
5 MCAR §§ 1.0120 - 1.0129

Notice of Hearing

A public hearing concerning the proposed rules will be held in the School Administration Building, Auditorium A & B, 360 Colborne Street, St. Paul, Minnesota 55102, on April 3, 1980, commencing at 8:30 a.m. The proposed rules may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rules, you are urged to participate in the rule hearing process.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to ask questions and make comments. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted to Peter C. Erickson, Hearing Examiner, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, telephone (612) 296-8118 either before the hearing or within five 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.

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 include a summary of all of the evidence which will be presented by the agency at the hearing justifying both the need for and the reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Hearing Examiners at a minimum charge.

The Board's statutory authority to promulgate the proposed rules is provided by Minn. Stat. §§ 120.17, subd. 3.

The Board estimates that there will be no cost to local bodies in the State to implement the rules for the two years immediately following its adoption within the meaning of Minn. Stat. § 15.0412, subd. 7 (1978).

A copy of the proposed rules is attached hereto. One free copy may be obtained by writing to Will Antell, Ed.D., Assistant Commissioner, 802 Capitol Square Building, 550 Cedar Street, St. Paul, MN 55101. Additional copies will be available at the door on the date of the hearing. If you have any questions on the content of the proposed rules contact Jeanne Dorle, Ph.D., Special Education Section, Capitol Square Building, 550 Cedar Street, St. Paul, MN 55101 (296-1793).

Any person may request notification of the date on which the hearing examiner's report will be available, after which date the Board may not take any final action on the rules for a period of five 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 Board. 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 the case of the hearing examiner's report, or to the Board, in the case of the Board's submission or resubmission to the Attorney General.

Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five 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

Howard B. Casmey, Secretary

Date January 15, 1980

State of Minnesota
Department of Education

State Board of Education
Special and Compensatory Division

Order for Hearing

IN THE MATTER OF: The Proposed Adoption of Rules of the State Board of Education Governing Standards and Procedures of Special Education Instruction and Services for Children and Youth Who are Handicapped
5 MCAR §§ 1.0120 - 1.0129

IT IS HEREBY ORDERED that a public hearing on the above-captioned rules be held in the School Administration Building, Auditorium A & B, 360 Colborne Street, St. Paul, Minnesota 55102 on April 3, 1980, commencing at 8:30 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