

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 941

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 8-16
DATE FOR REVIEW 8-29
DATE DUE 9-6

Adopted w/a hearing ✓
Adopted w/o hearing
Temporary rule

Approved _____ Disapproved _____ Returned to Agency _____

Resubmitted _____ Due _____
Approved _____ Disapproved _____ Returned to Agency _____

Date filed w/Secretary of State _____ Revisor approved _____ disapproved _____

✓ Rule as Adopted

✓ Rule as Proposed

✓ Order Adopting 7.12.83 Date

✓ Notice of Intent to Solicit Outside Opinion SR 4.19.82

✓ Order for rulemaking
4.13.83 date of Hearing

✓ Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
✓ Sufficiency

✓ Affidavit of Mailing Notice or rulemaking
2.16.83 At least 30 days prior to hearing/~~adoption~~

✓ Mailing list Certificate — 2 months prior to hearing

✓ Publication in State Register
2.21.83 At least 30/~~20~~ days prior to hearing/~~adoption~~

✓ Hearing Examiner's Report

✓ Chief Hearing Examiner's Report(s)
6.2.83 Approving H.E.'s Report
8.8.83 Approving agency action

✓ Agency's Findings of Fact

N/A LCRAR Report or agency Affidavit

✓ Certificate of Board's Resolution Adopting Rules

N/A Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness

N/A Petition for Adoption of a Rule

✓ Record (includes transcript or tape, exhibits, comments received by agency, requests for a hearing, and other relevant materials)

✓ Certificate of Compliance w/Rulemaking Procedures

✓ Affidavit of Mailing Notice of Submission to Attorney General

✓ Notice of Submission to the Attorney General

SF-00006-01

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT Education
747 Capitol Square Building

TO : Special Ass't. Attorney General
204 Administration Building

DATE: August 9, 1983

FROM : Lois E. Steinhaus LES
Education Statistics Section

PHONE: 6-4428

SUBJECT: Approval for Rules Governing Special Education

Rules With Hearing - Special Education 5 MCAR SS 1.0120-1.0127 and Repealing parts of 5 MCAR SS 1.0120-1.0123 - Docket No. EDU-83-001-JL

Enclosed is the complete record of the Hearing.

Also enclosed are four copies of the Rules as Adopted and two copies of the Order Adopting Rules. In addition, is a copy of each of the following:

1. Certificate of Board's Resolution Adopting Rules
2. Notice of Intent to Solicit Outside Opinion and any written Material received
3. Order for Hearing
4. Certificate of Board's Authorizing Resolution
5. Notice of Hearing
6. Affidavit of Mailing
   Affidavit of the Additional Notice....Rulemaking Mailing List Certificate
7. Rules as Proposed - State Register (copy of appropriate pages) and as mailed
8. Hearing Examiner's Report
9. Chief Hearing Examiner's Reports
10. Findings of Fact and Conclusions
11. Statement of Need and Reasonableness
12. Affidavit of Mailing Notice of Submission to the Attorney General and accompanying Notice

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : Ruth E. Randall, Secretary

DATE: 9/12/83

Attn: LAURA E. MATTSON
Special Assistant Attorney General

FROM : MARTHA J. CASSERLY
Special Assistant
Attorney General

MJC

PHONE: 296-4347

SUBJECT: In the Matter of Proposed Adoption of Rules of the State Board of Education Governing Special Education 5 MCAR § 1.0120 - 1.0127 and Repealing Parts of 5 MCAR § 1.0120 - 1.0123.

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. Please 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 stamps of the Attorney General and Secretary of State;

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

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

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

Encs.
MJC/ls
cc: Ms. Kathy Burek
Mr. Duane Harves

State Board of Education
Department of Education
Instruction Division

Adopted Rules Governing Special Education (5 MCAR SS 1.0120-1.0127) and Adopted Repeal of Parts of 5 MCAR SS 1.0120-1.0123

Rules as Adopted

5 MCAR S 1.0120 Policies for special education.

1. [Reletter as A.]

2. [Reletter as B.]

3.-4. [See Repealer.]

5. [Reletter as C.]

6. [Reletter as D.]

7.-8. [See Repealer.]

5 MCAR S 1.01201 Definitions for special education.

A. Applicability. As used in 5 MCAR SS 1.0120-1.0129 the terms defined in this rule have the meanings given them.

1.-14. [See Repealer.]

B. Assessment. "Assessment" means an individual educational evaluation of a pupil's performance or development conducted in accordance with recognized professional standards and the provisions of 5 MCAR S 1.0124.

C. Days. "Days" means the days school is in session when used in 5 MCAR SS 1.0121-1.0127. "Days" means calendar days when used in 5 MCAR SS 1.0128 and 1.0129.

D. Individual education program plan or IEP. "Individual education program plan" or "IEP" means a written individualized educational plan developed for a pupil. It is based on an assessment of the pupil's performance utilizing licensed personnel, a determination of the pupil'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 pupil's performance.

E. Initial formal assessment. "Initial formal assessment" means the first formal assessment of a pupil provided by the district proposing to conduct the assessment.

F. Initial placement. "Initial placement" means the first special education placement and provision of instruction and related services by the district proposing the placement.

G. Instruction. "Instruction" means the action or practice of a teacher.

H. Management aide or aide. "Management aide" or "aide" means a person who assists in the provision of special education under the direct supervision of regular teachers, teacher, or related services staff. The primary responsibilities of an aide are to provide physical management and to implement pupil behavior management techniques as determined by the team staff. This person may also provide incidental follow-up instruction and training in conjunction with the primary responsibilities and under the direct supervision of a teacher.

I. Nondiscrimination. "Nondiscrimination" means a requirement that districts shall:

a. comply with the provisions of Minnesota Statutes, chapter 363 and not discriminate in any manner in the full use of or benefit from any services rendered by an educational institution because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, or disability; and

b. provide procedures that ensure 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 pupil.

17.-21. [See Repealer.]

J. Parent. "Parent" or "parents" means the mother, father, ~~legally-appointed~~ guardian, conservator, or surrogate parent for a pupil under age 18 ~~years-and~~. For a pupil over age 18 ~~years old-or-older-and-under-legal-guardianship.~~, it means the pupil ~~if-a-pupil-is-18-years-old-or-older-and-not-under-legal guardianship~~ unless a guardian or conservator has been appointed, in which case it means the guardian or conservator. When the parents are separated or divorced, it means the parent who has the legal right, by court decree or agreement, to determine the pupil's education, even though the pupil may be living with the other parent ~~may-have-custody-of-the-pupil~~.

K. Providing district. "Providing district" means a district with the responsibility of providing instruction and related services to a pupil.

L. Pupil. "Pupil" means a handicapped person eligible for special education according to Minnesota Statutes, sections 120.03 and 120.17. Persons who are pregnant or chemically dependent and do not have a handicapping condition are not handicapped.

M. Recognized professional standards. "Recognized professional standards" means reasonable principles and concepts accepted by acknowledged experts that bear a direct relationship to the particular needs of the pupil.

N. Regular education program. "Regular education program" means the normal early childhood, elementary, secondary, or vocational education offerings, including instruction, training, aids, and services in the classroom or other appropriate places.

O. Related services. "Related services" means any specially designed services not provided by regular education or special education instruction to meet the unique needs of a pupil to benefit from the educational program. This includes

psychological services, social worker services, occupational therapy, physical therapy, audiology, orientation and mobility training, health services, medical services for diagnostic purposes, music therapy, and other similar services.

P. Resident district. "Resident district" means the district in which the pupil's parent resides, if living, or the guardian, or the district designated by the commissioner ~~of education~~ as provided in Minnesota Statutes, section 120.17, subdivisions 6 and 8a. It does not mean the district in which a surrogate parent resides.

Q. Special education. "Special education" means any specially designated instruction ~~or~~ and related services ~~and~~ or support services to meet the unique cognitive, affective, or psychomotor needs of a pupil as stated in the IEP.

R. Support services. "Support services" means any specially designed services which assist in the delivery of instruction or related services to a pupil. This includes braillists, interpreter services, management aides, transportation, and other similar services.

S. Teacher. "Teacher" means a person licensed according to 5 MCAR SS 3.090, 3.0901, 3.0902, and 3.0909, or successor rules, by the Board of Teaching to instruct pupils with specific handicapping conditions.

5 MCAR S 1.0121 Application.

A. District special education plan. Each district shall submit to the commissioner the district's plan for providing instruction and related services for all pupils as required by Minnesota Statutes, section 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. If a cooperative changes administrative organization, it shall submit a revised plan. The new plan must be submitted prior to the beginning of the next school year. The plan shall include descriptions of the district's:

1. study procedures for the identification and assessment of pupils;

2. method of providing the instruction and related services for the identified pupils;

3. administration and management plan to assure effective and efficient results of 1 and 2.

4. [See Repealer.]

B. On or before January 1, 1978, and as soon as possible after receiving revised plans, 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 if the commissioner has satisfactory assurances of compliance with standards for the education of pupils.

C. Annual application for programs and budget.

1. Districts shall submit to the commissioner an annual application for the regular school term for program and budget approval necessary to determine the special education aids during the next school year. The commissioner shall approve, disapprove, or modify each application and notify each applying district of the action and the estimated level of education aid to be paid when the first aid payment is made.

2. 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 the action and the estimated level of special education aid within 45 days.

3. Districts ~~may~~ which desire to apply ~~to amend applications as needed during the school term to reflect~~ for additional state aid because program and budget ~~changes~~ modifications are necessary to meet ~~the~~ changing needs of pupils ~~in the district~~ shall make an amended application.

4. Districts shall assure that they are in compliance with state and federal statutes and rules relating to the education of pupils.

D. [See repealer.]

D. State aid for special education personnel. Salaries for essential personnel who are teachers, related services and support services staff members, directors, and supervisors are reimbursable for the following activities:

1. child find and pupil identification;

2. necessary short-term activities to determine whether referrals for assessments shall be made;

3. assessment and IEP planning for individual pupils;

4. instruction or related and support services to pupils who have an IEP;

5. necessary follow-up activities after termination from special education;

6. parental involvement and due process;

7. personnel development;

8. special education curriculum development;

9. special education program evaluation;

10. supervision and administration of the total special education system; ~~and~~

11. school psychological services and school social worker services provided alone or in conjunction with the instructional program;

12. other related services provided in conjunction with the instructional program ~~other-activities-approved-through-the annual-application-for-programs-and-budget~~.

E. Experimental proposal.

1. The State Board of Education shall approve or disapprove a district's experimental proposal for exemption from its rules. No exemption shall be given from federal regulations, Minnesota Statutes, 5 MCAR SS 1.0122 B.1. and 1.01225 B. A proposal shall be designed to accomplish at least one of the following:

a. improved instructional quality;

b. increase cost effectiveness; or

c. make better use of community resources or available technology.

2. When a district applies for exemption it shall submit

a proposal which sets forth:

a. the proposal's goals and objectives;

b. the method by which the proposal will improve effectiveness and efficiency;

c. annual review procedures for up to three years;

d. rules from which it seeks exemption;

e. evidence that the district staff and parents, who would be affected, participated in the development and will participate in the annual review of the proposal, and that the proposal has the approval of the district school board;

f. evidence that the parents whose children would be involved will be fully informed at the team meeting and will have the opportunity to approve or disapprove placement in the experimental program; and

g. the annual evaluation procedures to be used to demonstrate attainment of the proposal goals and objectives, and the effectiveness of the proposal.

3. The state board shall approve, disapprove, or modify continuation of the experimental proposal after three years.

5 MCAR S 1.0122 Facilities and staff.

A. Facilities.

1. Classrooms and other facilities in which pupils receive instruction, related services, and support services shall:

a. be accessible <u>as defined in Code of Federal Regulations, title 34, section 104</u>;

b. be essentially equivalent to the regular education program;

c. provide an atmosphere that is conducive to learning; and

d. meet the pupils' special physical, sensory, and emotional needs.

2. The necessary special equipment and instructional materials shall be supplied to provide instruction, related services, and support services.

B. Staff.

1. Teachers. Every teacher shall hold a license appropriate to the handicapping condition of the pupil taught except as designated in 5 MCAR S 1.01225.

2. Directors. Every director and assistant director shall hold an appropriate supervisory license for general special education or supervisory license for one or more program areas.

3. Other supervisory personnel. Every supervisor shall hold either an appropriate supervisory license for one or more program areas coordinated or supervised, or an appropriate license for general special education supervision.

4. Related services staff. Every related services staff member shall hold an appropriate license issued by the Board of Teaching or the State Board of Education. When such license is not available, related services staff shall meet recognized professional standards which shall be documented by the district.

5. Contracts. When contracting for assessments, instruction, or related services, a district shall contract with personnel who hold licenses issued by the Board of Teaching or State Board of Education~~,-or-who-meet-recognized-professional standards~~. If either board does not issue a license for a necessary related service, the district shall contract with personnel who are members in good standing of professional organizations which regulate the conduct of its members and set standards for that profession.

6. Personnel variances. A district may apply to the commissioner of education for and the commissioner shall grant a variance from 1.-5~~.~~ 3. with regard to its employees for one year or less when~~,-in-an-emergency-situation,-instruction-or-related services-must-be-initiated-or-continued-and-documented-attempts have-been-made-to-find-a-licensed-person~~:

a. the district has made documented attempts to employ an appropriately licensed person and none are available; and

b. the person who will be employed holds any license issued by the Board of Teaching or the State Board of Education.

4. [Renumber as 7.]

C.-D. [See Repealer.]

E. [Reletter as D.]

5 MCAR S 1.01222 Pupils placed for care and treatment.

A. Handicapped pupil placement.

1.--Services-required.--The-district-shall-provide-regular education,-instruction,-and-related-services-in-the-home-or-a facility-if-a-pupil,-who-is-receiving-services-at-level-2 through-level-6,-is-prevented-from-attending-the-usual-school site-for-15-or-more-consecutive-days-or-is-other-health-impaired and-is-unable-to-attend-the-usual-school-site-for-15-or-more intermittent-days.--The-amount-and-nature-of-regular-education, instruction,-and-related-services,-must-be-provided,-as-required by-the-pupil's-IEP,-to-the-extent-that-medical-considerations allow-a-pupil-to-participate.

2.--In-a-home.--If-a-pupil-is-medically-restricted-from leaving-the-home,-the-district-shall-make-available-no-less-than an-average-of-one-hour-of-regular-education,-instruction,-and related-services-for-every-day-the-pupil-would-otherwise-attend the-usual-school-site.

3.--In-a-facility.

a.--If-a-pupil-is-placed-in-a-facility-for-care-and treatment-and-is-medically-restricted-from-leaving-the-facility on-a-daily-basis-because-of-the-treatment-therein,-the-district shall-make-available-up-to-three-hours-of-regular-education, instruction,-and-related-services-in-the-facility-for-every-day the-pupil-would-otherwise-attend-the-usual-school-site.--If-a pupil-can-benefit-from-more-than-three-hours-of-regular education,-instruction,-and-related-services,-consideration shall-be-made-for-placement-at-a-school-site-for-the-regular education,-instruction,-and-related-services.

b.--If-a-pupil-is-placed-in-a-facility-and-is-medically able-to-leave-the-facility-on-a-daily-basis-to-attend-a-school site,-the-providing-district-shall-make-available-up-to-a-full day-of-regular-education,-instruction,-and-related-services within-a-district-building-for-every-day-the-pupil-would otherwise-attend-the-usual-school-site.

~~c.--if-a-pupil-is-restricted-from-leaving-a correctional-facility,-the-providing-district-shall-make available-up-to-a-full-day-of-regular-education,-instruction, and-related-services-in-the-facility-for-every-day-the-pupil would-otherwise-attend-the-usual-school-site.~~

1. When district services required. A district must provide regular education, instruction, and related services in a facility or home to a pupil placed there for care and treatment. The services must be provided to a pupil who is:

a. prevented from attending the usual school site for 15 consecutive days; or

b. other health-impaired and predicted by the team to be absent from the usual school site for 15 intermittent days.

The services must be provided as required by the pupil's IEP, and to the extent that treatment considerations allow the pupil to participate. The services also must be provided for each day the pupil would otherwise attend the usual school site.

2. Minimum hours of service required. The team must predict how long the pupil will be restricted because of treatment from leaving the facility or home on a daily basis. If the prediction is for a restricted period of more than 175 days or its equivalent, exclusive of summer school, an average of at least three hours of services must be provided. If the predicted restricted period is 175 days, or its equivalent, exclusive of summer school, or shorter, an average of at least one hour of services must be provided.

3. Consideration of school site placement. If the team concludes a pupil can benefit from an average of more than three hours of services, it must consider placement at a school site.

4. Due process required. The district shall comply with the due process procedures of 5 MCAR SS 1.0124-1.0129.

5. Team meeting required. The placing agency or the providing district shall hold a team meeting as soon as possible after ~~it-is-determined-that~~ a pupil ~~may-be~~ has been placed for care and treatment. At least the following persons shall receive written notice to attend: the person or agency placing

the pupil, the resident district, the appropriate teachers and related services staff from the providing district, the parents, and, when appropriate, the pupil. This team meeting may be held in conjunction with a meeting called by the placing agency according to Minnesota Statutes, section ~~124.2129~~ 124.2133, subdivision 4.

6. IEP required. The IEP developed by the team shall include the provisions of 5 MCAR S 1.0125, the location of the instruction and related services ~~when provided other than in the facility~~, the projected duration of the instruction and related services, and provisions for coordinating the care and treatment and the instruction and related services.

7. Notice of anticipated return. When possible, a notice of discharge from the facility and anticipated return to the resident district shall be given by the providing district to the resident district.

8. Aid for special education only. When regular education, instruction, and related services are provided, only the special education portion shall be reimbursed with special education aid. When placement is made by a noneducational agency, the cost of care and treatment for which a child is placed shall not be reimbursed with special education aid, nor is such expense assessable against the resident district.

B. Nonhandicapped pupil placement. Nonhandicapped pupils who are anticipated to be absent 15 consecutive or intermittent days or more and who are suspected to have a handicapping condition shall receive an assessment.

5 MCAR S 1.01223 Early childhood program alternatives.

A. Instruction and related services required. If a district provides permissive special education to pupils under four years old, the pupils shall be provided instruction and related services in one or more early childhood program alternatives. If pupils are four years old but less than seven years old on September 1 of any year, the district shall provide services in one or more early childhood program alternatives or in one or more school-age levels of service in 5 MCAR S 1.01224 B.

B. Program alternatives. The following are early childhood program alternatives:

1. A consultation and indirect services program includes ongoing progress review, cooperative planning, demonstration teaching, modification and adaptation of the curriculum, supportive materials and equipment. The services are provided to teachers, related services staff, support staff, parents, and public and nonpublic agencies to the extent that the services are related to the pupil's special education.

2. In a center-based program, a pupil is enrolled in a district operated center and receives instruction and related services at the center.

3. In a home-based program, a pupil receives special education in the home.

C. Case loads for early childhood program alternatives. The following table sets forth the maximum number of pupils that may be assigned to a teacher's case load for the early childhood program alternatives. Case load means the number of pupils taught.

Consultation and indirect services program	24
Center-based program	
Deaf/blind, autistic, or severely multiply handicapped	
One class, with one aide	4
One class, with two aides	6
More than one class, with one aide	8
More than one class, with two aides	12
All other disabilities	
One class, with one aide	8
More than one class, with one aide	16
Home-based program	12

D. Early childhood teams. A district may assign one

full-time teacher, one full-time related services staff member, and one full-time aide as a team per class in an early childhood center-based program. Other related and support services shall also be provided as appropriate. The district may assign for one class not more than an average of eight pupils per teacher and related services staff nor more than 16 pupils to an individual team.

5 MCAR S 1.01224 School-age levels of service.

A. Instruction and related services required. If a pupil is school-age and is not provided instruction and related services in an early childhood program alternative, the pupil shall be provided instruction and related services in one or more levels of service.

B. Levels of service. The following are levels of service:

1. In level 1 a nonhandicapped pupil is placed in a regular classroom and does not receive special education, or is not enrolled in school. This level includes assessment services, monitoring, observation, and follow-up.

2. In level 2 a pupil is placed in a regular classroom. Instruction and related services are provided indirectly through the regular teacher, teachers, parents, or other persons who have direct contact with the pupil. The consultation and indirect services include ongoing progress review; cooperative planning; demonstration teaching; modification and adaptation of the curriculum, supportive materials, and equipment; and direct contact with the pupil for monitoring, observation, and follow-up.

3. In level 3 a pupil receives direct instruction from a teacher, or related services from a related services staff member for less than one-half of the day. Consultation and indirect services are included.

4. In level 4 a pupil receives direct instruction from a teacher for one-half day to less than full-time. Consultation and indirect services are included.

5. In level 5 a pupil receives full-time direct instruction from a teacher within a district building, day

school, or special station or facility. Integrated activities solely for socialization or enrichment, and related services are excluded when determining full-time. Consultation and indirect services are included.

6. In level 6 a pupil is placed in a residential facility and receives direct instruction from a teacher. Consultation and indirect services are included.

C. Case loads for school-age levels of service. The following table sets forth by levels of service the maximum number of school-age pupils that may be assigned to a teacher. Case load means the number of pupils taught.

Level 2	
Speech and language handicapped and developmental adaptive physical education	60
All other disabilities	30
Level 3	
Speech and language handicapped and developmental adaptive physical education	40
All other disabilities	18
Level 4	
Deaf/blind, autistic, or severely multiply handicapped	3
With one aide	6
Mildly mentally handicapped or specific learning disabled	12
With one aide	15
All other disabilities	8
With one aide	10
With two aides	12
Levels 5 and 6	
Deaf/blind, autistic, or severely multiply handicapped	

With one aide 4

With two aides 6

All other disabilities

With one aide 8

5 MCAR S 1.01225 Multidisability team teaching.

A. Team staff. A district may assign one or more full-time teachers and up to an equal number of full-time related services staff as a team to provide instruction and related services to school-age pupils. Other related and support services shall also be provided as appropriate.

B. License requirement. There must be a teacher on the team who is licensed in the disability area of each pupil served by the team.

C. Team member responsibility. The team member licensed in a pupil's disability shall be responsible for that pupil's reassessment, IEP development and coordination, periodic and annual reviews, and ongoing consultation and indirect services as defined in 5 MCAR S 1.01224 B.2. to the teacher providing instruction. The frequency and progress documentation of the specific consultation and indirect services shall be included in the pupil's IEP.

D. Implementation. Pupils may receive instruction and related services from any or all of the team members with appropriate skills. The instruction and related services provided by each team member shall be included in the IEP. Team teaching may be implemented in one or more levels of service.

E. Case loads. The total case load assigned to the team shall not exceed the case loads at the appropriate level of service set forth in 5 MCAR S 1.01224 C., times the full-time teachers and related services staff members assigned to the team. ~~Case load means the number of IEP's for which a teacher is responsible~~ In counting the total case load for the team, case loads for speech and language handicapped and developmental adaptive physical education shall be excluded. An aide or aides shall be a part of the team when designated in 5 MCAR S 1.01224 C., but shall not be counted when determining case loads for

related services staff members.

5 MCAR S 1.01226 Single disability case management services.

A. Case management may include: initial screening and assessment; development, coordination, and implementation of the individual IEP; compliance with procedural requirements; communication coordination among home, regular and special education programs; placement facilitation; and coordination and scheduling of team meetings, periodic reviews, and follow-up reviews. It does not include direct instruction to pupils.

B. A district may assign a teacher to perform case management for school-age pupils who are in levels 3, 4, 5, and 6 services and who all have the same disability.

C. A district may assign one case management teacher and up to five teachers as a team. All teachers shall be licensed in the same disability.

D. ~~A district may not assign to the team of teachers more than:~~

~~1. 18 pupils, times~~

~~2. the number of teachers in the team plus the case management teacher~~ The total case load assigned to the team shall not exceed the case loads at the appropriate level of service set forth in 5 MCAR S 1.01224 C., times the full-time teachers assigned to the team.

5 MCAR S 1.01228 Pupil performance plan.

A district shall be exempted from the ~~ratios~~ case loads for levels 2, 3, and 4 services when a pupil performance plan is established and approved by the State Board of Education or its designee. The plan must contain all of the following:

1. Development of IEP's for all pupils in levels 2, 3, and 4 based on district-wide performance expectations for all handicapped and nonhandicapped pupils;

2. Implementation of a system to measure ongoing pupil performance with individual pupil performance being reviewed at least monthly; and

3. Criteria for the modification of instruction, related

services, and support services to meet the changing pupil needs indicated in the pupil performance measurement system.

5 MCAR S 1.01229 Considerations to be made when determining ratios.

A. Variances. The district may apply to the State Board of Education or its designee for a variance from the ~~ratios~~ case loads in 5 MCAR SS 1.01223, 1.01224, and 1.01226 ~~for one year or less when special circumstances exist or when~~ the state board or its designee shall grant a variance for less than 90 days when it is demonstrated that unanticipated special education enrollment increases ~~occur~~ have occurred.

B. Method of counting pupils. For the purposes of the ~~ratios~~ case loads in 5 MCAR SS 1.01223, 1.01224, and 1.01226, each pupil receiving instruction or level 2 services shall be counted as one pupil in the teacher's case load.

C. Reduction of ratios. The district shall reduce the teacher to pupil ~~ratio accordingly~~ case loads to the extent necessary, to ensure the provision of services delineated in each pupil's IEP, if a teacher;

1. is assigned to more than one early childhood program alternative, or

2. is assigned to pupils in more than one level of service, or

3. is serving pupils representing a significant range of severity of problems, or

4. is providing instruction at more than one building.

5 MCAR S 1.01232 Supervision.

A. Directors.

1. The school board in every district shall employ, either singly or cooperatively, a director of special education to be responsible for program development, coordination, and evaluation; in-service training; and general special education supervision and administration in the district's total special education system. Cooperative employment of a director may be through a host district, joint powers agreement, or an

educational cooperative service unit.

2. Conditions for special education reimbursement of one full-time director of special education include:

a. enrollment of 5,000 or more in public and nonpublic schools within one district; or

b. enrollment of 4,000 or more in public and nonpublic schools in a group of two or more districts cooperating to provide special education; or

c. eight or more districts cooperating to provide special education through a host district, joint powers agreement, or educational cooperative service unit; or

d. districts numbered 287, 916, 917, or other similarly legislated multiddistricts.

3. Conditions for special education reimbursement of a part-time director of special education include an enrollment of 2,000 in public and nonpublic schools within a district or group of districts cooperating to provide special education or any cooperative having between five and seven districts cooperating to provide special education through a host district, joint powers agreement, or educational cooperative service unit. The maximum reimbursement shall equal the ratio of the actual enrollment to 5,000 within a district or 4,000 in a group of cooperating districts, as applicable, but not less than one-half. A part-time director must be assigned duties other than direct instruction for unreimbursed time.

4. Reimbursement for the ~~1983-1984~~ 1984-1985 through 1986-1987 school years shall be based on the 1982-1983 enrollment as reported to the State Department of Education. The enrollment year, as the basis for reimbursement, shall be changed every fourth year. When a district or cooperative has an increase or decrease in enrollment of ten percent or more, the district or cooperative shall have its reimbursement recalculated based on the actual enrollment for that year. The district must notify the State Department of Education of the increase by July 1 prior to the school year for which the adjustment is sought.

B. Assistant directors. Districts which employ full-time directors may employ and receive reimbursement for assistant directors of special education to assist in program supervision, development, coordination, and evaluation; and inservice training in the district's total special education system.

C. Other supervisory personnel. Districts may employ and receive reimbursement for supervisors to coordinate or supervise program development, evaluation, and implementation; and inservice training.

D. Variance. A district may apply to the commissioner of education for a variance from the mandatory employment of a director and conditions for reimbursements. The commissioner shall grant a variance from A. when:

1. the growth patterns of a district or cooperative demonstrate that the public and nonpublic school enrollment will increase over the minimum in the next two years; or

2. when districts cannot efficiently cooperate due to geographical isolation; or

3. the variance will result in a decrease in combined state and local costs and better delivery of instruction and related services to pupils.

5 MCAR S 1.01233 Surrogate parent.

A. A surrogate parent is a person appointed by the providing district to ensure, by intervening on behalf of a pupil, that the rights of the pupil to a free and appropriate education are protected. The surrogate parent shall not be a person who receives public funds to care for the child. However, a foster parent may serve as a surrogate parent if appointed and if no conflict of interest exists.

B. Reasonable efforts shall be made to locate the parent. These may be made through documented phone calls, letters, certified letters with return receipts, and visits to the parent's last known address.

C. The district shall appoint the surrogate parent when:

1. the parent ~~or~~, guardian, or conservator is unknown or unavailable; or

2. parental rights have been terminated; or

3. the pupil has reached the age of majority, continues to be eligible for public education, and is not represented by a parent; or

4. the parent requests in writing the appointment of a surrogate parent; the request may be revoked in writing at any time.

D. The district shall consult the county welfare office before appointing the surrogate parent when a pupil is the ward of the commissioner of public welfare.

E. A surrogate parent may be removed by majority vote of the school board. The surrogate parent must be notified of the time and place of the meeting at which a vote is to be taken and of the reasons for the proposed removal. The surrogate parent shall be given the opportunity to be heard. Removal may be for any of the following reasons:

1. failure to perform the duties required in the team meeting and IEP process and those cited in Code of Federal Regulations, title 34, section 300, a federal regulation to implement Part B of the Education of the Handicapped Act;

2. conflict of interest as referenced in Code of Federal Regulations, title 34, section 300.514 (c)(2);

3. actions that threaten the well-being of the assigned pupil;

4. failure to appear to represent the pupil; or

5. change in eligibility for special education.

F. The district shall either make the information and training available to the surrogate parent or appoint a surrogate parent who has all of the following knowledge and skills:

1. state and federal requirements;

2. district structure and procedures;

3. nature of the pupil's disability and needs; and

4. an ability to effectively advocate an appropriate educational program for the pupil.

5 MCAR S 1.01234 Suspension, exclusion, and expulsion.

A. Pupil Fair Dismissal Act. The Pupil Fair Dismissal Act shall apply to all pupils.

~~B. Dismissal.--A-pupil-whose-misconduct-creates-an-immediate and-substantial-danger-to-persons-or-property-may-be-dismissed for-one-day-or-less.--The-teacher,-administrator,-and-parent,-if available,-shall-hold-an-informal-meeting-by-the-next-school-day to-determine-whether-the-misconduct-is-related-to-the handicapping-condition.~~

~~C.~~ Team meeting required. A team meeting shall be held prior to ~~a-suspension,~~ exclusion, or expulsion of a pupil. Within five school days of a suspension, a team meeting shall occur. The team shall:

1. determine whether the misconduct is related to the handicapping condition;

2. review any assessments and determine the need for further assessment; and

3. review the IEP and amend the goals and objectives or develop an alternative IEP program.

~~B.~~ C. Exclusion and expulsion. A pupil may be placed, through a team meeting and the IEP, in a more restrictive alternative but shall not be excluded or expelled when the misconduct is related to the pupil's handicapping condition. When it is determined in a team meeting or a Pupil Fair Dismissal Act proceeding that a pupil's misconduct is related to the pupil's handicapping condition, then the assessment, IEP, and least restrictive alternative shall be reviewed according to the provisions of 5 MCAR SS 1.0120-1.0129.

5 MCAR S 1.0124 Identification and assessment procedures.

A. [Unchanged.]

B. Formal educational assessment.

1. An assessment:

a. [Unchanged.]

b. must be conducted at least every three years as required by 5 MCAR S 1.0126 B.;

c. [Unchanged.]

2.-4. [Unchanged.]

5 MCAR S 1.0126 Periodic reviews, reassessment, and follow-up.

A. Periodic reviews.

1. [Unchanged.]

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

3.-5. [Unchanged.]

B. Requirements for reassessment. When a pupil is continued in the primary placement in a special education program, the providing district shall conduct an educational reassessment according to the procedures specified in 5 MCAR S 1.0124 B., at least once every three years.

C. [Unchanged.]

5 MCAR S 1.0127 Formal notice to parents.

A. General notice provisions.

1.-4. [Unchanged.]

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.-d. [Unchanged.]

e. inform the parents that they may:

(1)-(2) [Unchanged.]

(3) obtain an independent assessment at public expense if the parent disagrees with an assessment obtained by the district. However, a district may initiate a due process hearing to show that its assessment is appropriate after at least one conciliation conference. If the final decision is that its assessment is appropriate, the parents still have the right to an independent assessment, but not at public expense. Whenever an independent evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria which the district

uses when it initiates an evaluation.

f.-t. [Unchanged.]

6. [Unchanged.]

B.-C. [Unchanged.]

Repealer. 5 MCAR SS 1.0120 A.3., A.4., ~~A.6.~~, A.7., A.8., B.1., B.2., B.3., B.4., B.5., B.6., B.7., B.8., B.9., B.10., B.11., B.12., B.13., B.14., B.17., B.18., B.19., B.20., B.21.; 5 MCAR SS 1.0121 A.4., D.; 1.0122 ~~C.-and~~ D.; and 1.0123 are repealed. 5 MCAR S 1.0122 C. is repealed effective for the school year beginning in 1984.

Effective date. 5 MCAR SS 1.01223, 1.01224, and 1.01232 are effective for the school year beginning in 1984. The remaining rules are effective five working days after the notice of adoption is published in the State Register.

OFFICE OF THE REVISOR OF STATUTES

Certificate of Approval of Adopted Rules

AR0257

Agency: State Board of Education

Division: Instruction

Agency Contact: Lois Steinhaus

Rule Numbers: 5 MCAR SS 1.0120; 1.01201; 1.0121; 1.0122; 1.01222; 1.01223; 1.01224; 1.01225; 1.01226; 1.01228; 1.01229; 1.0123; 1.01232; 1.01233; 1.01234; 1.0124; 1.0126; 1.0127

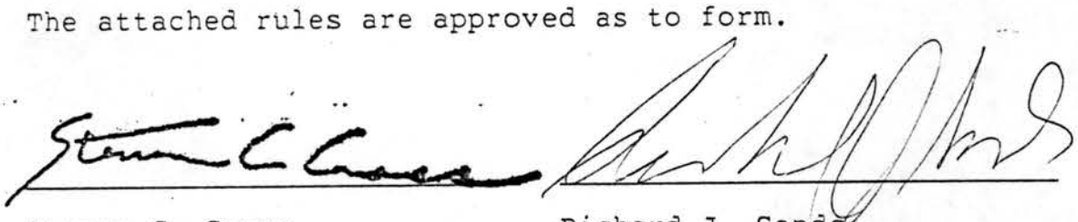
Title: Adopted Rules Governing Special Education: Definitions, District Plans, Facilities, Staffing, Placement for Care and Treatment, Early Childhood Program Alternatives, School-Age Levels and Models of Service, Supervision, Surrogate Parents, Discipline, and Certain Procedures

Type of Rules: Permanent

Incorporations by Reference: None

Duplication of Statutory Language: None

The attached rules are approved as to form.



Steven C. Cross
Revisor of Statutes

Richard J. Sands
Assistant Revisor
Phone: 296-2798
Date: September 12, 1983

APPROVED AS TO FORM AND LEGALITY

September 6 19 83

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY Martha J Cassedy
~~SPECIAL~~ ASSISTANT ATTORNEY GENERAL
Legal assistant

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
SEP 13 1983
Joan Anderson Growe
Secretary of State

9:20 A.M.

Rules as Proposed

5 MCAR S 1.0120 Policies ~~and definitions~~ for special education.

~~A. Policies.~~

1. [Reletter as A.]

2. [Reletter as B.]

3.-4. [See Repealer.]

5. [Reletter as C.]

6.-8. [See Repealer.]

~~B.~~ 5 MCAR S 1.01201 Definitions for special education.

A. Applicability. As used in 5 MCAR SS 1.0120-1.0129 the ~~following~~ terms ~~used throughout these rules~~ defined in this rule ~~shall~~ have the ~~following~~ meanings ~~ascribed to~~ given them.

1.-14. [See Repealer.]

B. Assessment. "Assessment" means an individual educational evaluation of a pupil's performance or development conducted in accordance with recognized professional standards and the provisions of 5 MCAR S 1.0124.

~~15.~~ C. Days. "Days" ~~shall be construed to exclude Saturdays, Sundays, and~~ means the days school is ~~not~~ in session when used in 5 MCAR SS 1.0121-1.0127. "Days" ~~shall be construed to mean~~ means calendar days when used in 5 MCAR SS 1.0128 and 1.0129.

D. Individual education program plan or IEP. "Individual education program plan" or "IEP" means a written individualized educational plan developed for a pupil. It is based on an assessment of the pupil's performance utilizing licensed personnel, a determination of the pupil'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 pupil's performance.

E. Initial formal assessment. "Initial formal assessment" means the first formal assessment of a pupil provided by the district proposing to conduct the assessment.

F. Initial placement. "Initial placement" means the first

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special education placement and provision of instruction and related services by the district proposing the placement.

G. Instruction. "Instruction" means the action or practice of a teacher.

H. Management aide or aide. "Management aide" or "aide" means a person who assists in the provision of special education under the direct supervision of regular teachers, teacher, or related services staff. The primary responsibilities of an aide are to provide physical management and to implement pupil behavior management techniques as determined by the team staff. This person may also provide incidental follow-up instruction and training in conjunction with the primary responsibilities.

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

a. comply with the provisions of Minnesota Statutes, chapter 363 and not discriminate in any manner in the full ~~utilization~~ use of or benefit from any services rendered by an 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 Minnesota Statutes, chapter 363~~; and

b. provide procedures that ~~insure~~ ensure 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~~ pupil.

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17.-21. [See Repealer.]

J. Parent. "Parent" or "parents" means the mother, father, legally appointed guardian, or surrogate parent for a pupil under 18 years and for a pupil 18 years old or older and under legal guardianship. It means the pupil if a pupil is 18 years old or older and not under legal guardianship. When the parents are separated or divorced, it means the parent who has the legal right, by court decree or agreement, to determine the pupil's education, even though the other parent may have custody of the pupil.

K. Providing district. "Providing district" means a district with the responsibility of providing instruction and related services to a pupil.

L. Pupil. "Pupil" means a handicapped person eligible for special education according to Minnesota Statutes, sections 120.03 and 120.17. Persons who are pregnant or chemically dependent and do not have a handicapping condition are not handicapped.

M. Recognized professional standards. "Recognized professional standards" means reasonable principles and concepts accepted by acknowledged experts that bear a direct relationship to the particular needs of the pupil.

N. Regular education program. "Regular education program" means the normal early childhood, elementary, secondary, or vocational education offerings, including instruction, training, aids, and services in the classroom or other appropriate places.

O. Related services. "Related services" means any specially designed services not provided by regular education or special education instruction to meet the unique needs of a pupil to benefit from the educational program. This includes psychological services, social worker services, occupational therapy, physical therapy, audiology, orientation and mobility training, health services, medical services for diagnostic purposes, and other similar services.

P. Resident district. "Resident district" means the district in which the pupil's parent resides or the district

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designated by the commissioner of education. It does not mean the district in which a surrogate parent resides.

Q. Special education. "Special education" means any specially designated instruction or related services and support services to meet the unique cognitive, affective, or psychomotor needs of a pupil as stated in the IEP.

R. Support services. "Support services" means any specially designed services which assist in the delivery of instruction or related services to a pupil. This includes braillists, interpreter services, management aides, transportation, and other similar services.

S. Teacher. "Teacher" means a person licensed according to 5 MCAR SS 3.090, 3.0901, 3.0902, and 3.0909, or successor rules, by the Board of Teaching to instruct pupils with specific handicapping conditions.

5 MCAR S 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 related services for all ~~handicapped~~ pupils as required by Minnesota Statutes, section 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. If a cooperative changes administrative organization, it shall submit a revised plan. The new plan must be submitted prior to the beginning of the next school year. The plan shall include descriptions of the district's:

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

2. ~~the district's~~ method of providing the ~~special~~ instruction and related 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.

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4. [See Repealer.]

B. On or before January 1, 1978, and as soon as possible after receiving revised plans, 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~~ if 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 the regular school term for program and budget approval necessary ~~for determining~~ to determine 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~~ the action and the estimated level of education aid to be paid when the first aid payment is made.

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~~ the action and the estimated level of special education aid ~~by May 1~~.

3. ~~Amendment to applications---School~~ Districts ~~shall~~ may 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.

4. Districts shall assure that they are in compliance with state and federal statutes and rules relating to the education of pupils.

D. [See repealer.]

D. State aid for special education personnel. Salaries for essential personnel who are teachers, related services and support services staff members, directors, and supervisors are

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reimbursable for the following activities:

1. child find and pupil identification;

2. necessary short-term activities to determine whether referrals for assessments shall be made;

3. assessment and IEP planning for individual pupils;

4. instruction or related and support services to pupils who have an IEP;

5. necessary follow-up activities after termination from special education;

6. parental involvement and due process;

7. personnel development;

8. special education curriculum development;

9. special education program evaluation;

10. supervision and administration of the total special education system; and

11. other activities approved through the annual application for programs and budget.

E. Experimental proposal.

1. The State Board of Education shall approve or disapprove a district's experimental proposal for exemption from its rules. No exemption shall be given from federal regulations, 5 MCAR SS 1.0122 B.1. and 1.01225 B.

2. When a district applies for exemption it shall submit a proposal which sets forth:

a. the proposal's goals and objectives;

b. the method by which the proposal will improve effectiveness and efficiency;

c. annual review procedures for up to three years;

d. rules from which it seeks exemption;

e. evidence that the district staff and parents, who would be affected, participated in the development and will participate in the annual review of the proposal, and that the proposal has the approval of the district school board;

f. evidence that the parents whose children would be involved will be fully informed at the team meeting and will have the opportunity to approve or disapprove placement in the

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experimental program; and

g. the annual evaluation procedures to be used to demonstrate attainment of the proposal goals and objectives, and the effectiveness of the proposal.

3. The state board shall approve, disapprove, or modify continuation of the experimental proposal after three years.

5 MCAR S 1.0122 Facilities, and staff ~~and supervision~~.

A. Facilities.

1. ~~Housing space.--Housing space for each class~~ Classrooms and other facilities in which pupils receive instruction, related services, and support services shall ~~be adequate~~:

a. be accessible;

b. be essentially equivalent to the regular education program;

c. provide an atmosphere that is conducive to learning; and

d. meet the pupils' special physical, sensory, and emotional needs.

2. ~~Equipment and materials.--Each special class and group shall be supplied with~~ The necessary special equipment and instructional materials shall be supplied to provide instruction, related services, and support services.

B. Staff.

1. Teachers. Every teacher ~~who teaches a special class~~ must shall hold a ~~special class~~ license appropriate to the type handicapping condition of ~~handicapped children she or he is teaching~~ the pupil taught except as designated in 5 MCAR S 1.01225.

2. ~~Administrators and supervisors~~ Directors. Every ~~administrator and supervisor of any special education program~~ director and assistant director shall hold an appropriate ~~licensure~~ supervisory license for general special education or one or more program areas.

3. Other supervisory personnel. Every supervisor shall hold either an appropriate supervisory license for one or more

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program areas coordinated or supervised, or an appropriate license for general special education supervision.

~~3.~~ 4. ~~Other professional or essential personnel~~ Related services staff. ~~The qualifications of other professional or essential personnel who are not licensed teachers, administrators or supervisors~~ Every related services staff member shall ~~be based upon~~ hold an appropriate license issued by the Board of Teaching or the State Board of Education. When such license is not available, related services staff shall meet recognized professional standards and which shall be documented by the ~~school~~ district ~~in their application as provided for in 5 MCAR S 1.0121. The commissioner or his designee shall review requests for approval of such personnel assigned to programs for handicapped children.~~

5. Contracts. When contracting for assessments, instruction, or related services, a district shall contract with personnel who hold licenses issued by the Board of Teaching or State Board of Education, or who meet recognized professional standards.

6. Personnel variances. A district may apply to the commissioner of education for a variance from 1.-5. for one year or less when, in an emergency situation, instruction or related services must be initiated or continued and documented attempts have been made to find a licensed person.

4. [Renumber as 7.]

C.-D. [See Repealer.]

E. [Reletter as C.]

5 MCAR S 1.01222 Pupils placed for care and treatment.

A. Handicapped pupil placement.

1. Services required. The district shall provide regular education, instruction, and related services in the home or a facility if a pupil, who is receiving services at level 2 through level 6, is prevented from attending the usual school site for 15 or more consecutive days or is other health impaired and is unable to attend the usual school site for 15 or more intermittent days. The amount and nature of regular education,

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instruction, and related services, must be provided, as required by the pupil's IEP, to the extent that medical considerations allow a pupil to participate.

2. In a home. If a pupil is medically restricted from leaving the home, the district shall make available no less than an average of one hour of regular education, instruction, and related services for every day the pupil would otherwise attend the usual school site.

3. In a facility.

a. If a pupil is placed in a facility for care and treatment and is medically restricted from leaving the facility on a daily basis because of the treatment therein, the district shall make available up to three hours of regular education, instruction, and related services in the facility for every day the pupil would otherwise attend the usual school site. If a pupil can benefit from more than three hours of regular education, instruction, and related services, consideration shall be made for placement at a school site for the regular education, instruction, and related services.

b. If a pupil is placed in a facility and is medically able to leave the facility on a daily basis to attend a school site, the providing district shall make available up to a full day of regular education, instruction, and related services within a district building for every day the pupil would otherwise attend the usual school site.

c. If a pupil is restricted from leaving a correctional facility, the providing district shall make available up to a full day of regular education, instruction, and related services in the facility for every day the pupil would otherwise attend the usual school site.

4. Due process required. The district shall comply with the due process procedures of 5 MCAR SS 1.0124-1.0129.

5. Team meeting required. The placing agency or the providing district shall hold a team meeting as soon as possible after it is determined that a pupil may be placed for care and treatment. At least the following persons shall receive written

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notice to attend: the person or agency placing the pupil, the resident district, the appropriate teachers and related services staff from the providing district, the parents, and, when appropriate, the pupil. This team meeting may be held in conjunction with a meeting called by the placing agency according to Minnesota Statutes, section 124.2129, subdivision 4.

6. IEP required. The IEP developed by the team shall include the provisions of 5 MCAR S 1.0125, the location of the instruction and related services when provided other than in the facility, the projected duration of the instruction and related services, and provisions for coordinating the care and treatment and the instruction and related services.

7. Notice of anticipated return. When possible, a notice of discharge from the facility and anticipated return to the resident district shall be given by the providing district to the resident district.

8. Aid for special education only. When regular education, instruction, and related services are provided, only the special education portion shall be reimbursed with special education aid. The cost of care and treatment for which a child is placed shall not be reimbursed with special education aid, nor is such expense assessable against the resident district.

B. Nonhandicapped pupil placement. Nonhandicapped pupils who are anticipated to be absent 15 consecutive or intermittent days or more and who are suspected to have a handicapping condition shall receive an assessment.

5 MCAR S 1.01223 Early childhood program alternatives.

A. Instruction and related services required. If a district provides permissive special education to pupils under four years old, the pupils shall be provided instruction and related services in one or more early childhood program alternatives. If pupils are four years old but less than seven years old on September 1 of any year, the district shall provide services in one or more early childhood program alternatives or in one or more school-age levels of service in 5 MCAR S 1.01224 B.

B. Program alternatives. The following are early childhood

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program alternatives:

1. A consultation and indirect services program includes ongoing progress review, cooperative planning, demonstration teaching, modification and adaptation of the curriculum, supportive materials and equipment. The services are provided to teachers, related services staff, support staff, parents, and public and nonpublic agencies to the extent that the services are related to the pupil's special education.

2. In a center-based program, a pupil is enrolled in a district operated center and receives instruction and related services at the center.

3. In a home-based program, a pupil receives special education in the home.

C. Case loads for early childhood program alternatives. The following table sets forth the maximum number of pupils that may be assigned to a teacher's case load for the early childhood program alternatives. Case load means the number of pupils taught.

Consultation and indirect services program	24
Center-based program	
Deaf/blind, autistic, or severely multiply handicapped	
One class, with one aide	4
One class, with two aides	6
More than one class, with one aide	8
More than one class, with two aides	12
All other disabilities	
One class, with one aide	8
More than one class, with one aide	16
Home-based program	12

D. Early childhood teams. A district may assign one full-time teacher, one full-time related services staff member,

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and one full-time aide as a team per class in an early childhood center-based program. Other related and support services shall also be provided as appropriate. The district may assign for one class not more than an average of eight pupils per teacher and related services staff nor more than 16 pupils to an individual team.

5 MCAR S 1.01224 School-age levels of service.

A. Instruction and related services required. If a pupil is school-age and is not provided instruction and related services in an early childhood program alternative, the pupil shall be provided instruction and related services in one or more levels of service.

B. Levels of service. The following are levels of service:

1. In level 1 a nonhandicapped pupil is placed in a regular classroom and does not receive special education, or is not enrolled in school. This level includes assessment services, monitoring, observation, and follow-up.

2. In level 2 a pupil is placed in a regular classroom. Instruction and related services are provided indirectly through the regular teacher, teachers, parents, or other persons who have direct contact with the pupil. The consultation and indirect services include ongoing progress review; cooperative planning; demonstration teaching; modification and adaptation of the curriculum, supportive materials, and equipment; and direct contact with the pupil for monitoring, observation, and follow-up.

3. In level 3 a pupil receives direct instruction from a teacher, or related services from a related services staff member for less than one-half of the day. Consultation and indirect services are included.

4. In level 4 a pupil receives direct instruction from a teacher for one-half day to less than full-time. Consultation and indirect services are included.

5. In level 5 a pupil receives full-time direct instruction from a teacher within a district building, day school, or special station or facility. Integrated activities

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solely for socialization or enrichment, and related services are excluded when determining full-time. Consultation and indirect services are included.

6. In level 6 a pupil is placed in a residential facility and receives direct instruction from a teacher. Consultation and indirect services are included.

C. Case loads for school-age levels of service. The following table sets forth by levels of service the maximum number of school-age pupils that may be assigned to a teacher. Case load means the number of pupils taught.

Level 2	
Speech and language handicapped and developmental adaptive physical education	60
All other disabilities	30
Level 3	
Speech and language handicapped and developmental adaptive physical education	40
All other disabilities	18
Level 4	
Deaf/blind, autistic, or severely multiply handicapped	3
With one aide	6
Mildly mentally handicapped or specific learning disabled	12
With one aide	15
All other disabilities	8
With one aide	10
With two aides	12
Levels 5 and 6	
Deaf/blind, autistic, or severely multiply handicapped	
With one aide	4

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With two aides 6

All other disabilities

With one aide 8

5 MCAR S 1.01225 Multidisability team teaching.

A. Team staff. A district may assign one or more full-time teachers and up to an equal number of full-time related services staff as a team to provide instruction and related services to school-age pupils. Other related and support services shall also be provided as appropriate.

B. License requirement. There must be a teacher on the team who is licensed in the disability area of each pupil served by the team.

C. Team member responsibility. The team member licensed in a pupil's disability shall be responsible for that pupil's reassessment, IEP development and coordination, periodic and annual reviews, and ongoing consultation and indirect services to the teacher providing instruction.

D. Implementation. Pupils may receive instruction and related services from any or all of the team members with appropriate skills. The instruction and related services provided by each team member shall be included in the IEP. Team teaching may be implemented in one or more levels of service.

E. Case loads. The total case load assigned to the team shall not exceed the case loads at the appropriate level of service set forth in 5 MCAR S 1.01224 C., times the full-time teachers and related services staff members assigned to the team. Case load means the number of IEP's for which a teacher is responsible. An aide or aides shall be a part of the team when designated in 5 MCAR S 1.01224 C.

5 MCAR S 1.01226 Single disability case management services.

A. Case management may include: initial screening and assessment; development, coordination, and implementation of the individual IEP; compliance with procedural requirements; communication coordination among home, regular and special education programs; placement facilitation; and coordination and

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scheduling of team meetings, periodic reviews, and follow-up reviews. It does not include direct instruction to pupils.

B. A district may assign a teacher to perform case management for school-age pupils who are in levels 3, 4, 5, and 6 services and who all have the same disability.

C. A district may assign one case management teacher and up to five teachers as a team. All teachers shall be licensed in the same disability.

D. A district may not assign to the team of teachers more than:

1. 18 pupils, times

2. the number of teachers in the team plus the case management teacher.

5 MCAR S 1.01228 Pupil performance plan.

A district shall be exempted from the ratios for levels 2, 3, and 4 services when a pupil performance plan is established and approved by the State Board of Education or its designee. The plan must contain all of the following:

1. Development of IEP's for all pupils in levels 2, 3, and 4 based on district-wide performance expectations;

2. Implementation of a system to measure ongoing pupil performance with individual pupil performance being reviewed at least monthly; and

3. Criteria for the modification of instruction, related services, and support services to meet the changing pupil needs indicated in the pupil performance measurement system.

5 MCAR S 1.01229 Considerations to be made when determining ratios.

A. Variances. The district may apply to the State Board of Education or its designee for a variance from the ratios in 5 MCAR SS 1.01223, 1.01224, and 1.01226 for one year or less when special circumstances exist or when unanticipated special education enrollment increases occur.

B. Method of counting pupils. For the purposes of the ratios in 5 MCAR SS 1.01223, 1.01224, and 1.01226, each pupil

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receiving instruction shall be counted as one pupil in the teacher's case load.

C. Reduction of ratios. The district shall reduce the teacher to pupil ratio accordingly, to ensure the provision of services delineated in each pupil's IEP, if a teacher;

1. is assigned to more than one early childhood program alternative, or

2. is assigned to pupils in more than one level of service, or

3. is serving pupils representing a significant range of severity of problems, or

4. is providing instruction at more than one building.

5 MCAR S 1.01232 Supervision.

A. Directors.

1. The school board in every district shall employ, either singly or cooperatively, a director of special education to be responsible for program development, coordination, and evaluation; in-service training; and general special education supervision and administration in the district's total special education system. Cooperative employment of a director may be through a host district, joint powers agreement, or an educational cooperative service unit.

2. Conditions for special education reimbursement of one full-time director of special education include:

a. enrollment of 5,000 or more in public and nonpublic schools within one district; or

b. enrollment of 4,000 or more in public and nonpublic schools in a group of two or more districts cooperating to provide special education; or

c. eight or more districts cooperating to provide special education through a host district, joint powers agreement, or educational cooperative service unit; or

d. districts numbered 287, 916, 917, or other similarly legislated multidistricts.

3. Conditions for special education reimbursement of a part-time director of special education include an enrollment of

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2,000 in public and nonpublic schools within a district or group of districts cooperating to provide special education. The maximum reimbursement shall equal the ratio of the actual enrollment to 5,000 within a district or 4,000 in a group of cooperating districts, as applicable, but not less than one-half. A part-time director must be assigned duties other than direct instruction for unreimbursed time.

4. Reimbursement for the 1983-1984 through 1986-1987 school years shall be based on the 1982-1983 enrollment as reported to the State Department of Education. The enrollment year, as the basis for reimbursement, shall be changed every fourth year. When a district or cooperative has an increase or decrease in enrollment of ten percent or more, the district or cooperative shall have its reimbursement recalculated based on the actual enrollment for that year. The district must notify the State Department of Education of the increase by July 1 prior to the school year for which the adjustment is sought.

B. Assistant directors. Districts which employ full-time directors may employ and receive reimbursement for assistant directors of special education to assist in program supervision, development, coordination, and evaluation; and inservice training in the district's total special education system.

C. Other supervisory personnel. Districts may employ and receive reimbursement for supervisors to coordinate or supervise program development, evaluation, and implementation; and inservice training.

D. Variance. A district may apply to the commissioner of education for a variance from A. when:

1. the growth patterns of a district or cooperative demonstrate that the public and nonpublic school enrollment will increase over the minimum in the next two years;

2. when districts cannot efficiently cooperate due to geographical isolation; or

3. the variance will result in a decrease in combined state and local costs and better delivery of instruction and related services to pupils.

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5 MCAR S 1.01233 Surrogate parent.

A. A surrogate parent is a person appointed by the providing district to ensure, by intervening on behalf of a pupil, that the rights of the pupil to a free and appropriate education are protected. The surrogate parent shall not be a person who receives public funds to care for the child. However, a foster parent may serve as a surrogate parent if appointed and if no conflict of interest exists.

B. Reasonable efforts shall be made to locate the parent. These may be made through documented phone calls, letters, certified letters with return receipts, and visits to the parent's last known address.

C. The district shall appoint the surrogate parent when:

1. the parent or guardian is unknown or unavailable; or

2. parental rights have been terminated; or

3. the pupil has reached the age of majority, continues to be eligible for public education, and is not represented by a parent.

D. The district shall consult the county welfare office before appointing the surrogate parent when a pupil is the ward of the commissioner of public welfare.

E. A surrogate parent may be removed by majority vote of the school board. The surrogate parent must be notified of the time and place of the meeting at which a vote is to be taken and of the reasons for the proposed removal. The surrogate parent shall be given the opportunity to be heard. Removal may be for any of the following reasons:

1. failure to perform the duties;

2. conflict of interest;

3. actions that threaten the well-being of the assigned pupil;

4. failure to appear to represent the pupil; or

5. change in eligibility for special education.

F. The district shall either make the information and training available to the surrogate parent or appoint a surrogate parent who has all of the following knowledge and

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skills:

1. state and federal requirements;

2. district structure and procedures;

3. nature of the pupil's disability and needs; and

4. an ability to effectively advocate an appropriate educational program for the pupil.

5 MCAR S 1.01234 Suspension, exclusion, and expulsion.

A. Pupil Fair Dismissal Act. The Pupil Fair Dismissal Act shall apply to all pupils.

B. Dismissal. A pupil whose misconduct creates an immediate and substantial danger to persons or property may be dismissed for one day or less. The teacher, administrator, and parent, if available, shall hold an informal meeting by the next school day to determine whether the misconduct is related to the handicapping condition.

C. Team meeting required. A team meeting shall be held prior to a suspension, exclusion, or expulsion of a pupil. The team shall:

1. determine whether the misconduct is related to the handicapping condition;

2. review any assessments and determine the need for further assessment; and

3. review the IEP and amend the goals and objectives or develop an alternative IEP program.

D. Exclusion and expulsion. A pupil may be placed, through a team meeting and the IEP, in a more restrictive alternative but shall not be excluded or expelled when the misconduct is related to the pupil's handicapping condition. When it is determined in a team meeting or a Pupil Fair Dismissal Act proceeding that a pupil's misconduct is related to the pupil's handicapping condition, then the assessment, IEP, and least restrictive alternative shall be reviewed according to the provisions of 5 MCAR SS 1.0120-1.0129.

5 MCAR S 1.0124 Identification and assessment procedures.

A. [Unchanged.]

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B. Formal educational assessment.

1. An assessment:

a. [Unchanged.]

b. must be conducted at least every ~~two~~ three years as required by 5 MCAR S 1.0126 B.;

c. [Unchanged.]

2.-4. [Unchanged.]

5 MCAR S 1.0126 Periodic reviews, reassessment, and follow-up.

A. Periodic reviews.

1. [Unchanged.]

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

3.-5. [Unchanged.]

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

C. [Unchanged.]

5 MCAR S 1.0127 Formal notice to parents.

A. General notice provisions.

1.-4. [Unchanged.]

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.-d. [Unchanged.]

e. inform the parents that they may:

(1)-(2) [Unchanged.]

(3) obtain an independent assessment at public expense if the parent disagrees with an assessment obtained by the ~~public agency~~ district. However, a district may initiate a due process hearing to show that its assessment is appropriate

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after at least one conciliation conference. If the final decision is that its assessment is appropriate, the parents still have the right to an independent assessment, but not at public expense. Whenever an independent evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria which the ~~public agency~~ district uses when it initiates an evaluation.

f.-t. [Unchanged.]

6. [Unchanged.]

B.-C. [Unchanged.]

Repealer. 5 MCAR SS 1.0120 A.3., A.4., A.6., A.7., A.8., B.1., B.2., B.3., B.4., B.5., B.6., B.7., B.8., B.9., B.10., B.11., B.12., B.13., B.14., B.17., B.18., B.19., B.20., B.21.; 5 MCAR SS 1.0121 A.4., D.; 1.0122 C. and D.; and 1.0123 are repealed.

Effective date. 5 MCAR SS 1.01223, 1.01224, and 1.01232 are effective for the school year beginning in 1984. The remaining rules are effective five working days after the notice of adoption is published in the State Register.

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

State Board of Education
Department of Education
Instruction Division

In the Matter of Proposed Adoption of Rules of the State Board of Education Governing Special Education 5 MCAR ss 1.0120 - 1.0127 and Repealing Parts of 5 MCAR ss 1.0120 - 1.0123

ORDER ADOPTING RULES

The above-entitled matter came on for hearing before Hearing Examiner Jon L. Lunde on Wednesday, April 13, 1983 at 9:00 a.m. in the Auditorium at the Sheraton Midway Hotel, I-94 and Hamline Avenue in St. Paul, Minnesota, after proper notice required by Minnesota Statutes Ch.14 was served upon all persons, associations and other interested groups registered with the State Board of Education and upon those who filed with the Department of Education for that purpose.

After affording interested persons an opportunity to present written and oral data, statements, and arguments, hearing all of the testimony, considering all of the evidence adduced and upon the records, files and proceedings herein and applicable statutory standards or criteria, and confirming the need for and reasonableness of the above-captioned rules.

NOW, THEREFORE, IT IS ORDERED that these rules identified as Special Education 5 MCAR ss 1.0120 - 1.0127 and Repealing parts of 5 MCAR ss 1.0120 - 1.0123 are adopted this 12th day of July, 1983, pursuant to authority vested in the Board by Minnesota Statutes s 120.17, subd. 3.

STATE OF MINNESOTA

STATE BOARD OF EDUCATION

Ruth E. Randall

Ruth E. Randall, Secretary

Responders should be prepared to begin work on the project no later than June 1, 1982. The amount of the contract shall not exceed $60,000. The deadline for the receipt of complete proposals is 4:30 p.m., Wednesday, May 5, 1982.

To obtain a copy of the complete Request for Proposals or for additional information, please write or call:

George W. Winter
Assistant Commissioner
Minnesota Department of Revenue
2nd Floor, Centennial Office Building
St. Paul, MN 55145
Phone: (612) 296-3403

State University System

Notice of Request for Proposals for Auditing Service

The State University System is requesting proposals for auditing service. The project will be an audit of the Revenue Bond Fund, which includes student residence hall, food service, and student union operations on six state university campuses. Fiscal year 1981 net income was $475,594 on Revenues of $22,856,065. Total assets equaled $75,637,052. The audit will be performed in accordance with generally accepted auditing standards. Services requested are outlined in the formal Request for Proposals (RFP). The RFP may be requested from and inquiries should be directed to:

Gerald Rushenberg
Financial Reporting Director
State University System
407 Capitol Square Building
St. Paul, Minnesota 55101
Phone 612-297-2619

It is anticipated that the activities to accomplish this audit will not exceed a total cost of $36,000. The deadline for submission of completed proposals will be the close of the working day of April 30, 1982.

OFFICIAL NOTICES

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

State Board of Education
Department of Education
Instruction Division

Notice of Intent to Solicit Outside Opinion Regarding Proposed Rules Governing Special Education Definitions, Supervision, Staff to Student Ratios and Other Related Topics

Notice is hereby given that the Department of Education is seeking information or opinions from sources outside the agency in preparing to amend current rules governing special education definitions, supervision, staff to student ratios and other related topics of State Board of Education Rules Chapter Seven: Standards and Procedures for the Provision of Special Education

Instruction and Services for Children and Youth Who Are Handicapped. The promulgation of these rules is authorized by Minnesota Statutes § 120.17, subdivision 3, which requires the agency to adopt rules relative to size of classes and supervision and any other rules deemed necessary.

The Department of Education requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit written statements of information to:

Wayne A. Erickson, Manager
Special Education Section
802 Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101

All statements of information will be accepted until May 17, 1982. Any written material received by the State Department of Education shall become part of the record in the event that the rules are promulgated.

April 8, 1982 John J. Feda, Commissioner

Department of Finance

Notice of Maximum Interest Rate for Municipal Obligations for Month of April 1982

Pursuant to Laws of Minnesota 1982, Chapter 523, Commissioner of Finance, Allan L. Rudell, announced today that the maximum interest rate for municipal obligations in the month of April will be 14 percent per annum. Obligations which are payable wholly or in part from the proceeds of special assessments or which are not secured by general obligations of the municipality may bear an interest rate of up to 15 percent per annum.

The maximum interest rate for obligations authorized by resolution prior to April 1, 1982 shall be 12 percent per annum.

The Governor's Planning Council on Developmental Disabilities Department of Energy, Planning and Development Developmental Disabilities Program

Notice of Intent to Hold a Public Forum to Obtain Input for Preparation of a Three-year Plan for Developmental Disabilities

The Governor's Planning Council on Developmental Disabilities is responsible for the development of a three-year state plan for submission to the Administration on Developmental Disabilities, U.S. Department of Health and Human Services. For the purpose of obtaining input for the new three-year state plan (October 1, 1983—September 30, 1986), a public forum will be held in Conference Rooms A and B (1st floor), Capitol Square Building, 550 Cedar, St. Paul, Minnesota, on May 4 and 5, 1982.

The purpose of the public forum is to provide an opportunity for the Governor's Planning Council on Developmental Disabilities to be more inclusive and comprehensive in meeting its state planning responsibilities. Invitations have been sent to state agencies, advocacy groups, and provider organizations.

Persons wishing to participate should prepare a 15-minute response to three questions: (1) what is the current status of community services and programs germane to your organization, (2) what are the most critical problems or gaps in programs and services, and (3) what recommendations or solutions do you see as needed to address the problems outlined in (2). These solutions could include changes in resource allocation, statutes, or regulations. All participants will be asked to submit a written copy of their presentation including any data. Please keep in mind that the definition of developmental disabilities refers to the most substantially handicapped population, and not to the broad categories of mental retardation, cerebral palsy, epilepsy, and autism.

To reserve a 15-minute period on the agenda for remarks, questions, and submission of any written or printed material, call Colleen Wieck (612/296-9964).

State of Minnesota
State Board of Education
Department of Education

IN THE MATTER OF: The Proposed Adoption of Rules of the State Board of Education Governing Special Education (5 MCAR SS 1.0120-1.0127) and Repealing parts of 5 MCAR SS 1.0120-1.0123

Order for Hearing

IT IS HEREBY ORDERED THIS 18th day of January, 1983, that a public hearing on the proposed rules captioned above be held at the Sheraton Midway St. Paul, I-94 and Hamline Avenue, St. Paul, Minnesota 55104, on April 13, 1983, commencing at 9:00 a.m., and continuing until all representatives of associations or other interested groups or persons have had an opportunity to be heard.

IT IS FURTHER ORDERED, that notice of said hearing be given to all persons who have registered their names with the State Board of Education for that purpose and be published in the State Register.

State of Minnesota
State Board of Education

John J. Feda, Secretary

CERTIFICATE OF BOARD'S
AUTHORIZING RESOLUTION

I, John J. Feda, 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 18th day of January, 1983; 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 John J. Feda, Secretary of the Board of Education, be and he hereby is granted the authority and directed to call a hearing for the purpose of promulgating rules of the Board governing special education staff to student ratios, supervision, pupils placed for care and treatment, surrogate parents, suspension, exclusion and expulsion, experimental programs, and ratio alternatives; as well as perform any and all acts incidental thereto, including but without being limited to signing an Order for Hearing and Notice of Hearing as well as acting as the Board's representative at all hearings."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 18th day of January, 1983.

John J. Feda, Secretary

Member, State Board of Education

State Board of Educatio
Department of Education
Instruction Division

In the Matter of Proposed Adoption
of Rules of the State Board of
Education Governing Special Education
5 MCAR §§ 1.0120-1.0127 and Repealing
parts of 5 MCAR §§ 1.0120-1.0123

Notice of Hearing

A public hearing concerning the proposed rules will be held at the Sheraton Midway St. Paul, I-94 and Hamline Avenue on April 13, 1983, commencing at 9:00 a.m. and continuing until all interested persons have had an opportunity to be heard. 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 Jon Lunde, Hearing Examiner, Office of Administrative Hearings, 400 Summit Bank Building, 310 South Fourth Avenue, Minneapolis, MN 55415, telephone (612) 341-7645 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. §§ 14.02 to 14.57, and by 9 MCAR §§ 2.101-2.113 (Minnesota Code of Agency Rules). If you have any questions about the procedure, call or write the hearing examiner.

Notice is hereby given that 25 days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the agency and at the Office of Administrative Hearings. This Statement of Need and Reasonableness will include all the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rule or rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge.

The agency intends to present only a short summary of the Statement of Need and Reasonableness at the hearing but will answer questions raised by interested persons. You are therefore urged to review the Statement of Need and Reasonableness before the hearing. Additional copies will be available at the hearing.

The purposes of the rules are to:

1. establish legitimate standards that offer protection for the rights of handicapped pupils and at the same time allow local school district flexibility,

2. amend or delete obsolete or redundant language at the directive of the Revisor of Statutes Office,

3. recommend rules that provide greater local school district flexibility, cost containment features, and incentives for cooperation among school districts at the directive of the 1981 State Legislature, and

4. update current rules to be consistent with recent court rulings and interpretations of federal regulations.

The Board's statutory authority to promulgate the proposed rules is provided by Minn. Stat. § 120.17, subd. 3.

The Board anticipates that because the following are local school district options allowing flexibility in staffing, the Department is unable to project an accurate savings or cost estimate for:

1.0121 E.	Experimental proposal
1.01223 D.	Early childhood team
1.01225	Multidisability team teaching
1.01226	Single disability case management services
1.01228	Pupil performance plan
1.01232 B.	Assistant directors
1.01232 C.	Other supervisory personnel

The Board estimates that savings in state aids and local expenditure may be realized for the following rules, depending on the extent to which the rules are implemented.

1. Rule 5 MCAR § 1.01224 C. Level 3. All other disabilities with a ratio of one teacher to 18 pupils may realize a savings in state aids of between zero, if local school districts do not increase the actual ratios beyond those of 1981-82, and $6,855,000 if local school districts increase by 20 percent the 12.9 ratio reported in 1981-82.

2. Rule 5 MCAR § 1.01232 A. may realize a savings in state aids of between $61,040 and $198,160 depending on how the local school districts implement the rule. Based on 1981-82 data there were 13 districts without a director of special education which under this proposal would have to hire at least a part-time person, there were seven districts which employed directors but would not be eligible for aid under this rule. There were nine districts and eight cooperatives which employed full-time directors which would only be eligible for part-time directors under this rule.

3. Rule 5 MCAR § 1.01232 C. may realize a savings in state aids of zero if local school districts choose to keep the same number of supervisors as were employed in 1981-82 or a savings of $2,152,500 if they choose not to employ supervisors at all. Following the legislated suspension of the supervisory rules in 1981 and based on 1982-83 first and second state aid payments, local school districts did not continue the employment of 23 of the 119 supervisors reported in 1981-82 for an estimated savings of $416,400 in state aids.

The Board anticipates there will be an increased cost to local school districts for the following rules:

1. Rule 5 MCAR § 1.01223 covers an area not clarified in rule previously, (early childhood handicapped) and a number of local school districts were out of compliance. It is estimated that there will be an increase of $601,823 to bring these districts into compliance.

2. Cost for Rule 5 MCAR § 1.01224 C. Level 4 is estimated to be $1,284,000 and Levels 5 and 6, $912,680. This may occur because programs for children who are emotionally/behaviorally disordered are relatively new in Minnesota and the previous ratios are not considered appropriate for effective programming.

It is estimated that the savings of the total rules proposal will range up to $6,407,260 depending on the implementation decisions made by the local school districts.

A copy of the proposed rules is attached hereto. One free copy may be obtained by writing to Mr. Wayne A. Erickson, 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 Dr. Norena A. Hale at 612/296-1793.

Notice: 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

John J. Feda, Secretary

Date: January 18, 1983

FISCAL STATEMENT

The Board anticipates that because the following are local school district options allowing flexibility in staffing, the Department is unable to project an accurate savings or cost estimate for:

1.0121 E. Experimental proposal
1.01223 D. Early childhood team
1.01225 Multidisability team teaching
1.01226 Single disability case management services
1.01228 Pupil performance plan
1.01232 B. Assistant directors
1.01232 C. Other supervisory personnel

The Board estimates that savings in state aids and local expenditure may be realized for the following rules, depending on the extent to which the rules are implemented.

1. Rule 5 MCAR § 1.01224 C. Level 3. All other disabilities with a ratio of one teacher to 18 pupils may realize a savings in state aids of between zero, if local school districts do not increase the actual ratios beyond those of 1981-82, and $6,855,000 if local school districts increase by 20 percent the 12.9 ratio reported in 1981-82.

2. Rule 5 MCAR § 1.01232 A. may realize a savings in state aids of between $61,040 and $198,160 depending on how the local school districts implement the rule. Based on 1981-82 data there were 13 districts without a director of special education which under this proposal would have to hire at least a part-time person, there were seven districts which employed directors but would not be eligible for aid under this rule. There were nine districts and eight cooperatives which employed full-time directors which would only be eligible for part-time directors under this rule.

3. Rule 5 MCAR § 1.01232 C. may realize a savings in state aids of zero if local school districts choose to keep the same number of supervisors as were employed in 1981-82 or a savings of $2,152,500 if they choose not to employ supervisors at all. Following the legislated suspension of the supervisory rules in 1981 and based on 1982-83 first and second state aid payments, local school districts did not continue the employment of 23 of the 119 supervisors reported in 1981-82 for an estimated savings of $416,400 in state aids.

The Board anticipates there will be an increased cost to local school districts for the following rules:

1. Rule 5 MCAR § 1.01223 covers an area not clarified in rule previously, (early childhood handicapped) and a number of local school districts were out of compliance. It is estimated that there will be an increase of $601,823 to bring these districts into compliance.

2. Cost for Rule 5 MCAR § 1.01224 C. Level 4 is estimated to be $1,284,000 and Levels 5 and 6, $912,680. This may occur because programs for children who are emotionally/behaviorally disordered are relatively new in Minnesota and the previous ratios are not considered appropriate for effective programming.

It is estimated that the savings of the total rules proposal will range up to $6,407,260 depending on the implementation decisions made by the local school districts.

State of Minnesota
Department of Education

State Board of Education
Instruction Division

IN THE MATTER OF: The Proposed Adoption
of Rules of the State Board of Education
Governing Special Education
5 MCAR §§ 1.0120-1.0127 and
Repealing Parts of 5 MCAR §§ 1.0120-1.0123

Affidavit of Additional
Notice of the State
Board of Education
Mailing List

I hereby certify that in addition to the Notice required for persons on the State Board of Education rulemaking mailing list, of persons who have specifically requested notice of rulemaking proceedings, a Notice and a copy of the proposed rules were mailed to all persons on the Education Statistics memo series mailing list, as of 10 o'clock A.M., this 16th day of February, 1983, which includes school superintendents, Directors of ECSUs, AVTIs, Vocational Centers and Joint Powers Districts. Also included are the Directors of Special Education.

STATE BOARD OF EDUCATION

John J. Feda

Subscribed and sworn to before me
this 16th day of February, 1983.

Lois E. Steinhaus
Notary Public

Ramsey County, Minnesota

My commission expires 1987.

LOIS E. STEINHAUS
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES MAY 9, 1989

State of Minnesota
Department of Education

State Board of Education
Instruction Division

IN THE MATTER OF: The Proposed Adoption
of Rules of the State Board of Education
Governing Special Education
5 MCAR §§ 1.0120-1.0127 and
Repealing Parts of 5 MCAR §§ 1.0120-1.0123

STATE OF MINNESOTA)
) ss.
County of Ramsey)

AFFIDAVIT OF MAILING

John R. Jelinek, being first duly sworn, deposes and says:

That on the 16th day of February, 1983, at the City of St. Paul, County of Ramsey, State of Minnesota, he served the attached Notice of Hearing and copy of the proposed rules, by depositing in the State of Minnesota Central Mail System for United States mailing at said City of St. Paul, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations named on the certified list (see attached Certificate) who have requested that their names be placed on file with the Minnesota Department of Education for the purpose of receiving notice of the proposed adoption of rules by the State Board of Education.

John R Jelinek

Subscribed and sworn to before me
this 16th day of February
1983.

Lois E. Steinhaus

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Repealing Parts of 5 MCAR §§ 1.0120-1.0123

CERTIFICATE

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minn. Stat. § 14.14, subd. 1, that their names be placed on file with and maintained by the Minnesota Department of Education for the purpose of receiving notice of the proposed adoption of rules by the State Board of Education is accurate and complete as of 10 o'clock A.M. this 16th day of February, 1983.

STATE BOARD OF EDUCATION

By Linda Alberg

PROPOSED RULES

Pursuant to Minn. Laws of 1980, § 15.0412, subd. 4h, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless seven or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules;

and

4. that the rule may be modified if modifications are supported by the data and views submitted.

If, during the 30-day comment period, seven or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of § 15.0412, subds. 4 through 4g, which state that if an agency decides to hold a public hearing, it must publish in the *State Register* a notice of its intent to do so. This notice must appear at least 30 days prior to the date set for the hearing, along with the full text of the proposed rules. (If the agency has followed the provisions of subd. 4h and has already published the proposed rules, a citation to the prior publication may be substituted for republication.)

Pursuant to Minn. Stat. § 15.0412, subd. 5, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 20 days thereafter, interested persons may submit data and views in writing to the proposing agency.

State Board of Education
Department of Education
Instruction Division

Proposed Rules Governing Special Education (5 MCAR §§ 1.0120-1.0127) and Proposed Repeal of Parts of 5 MCAR §§ 1.0120-1.0123

Notice of Hearing

A public hearing concerning the proposed rules will be held at the Sheraton Midway St. Paul, I-94 and Hamline Avenue on April 13, 1983, commencing at 9:00 a.m. and continuing until all interested persons have had an opportunity to be heard. 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 Jon Lunde, Hearing Examiner, Office of Administrative Hearings, 400 Summit Bank Building, 310 South Fourth Avenue, Minneapolis, MN 55415, telephone (612) 341-7645 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. §§ 14.02 to 14.57, and by 9 MCAR §§ 2.101-2.113 (Minnesota Code of Agency Rules). If you have any questions about the procedure, call or write the hearing examiner.

Notice is hereby given that 25 days prior to the hearing, a statement of need and reasonableness will be available for review at the agency and at the Office of Administrative Hearings. This statement of need and reasonableness will include all the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rule or rules. Copies of the statement of need and reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge.

The agency intends to present only a short summary of the statement of need and reasonableness at the hearing but will answer questions raised by interested persons. You are therefore urged to review the Statement of Need and Reasonableness before the hearing. Additional copies will be available at the hearing.

The purposes of the rules are to:

1. establish legitimate standards that offer protection for the rights of handicapped pupils and at the same time allow local school district flexibility,

2. amend or delete obsolete or redundant language at the directive of the Revisor of Statutes Office,

3. recommend rules that provide greater local school district flexibility, cost containment features, and incentives for cooperation among school districts at the directive of the 1981 State Legislature, and

4. update current rules to be consistent with recent court rulings and interpretations of federal regulations.

The board's statutory authority to promulgate the proposed rules is provided by Minn. Stat. § 120.17, subd. 3.

The board anticipates that because the following are local school district options allowing flexibility in staffing, the department is unable to project an accurate savings or cost estimate for:

1.0121 E.	Experimental proposal
1.01223 D.	Early childhood team
1.01225	Multidisability team teaching
1.01226	Single disability case management services
1.01228	Pupil performance plan
1.01232 B.	Assistant directors
1.01232 C.	Other supervisory personnel

The board estimates that savings in state aids and local expenditure may be realized for the following rules, depending on the extent to which the rules are implemented.

1. Rule 5 MCAR § 1.01224 C. Level 3. All other disabilities with a ratio of one teacher to 18 pupils may realize a savings in state aids of between zero, if local school districts do not increase the actual ratios beyond those of 1981-82, and $6,855,000 if local school districts increase by 20 percent the 12.9 ratio reported in 1981-82.

2. Rule 5 MCAR § 1.01232 A. may realize a savings in state aids of between $61,040 and $198,160 depending on how the local school districts implement the rule. Based on 1981-82 data there were 13 districts without a director of special education which under this proposal would have to hire at least a part-time person, there were seven districts which employed directors but would not be eligible for aid under this rule. There were nine districts and eight cooperatives which employed full-time directors which would only be eligible for part-time directors under this rule.

3. Rule 5 MCAR § 1.01232 C. may realize a savings in state aids of zero if local school districts choose to keep the same number of supervisors as were employed in 1981-82 or a savings of $2,152,500 if they choose not to employ supervisors at all. Following the legislated suspension of the supervisory rules in 1981 and based on 1982–83 first and second state aid payments, local school districts did not continue the employment of 23 of the 119 supervisors reported in 1981–82 for an estimated savings of $416,000 in state aids.

The board anticipates there will be an increased cost to local school districts for the following rules:

1. Rule 5 MCAR § 1.01223 covers an area not clarified in rule previously, (early childhood handicapped) and a number of local school districts were out of compliance. It is estimated that there will be an increase of $601,823 to bring these districts into compliance.

2. Cost for Rule 5 MCAR § 1.01224 C. Level 4 is estimated to be $1,284,000 and Levels 5 and 6 $912,680. This may occur because programs for children who are emotionally/behaviorally disordered are relatively new in Minnesota and the previous ratios are not considered appropriate for effective programming.

It is estimated that the savings of the total rules proposal will range up to $6,407,260 depending on the implementation decisions made by the local school districts.

A copy of the proposed rules is attached hereto. One free copy may be obtained by writing to Mr. Wayne A. Erickson, 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 Dr. Norena A. Hale at 612/296-1793.

Notice: 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.

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

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.

January 18, 1983

John J. Feda, Secretary
State Board of Education

FISCAL STATEMENT

The board anticipates that because the following are local school district options allowing flexibility in staffing, the Department is unable to project an accurate savings or cost estimate for:

1.0121	E.	Experimental proposal
1.01223	D.	Early childhood team
1.01225		Multidisability team teaching
1.01226		Single disability case management services
1.01228		Pupil performance plan
1.01232	B.	Assistant directors
1.01232	C.	Other supervisory personnel

The board estimates that savings in state aids and local expenditure may be realized for the following rules, depending on the extent to which the rules are implemented.

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2. Rule 5 MCAR § 1.01232 A. may realize a savings in state aids of between $61,040 and $198,160 depending on how the local school districts implement the rule. Based on 1981–82 data there were 13 districts without a director of special education which under this proposal would have to hire at least a part-time person, there were seven districts which employed directors but would not be eligible for aid under this rule. There were nine districts and eight cooperatives which employed full-time directors which would only be eligible for part-time directors under this rule.

3. Rule 5 MCAR § 1.01232 C. may realize a savings in state aids of zero if local school districts choose to keep the same number of supervisors as were employed in 1981–82 or a savings of $2,152,500 if they choose not to employ supervisors at all. Following the legislated suspension of the supervisory rules in 1981 and based on 1982–83 first and second state aid payments, local school districts did not continue the employment of 23 of the 119 supervisors reported in 1981–82 for an estimated savings of $344,000 in state aids.

The board anticipates there will be an increased cost to local school districts for the following rules:

1. Rule 5 MCAR § 1.01223 covers an area not clarified in rule previously, (early childhood handicapped) and a number of local school districts were out of compliance. It is estimated that there will be an increase of $601,823 to bring these districts into compliance.

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It is estimated that the savings of the total rules proposal will range up to $6,407,260 depending on the implementation decisions made by the local school districts.

Rules as Proposed

5 MCAR § 1.0120 Policies ~~and definitions~~ for special education.

~~A. Policies.~~

1. [Reletter as A.]

2. [Reletter as B.]

3.-4. [See Repealer.]

5. [Reletter as C.]

6.-8. [See Repealer.]

~~B.~~ 5 MCAR § 1.01201 Definitions for special education.

A. Applicability. As used in 5 MCAR §§ 1.0120-1.0129 the ~~following~~ terms ~~used throughout these rules~~ defined in this rule ~~shall~~ have the ~~following~~ meanings ~~ascribed to~~ given them.

1.-14. [See Repealer.]

B. Assessment. "Assessment" means an individual educational evaluation of a pupil's performance or development conducted in accordance with recognized professional standards and the provisions of 5 MCAR § 1.0124.

~~15.~~ C. Days. "Days" ~~shall be construed to exclude Saturdays, Sundays, and~~ means the days school is ~~not~~ in session when used in 5 MCAR §§ 1.0121-1.0126. "Days" ~~shall be construed to mean~~ means calendar days when used in 5 MCAR §§ 1.0128 and 1.0129.

D. Individual education program plan or IEP. "Individual education program plan" or "IEP" means a written individualized educational plan developed for a pupil. It is based on an assessment of the pupil's performance utilizing licensed personnel, a determination of the pupil'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 pupil's performance.

E. Initial formal assessment. "Initial formal assessment" means the first formal assessment of a pupil provided by the district proposing to conduct the assessment.

F. Initial placement. "Initial placement" means the first special education placement and provision of instruction and related services by the district proposing the placement.

G. Instruction. "Instruction" means the action or practice of a teacher.

H. Management aide or aide. "Management aide" or "aide" means a person who assists in the provision of special education under the direct supervision of regular teachers, teacher, or related services staff. The primary responsibilities of an aide are to provide physical management and to implement pupil behavior management techniques as determined by the team staff. This person may also provide incidental follow-up instruction and training in conjunction with the primary responsibilities.

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

a. comply with the provisions of Minnesota Statutes, chapter 363 and not discriminate in any manner in the full ~~utilization~~ use of or benefit from any services rendered by an 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 Minnesota Statutes, chapter 363~~; and

b. provide procedures that ~~insure~~ ensure 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

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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~~ pupil.

17.-21. [See Repealer.]

J. Parent. "Parent" or "parents" means the mother, father, legally appointed guardian, or surrogate parent for a pupil under 18 years and for a pupil 18 years old or older and under legal guardianship. It means the pupil if a pupil is 18 years old or older and not under legal guardianship. When the parents are separated or divorced, it means the parent who has the legal right, by court decree or agreement, to determine the pupil's education, even though the other parent may have custody of the pupil.

K. Providing district. "Providing district" means a district with the responsibility of providing instruction and related services to a pupil.

L. Pupil. "Pupil" means a handicapped person eligible for special education according to Minnesota Statutes, sections 120.03 and 120.17. Persons who are pregnant or chemically dependent and do not have a handicapping condition are not handicapped.

M. Recognized professional standards. "Recognized professional standards" means reasonable principles and concepts accepted by acknowledged experts that bear a direct relationship to the particular needs of the pupil.

N. Regular education program. "Regular education program" means the normal early childhood, elementary, secondary, or vocational education offerings, including instruction, training, aids, and services in the classroom or other appropriate places.

O. Related services. "Related services" means any specially designed services not provided by regular education or special education instruction to meet the unique needs of a pupil to benefit from the educational program. This includes psychological services, social worker services, occupational therapy, physical therapy, audiology, orientation and mobility training, health services, medical services for diagnostic purposes, and other similar services.

P. Resident district. "Resident district" means the district in which the pupil's parent resides or the district designated by the commissioner of education. It does not mean the district in which the surrogate parent resides.

Q. Special education. "Special education" means any specially designated instruction or related services and support services to meet the unique cognitive, affective, or psychomotor needs of a pupil as stated in the IEP.

R. Support services. "Support services" means any specially designed services which assist in the delivery of instruction or related services to a pupil. This includes braillists, interpreter services, management aides, transportation, and other similar services.

S. Teacher. "Teacher" means a person licensed according to 5 MCAR §§ 3.090, 3.0901, 3.0902, and 3.0909, or successor rules, by the Board of Teaching to instruct pupils with specific handicapping conditions.

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 related services for all ~~handicapped~~ pupils as required by Minnesota Statutes, section 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. If a cooperative changes administrative organization, it shall submit a revised plan. The new plan must be submitted prior to the beginning of the next school year. The plan shall include descriptions of the district's:

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

2. ~~the district's~~ method of providing the ~~special~~ instruction and related 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. [See Repealer.]

B. On or before January 1, 1978, and as soon as possible after receiving revised plans, 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~~ if 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 the regular school term for program and budget approval necessary ~~for determining~~ to determine 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~~ the action and the estimated level of education aid to be paid when the first aid payment is made.

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~~ the action and the estimated level of special education aid ~~by May 1~~.

3. ~~Amendment to applications. School~~ Districts ~~shall~~ may 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.

4. Districts shall assure that they are in compliance with state and federal statutes and rules relating to the education of pupils.

D. [See repealer.]

D. State aid for special education personnel. Salaries for essential personnel who are teachers, related services and support services staff members, directors, and supervisors are reimbursable for the following activities:

1. child find and pupil identification;

2. necessary short-term activities to determine whether referrals for assessments shall be made;

3. assessment and IEP planning for individual pupils;

4. instruction or related and support services to pupils who have an IEP;

5. necessary follow-up activities after termination from special education;

6. parental involvement and due process;

7. personnel development;

8. special education curriculum development;

9. special education program evaluation;

10. supervision and administration of the total special education system; and

11. other activities approved through the annual application for programs and budget.

E. Experimental proposal.

1. The State Board of Education shall approve or disapprove a district's experimental proposal for exemption from its rules. No exemption shall be given from federal regulations, 5 MCAR §§ 1.0122 B.1. and 1.01225 B.

2. When a district applies for exemption it shall submit a proposal which sets forth:

a. the proposal's goals and objectives;

b. the method by which the proposal will improve effectiveness and efficiency;

c. annual review procedures for up to three years;

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d. rules from which it seeks exemption;

e. evidence that the district staff and parents, who would be affected, participated in the development and will participate in the annual review of the proposal, and that the proposal has the approval of the district school board;

f. evidence that the parents whose children would be involved will be fully informed at the team meeting and will have the opportunity to approve or disapprove placement in the experimental program; and

g. the annual evaluation procedures to be used to demonstrate attainment of the proposal goals and objectives, and the effectiveness of the proposal.

3. The state board shall approve, disapprove, or modify continuation of the experimental proposal after three years.

5 MCAR § 1.0122 Facilities~~,~~ and staff ~~and supervision~~.

A. Facilities.

1. ~~Housing space. Housing space for each class~~ Classrooms and other facilities in which pupils receive instruction, related services, and support services shall ~~be adequate~~:

a. be accessible;

b. be essentially equivalent to the regular education program;

c. provide an atmosphere that is conducive to learning; and

d. meet the pupils' special physical, sensory, and emotional needs.

2. ~~Equipment and materials. Each special class and group shall be supplied with~~ The necessary special equipment and instructional materials shall be supplied to provide instruction, related services, and support services.

B. Staff.

1. Teachers. Every teacher ~~who teaches a special class must~~ shall hold a ~~special class~~ license appropriate to the ~~type~~ handicapping condition of ~~handicapped children she or he is teaching~~ the pupil taught except as designated in 5 MCAR § 1.01225.

2. ~~Administrators and supervisors~~ Directors. Every ~~administrator and supervisor of any special education program~~ director and assistant director shall hold an appropriate ~~licensure~~ supervisory license for general special education or one or more program areas.

3. Other supervisory personnel. Every supervisor shall hold either an appropriate supervisory license for one or more program areas coordinated or supervised, or an appropriate license for general special education supervision.

~~3.~~ 4. ~~Other professional or essential personnel~~ Related services staff. ~~The qualifications of other professional or essential personnel who are not licensed teachers, administrators or supervisors~~ Every related services staff member shall ~~be based upon~~ hold an appropriate license issued by the Board of Teaching or the State Board of Education. When such license is not available, related services staff shall meet recognized professional standards ~~and~~ which shall be 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~~.

5. Contracts. When contracting for assessments, instruction, or related services, a district shall contract with personnel who hold licenses issued by the Board of Teaching or State Board of Education, or who meet recognized professional standards.

6. Personnel variances. A district may apply to the commissioner of education for a variance from 1.-5. for one year or less when, in an emergency situation, instruction or related services must be initiated or continued and documented attempts have been made to find a licensed person.

4. [Renumber as 7.]

C.-D. [See Repealer.]

E. [Reletter as C.]

5 MCAR § 1.01222 Pupils placed for care and treatment.

A. Handicapped pupil placement.

1. Services required. The district shall provide regular education, instruction, and related services in the home or a facility if a pupil, who is receiving services at level 2 through level 6, is prevented from attending the usual school site for 15 or more consecutive days or is other health impaired and is unable to attend the usual school site for 15 or more intermittent days. The amount and nature of regular education, instruction, and related services, must be provided, as required by the pupil's IEP, to the extent that medical considerations allow a pupil to participate.

2. In a home. If a pupil is medically restricted from leaving the home, the district shall make available no less than an average of one hour of regular education, instruction, and related services for every day the pupil would otherwise attend the usual school site.

3. In a facility.

a. If a pupil is placed in a facility for care and treatment and is medically restricted from leaving the facility on a daily basis because of the treatment therein, the district shall make available up to three hours of regular education, instruction, and related services in the facility for every day the pupil would otherwise attend the usual school site. If a pupil can benefit from more than three hours of regular education, instruction, and related services, consideration shall be made for placement at a school site for the regular education, instruction, and related services.

b. If a pupil is placed in a facility and is medically able to leave the facility on a daily basis to attend a school site, the providing district shall make available up to a full day of regular education, instruction, and related services within a district building for every day the pupil would otherwise attend the usual school site.

c. If a pupil is restricted from leaving a correctional facility, the providing district shall make available up to a full day of regular education, instruction, and related services in the facility for every day the pupil would otherwise attend the usual school site.

4. Due process required. The district shall comply with the due process procedures of 5 MCAR §§ 1.0124-1.0129.

5. Team meeting required. The placing agency or the providing district shall hold a team meeting as soon as possible after it is determined that a pupil may be placed for care and treatment. At least the following persons shall receive written notice to attend: the person or agency placing the pupil, the resident district, the appropriate teachers and related services staff from the providing district, the parents, and, when appropriate, the pupil. This team meeting may be held in conjunction with a meeting called by the placing agency according to Minnesota Statutes, section 124.2129, subdivision 4.

6. IEP required. The IEP developed by the team shall include the provisions of 5 MCAR § 1.0125, the location of the instruction and related services when provided other than in the facility, the projected duration of the instruction and related services, and provisions for coordinating the care and treatment and the instruction and related services.

7. Notice of anticipated return. When possible, a notice of discharge from the facility and anticipated return to the resident district shall be given by the providing district to the resident district.

8. Aid for special education only. When regular education, instruction, and related services are provided, only the special education portion shall be reimbursed with special education aid. The cost of care and treatment for which a child is placed shall not be reimbursed with special education aid, nor is such expense assessable against the resident district.

B. Nonhandicapped pupil placement. Nonhandicapped pupils who are anticipated to be absent 15 consecutive or intermittent days or more and who are suspected to have a handicapping condition shall receive an assessment.

5 MCAR § 1.01223 Early childhood program alternatives.

A. Instruction and related services required. If a district provides permissive special education to pupils under four years old, the pupils shall be provided instruction and related services in one or more early childhood program alternatives. If pupils are

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four years old but less than seven years old on September 1 of any year, the district shall provide services in one or more early childhood program alternatives or in one or more school-age levels of service in 5 MCAR § 1.01224 B.

B. Program alternatives. The following are early childhood program alternatives:

1. A consultation and indirect services program includes ongoing progress review, cooperative planning, demonstration teaching, modification and adaptation of the curriculum, supportive materials and equipment. The services are provided to teachers, related services staff, support staff, parents, and public and nonpublic agencies to the extent that the services are related to the pupil's special education.

2. In a center-based program, a pupil is enrolled in a district operated center and receives instruction and related services at the center.

3. In a home-based program, a pupil receives special education in the home.

C. Case loads for early childhood program alternatives. The following table sets forth the maximum number of pupils that may be assigned to a teacher's case load for the early childhood program alternatives. Case load means the number of pupils taught.

Consultation and indirect services program	24
Center-based program	
Deaf/blind, autistic, or severely multiply handicapped	
One class, with one aide	4
One class, with two aides	6
More than one class, with one aide	8
More than one class, with two aides	12
All other disabilities	
One class, with one aide	8
More than one class, with one aide	16
Home-based program	12

D. Early childhood teams. A district may assign one full-time teacher, one full-time related services staff member, and one full-time aide as a team per class in an early childhood center-based program. Other related and support services shall also be provided as appropriate. The district may assign for one class not more than an average of eight pupils per teacher and related services staff nor more than 16 pupils to an individual team.

5 MCAR § 1.01224 School-age levels of service.

A. Instruction and related services required. If a pupil is school-age and is not provided instruction and related services in an early childhood program alternative, the pupil shall be provided instruction and related services in one or more levels of service.

B. Levels of service. The following are levels of service:

1. In level 1 a nonhandicapped pupil is placed in a regular classroom and does not receive special education, or is not enrolled in school. This level includes assessment services, monitoring, observation, and follow-up.

2. In level 2 a pupil is placed in a regular classroom. Instruction and related services are provided indirectly through the regular teacher, teachers, parents, or other persons who have direct contact with the pupil. The consultation and indirect services include ongoing progress review; cooperative planning; demonstration teaching; modification and adaptation of the curriculum, supportive materials, and equipment; and direct contact with the pupil for monitoring, observation, and follow-up.

3. In level 3 a pupil receives direct instruction from a teacher, or related services from a related services staff member for less than one-half of the day. Consultation and indirect services are included.

4. In level 4 a pupil receives direct instruction from a teacher for one-half day to less than full-time. Consultation and indirect services are included.

5. In level 5 a pupil receives full-time direct instruction from a teacher within a district building, day school, or special station or facility. Integrated activities solely for socialization or enrichment, and related services are excluded when determining full-time. Consultation and indirect services are included.

6. In level 6 a pupil is placed in a residential facility and receives direct instruction from a teacher. Consultation and indirect services are included.

C. Case loads for school-age levels of service. The following table sets forth by levels of service the maximum number of school-age pupils that may be assigned to a teacher. Case load means the number of pupils taught.

Level 2	
Speech and language handicapped and developmental adaptive physical education	60
All other disabilities	30
Level 3	
Speech and language handicapped and developmental adaptive physical education	40
All other disabilities	18
Level 4	
Deaf/blind, autistic, or severely multiply handicapped	3
With one aide	6
Mildly mentally handicapped or specific learning disabled	12
With one aide	15
All other disabilities	8
With one aide	10
With two aides	12
Levels 5 and 6	
Deaf/blind, autistic, or severely multiply handicapped	
With one aide	4
With two aides	6
All other disabilities	
With one aide	8

5 MCAR § 1.0125 Multidisability team teaching.

A. Team staff. A district may assign one or more full-time teachers and up to an equal number of full-time related services staff as a team to provide instruction and related services to school-age pupils. Other related and support services shall also be provided as appropriate.

B. License requirement. There must be a teacher on the team who is licensed in the disability area of each pupil served by the team.

C. Team member responsibility. The team member licensed in a pupil's disability shall be responsible for that pupil's reassessment, IEP development and coordination, periodic and annual reviews, and ongoing consultation and indirect services to the teacher providing instruction.

D. Implementation. Pupils may receive instruction and related services from any or all of the team members with appropriate skills. The instruction and related services provided by each team member shall be included in the IEP. Team teaching may be implemented in one or more levels of service.

E. Case loads. The total case load assigned to the team shall not exceed the case loads at the appropriate level of service set forth in 5 MCAR § 1.01224 C., times the full-time teachers and related services staff members assigned to the team. Case load means the number of IEP's for which a teacher is responsibile. An aide or aides shall be a part of the team when designated in 5 MCAR § 1.01224 C.

5 MCAR § 1.01226 Single disability case management services.

A. Case management may include: initial screening and assessment; development, coordination, and implementation of the individual IEP; compliance with procedural requirements; communication coordination among home, regular and special

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education programs; placement facilitation; and coordination and scheduling of team meetings, periodic reviews, and follow-up reviews. It does not include direct instruction to pupils.

B. A district may assign a teacher to perform case management for school-age pupils who are in levels 3, 4, 5, and 6 services and who all have the same disability.

C. A district may assign one case management teacher and up to five teachers as a team. All teachers shall be licensed in the same disability.

D. A district may not assign to the team of teachers more than:

1. 18 pupils, times
2. the number of teachers in the team plus the case management teacher.

5 MCAR § 1.01228 Pupil performance plan.

A district shall be exempted from the ratios for levels 2, 3, and 4 services when a pupil performance plan is established and approved by the State Board of Education or its designee. The plan must contain all of the following:

1. Development of IEP's for all pupils in levels 2, 3, and 4 based on district-wide performance expectations;

2. Implementation of a system to measure ongoing pupil performance with individual pupil performance being reviewed at least monthly; and

3. Criteria for the modification of instruction, related services, and support services to meet the changing pupil needs indicated in the pupil performance measurement system.

5 MCAR § 1.01229 Considerations to be made when determining ratios.

A. Variances. The district may apply to the State Board of Education or its designee for a variance from the ratios in 5 MCAR §§ 1.01223, 1.01224, and 1.01226 for one year or less when special circumstances exist or when unanticipated special education enrollment increases occur.

B. Method of counting pupils. For the purposes of the ratios in 5 MCAR §§ 1.01223, 1.01224, and 1.01226, each pupil receiving instruction shall be counted as one pupil in the teacher's case load.

C. Reduction of ratios. The district shall reduce the teacher to pupil ratio accordingly, to ensure the provision of services delineated in each pupil's IEP, if a teacher;

1. is assigned to more than one early childhood program alternative, or

2. is assigned to pupils in more than one level of service; or

3. is serving pupils representing a significant range of severity of problems, or

4. is providing instruction at more than one building.

5 MCAR § 1.01232 Supervision.

A. Directors.

1. The school board in every district shall employ, either singly or cooperatively, a director of special education to be responsible for program development, coordination, and evaluation; in-service training; and general special education supervision and administration in the district's total special education system. Cooperative employment of a director may be through a host district, joint powers agreement, or an educational cooperative service unit.

2. Conditions for special education reimbursement of one full-time director of special education include:

a. enrollment of 5,000 or more in public and nonpublic schools within one district; or

b. enrollment of 4,000 or more in public and nonpublic schools in a group of two or more districts cooperating to provide special education; or

c. eight or more districts cooperating to provide special education through a host district, joint powers agreement, or educational cooperative service unit; or

d. districts numbered 287, 916, 917, or other similarly legislated multidistricts.

3. Conditions for special education reimbursement of a part-time director of special education include an enrollment of 2,000 in public and nonpublic schools within a district or group of districts cooperating to provide special education. The maximum reimbursement shall equal the ratio of the actual enrollment to 5,000 within a district or 4,000 in a group of cooperating districts, as applicable, but not less than one-half. A part-time director must be assigned duties other than direct instruction for unreimbursed time.

4. Reimbursement for the 1983-1984 through 1986-1987 school years shall be based on the 1982-1983 enrollment as reported to the State Department of Education. The enrollment year, as the basis for reimbursement, shall be changed every fourth year. When a district or cooperative has an increase or decrease in enrollment of ten percent or more, the district or cooperative shall have its reimbursement recalculated based on the actual enrollment for that year. The district must notify the State Department of Education of the increase by July 1 prior to the school year for which the adjustment is sought.

B. Assistant directors. Districts which employ full-time directors may employ and receive reimbursement for assistant directors of special education to assist in program supervision, development, coordination, and evaluation; and inservice training in the district's total special education system.

C. Other supervisory personnel. Districts may employ and receive reimbursement for supervisors to coordinate or supervise program development, evaluation, and implementation; and inservice training.

D. Variance. A district may apply to the commissioner of education for a variance from A. when:

1. the growth patterns of a district or cooperative demonstrate that the public and nonpublic school enrollment will increase over the minimum in the next two years;

2. when districts cannot efficiently cooperate due to geographical isolation; or

3. the variance will result in a decrease in combined state and local costs and better delivery of instruction and related services to pupils.

5 MCAR § 1.01233 Surrogate parent.

A. A surrogate parent is a person appointed by the providing district to ensure, by intervening on behalf of a pupil, that the rights of the pupil to a free and appropriate education are protected. The surrogate parent shall not be a person who receives public funds to care for the child. However, a foster parent may serve as a surrogate parent if appointed and if no conflict of interest exists.

B. Reasonable efforts shall be made to locate the parent. These may be made through documented phone calls, letters, certified letters with return receipts, and visits to the parent's last known address.

C. The district shall appoint the surrogate parent when:

1. the parent or guardian is unknown or unavailable; or

2. parental rights have been terminated; or

3. the pupil has reached the age of majority, continues to be eligible for public education, and is not represented by a parent.

D. The district shall consult the county welfare office before appointing the surrogate parent when a pupil is the ward of the commissioner of public wefare.

E. A surrogate parent may be removed by majority vote of the school board. The surrogate parent must be notified of the time and place of the meeting at which a vote is to be taken and of the reasons for the proposed removal. The surrogate parent shall be given the opportunity to be heard. Removal may be for any of the following reasons:

1. failure to perform the duties;

2. conflict of interest;

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3. actions that threaten the well-being of the assigned pupil;

4. failure to appear to represent the pupil; or

5. change in eligibility for special education.

F. The district shall either make the information and training available to the surrogate parent or appoint a surrogate parent who has all of the following knowledge and skills:

1. state and federal requirements;

2. district structure and procedures;

3. nature of the pupil's disability and needs; and

4. an ability to effectively advocate an appropriate educational program for the pupil.

5 MCAR § 1.01234 Suspension, exclusion, and expulsion.

A. Pupil Fair Dismissal Act. The Pupil Fair Dismissal Act shall apply to all pupils.

B. Dismissal. A pupil whose misconduct creates an immediate and substantial danger to persons or property may be dismissed for one day or less. The teacher, administrator, and parent, if available, shall hold an informal meeting by the next school day to determine whether the misconduct is related to the handicapping condition.

C. Team meeting required. A team meeting shall be held prior to a suspension, exclusion, or expulsion of a pupil. The team shall:

1. determine whether the misconduct is related to the handicapping condition;

2. review any assessments and determine the need for further assessment; and

3. review the IEP and amend the goals and objectives or develop an alternative IEP program.

D. Exclusion and expulsion. A pupil may be placed, through a team meeting and the IEP, in a more restrictive alternative but shall not be exluded or expelled when the misconduct is related to the pupil's handicapping condition. When it is determined in a team meeting or a Pupil Fair Dismissal Act proceeding that a pupil's misconduct is related to the pupil's handicapping condition, then the assessment, IEP, and least restrictive alternative shall be reviewed according to the provisions of 5 MCAR §§ 1.0120-1.0129.

5 MCAR § 1.0124 Identification and assessment procedures.

A. [Unchanged.]

B. Formal educational assessment.

1. An assessment:

a. [Unchanged.]

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

c. [Unchanged.]

2.-4. [Unchanged.]

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

A. Periodic reviews.

1. [Unchanged.]

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

3.-5. [Unchanged.]

B. Requirements for reassessment. When a ~~student~~ pupil is continued in ~~his or her~~ the 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~~ three years.

C. [Unchanged.]

5 MCAR § 1.0127 Formal notice to parents.

A. General notice provisions.

1.-4. [Unchanged.]

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.-d. [Unchanged.]

e. inform the parents that they may:

(1)-(2) [Unchanged.]

(3) obtain an independent assessment at public expense if the parent disagrees with an assessment obtained by the ~~public agency~~ district. However, a district may initiate a due process hearing to show that its assessment is appropriate after at least one conciliation conference. If the final decision is that its assessment is appropriate, the parents still have the right to an independent assessment, but not at public expense. Whenever an independent evaluation is at public expense, the criteria under which the evaulation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria which the ~~public agency~~ district uses when it initiates an evaluation.

f.-t. [Unchanged.]

6. [Unchanged.]

B.-C. [Unchanged.]

Repealer. 5 MCAR §§ 1.0120 A.3., A.4., A.6., A.7., A.8., B.1., B.2, B.3., B.4., B.5., B.6., B.7., B.8., B.9., B.10., B.11., B.12., B.13., B.14., B.17., B.18., B.19., B.20., B.21.; 5 MCAR §§ 1.0121 A.4., D.; 1.0122 C. and D.; and 1.0123 are repealed.

Effective date. 5 MCAR §§ 1.01223, 1.01224, and 1.01232 are effective for the school year beginning in 1984. The remaining rules are effective five working days after the notice of adoption is published in the *State Register*.

ADOPTED RULES

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 15.0412, subd. 4, have been met and five working days after the rule is published in the *State Register*, unless a later date is required by statutes or specified in the rule.

If an adopted rule is identical to its proposed form as previously published, a notice of adoption and a citation to its previous *State Register* publication will be printed.

If an adopted rule differs from its proposed form, language which has been deleted will be printed with strike outs and new language will be underlined, and the rule's previous *State Register* publication will be cited.

A temporary rule becomes effective upon the approval of the Attorney General as specified in Minn. Stat. § 15.0412, subd. 5. Notice of his decision will be published as soon as practicable, and the adopted temporary rule will be published in the manner provided for adopted rules under subd. 4.

Department of Administration
Building Codes and Standards Division

Adopted Rules Governing Amendments to the *State Building Code*

The rules proposed and published at *State Register*, Volume 7, Number 21, pp. 766-782 (7 S.R. 766), November 22, 1982, are now adopted without modification.

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EDU-83-001-JL

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE STATE BOARD OF EDUCATION

In the Matter of Proposed Adoption of Rules of the State Board of Education Governing Special Education, 5 MCAR §§ 1.0120-1.0127, and Repealing Parts of 5 MCAR §§ 1.0120-1.0123.

REPORT OF THE HEARING EXAMINER

The above-entitled matter came on for hearing before Jon L. Lunde, duly appointed Hearing Examiner, on Wednesday, April 13, 1983, commencing at 9:00 a.m. in the Auditorium at the Sheraton Midway Hotel, I-94 and Hamline Avenue in St. Paul, Minnesota, pursuant to a Notice of Hearing dated January 18, 1983. This was a rulemaking proceeding conducted pursuant to Minn. Stat. Ch. 14 to determine whether the Board of Education (hereinafter the "Board") has authority to adopt the rules proposed and whether they are necessary and reasonable and may be adopted.

Laura E. Mattson and Michael Bradley, Special Assistant Attorneys General, 1100 Bremer Tower, Seventh Place and Minnesota Street, St. Paul, Minnesota 55101, appeared as counsel for the Board of Education. Also appearing on behalf of the Board were Mr. Gregory Waddick, Ph.D., Assistant Commissioner, Wayne A. Erickson, Manager, Special Education Section, and Norena A. Hale, Ph.D , Assistant Manager, Special Education Section. Approximately 150 persons attended the hearing, and 112 persons signed the hearing register. The hearing continued throughout the day and until all persons present had an opportunity to be heard. Twenty written comments were filed with the Office of Administrative Hearings before the hearing was held. After the hearing, but before the expiration of the 20-day comment period authorized by the Hearing Examiner, 49 timely public comments and one comment from the Board of Education were also filed with the Office of Administrative Hearings. Five comments were filed late.

The Board of Education must wait at least five working days before taking any final action on the rules; during that period, this Report must be made available to all interested persons upon request.

Pursuant to the provisions of Minn. Stat. § 14.15, subd. 3 (1982), this Report has been submitted to the Chief Hearing Examiner for his approval. If the Chief Hearing Examiner approves the findings of this Report, he will advise the Board of actions which will correct the defects and the Board may not adopt the rule until the Chief Hearing Examiner determines that the defects have been corrected. However, in those instances where the Chief Hearing Examiner identifies defects which relate to the issues of need or reasonableness, the Board may either adopt the Hearing Examiner's recommendations to cure the defects or, in the alternative, if the Board does not elect to adopt the recommendations, it may submit the proposed rule to the Legislative Commission to Review Administrative Rules for the Commission's advice and comment. Provisions relating to this submission to the Commission may be found in Minn. Stat. § 14.15, subd. 4 (1982).

If the Board elects to adopt the recommendations of the Hearing Examiner and makes no other changes and the Chief Hearing Examiner determines that the defects have been corrected, then the Board shall submit the rule to the Attorney General for review of form and legality. If the Board makes changes in the rule other than those recommended by the Hearing Examiner, then it shall submit the rule, with the complete record, to the Chief Hearing Examiner for a review of the changes before adopting it and submitting it to the Attorney General. Procedures relating to this subsequent review by the Chief Hearing Examiner are set forth in Minn. Stat. § 14.16 (1982).

When the Board submits the rule to the Attorney General, it shall give notice on the day of submission to all persons who requested that they be informed of the submission to the Attorney General.

Based on the foregoing, the Hearing Examiner makes the following:

FINDINGS OF FACT

Procedural Requirements

1. On January 20, 1983, the Board filed the following documents with the Chief Hearing Examiner:

(a) The Order for Hearing.
(b) The Notice of Hearing proposed to be issued and a fiscal statement pertaining to the cost impact of the proposed rules.
(c) A Statement of the number of persons expected to attend the hearing and estimated length of the Agency's presentation.
(d) A certificate of the Board's resolution authorizing the holding of a rulemaking hearing.

A copy of the proposed rules was filed with the Chief Hearing Examiner on January 27, 1983.

2. On Monday, February 21, 1983, more than 30 days prior to hearing, a Notice of Hearing and a copy of the proposed rules were published at 7 State Register No. 34, pp. 1198 through 1211.

3. On February 16, 1983, more than 30 days prior to hearing, the Board mailed the Notice of Hearing to all persons and associations who had registered their names with the Board for the purpose of receiving such notice.

4. On March 21, 1983, the Board filed the following documents with the Hearing Examiner:

(a) The Notice of Hearing as mailed.
(b) The Agency's certification that its mailing list was accurate and complete.
(c) The Affidavit of Mailing the Notice to all persons on the Agency's list.
(d) The Statement of Need and Reasonableness.
(e) The names of Board personnel who will represent the Board at the hearing together with the names of any other witnesses solicited by the Board to appear on its behalf.
(f) A copy of the State Register containing the proposed rules.
(g) An Affidavit of Additional Notice.
(h) All materials received following a Notice of Intent to Solicit Outside Opinion published at 6 State Register pp. 1758-1759 on Monday, April 19, 1982, .
(i) A copy of a Notice of Public Meetings on the proposed rules published in 7 State Register, pp. 286 and 287, on Monday, September 6, 1982.

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

5. The record remained open through Tuesday, May 3, 1983, for the receipt of written comments and statements, the period having been extended by order of the Hearing Examiner to 20 calendar days following the hearing.

Background

6. In February, 1981, the School Aids Division of the Education Committee, Minnesota House of Representatives, wrote to the Department of Education expressing concern with the existing rules governing special education, and in particular, with the staff to student ratios contained in the rules. The letter requested a report on proposed amendments to be submitted by October, 1981. Proposed rules were subsequently drafted and a Notice of Intent to Solicit Outside Opinion was published in the State Register on June 29, 1981. On September 8, 1981, the Board authorized a hearing for the purpose of promulgating rules governing staff to student ratios. On November 9, 1981, the proposed rules were withdrawn because interested persons requested additional time for public input before rules were proposed.

7. During the 1982 legislative session, Minn. Laws 1982, Chapter 548, Article III, §§ 27 and 28 were adopted. These sections provide as follows:

> Sec. 27. SUPERVISION.
>
> For the 1982-1983 school year, the rules on supervisory personnel of 5 MCAR 1.0122 D., D.1., D.2., D.3., and D.4. are suspended.
>
> By February 1, 1983, the department of education shall report to the education committees of the legislature regarding the need to reinstate the rules or its recommendations for alternative rules for supervisory personnel.
>
> Sec. 28. STUDENT TO STAFF RATIOS; 1982-1983 SCHOOL YEAR.
>
> For the 1982-1983 school year, a school district may increase the student to staff ratios established pursuant to 5 MCAR 1.0122 C. by an amount not to exceed 20 percent. By February 1, 1983, the department shall report to the education committees of the legislature regarding recommendations on promulgating new student to staff rules which provide greater flexibility to school districts and which have cost containment features, including incentives for cooperation among school districts.

After enactment of the cited provisions, a series of meetings were held to develop revisions to the Board's existing rules. Based on the input received, an initial draft of the proposed revisions was prepared and additional meetings were held to consider public comments on the draft. Based on those comments, a final draft of the rule revisions was made. During this process, more than 20 meetings were held with interested persons. More than 750 persons attended those meetings, and 450 written comments were received.

8. The Association of Metropolitan School Districts takes the position that the proposed rules do not contain real flexibility and cost containment features as required under Minnesota Laws 1982, Ch. 548, Art. III. § 28. That

argument is not persuasive. The cited law does not require the adoption of rules with those features. It requires only a report to the Education Committee with the agency's recommendations on the promulgation of new staff to student ratios. Moreover, flexibility factors were included in the rules proposed here in the form of early childhood teams, multi-disability team teaching, single disability case management services, increased staff to student ratios, and variances. Provisions for cost containment and incentives for cooperation were also added to the rules. The balancing of flexibility and cost containment factors with the need for quality assurances is a difficult one involving complex policy decisions. The Board cannot give districts unrestrained flexibility to contain costs without completely abrogating its duties.

9. The proposed rules incorporate many compromises and accommodations reached during the drafting process. They are the product of a great deal of public input and represent the Board's attempt to accommodate the interests of a variety of groups directly affected by special education, such as parents, teachers, school boards and pupils. In the rules, the Board has attempted to clarify and simplify current language, to give greater flexibility to local school districts, to contain costs and to provide incentives to cooperation while maintaining compliance with federal requirements and minimal quality assurances. Parties submitting comments on the proposed rules universally praised the openness with which the rules were adopted and expressed satisfaction with the Board's attempt to accommodate all the various interests affected.

Unless specifically found to the contrary herein, the rules proposed by the agency were all shown to be a necessary and reasonable exercise of its delegated authority. The facts establishing that need and reasonableness are in the Statement of Need and Reasonableness or in evidence submitted during the hearing process.

Statutory Authority.

10. The statutory authority cited by the Board for the promulgation of the rules and rule amendments proposed in this proceeding is Minn. Stat. § 120.17, subd. 3 (1982), which provides as follows:

> Subd. 3. 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.

This mandatory language establishes a general need for the rules proposed, and unless it is specifically found to the contrary herein, the rules proposed are all within the scope of the Board's rulemaking authority as set forth in §120.17, subd. 3.

5 MCAR § 1.0120 - Policies.

11. 5 MCAR § 1.0120 A. This part currently contains the policy statements applicable to the provision of special education instruction and services to handicapped pupils. Based on recommendations made by the Revisor of Statutes, the Board is proposing to amend this part by repealing those policy statements which are covered by specific rules. Those policy statements which contain the Board's basic philosophy and which give an overview and foundation for the rules are being retained and relettered consistent with current practice.

The policy statements the Board proposes to repeal are covered by more specific rules. Since they are not necessary, and since the Revisor's office has recommended their elimination, the Board's decision to repeal them is necessary and reasonable. This decision to retain some policy statements which give an overview for the rules is not subject to a showing of need and reasonableness. These policies were previously approved. Under 9 MCAR § 2.104, an agency must only demonstrate the need and reasonableness of new language.

12. At the hearing, the Board withdrew its proposed repeal of § 1.0120 A.6. which pertains to the accountability for instruction and services. The Board felt it needed more time to assure that this policy statement is covered by specific rules before it is repealed. The decision to retain this policy statement was not subject to any adverse public comment, and is necessary and reasonable for the grounds stated. The retention of this policy statement, which will be recodified as 5 MCAR § 1.0120 D., does not constitute a substantial change for purposes of 9 MCAR § 2.111. Notice of the Board's intention to retain this policy statement was given at the commencement of the hearing and copies of that policy were made available to all interested persons.

5 MCAR § 1.01201 - Definitions.

13. 5 MCAR § 1.01201 B. This part contains 21 definitions which are currently applicable to special education. Except for the definitions of "days" and "non-discrimination", which are to be amended, all current definitions are to be repealed. Sixteen new definitions are proposed. Some of these replace current definitions: others are new. The need and reasonableness of the new definitions and the amendments proposed to two existing definitions is adequately supported by the Board's Statement of Need and Reasonableness (SONR), and other evidence in the record. Only those definitions which were subject to substantial, adverse public comment or altered by amendments the Board proposed at the hearing or during the subsequent comment period are discussed herein.

14. 5 MCAR § 1.01201 D. This part defines the "individual education program plan or IEP." The definition incorporates language contained in a policy statement to be repealed and is necessary and reasonable. Helen Kowalski, an interested parent, proposed that the definition contain a statement that the team determining pupil needs should be defined to include parents. However, as noted by the Board, such an amendment is not necessary here since parent participation in the development of the IEP is provided for in 5 MCAR § 1.0125 A.1.

15. 5 MCAR § 1.01201 H. This part contains the definition of a "management aide or aide." It was added to clarify the type of aide services that are reimbursable with special education aids. It is necessary and reasonable as proposed. However, the Minnesota Federation of Teachers (MFT), in post-hearing comments (Post-hearing Ex. 21), suggested that this part be amended so that aides may provide incidental follow-up instruction and training in conjunction with the primary responsibilities only "under the direct supervision of a teacher." Although the definition is necessary and reasonable as proposed, the Board may consider the additional language suggested by MFT in its final version of these rules.

added p. 2

16. 5 MCAR § 1.01201 J. This part defines a parent. The definition originally proposed is as follows:

> J. Parent. "Parent" or "parents" means the mother, father, legally appointed guardian, or surrogate parent for a pupil under 18 years and for a pupil 18 years old or older and under legal guardianship. It means the pupil if the pupil is 18 years old or older and not under legal guardianship. When the parents are separated or divorced, it means the parent who has the legal right, by court decree or agreement, to determine the pupil's education, even though the other parent may have custody of the pupil.

Under this definition, the pupil becomes the parent at age 18 unless that pupil is under a guardianship. Lawrence Ringer, a special education attorney for Legal Advocacy for Developmentally Disabled Persons in Minnesota (LADDPM) suggested that this definition not be adopted (Public Ex. 15). He admitted that there are many profoundly retarded adult pupils who are not under guardianship but who are not capable of making educational decisions. However, he criticized the rule because it appears to encourage the appointment of guardians. According to him, the creation of a guardianship is expensive, intimidating to parents and may deprive the adult pupil of many non-educational rights. He suggested that the Board devise a mechanism for distinguishing between adult pupils who can make decisions and those who cannot.

In order to partially resolve the problems Ringer feels are associated with guardianships, the Board now proposes to recognize conservatorships and to amend this part by adding the words "or under conservatorship of the person" after the word "guardianship" on page 3, line 5, of the proposed rules. Conservators can be appointed under Minn. Stat. § 525.54, subd. 2 (1982), and special conservators for limited purposes may be appointed under Minn. Stat. § 525.591. Although the appointment of a guaradian or a conservator may be intimidating to a parent and may involve some court costs, the rights of adult pupils cannot be limited unless those proceedings are instituted according to law. Since conservators can be appointed for a special purpose, and since any person can file a petition for their appointment, it is concluded that the definition as amended is necessary and reasonable. If an adult pupil is not capable of making informed educational decisions, an interested person will be required to file the necessary petition so that a guardian or conservator is appointed. The Board has recognized the procedures currently in existence for protecting minors and should

not and cannot set up an entirely different procedures for depriving adult pupils of their rights.

The amendment to Part J. merely recognizes the legal status of a duly appointed conservator. Since that recognition would be required even if this part was not amended, the amendment does not constitute a substantial change for purposes of 9 MCAR § 2.111. The amended definition is necessary and reasonable. ✓p.3

17. Although the definition is necessary and reasonable the language used is confusing and should be clarified. The last sentence states that the parent is the one who has the legal right to determine a pupil's education even though the other parent has custody. The word "custody" includes the right to make educational decisions concerning a child. 67A C.J.S., Parent and Child § 10. Thus, in the usual situation, the parent with the legal right to determine a pupil's education is the custodial parent. For that reason, the words "even though the other parent may have custody" are confusing. To make the definition's clearer it is recommended that this part be amended to read as follows:

> J. Parent. "Parent" or "parents" means the mother, father, guardian, conservator, or surrogate parent of a pupil under age 18. For a pupil over age 18 it means the pupil unless a guardian or conservator has been appointed, in which case it means the guardian or conservator. When the parents are separated or divorced, it means the parent who has custody of the pupil or the legal right, by court decree or agreement, to determine the pupil's education, even though the pupil may be living with the other parent.

So amended p.3 - no - not so amended

18. 5 MCAR § 1.01201 M. This part defines "recognized professional standards" as follows:

> M. Recognized professional standards. "Recognized professional standards" means reasonable principles and concepts accepted by acknowledged experts that bear a direct relationship to the particular needs of the pupil.

The language used here is identical to the definition now contained in 5 MCAR § 1.0120 B.14., which is being repealed. It is necessary and reasonable as proposed. Stan Nerhaugen, a representative of the Southeast Minnesota Special Education Directors, suggested that the professional standards of agencies be included within the scope of the definition. The Board concluded that giving agencies the power to establish such standards could be subject to abuse and determined that the proposed amendment should not be adopted. That decision is a reasonable one and within the scope of its discretion under the law.

19. 5 MCAR § 1.01201 O. This part defines "related services" as follows:

> O. Related services. "Related services" means any specially designed services not provided by regular education or special education instruction to meet the unique needs of the pupil to benefit from the educational program. This includes psychological services, social worker services, occupational therapy, physical therapy, audiology, orientation and mobility training, health services, medical services for diagnostic purposes, and other similar services.

The Minnesota School Social Workers Association (MSSWA), among others, suggested that the definition of this term be changed by deleting the words "not provided by regular education or special education instruction" and the words "psychological services, social worker services" (Post-Hearing Ex. 33). MSSWA wants psychological and social worker services to be included within the definition of "special education" so that they can "stand alone" as services which must be provided by school districts.

Since the psychological and social worker services are not instructional, and since they are not the only types of services which may stand alone, the Board refused the changes proposed. The language proposed by the Board is necessary and reasonable without the proffered amendment. There is simply no compelling reason to treat psychological and social worker services as educational services or to give them preferential treatment under the rules.

In response to numerous public comments, the Board did agree to specifically list music therapy as a related service under Part O. The rule will be amended to that extent. Music therapy is an effective teaching tool for handicapped children and the amendment specifically listing it as a related service is necessary and reasonable. The addition of music therapy is not a substantial change for purposes of 9 MCAR § 2.111. It was originally intended to be within the words "and other similar services". Clarification of that intention is not a substantial change. added p.4

20. 5 MCAR § 1.01201 P. This part defines a "resident district" as follows:

> P. Resident district. "Resident district" means the district in which the pupil's parent resides or the district designated by the Commissioner of Education. It does not mean the district in which a surrogate parent resides.

This definition is similar to the current definition in 5 MCAR § 1.0120 B.7. The Board has changed the current definition by eliminating references to the statutes which limit the Commissioner's discretion in designating resident districts and has added language to make it clear that the surrogate parent's residence is not material to a determination of the appropriate resident district. The Board decided to delete references to specific statutes in the rules where possible so that those references do not need to be changed if the statutory citations are changed. While this is convenient, it is not permissible. Under Minn. Stat. § 14.02, subd. 4, rules are required to make the laws enforced or administered specific. As has been long construed by the Attorney General's office, this section prohibits the adoption of rules giving unfettered discretion to an administrative officer. In its current form, the definition gives the Commissioner unfettered discretion to designate resident districts. This violates § 14.02, subd. 4, and constitutes a substantive violation of law for purposes of Minn. Stat. § 14.14, subd. 2. To correct this defect, the statutory references contained in the current rule must be retained. Thus, the definition could read as follows:

"Resident district" means the district in which the pupil's parent resides, if living, or his guardian, or the district designated by the Commissioner as provided in Minn. Stat. § 120.17, subds. 6 and 8a. It does not mean the district in which a surrogate parent resides.

Such an amendment would not constitute a substantial change for purposes of 9 MCAR § 2.111, would be more consistent with the language in Minn. Stat. § 120.17, subd. 6(a), and would cure the substantive defect which currently exists in the rule.

21. 5 MCAR § 1.0120 Q. This part defines "special education" as follows:

Q. Special education. "Special education" means any specially designated instruction or related services and support services to meet the unique cognitive, affective, or psychomotor needs of a pupil as stated in the IEP.

Several groups requested this part be amended to include psychological and social worker services as stand-alone services. These suggestions were made in tandem with proposed amendments to the definition of the words "related services.", supra. The amendments were proposed to make it clear that psychological and social worker services, standing alone, must be reimbursed by the State even if no other special education is needed by the particular pupil.

The Board has recognized that some related services are reimbursable but has concluded that they are not reimbursable if the pupil has no educational problems. See, Board's Post-hearing Comments, p. 4. Keith A. Kromer, Director of Special Education for the Minneapolis Public Schools, strongly objects to the inclusion of related services in the definition of special education (Post-hearing Ex. 30). Kromer believes that related services not necessarily related to the identified instructional needs of handicapped children should not be provided. He believes that service fragmentation and large cost increases will result if related services may stand alone. He would focus on a pupil's academic, instructional needs only.

To clarify the fact that both related services and support services must be provided in conjunction with special education instruction, unless otherwise specified in the rules, the Board proposes to amend this part to read as follows:

Q. Special education. "Special Education" means any specially designed instruction and related services or support services to meet the unique cognitive, affective, or psychomotor needs of a pupil as stated in the IEP.

As amended, the definition proposed is necessary and reasonable. The extent to which related services may stand alone and be reimbursed by the State is covered in 5 MCAR § 1.0121 D.11. and will be discussed in connection with that part.

5 MCAR § 1.0121 - Application.

22. 5 MCAR § 1.0121 A. This part pertains to the special education plan required of each school district. The amendments proposed to this part are primarily of a grammatical nature and simplify existing language. There were

no adverse comments on the substantive language changes made, and it is concluded that this part is necessary and reasonable as originally proposed.

Stan Nerhaugen proposed the deletion of Part A.2., which requires that the plans specify the method of providing instruction and services to handicapped pupils. The Board refused deletion of this requirement. The Board's decision to retain this requirement is not subject to a showing of need and reasonableness and must be approved. Since this requirement is found in the existing rule and was approved in a prior rulemaking hearing, its need and reasonableness need not be demonstrated anew. Under 9 MCAR § 2.104, an agency is only required to demonstrate the need and reasonableness of new language.

23. 5 MCAR § 1.0121 C. This part pertains to the annual application for program and budget approval that must be submitted to the Commissioner. Most of the amendments to this part are also of a grammatical nature and such changes are necessary and reasonable as proposed. However, the amendments to § 1.0121 C.2., which eliminate the dates when certain actions must be taken, are substantive in nature. As amended, districts are no longer required to submit their summer school application for program and budget approval by March 15, and the Commissioner is no longer required to give notice of his action thereon by May 1. The reasons for these changes is not discussed in any great detail in the SONR.

24. Keith A. Kromer stated that a date for the notification of school districts should be retained in the rule because districts need to have clarification of the Commissioner's action by a specified date. Since school districts have a need to know when the Commissioner will act on their summer school applications for program and budget approval, and since the reasons for the deletion of the dates for those actions were not stated in the SONR, it is concluded that the need and reasonableness of the deletions has not been established by an affirmative presentation of facts. This constitutes a violation of Minn. Stat. § 14.14, subd. 2 (1982).

To cure this defect, the deadlines contained in the current rule may be retained. On the other hand, if the Board determines that districts should be permitted to file applications after March 1, the March 1 deadline in the existing rule may be eliminated. However, in order to give districts notice of when action will be taken, a fixed time period would then have to be included in the rule. Thus, Part C.2. could be amended by adding the words "within 45 days" to the end of that part. This would keep the same period of time between filing and approval that currently exists (i.e., the 45-day time period between March 15 and May 1). It would also give notice to districts of the time period within which the Commissioner would act on their application. By adding 45 days to the date when their application is submitted, they would know that Commissioner action would occur. Thus, school districts would have the flexibility to file applications after March 15, and the Commissioner would have the same 45-day period for acting on those applications.

25. 5 MCAR § 1.0121 C.3. This part applies to amended applications which are needed to reflect program and budget changes occurring during the year. At the hearing, the Board proposed to amend this part to read as follows:

3. Districts which desire to apply for additional state aid because program and budget modifications are necessary to meet changing needs of pupils shall make an amended application.

so amended p. 5

The change in this part makes the filing of an amended application mandatory when districts wish to obtain additional state aids because of necessary program and budget modifications instituted to meet changing pupil needs. The new language is substantially the same as that originally proposed and was subject to no adverse comments or criticisms. The language is necessary and reasonable and does not constitute a substantial change for purposes of 9 MCAR § 2.111.

26. 5 MCAR § 1.0121 D. This part contains all new language which specifies when special education salaries qualify for state aids. The language originally proposed was not subject to adverse public comment and is necessary and reasonable.

At the hearing, the Board proposed to amend this part by renumbering subpart D.11. as D.12, and adding a new subpart D.11. to read as follows:

11. Appropriate related services provided alone or in conjunction with the instructional program; and

The language of this amendment raises issues similar to those discussed in connection with the proposed definitions of "related services" and "special education". The amendment recognizes that some related services may "stand alone". However, the language used fails to make the law specific as to when such related services are "appropriate" and leaves the administrators with unfettered discretion in determining which related services are appropriate and which are not. This violates the requirement in Minn. Stat. § 14.02, subd. 4, that rules make the law enforced or administered specific. As was mentioned, the Attorney General has consistently interpreted this statute to prohibit any language which leaves an administrator with unfettered discretion. As such, the language constitutes a substantive violation of law for purposes of Minn. Stat. § 14.14, subd. 2 (1982). To cure this defect, the Board must add language indicating what related services are appropriate and may stand alone.

language added p. 6

27. 5 MCAR § 1.0121 E. This part contains all new language permitting experimental proposals for exemptions from the Board's special education rules. While designated as an exemption it is, in fact, a variance because it is subject to agency approval and is not automatic. The Board cited no statutory authority authorizing it to grant variances from its rules. However, the Examiner takes administrative notice of Minn. Stat. § 14.05, subd. 4, which enables state agencies to grant variances from their rules. It provides:

Subd. 4. Authority to grant variance to rule. Unless otherwise provided by law, an agency may grant a variance to a rule. Before an agency grants a variance, it shall adopt rules setting forth procedures and standards by which variances shall be granted and denied. An agency receiving a request for a var-

iance shall set forth in writing its reasons for granting or denying the variance. This subdivision shall not constitute authority for an agency to grant variances to statutory standards.

Based on the general authority contained in the cited statutory provision, it is concluded that the Board has authority to grant variances from its rules for experimental proposals.

28. The Board currently has rules which permit experimental programs for general education under 5 MCAR § 1.0010. Similar rules are necessary in the special education area in order to provide additional flexibility to local school districts, and the information local districts must submit to the Board in connection with a variance request is reasonable.

The Association of Metropolitan School Districts (AMSD) admitted that variances for experimental proposals are necessary, but it challenged the reasonableness of the rules because they give school districts little flexibility to implement cost containment (Post-hearing Ex. 24). AMSD suggested that standards for quality programs should be based on student outcomes and be set by the Board, but that the means of achieving those standards should be left to local school districts.

29. The language of Part E. is necessary and reasonable as proposed. However, as indicated by AMSD, the rule, in its present form, violates the provisions of Minn. Stat. §§ 14.02, subd. 4, and 14.05, subd. 4, because it fails to specify the criteria or standards to be used in determining when a waiver will be granted. Under Minn. Stat. § 14.05, subd. 4, agencies which desire to grant variances must adopt rules and "standards" by which variances will be granted and denied. Under Minn. Stat. § 14.02, subd. 4, the rules adopted by the Board must make the laws it enforces and administers specific and must not leave unfettered discretion in administrative officers. Part E. violates both provisions because it contains no standards or criteria for the granting or denial of variance requests submitted. This constitutes a substantive violation of law for purposes of Minn. Stat. § 14.14, subd. 2. To correct this defect, new language must be added stating the standards and criteria for the approval of experimental proposals under Part E.

language added p.6

30. 5 MCAR § 1.0121 E.1. This part makes it clear that no exemptions or variances will be allowed from federal regulations and various cited portions of the Board's special education rules. This language is necessary and reasonable, but it is suggested that the rule also note that no variances to statutory standards may be granted either. The Board has cited no authority to grant variances from statutory standards, and such variances are prohibited under Minn. Stat. § 14.05, subd. 4. So that school districts are aware of this prohibition, it should be repeated in the rules.

repeated p.6

31. 5 MCAR § 1.0121 E.2.f. This part provides that the experimental proposal submitted to the Board must contain evidence that the parents whose children would be involved will be fully informed at the team meeting and will have an opportunity to approve or disapprove placement of their children in the experimental program. Helen Kowalski recommended that language should be added to this part which would preclude the placement of any child in an experimental program without the written parental consent. There is no in-

formation in the record indicating that written consent is necessary. It is sufficient that the parent has an opportunity to approve or disapprove of the placement in an experimental program. The language of this part is necessary and reasonable.

5 MCAR § 1.0122 - Facilities and Staff.

32. 5 MCAR § 1.0122 A. This part pertains to the special educational facilities and equipment school districts must provide to handicapped pupils. John L. Doman, a member of the public affairs committee of the Minnesota Council of Residential Treatment Centers, questioned the meaning of the requirement in Part A.1.a. that all facilities "be accessible." (Prehearing Ex. 10). The Department's posthearing comments indicate that the standard for accessibility is defined and covered in § 504 of the Vocational Rehabilitation Act of 1973. However, that fact may not be generally known to the public and the language of this part, as it now exists, fails to make the law enforced and administered specific for purposes of Minn. Stat. § 14.02, subd. 4. This constitutes a substantive violation of law for purposes of Minn. Stat. § 14.14, subd. 2. To correct this defect, additional language must be added to this subpart referencing the particular federal standard or regulation which defines accessibility. added p.7

The remainder of Part A. was not subject to adverse public comment, and it is concluded it is necessary and reasonable in its entirety.

33. 5 MCAR § 1.0122 B. Part B. pertains to the qualifications of special education teachers, directors and other staff members. At the hearing, the Board proposed to amend Part B.2. to read as follows:

> 2. Directors. Every director and assistant director shall hold an appropriate supervisory license for general special education or supervisory license for one or more program areas. p.7

The change in this part merely clarifies the fact that the license in one or more program areas must be a "supervisory license." This is a necessary and reasonable clarification and does not constitute a substantial change under 9 MCAR § 2.111.

34. 5 MCAR § 1.0122 B.5. Under this part, school districts must contract with persons who hold licenses issued by the Board of Teaching or the Board of Education or who meet "recognized professional standards." Andrea Canter, Ph.D., president of the Minnesota School Psychologists Association (MSPA), expressed concern with the qualifications of persons employed as independent contractors under this part. (Post-hearing Ex. 32). "Recognized professional standards" are defined in § 1.01201 M. in terms of reasonable principles and concepts accepted by acknowledged experts, which bear a direct relationship to pupil needs. The definition does not mention qualifications and appears to apply in the context of assessments conducted under 5 MCAR § 1.0124 B.3.d. Since the definition does not relate to qualifications, it is unclear which unlicensed individuals would meet "recognized professional standards" under Parts A.5. and A.4. The language fails to make the rules specific as required by Minn. Stat. § 14.02, subd. 4. This constitutes a substantive violation of

law for purposes of Minn. Stat. § 14.14, subd. 2. To correct this defect, the unlicensed related services staff and independent contractors who qualify under these subparts must be clarified. The clarification must state the qualifications these individuals must have. For example, these subparts could state that the related service staff and independent contractors shall have qualifications equivalent to those possessed by licensed personnel or have equivalent licensure from another state.

new language added — still questional

35. 5 MCAR § 1.0122 B.6. This part authorizes variances from staffing requirements for periods up to one year when:

> . . . in an emergency situation, instruction or related services must be initiated or continued and documented attempts have been made to find a licensed person.

This part is ambiguous because Parts B.4. and 5. appear to permit the hiring of unlicensed persons meeting recognized professional standards. Under this part, variances are apparently required before any unlicensed person can be hired. Furthermore, the variances are available to the qualifications imposed on teachers, directors and other supervisory personnel under Part B.1., 2. and 3., but Part B.6. contains no requirement that unlicensed persons have any special qualifications. In its present form, therefore, Part B.6. fails to make the law enforced and administered specific for purposes of Minn. Stat. § 14.02, subd. 4. In addition, this part contains no standards or criteria under which variances shall be granted or denied where teachers, directors and other supervisory personnel are concerned. Under Minn. Stat. § 14.05, subd. 4, no agency may grant a variance until it adopts rules setting forth the procedures and standards by which variances will be granted and denied. As written, this part violates that statutory mandate. As such, Part B.6. constitutes a substantive violation of law for purposes of Minn. Stat. § 14.14, subd. 2. To correct this defect, Part B.6. must be rewritten to clarify whether or not variances for independent contractors and related services staff are required when licensed persons are unavailable, and standards or criteria for the granting or denial of variances requested must be adopted.

If the Board intends to require variances whenever a licensed person is unavailable, it might consider deletion of the sentence beginning on page 8, line 8, and ending on page 8, line 11, and the last clause of Part B.5. This would solve the ambiguity mentioned, supra (Finding 34). Then, the variance provision could be amended to read as follows:

> 6. Personnel variances. A district may apply to the commissioner of education for a variance from 1. - 5. The commissioner shall grant variance for one year or less when, in an emergency situation, instruction or related services must be initiated or continued and documented attempts have been made to find a licensed person. Any unlicensed person for whom a variance is granted must have qualifications equivalent to those possessed by licensed individuals or they must be licensed in a similar category in another state.

new language added p. 8

Of course, the language concerning the qualifications unlicensed persons must possess is one that the Board in the exercise of its expertise must fashion. The language suggested here is merely an example.

36. The Minnesota Federation of Teachers questioned the need to permit variances for up to one year. With the volume of teacher lay-offs that has recently occurred, they suggested that a 30-day time period should be the maximum allowable. (Post-hearing Ex. 21). There is no evidence in the record on the availability of licensed persons throughout the state, and the fixing of time periods necessarily involves the kind of policy decisions the Board has the expertise to make. Since a one-year waiver may be necessary in remote areas of the State, or when vacancies in positions arise shortly after the commencement of the school year, it is concluded that the minimum time period selected is necessary and reasonable as written.

5 MCAR § 1.01222 - Pupils Placed for Care and Treatment.

37. 5 MCAR § 1.01222. This section pertains to handicapped pupils who are prevented from attending their usual school site for specified periods of time. It requires districts to continue the educational programs of these students, depending on the duration of their inability to attend school at their school site. Agency personnel received many prehearing comments on this section. Based on those comments, it proposed to amend Part A.1. through A.5. to read as follows:

> A. Handicapped pupil placement.
>
> 1. Services required. The district shall provide regular education, instruction, and related services in the home or a facility to a pupil who is prevented from attending the usual school site for 15 or more consecutive days or is other health impaired and is unable to attend the usual school site for 15 or more intermittent days.
>
> 2. Minimum Services. Regular education, instruction, and related services shall be provided in the home or facility as required by the pupil's IEP and to the extent that treatment considerations allow the pupil to participate. The district shall provide up to a full day of services as necessary to meet the pupil's unique needs but no less than an average of one hour of regular education, instruction, and related services for every day the pupil would otherwise attend the usual school site.
>
> 3. More than one school year. If a pupil is placed for care and treatment and it is predicted by the team that the pupil will be restricted from leaving the facility or home on a daily basis for more than one school year because of the treatment therein, the district shall provide no less than an average of three hours of regular education, instruction, and related services in the facility or home for every day the pupil would otherwise attend the usual school site. If a pupil can benefit from more than three hours of regular education, instruction, and related services, consideration shall be made for placement at a school site for the services.
>
> 4. Due process required. The district shall comply with the due process procedures of 5 MCAR §§ 1.0124-1.0129.
>
> 5. Team meeting required. The placing agency or the providing district shall hold a team meeting as soon as possible after it is determined that a pupil may be placed for care and treatment. At least the following persons shall receive written notice to attend: the person or agency placing the pupil; the appropriate administrators and staff from the providing district, the resident district and the facility; the parents; and, when appropriate the pupil. This team meeting may be held in conjunction with a meeting called by the placing agency according to Minnesota Statutes, section 124.2129, subdivision 4.

This language not used. See p.10

The new language proposed at the hearing does not constitute a substantial change for purposes of 9 MCAR § 2.111. The changes were made in response to prehearing public comments which criticized the clarity of the original language proposed, and the changes were available to the public at the hearing and subject to public comment. It should be pointed out, however, that Minn. Stat. § 124.2129, subd. 4, referenced in Part A.5, has been renumbered as Minn. Stat. § 124.2133, subd. 4. The rule should be amended accordingly.

38. 5 MCAR § 1.01222 A.1. As amended, this part requires districts to provide regular education, instruction and related services in the home or a facility if the handicapped pupil is prevented from attending the usual school site for 15 or more consecutive days, or for 15 or more intermittent days if the pupil is other health impaired. As amended, Part A.1. is necessary and reasonable because it provides for the continued education of handicapped pupils who cannot attend their usual school site. It is clear that under Minn. Stat. § 120.17, subd. 2, handicapped students must be provided with special instruction or training and services even if they cannot attend a regular school site and are at home or in a facility.

Keith A. Kromer questioned whether the word "facility" in Part A. means only residential facilities providing 24-hour care. Since this question was raised by a posthearing comment submitted the day the record closed, the agency was unable to respond. If such residential facilities are the only ones the agency has in mind, it is recommended that Part A.1 be amended to make that clear.

Paul Ratwik, an attorney for the Minnesota School Board's Association, suggested that the words "intermittent days" are confusing. He suggested that the rule be clarified by alluding only to days of anticipated absence. The agency agreed to clarify this part by deleting the words "unable to attend the usual school site" on line 5 of the amended version of Part A.1., and inserting instead the words "predicted by the team to be absent". This is a necessary and reasonable clarification and does not constitute a substantial change for purposes of 9 MCAR § 2.111.

see new language p. 10

39. 5 MCAR § 1.01222 A.2. As amended, this part makes it clear that the handicapped pupil's IEP must be followed if the pupil is prevented from attending his usual school site, and that up to a full day of services, but no less than an average of one hour for every school day the pupil is unable to attend his usual school site, must be provided. Since handicapped pupils are entitled to an appropriate education, and since that education is governed by the pupil's IEP, the language of this part is necessary and reasonable. It was generally supported by public comments received.

see new language p. 10

40. 5 MCAR § 1.01222 A.3. For pupils whose placement for care and treatment is expected to exceed 175 days, this part requires the district to provide no less than an average of three hours of regular education, instruction and related services in the home or the facility for each day the pupil would otherwise attend the usual school site. If the pupil can benefit from more than three hours daily time, the district must give consideration to placing the pupil at a school site. This part was subject to a great deal of public comment.

LADDPM's legal counsel, Lawrence Ringer, recommended that the requirements of this part should become operative whenever a pupil is placed for more than 75 days rather than the one-year (175 day) period proposed by the agency. Ringer's comments were supported by several other groups who noted that it is difficult for a team to make a prediction at an early stage of a pupil's placement, due in part to the fact that the courts frequently place handicapped pupils for care and treatment for a six-month period. The commentators generally felt that the one-year time period is much too long because it could result in a child receiving only one hour of education time for an entire school year. These commentators felt that a 75- or 90-day time period would be more appropriate. The agency rejected this proposal as too expensive and due to its belief that a pupil may keep up progress based on one hour of instruction a day for 175 days. Although a one year time period is rather lengthy, it is clear that reasonable minds could differ on the appropriate time period during which a minimum of one hour of instruction per day is sufficient. Since the agency has expertise in determining adequate educational requirements, and since its decision is based on that expertise, it is concluded that the one year time period selected by it is necessary and reasonable. An agency is not required to adopt the most reasonable rule, and when it makes policy decisions using its expertise and informed discretion, its decision must be upheld if reasonable. Its decision is reasonable in this instance.

41. John Doman expressed some confusion with the meaning of the one school year period. At the hearing, agency representatives made it clear that one school year meant 175 days, exclusive of summer school. Since this interpretation is not clear on the face of the rule, it is suggested that the words "one school year" in the body of Part A.3. be replaced with the words "175 days exclusive of summer school." p.10

The Agency may also wish to reconsider whether the instruction required by this part should be required only after the team "predicts" that the pupil will be restricted from leaving the facility or the home for more than school year. Ringer and others argued that the predictions should be one made by the pupil's physician or treatment staff rather than a prediction made by the team. Placing responsibility on the team is necessary and reasonable as proposed. It is clear that the team must make its prediction in a reasonable manner and must consider available medical evidence. When all the evidence indicates that a pupil's placement will be for more than one year, it cannot arbitrarily refuse to make the necessary prediction. Since the team is the one responsible for the pupil, and for the development of the pupil's IEP, the language proposed is reasonable.

42. 5 MCAR § 1.01222 A.5. This part requires a team meeting as soon as possible after it is determined that a pupil may be placed for care and treatment and it specifies the persons who shall receive written notice of that meeting. John Doman pointed out that requiring a team meeting prior to a pupil's placement may involve contacting representatives of up to six different districts. He felt that this was unnecessary and that this part should be amended to require the meeting after it is determined in which facility the

pupil is to be placed. The agency was persuaded by his comments and now proposes to amend Part A.5. (p. 9, line 35) to read as follows: "After a pupil has been placed for care and. . . ." This is a necessary and reasonable amendment which will result in a better I.E.P. plan. It does not constitute a substantial change for purposes of 9 MCAR § 2.111.

43. 5 MCAR § 1.01222 A.6. In response to comments made by Lawrence Ringer, the Department proposes to amend this part by deleting the words "when provided other than in a facility" on page 10, lines 9 and 10. The purpose of this change is to eliminate the possibility that a district could unilaterally change a pupil's placement without parental approval. The change in this part is necessary and reasonable and does not constitute a substantial change for purposes of 9 MCAR § 2.111.

44. 5 MCAR § 1.01222 A.8. This part pertains to state aid for special education. It provides that only the special education portion of the regular education, instruction and related services provided by a district are reimbursable with special education aid. It also provides that the cost of care and treatment for a pupil shall not be reimbursed with special education aid and is not assessable against the resident district. John Doman noted that some local school boards have chosen to use local tax dollars to pay for care and treatment beyond educational costs and that the rule should not prohibit that practice. At the hearing, agency representatives made it clear that this part does not prohibit local school districts from deciding to spend monies for the care and treatment of pupils. It is intended only to prohibit reimbursement with state aid. The agency also made it clear that even though these costs are not assessable against the resident district as a matter of law, the resident district can voluntarily pay for them.

The Department proposes to amend this part to make it clear, however, that where the district makes a placement for educational purposes, that district would be responsible for the costs involved, including the room and board expenses. To make this clear, it proposes to add the following language on page 10, line 20, after the sentence ending in the word "aid": "When placement is made by a non-educational agency, [t]he. . . ." This is a necessary and reasonable clarification of the Rule that does not constitute a substantial change for purposes of 9 MCAR § 2.111.

5 MCAR § 1.01223 - Early Childhood Program Alternatives.

45. 5 MCAR § 1.01223 C. This part establishes case loads for early childhood educational alternatives. The case loads established include a teacher and an aide. Some persons criticized the mandatory inclusion of an aide because it reduces local district flexibility. However, the record supports the agency's conclusion that both a teacher and an aide are needed in every class for the safety of the pupils involved. Consequently, it is concluded that this requirement is necessary and reasonable as proposed. The concept of having ratios is reasonable in order to have some minimal level of service the pupils will receive, and the ratios proposed by the Board were generally supported by public comments. Although some recommendations were made to change the ratios for particular groups, the classifications proposed

are reasonable. It would be surprising if any two persons would agree on the ratios applicable to each kind of handicapping condition and where reasonable minds can differ, the agency's selection is subject to deference, especially in view of the accommodations it has attempted to reach between interested groups and current financial considerations.

46. 5 MCAR § 1.01223 D. This part authorizes early childhood teams in center-based programs, to be composed of a full-time teacher, a full-time related services staff member, and a full-time aide. It permits the district to assign for one class not more than an average of eight pupils per teacher and related services staff, and not more than 16 pupils to an individual team. This part is proposed in order to give districts additional flexibility in assigning related service staff and teachers to serve as full-time partners in providing services for early childhood handicapped pupils. It is an optional alternative and does not preclude the participation of other persons for one period in the day in order to meet the needs of an individual pupil. It was generally supported by public comments and is necessary and reasonable as proposed.

5 MCAR § 1.01224 - School-Age Levels of Service.

47. 5 MCAR § 1.01224 A. This part requires that school-aged children not provided with instruction and related services in an early childhood program alternative under § 1.01223 must be provided instruction and related services in one or more of the levels specified in 5 MCAR § 1.01224 B. Under Part B., six levels of service are established. These levels replace the existing six levels found in the "continuum of placement model" under 5 MCAR § 1.0120 B.11. The levels are needed to describe the range of services required and to delineate the differences between each of the levels of service in order to specify the amount of time various handicapped pupils must receive instruction and related services. Since handicapping conditions can vary in degree, and require differing amounts of direct contact, the levels established are necessary and reasonable.

48. 5 MCAR § 1.01224 C. This part establishes, by levels of service, the maximum number of pupils that may be assigned to a teacher. It was subject to a great deal of public comment. Walter Wilson, a principal at the Holdingford Public Schools, suggested that the case loads in this part are too high and should be reduced to their pre-existing levels. (Prehearing Ex. 3). Furthermore, he stated that in determining the case loads, consideration should be given to the amount of contact time required for each student, and that instead of maximizing case loads in terms of pupil units, it should be done in terms of pupil contact hours. He felt that it was not reasonable that the student getting one hour of service each day should be counted the same as one getting two hours. Julie Brunner, speaking on behalf of the Association of Metropolitan School Districts (AMSD), made a similar argument. She noted that the financial problems faced by local school districts, coupled with the Legislature's mandate that new special education rules containing provisions for flexibility and cost containment be adopted, make the establishment of ratios inappropriate, especially in view of the fact that ratios are not mandated

under federal or state laws. She argued that student needs should determine district staffing patterns and that the ratios proposed unreasonably limit district options in service delivery patterns and staffing allocations. Mary Anderson Roberts, AMSD's Executive Secretary noted that the rules prevent districts from achieving flexibility in managing their programs and that real flexibility would result if local districts were permitted to establish their own staffing patterns based on their own students' needs. (Post-hearing Ex. 24).

49. In spite of these criticisms, the agency has made the policy decision that ratios are necessary in order to guarantee certain minimun quality assurances for the educational programming of handicapped students. Many individuals and groups supported the ratio concept on that ground. The ratios were, of course, developed after consideration of a great deal of public comment during the rule formulation process, and involved the agency's attempt to reconcile inconsistent and conflicting opinions and objectives. Agency personnel have a great deal of expertise in this area, and since it is not possible to monitor the special education programs and plans adopted in each district for each pupil, the adoption of maximum pupil to teacher ratios is reasonable. Although the Legislature has indicated that cost containment and flexibility are factors the agency must consider, it does not follow that any restrictions on a district's flexibility, or any requirements imposing costs on them should not be adopted. In the area of ratios, the agency's policy decision is subject to deference and ratios devised after lengthy public input and a bona fide attempt to resolve competing interests should not be lightly disturbed.

50. The particular staff to student ratios proposed, rather than the ratio concept itself, were also subject to criticism. Sandra Scholz, Arlene Gable and Sandra Lewandowski, who all have extensive experience in special education, criticized the ratios established for the visually impaired, hearing impaired and physically handicapped pupils in Levels 2 and 3. (Post-hearing Ex. 10). They argued that these ratios are too high when the pupils are in different schools or in different grades in the same school. Karen L. Weiss, of the Anoka-Hennepin Independent School District No. 11, whose position was reiterated by several commentators, argued that the maximum ration for hearing impaired pupils in Level 3 should be 8 rather than 18. (Post-hearing Ex. 7).

These comments and other similar ones objecting to the ratios on the grounds that they are too high were considered by the agency when the rules were formulated, and the ratios proposed were shown to be necessary and reasonable. The ratios are maximum which must be reduced under 5 MCAR § 1.01228 C., to ensure the appropriate education of handicapped pupils as delineated in each pupil's I.E.P. Since they are maximums which must be reduced when necessary, they are reasonable as proposed.

5 MCAR § 1.01225 Multi-Disability Team Teaching

51. 5 MCAR § 1.01225. This section permits a district to assign a full-time teacher and an equal number of full-time related services staff to a team

so that the team can provide instruction and related services to pupils. One teacher on each team must be licensed in the disability area of each pupil served by the team. The team member licensed in the pupil's disability area is responsible for that pupil's reassessment and IEP development and coordination, among other things. However, the pupil may receive instruction and related services from any member of the team who has "appropriate skills" as specified in the IEP. Team case loads are the same as those set out in 5 MCAR § 1.01224 C., times the number of full-time teachers assigned to the particular team involved.

Several groups objected to this part because it does not require a person licensed in the area of a particular pupil's disability to actually teach that pupil, and objected to the rules' failure to specify the nature and frequency of the contact required between the pupil and the teacher licensed in the area of that pupil's handicap. Orian Hunter, President of the Minnesota Association for Children and Adults with Learning Disabilities (MACLD) argued that the multi-disability team provision presents a poor model of services. He felt that it is not cost-effective because different disability areas have specialized techniques which teachers trained in other disability areas will be unaware. He concluded that students will, therefore, make slower progress if not taught by a person who has some expertise in the relevant disability area. He felt that it was inappropriate to assume that teachers without any special training in a particular handicap are able to teach pupils with that handicap. To cure the concerns of his organization, he suggested that the IEP of each pupil served should be required to specify the frequency with which the teacher licensed in the pupil's disability area shall consult with the teachers providing services, observe the provision of services to the pupil, be available to demonstrate appropriate methods and materials, and review data collected by those teachers. He felt that it is critical for each teacher to carefully monitor the provision of services through on-going observation, data review and demonstration, to assure the appropriate provision of services to pupils. (Public Ex. 16).

52. At the hearing, the Agency proposed to amend 5 MCAR § 1.01225 C. and E. The amendments to Part C. were proposed to insure that all services to be provided to a pupil are included in the pupil's IEP and the amendments to Part E. were proposed to clarify which case loads should be used in determining the total team case loads. As amended those parts will read as follows:

> C. Team members responsibility. The team member licensed in a pupil's disability shall be responsible for that pupil's reassessment, IEP development and coordination, periodic and annual reviews, and on-going consultation and indirect services as defined in 5 MCAR § 1.01224 B. 2. to the teacher providing instruction. The consultation and indirect services shall be included in the pupil's IEP.
>
> E. C. Case loads. The total case load assigned to the team shall not exceed the case loads at the appropriate level of service set forth in 5 MCAR § 1.01224 C., times the full-time teachers and related services staff members assigned to the team. In counting the total caseload for the team, case loads for speech and language handicapped and developmental adaptive physical education shall be ex-

see new language p. 15

p. 15

cluded. An aide or aides shall be a part of the team when designated in 5 MCAR § 1.01224 C., but shall not be counted when determining case loads for related services staff members.

The clarifying revisions to these two parts of § 1.01225 were not subject to adverse public comment and they are necessary and reasonable as proposed.

53. Although there was criticism of the rules' failure to specify the amount of direct contact a teacher licensed in the area of a pupil's disability must have with that pupil, and the cost-effectiveness of the team teaching concept, the part as proposed is necessary and reasonable. It provides local districts with flexibility in providing services to school age pupils and recognizes that pupils who are mildly handicapped have fewer distinct differences than other pupils. A number of districts have already implemented such team teaching programs under existing variances, and the practice has been successful. The team teaching model is widely accepted across the country as a desirable way to deliver appropriate programs, and permitting that model to be used by school districts will eliminate the need for them to request variances. For all these reasons the agency's decision to implement the team teaching model is subject to deference. The specific role of each team member must be included in the IEP and the possibility that unqualified teachers will teach a particular pupil should not occur if the IEP is appropriately developed. Furthermore, that is not permissible under Part D., which requires that the instruction be given by team members with appropriate skills.

However, the agency does propose to add an additional sentence to the end of Part C., requiring that the frequency and progress documentation of the specific consultation be included in the IEP as requested by MACLD and LADDPM. That sentence will read as follows:

> The frequency and progress documentation of the specific consultation and indirect services shall be included in the pupil's IEP.

p.15

This is a necessary and reasonable amendment to clarify the content of the IEP when the multi-disability team teaching model is used. It does not constitute a substantial change for purposes of 9 MCAR § 2.111.

5 MCAR § 1.01226 - Single Disability Case Management Services.

54. 5 MCAR § 1.01226. This section permits a district to assign one teacher to perform case management services for school age pupils in Levels 3, 4, 5 and 6 having the same disability. Among other things, that teacher may conduct initial screening and assessment and the development, coordination and implementation of individual IEPs. The rule permits the assignment of one case management teacher and up to five other teachers as a team, if all are licensed in the same disability area. The purpose of this rule, which implements the so-called "lead teacher concept", is to permit regular classroom teachers to have more direct contact with their pupils. A study conducted two years ago showed that teachers spend at least one hour and 10 minutes a day on case management activities. In order to permit the teacher to have more

direct instructional time, the case management services concept has been adopted so that a case manager takes over some of the non-instructional duties currently performed by teachers. The rule is necessary and reasonable for that purpose.

55. 5 MCAR § 1.01226 D. At the hearing, the Department admitted that the student to teacher ratios in this part were mistakenly calculated and, in its post-hearing comment, it proposes to strike lines 9 through 13 on page 15, and to replace it with a new Part D., to provide as follows:

> D. Case loads. The total caseload assigned to the team shall not exceed the case loads at the appropriate level of service set forth in 5 MCAR § 1.01224 C., times the full-time teachers assigned to the team.

This is a necessary and reasonable amendment which is needed to make the case-loads under this part consistent with those set forth in 5 MCAR § 1.01224 C. It does not constitute a substantial change for purposes of 9 MCAR § 2.111.

5 MCAR § 1.01228 - Pupil Performance Plan.

56. 5 MCAR § 1.01228. This section exempts a district from the Level 2, 3 and 4 ratios when a pupil performance plan is established and approved by the Board. The plan must be based on district-wide performance expectations, implement a system to measure ongoing pupil performance with individual pupil performance being reviewed monthly, and contain criteria for the modification of instruction, related services and support services to meet changing pupil needs as indicated in the performance measuring system. It was developed to give local districts flexibility to operate a results oriented system and was inserted at the request of several districts who are implementing such programs for handicapped pupils. It enables the district to determine the effectiveness of its instructional process by measuring pupil outcome.

Karen Locke, President of Teachers Concerned About Learning Disabilities, objected to this part, stating that an individual educational plan based on district-wide performance objectives is a contradiction in terms. She argued that since each student's plan is to be based on his own potential and skills, it is inconsistent that these plans conform to district-wide performance expectations (Public Ex. 14). AMSD supports the development of special education programs based on pupil performance rather than case loads, but objects to the pupil performance plan proposed as unduly prescriptive. AMSD argued that it is not reasonable to limit the plan to Levels 2, 3 and 4, or to base it on district-wide performance expectations for all handicapped and non-handicapped pupils.

57. This part is necessary and reasonable as originally proposed because it provides for flexibility by enabling a school district to determine the effectiveness of its instructional processes by measuring learner outcomes. It allows the district to relate individual instructional progress to the instructional progress of the total curriculum, and allows for a plan related to the districts' total curriculum. Since such plans are usually made for mild to moderately handicapped students, limiting it to Levels 2, 3, and 4 is necessary and reasonable.

At the hearing, the Board proposed to amend subpart 1 to read as follows:

> 1. Development of IEP's for all pupils in Levels 2, 3 and 4 based on district-wide performance expectations for all handicapped and non-handicapped pupils.

p. 16

This clarifying amendment was inserted to ensure that the district-wide performance expectations are those established for all pupils, district-wide. This is a necessary and reasonable amendment and consistent with the results orientated approch authorized. It does not constitute a substantial change for purposes of 9 MCAR § 2.111.

Karen Locke also questioned whether or not it was statistically possible to conduct any meaningful, individual pupil performance review on a monthly basis. The agency did not respond to her comment and it is urged to consider it before the rules are ultimately promulgated.

5 MCAR § 1.01229 - Considerations to be Made When Determining Ratios.

58. 5 MCAR § 1.01229 A. This part authorizes variances from the ratios in §§ 1.01223 (Early Childhood Program Alternatives), 1.01224 (School-Age Levels of Service), and 1.01226 (Single Disability Case Management Services). Variances are available for one year or less when special circumstances exist or when unanticipated special education enrollment increases occur. The Minnesota Federation of Teachers (MFT), objected to the variance rule because it does not establish clear standards for granting variances (Post-hearing Ex. 21). MFT also argued that a one year variance is too long. It recommended that variances be limited to a maximum of three students over specified ratios and that variances be limited to 30 days. AMSD voiced similar objections, arguing that the "special circumstances" standard for variances is too vague. AMSD suggested that a "reasonableness" criteria be adopted and also suggested that financial emergencies be a recognized ground for variances.

59. Under Minn. Stat. § 14.05, subd. 4, agencies must adopt rules setting forth procedures and standards by which variances will be granted or denied. The proposed "special circumstances" standard for granting a variance is not a sufficient standard for purposes of the statute. The "special circumstance" can mean anything, and leaves the decision to grant or withhold the variance to the unfettered discretion of the Board of Education. This is contrary to Minn. Stat. § 14.02, subd. 4. Therefore, Part A, in its present form, constitutes a substantive violation of law for purposes of Minn. Stat. § 14.14, subd. 2. To correct this defect, more specific standards for granting variances must be adopted. In the amended language, the rule must specify that variances "shall" be granted when the criteria are met. Once the standards are met the Board does not have discretion to deny a variance.

see new language p. 17

In its post-hearing comments, the agency notes that since financial emergencies do not justify the failure to provide adequate services to handicapped children, such emergencies cannot constitute grounds for a variance. Since it has been determined that the ratios are the maximum that should exist to provide adequate services to handicapped pupils, the agency's position is

necessary and reasonable.

60. 5 MCAR § 1.0229 B. This part provides that for purpose of the ratios in 5 MCAR §§ 1.01223, 1.01224, and 1.01226, each pupil receiving instruction shall be counted as one pupil in the teacher's caseload. This provision is necessary and reasonable because it states how pupils must be counted when one pupil is taught by two teachers, or one teacher provides services at more than one level. Walter Wilson, Principal at the Holdingford Public Schools (Prehearing Ex. 3), asked if Level 2 students who do not receive instruction would be counted. The agency did not respond to this question, but since the rules specifically states that pupils receiving instruction are counted, those not receiving instruction would not be. If this result is not intended, by the agency, this part should be clarified.

clarified p. 17

61. 5 MCAR § 1.01229 C. Under this part, a district is required to reduce ratios "accordingly" to ensure the provision of services delineated in each pupil's IEP. The reduction is required if a teacher is assigned to more than one early childhood program alternative, is assigned to pupils in more than one level of service, is serving pupils representing a significant range of severity of problems, or is providing instruction at more than one building.

Although the agency's SONR did not address the need and reasonableness of this part, the comments of Lawrence Ringer, who spoke on behalf of LADDPM (Public Ex. 15), provide a sufficent showing of its need and reasonableness. Under Minn. Stat. § 14.14, subd. 2, an agency may, in addition to its affirmative presentation, rely on facts presented by others on the record to establish the need and reasonableness of rules it proposes. LADDPM supports this provision because the ratios themselves are maximums, and the provision of service at those ratios is not permissible under federal laws if it does not result in the appropriate provision of services to handicapped pupils. LADDPM feels that this provision is needed, therefore, in order to make it clear that districts will not necessarily be in compliance with federal law simply because they are serving pupils at the ratios established in the rules. If service at a particular ratio does not result in the appropriate provision of services to handicapped pupils the ratios must be reduced. For these reasons, it is concluded that the Part C. as proposed is necessary and reasonable. This is especially true of Subpart 4, which relates to itinerant teachers. It addresses their concern that existing maximum case loads are too high for them.

62. Stan Nerhaugen (Public Ex. 19), objected to this part as too vague, particularily the language stating that the school districts shall reduce the "teacher to pupil ratio accordingly" to ensure the provision of services delineated in the pupil's IEP under the conditions specified. He also felt that the maximum ratios specified in the rules should reflect normal conditions. Sue Abderholden, speaking on behalf of the Minnesota Association for Retarded Citizens (ARC) (Public Ex. 17), suggested that the method or mechanism for reducing ratios should be specified in the rule. Without such a specification, she argued that there was no way to ensure that districts would reduce ratios when necessary.

Although the rule contains no formula for reducing rules, the agency, in its post-hearing comments, noted that it is not possible to set maximum ratios for all the various situations that may be encountered by school districts throughout the state. While agencies are required to adopt rules making the laws enforced and administered by them specific under Minn. Stat. § 14.02, subd. 4, there is a recognized exception to that mandate. In Can Mfrs. Institute, Inc. v. State, 289 N.W.2d 416, 423 (Minn. 1979), the Minnesota Supreme Court noted that where flexibility is needed rules need not be precise if it is not feasible to make them so. Similarily, in Thompson v. City of Minneapolis, 300 N.W.2d 763, 768 (Minn. 1980), the Supreme Court noted that where there are practical difficulties in drawing statutes, and where specificity is impractical due to a myriad of different fact situations that might be encountered, less specificity is required. Since the need for the reduction of ratios will vary from case to case, and since there is such a great factual variety among the various school districts and the situations that may be encountered, the failure of the rule to specify a particular formula or methodology for reducing ratios is permissible. Since the rule states the circumstances which may require the reduction in ratios, it is adequate in its present form.

63. However, the words "reduce the teacher to pupil ratio accordingly", which Nerhaugen objected to, should be clearer and the particular ratios which must be reduced should be specified. It is recommended that the word "accordingly" in the first clause of Part C., be replaced with the words "to the extent necessary." It is also recommended that the word "ratio" (page 16, line 4) be made plural, and be followed by a citation to the sections of the rule containing the ratios that may need to be reduced in the circumstances listed.

So amended p. 17

All the rule apparently requires is that school districts consider the need to reduce ratios in specific circumstances, and to reduce those ratios to the extent necessary to ensure the adequate provision of services to handicapped pupils.

5 MCAR § 1.01232 - Supervision.

64. 5 MCAR § 1.01232 A.1. Under this part, every school board must employ a director of special education. They may fulfill this requirement singly or cooperatively with other districts. The mandatory employment of a special education director is necessary and reasonable because of the complexity of special education laws, the time involved in maintaining familiarity with those laws, and the fact that regular education personnel are not trained in the problems and programming needed for handicapped pupils. The need and reasonableness of this requirement is reflected in the comments of Glenn Matejka, Superintendent of the Hutchinson Public Schools. He noted in part (Public Ex. 2):

> Since the inception of special education, state and federal laws have mandated educational programs and service for the handicapped. These laws and guidelines are extremely complicated and are constantly changing in scope and in inter-

> pretation. These laws have also been designed to serve a population (the handicapped) that had not been served very well prior to the mandated law. The amount of time involved in establishing programs, in developing budgets for programs, and evaluating the quality of programs, and in staff selection and evaluation to meet the needs of each handicapped individual, makes it virtually impossible for school administrators to maintain adequate programs without the assistance of a well trained full-time special education director as outlined in this proposed state plan.

Therefore, even though several persons suggested that the employment of special education directors be optional in order to promote district flexibility and cost containment, the decision to require the employment of such a director is necessary and reasonable.

65. Kathryn Beebe, Chairperson of the Developmental Disability Task Force for the Metropolitan Health Planning Board of the Metropolitan Council, in her post-hearing comments (Post-hearing Ex. 6), stated that organization's concern with the cooperative employement of a single director by a large number of school districts. She stated that the difference between districts require special attention and in-depth knowledge. Consequently, if one director serves a large number of school districts, superficial direction may result. Therefore, she recommended that directors be required to be employed at least 50 percent of the time in special education and that they have a maximum number of school districts, not to exceed 15 administrative units, and that they have a specified number of pupils under their jurisdiction. Her comment involves policy considerations that must be evaluated by the agency and it is urged to consider her comments before promulgating its final version of these rules.

66. 5 MCAR § 1.01232 A.2. This part contains the conditions for reimbursement of full-time directors of special education. It was subject to no adverse public comments and it is concluded, based on the agency's SONR, to be necessary and reasonable as proposed.

67. 5 MCAR § 1.01232 A.3. This part specifies conditions for reimbursement of part-time directors of special education. Virgil Likness, Superintendent of the Madison Public Schools, suggested that any special education cooperative consisting of five districts should qualify for a half-time director (Public Ex. 5). The agency was persuaded that Likness recommendation should be adopted. In its post-hearing comments, it proposes to add on page 17, line 2, after the words "special education" the following language: ", or any cooperative having between five and seven districts cooperating to provide special education to a host district, joint powers agreement, or educational cooperative service unit." This is a necessary and reasonable provision and does not constitute a substantial change for purposes of 9 MCAR § 2.111.

added p 18

68. 5 MCAR § 1.01232 A.4. There is a typographical error in this part which pertains to reimbursement for the 1983-84 school year. The agency proposes to correct this error by replacing the numbers "1983-1984" on page 17, line 8, with the numbers "1984-1985." The correction of this error would be necessary and reasonable.

✓ p.18

69. 5 MCAR § 1.01232 C. This part makes the employment of supervisors to coordinate or supervise in-service training and program development, eval-

uation or implementation optional. The decision to make the employment of such supervisors optional resulted from a policy decision that districts and cooperatives should have the flexibility to determine their own needs for such positions. Existing agency rules require that supervisors be employed. These rules were suspended for the 1982-1983 school year under Laws of Minnesota 1982, Ch. 548, Article 3, Section 27.

The Twin Cities Society for Autistic Children, Inc., expressed disappointed in the lack of mandated supervisors (Post-hearing Comment 17). Renee Moen, its representative, stated her feeling that supervisors are a vital link between the teaching staff and district management. The same position was taken by the Special Education Advisory Council (Public Ex. 26). Although a supervisor may be a helpful and important addition to a district's staff, the agency's decision to permit local districts to make that decision in order to promote flexibility is necessary and reasonable, and involves the kind of policy decisions it is particularly suited to make.

Marcia Carthaus, speaking on behalf of the Minnesota Admistrators of Special Education (MASE), supported the agency's decision to make supervisors optional for the 1983-1984 school year. However, she believes that supervisors are necessary and after the 1983-1984 school year they should be required.

70. The rules proposed by the agency are the result of many compromises between competing interests and groups. Carthaus' comments suggest that there may be some agreement by the agency to make the employment of supervisors optional with the local districts only during the 1983-1984 school year. However, under Part C., as proposed, the employment of supervisory personnel is optional and will remain so until such time as the rule is changed. Under the rules (Page 21, lines 18 and 19), the provisions of § 1.01232, are effective for the school year beginning in 1984. It appears, therefore, that instead of making the employment of a supervisor optional only for the 1983-84 school year, that the employment of such supervisors becomes optional for the 1984 school year and will remain so after that date. And, as a result of the proposed repeal of 5 MCAR § 1.0122 D., the employment of a supervisor will also be optional during the 1983-1984 school year. If this is not the agency's intention, the permissive word "may" on page 17, line 23, should be replaced with the mandatory word "shall."

71. 5 MCAR § 1.01232 D. This part permits a variance from the provisions of Part A. This part is necessary and reasonable because it allows variances from the requirement for the employment of directors in cases where the districts are growing significantly or are so geographically isolated that cooperative services are not feasible. It also allows flexibility to districts by permitting proposals to decrease state and local costs. However, the rule should be clarified. In its present form, districts may apply for variances from any of the provisions of Part A. However, it appears that the only variance intended is a variance from the provisions of part A.1. If the Department intends only to permit variances from the employment of directors under Part A.1., the rule should be amended to specifically say that by replacing the letter "A." on page 17, line 28, with "A.1.".

72. The Department's SONR (p.19), describing the need and reasonableness of this part indicates that variances are available only to districts that are growing significantly or which are so geographically isolated that cooperative services would not be feasible, provided that the granting of the variance will result in decreased costs and better delivery of instruction and related services to pupils. However, the language of the rule itself permits variances for any of the three grounds listed, and does not limit it to those districts which are rapidly growing or who are geographically isolated. It is recommended, therefore, that the agency examine the language of this part to make sure it properly states the agency's intention.

73. Under Minn. Stat. § 14.02, subd. 4, rules promulgated by agencies must make the law enforced or administered by them specific. Under this provision, language which leaves an administrator with unfettered discretion is not permissible. In its present form, Part D., leaves unfettered discretion with the Commissioner of Education, because it fails to specify that variances shall be granted when the conditions are met. This constitutes a substantive violation of law for purposes of Minn. Stat. § 14.14, subd. 2. To correct this defect, this part must be rewritten to make the issuance of variances mandatory when the conditions for granting it exist. The rule could be rewritten by deleting lines 27 and 28 on page 17 and replacing them with the following:

> D. Variance. A district may apply to the commissioner of education for a variance from the mandatory employment of a director. The commissioner shall grant a variance from A.1., when:
>
> * * *

p.19

5 MCAR § 1.01233 - Surrogate Parent

74. 5 MCAR § 1.01233 A. This part identifies a "surrogate parent" as the person appointed by a district to protect the rights of handicapped pupils. The surrogate parent appointed cannot be a person who receives public funds to care for the child, but may be a foster parent if the foster parent is appointed and no conflict of interest exists.

The current rule regulating the appointment of surrogate parents is found at 5 MCAR § 1.0123. That rule has proven to be inadequate to protect pupils because it only requires the local district to contact welfare agencies and suggest to them that a guardian be appointed for a pupil. Current practice has been to name county social workers as the surrogate parent, but it frequently happens that the social worker does not participate in educational decisions or attend school conferences. In other states, school districts have been required to make the selection of surrogates to represent handicapped pupils. For these reasons, it is concluded that Part A. is necessary and reasonable in order to provide for the appointment of a surrogate parent to represent the interests of handicapped children. The decision to require that no conflicts of interest exist is consistent with with federal laws and permitting foster parents to act as the surrogate is a sensible one.

75. 5 MCAR § 1.01233 C. This part requires the district to appoint sur-

rogates when: (1) the parent or guardian is unknown or unavailable, (2) parental rights have been terminated, or (3) when the pupil has reached the age of majority and continues to be eligible for public education but is not represented by a parent. The requirement to appoint surrogates in the situations specified is necessary and reasonable as proposed. However, the recommendation of the Minnesota Governor's Planning Council on Developmental Disabilities (Post-hearing Ex. 8), that conservators be specifically mentioned in this part should be adopted. Such an amendment is consistent with the amended definition of the word "parent" proposed by the agency in its post-hearing comments.

so amended p-19

76. Both ARC (Public Ex. 17) and LADDPM (Public Ex. 15), recommended that Part C., be amended by adding a new Subpart 4 to read as follows:

> 4. the parent requests in writing the appointment of a surrogate parent; such request may be revoked in writing at any time.

added p.20

Lawrence Ringer, speaking on behalf of LADDPM, noted that many districts have informally followed the practice of appointing surrogates at parental request, and he took the position that his amendment would also help clarify when a parent is unavailable. The agency took no position on this proposal in its post-hearing comments and is urged to do so. Since this is the current practice in many districts, and since there is no evidence in the record that this would pose any particular problems, it would be necessary and reasonable if adopted.

77. Julie Brunner, speaking on behalf of AMSD, questioned the reasonableness of the district's responsibility to appoint a surrogate parent. She felt that placement of that responsibility on the district is unreasonable because it exposes the district and the individual appointed to potential liability under the legal principles related to breach of fiduciary duty, conflict of interest, negligence, and respondeat superior. For that reason, Brunner suggested that the Board establish standards which would limit the potential liability of the surrogate parents and the various school boards. The Hearing Examiner is not persuaded that the potential liability of a school district or a surrogate parent under applicable legal doctrines renders the rule unreasonable. The Board has the authority to require school districts to perform specified activities relating to special education. It has decided that school districts are in the best position to appoint surrogates and has placed that responsibility on them. This is a reasonable exercise of its authority, even though it may subject the districts to liability if that responsibility is not appropriately carried out. Furthermore, it appears that the rule does contain standards which can be used by the school board and the surrogate parents themselves. Those standards are contained in 5 MCAR § 1.01233 E., which specifies the causes for the removal of a surrogate. Implicit in this part is the requirement that surrogates do not engage in behavior constituting grounds for their removal.

78. 5 MCAR § 1.01233 E. This part pertains to the removal of surrogate parents. It authorizes the school board of the applicable district to remove

a surrogate by majority vote after notice and an opportunity to be heard. The grounds for removal are specified in the rule. They include a conflict of interest, actions that threaten the well-being of the assigned pupil, the failure to represent the pupil, or the failure to perform "the duties."

LADDPM suggested that this part should be amended to provide that the school board's decision to remove a surrogate may be appealed to the Commissioner of Education. The agency has rejected this proposal because the rule sets out specific reasons for removal of a surrogate and has decided abuses of the provision can be more economically investigated through the monitoring section of the Department of Education, rather than through expensive and time-consuming contested case procedures which are not funded by the Legislature. It is concluded that the failure to provide appeal rights to the Commissioner is necessary and reasonable at this point, and that the agency is not required to adopt LADDPM's suggested amendment. If abuses are discovered after the rule is promulgated, the agency can always take corrective action by adopting specific appeal rights to the Commissioner if found to be needed.

79. Paul Ratwik, who appeared on behalf of the Minnesota School Boards Association, questioned whether school boards should be directly involved in the appointment or removal of surrogate parents. During the formulation of the rules, the agency determined that school boards would provide greater protection from arbitrary action in the removal of surrogate parents than school personnel. In placing this responsibility on local school boards, the agency attempted to compromise the position of parents, who wanted an appeal to the State Board of Education, and the position of districts, which wanted a decision made by the special education director. Based on these factors, it is concluded that the agency's decision to place this responsibility on the school board is necessary and reasonable as proposed.

However, since the school board is the entity that must remove a surrogate, it is suggested that the agency consider whether the school board should be specifically designated as the entity responsible for appointing the surrogate parent under § 1.01233 A.

80. Ratwik also questioned whether the removal of surrogate parents would be subject to the Minnesota Open Meeting Law, Minn. Stat. § 471.705, subd. 1, which requires all school board meetings to be open, except as otherwise expressly provided by statute. In his opinion, this would require removal proceedings regarding surrogate parents to be open to the public, and would result in the disclosure of the pupil's program of education. The Department disagrees, noting that the hearing can be closed under the provisions of the Minnesota Government Data Practices Act, Minn. Stat. § 13.32, subd. 3 . Under that statute, educational data is private data on individuals and may not be disclosed except in limited circumstances. It appears, therefore, that hearings on the removal of surrogate parents are not required to be open to the public under the Open Meeting Law while private educational data is being discussed.

81. The language of Part E.1., specifies that one of the grounds for surrogate parent removal is the "failure to perform the duties." This language fails to make the law enforced and administered specific for purposes of Minn.

Stat. § 14.02, subd. 4., and constitutes a substantive violation of law for purposes of Minn. Stat. § 14.14, subd. 2., because it is unclear what duties are involved. To correct this defect, this subpart must be clarified. That can be done by listing the duties of the surrogate parent that must be performed or by referencing the federal regulation, if any, which describes those duties. Also, it is suggested that the federal regulation regarding conflicts of interest be referenced in Subpart 2.

clarified p. 20

82. 5 MCAR § 1.01233 F. This part requires the district to make information and training available to surrogate parents, or to appoint a surrogate parent who has the knowledge and skills specified. This is a necessary and reasonable provision for ensuring that surrogates will properly perform their duties. AMSD objected to this part because it imposes extensive and comprehensive requirements on school districts. As an alternative, Julie Brunner suggested that the Department of Education should develop and conduct training programs for surrogate parents throughout the state. In its post-hearing comments, the agency rejected this suggestion. It is not cost-effective in a large state like Minnesota, and it is difficult to time such training to meet the needs of a constantly changing group of individuals throughout the state. Its decision is necessary and reasonable. The Department of Education is currently developing a training packet which will be available for school districts to use for training purposes, that should help ease the burdens AMSD mentioned.

5 MCAR § 1.01234 - Suspension, Exclusion and Expulsion

83. 5 MCAR § 1.01234. This section pertains to the suspension, exclusion and expulsion of handicapped pupils. It provides that the provisions of the Pupil Fair Dismissal Act, Minn. Stat. § 127.26, et seq. (1982), apply to all pupils. As originally proposed, it contained separate provisions for dismissals, team meetings, and the exclusion or expulsion of students. At the hearing, several groups urged that this section be clarified and made consistent with federal regulations. Based on the comments of Paul Ratwik, counsel for the Minnesota School Boards Association, the agency now proposes to amend this part. Part A, will be amended by adding the following sentence to the end of that part:

not so amended p. 21 - see FoF 23

> Pupils may also be suspended for one day or less for the same reasons allowed for a longer suspension pursuant to the Pupil Fair Dismissal Act.

This amendment is necessary to clarify the original intent of the rules and as amended, Part A., is necessary and reasonable.

The agency also proposes not to adopt Part B., pertaining to dismissals, as Ratwik suggested. This deletion is necessary and reasonable to clarify the meaning of the rule. Finally, the agency proposes to remove from Part C. (page 19, line 17) the words "a suspension" and to add at the end of the first sentence of Part C., an additional sentence to read as follows: "Within five school days of a suspension, a team meeting shall occur." The five day period was selected because that is the generally accepted cutoff

deleted p. 21

added p. 21

time for less significant suspensions under the Pupils Fair Dismissal Act. This section as amended by the agency in response to public comments is necessary and reasonable and none of the changes are substantial for purposes of 9 MCAR § 2.111.

84. 5 MCAR § 1.0122 C. MACLD expressed concern with the repeal of 5 MCAR § 1.0122 C.3.a., which requires that handicapped pupils receive special education service for a minimum of one hour per day. It suggested that the minimum of one hour a day of special education services be retained in elementary schools and a constant clock hour model be identified as a minimum at the secondary levels. Since Level 3 students by definition have from zero to one-half day of direct special education services, the agency has determined that MACLD's suggestion should not be adopted, and that the specific needs of each student be determined by the team reproach and the IEP. The agency noted that the one hour limitation would prevent the Department from having a full continum of services as required by federal law and that the 60-minute nature of an hour requirement causes scheduling problems for all districts that use periods of less than 60-minutes duration. For these reasons, it is concluded that the proposed repeal is necessary and reasonable.

The remainder of the rules proposed by the agency, including the repealors were not subject to adverse to public comment and are necessary and easonable.

85. The agency has indicated that it failed to include the repeal of 5 MCAR § 1.0122 C., effective for the school year beginning in 1984 on page 21, line 18. As a result of this omission, the rules proposed would create a one-year gap between the current student teacher ratios and those proposed in these rules. The agency wishes to correct the omission by adding the repeal of 5 MCAR § 1.0122 C., to those sections listed on page 21, line 18. Although this admission was discovered after the close of the record, the agency may proceed to make the necessary correction as they propose to do with respect to the typographical error in the school year designated on page 17, line 8.

added p. 23

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

CONCLUSIONS

1. That the State Board of Education gave proper notice of the hearing in this matter.

2. That the State Board of Education has fulfilled the procedural requirements of Minn. Stat. § 14.14, subds. 1 and 2 (1982) and all other procedural requirements of law or rule.

3. That the State Board of Education has demonstrated its statutory authority to adopt the proposed rules and has fulfilled all other substantive requirements of law or rule within the meaning of Minn. Stat. §§ 14.05, subd. 1, 14.15, subd. 3 and 14.50 (i) and (ii) (1982), except as noted at Findings 20, 26, 29, 32, 34, 35, 59, 73 and 81.

4. That the State Board of Education has documented the need for and reasonableness of its proposed rules with an affirmative presentation of facts

in the record within the meaning of Minn. Stat. §§ 14.14, subd. 2 and 14.50 (iii) (1982), except as noted at Finding 24.

5. That the amendments and additions to the proposed rules which were suggested by the State Board of Education after publication of the proposed rules in the State Register do not result in rules which are substantially different from the proposed rules as published in the State Register within the meaning of Minn. Stat. § 14.15, subd. 3 (1982) and 9 MCAR §§ 2.110 A. and 2.111 (1980 Ed.).

6. That the Hearing Examiner has suggested action to correct the defects cited in Conclusions 3 and 4 as noted at Findings 20, 24, 26, 29, 32, 34, 35, 59, 73 and 81.

7. That due to Conclusions 2 and 3, this Report has been submitted to the Chief Hearing Examiner for his approval pursuant to Minn. Stat. § 14.15, subd. 3 (1982).

8. That any Findings which might properly be termed Conclusions and any Conclusions which might properly be termed Findings are hereby adopted as such.

9. That a finding or conclusion of need and reasonableness in regard to any particular rule subsection does not preclude and should not discourage the State Board of Education from further modification of the proposed rules based upon an examination of the public comments, provided that no substantial change is made from the proposed rules as originally published, and provided that the rule finally adopted is based upon facts appearing in this rule hearing record.

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

RECOMMENDATION

It is hereby recommended that the proposed rules be adopted except where specifically otherwise noted above.

Dated this 1st day of June, 1983.

JON L. LUNDE
Hearing Examiner

Reported: Taped.

EDU-83-001-JL

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE STATE BOARD OF EDUCATION

IN THE MATTER OF PROPOSED ADOPTION OF RULES OF THE STATE BOARD OF EDUCATION GOVERNING SPECIAL EDUCATION, 5 MCAR §§ 1.0120-1.0127, AND REPEALING PARTS OF 5 MCAR §§ 1.0120-1.0123.

ORDER OF THE CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on April 13, 1983, before Jon L. Lunde, a Hearing Examiner of the State Office of Administrative Hearings, on the above-entitled matter in compliance with the rule-making provisions of Minn. Stat. Ch. 14 (1982); and

WHEREAS, the Report of Hearing Examiner made pursuant to Minn. Stat. § 14.50, was issued to the Board of Education and;

WHEREAS, the Board of Education has now determined to adopt rules; and

WHEREAS, the Board of Education has submitted said rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. §§ 14.16, 14.51, and 9 MCAR § 2.111; 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 cured the defects in the rule as required.

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 of Education to the Attorney General and to publish in the State Register if approved by the Attorney General.

Dated: August 8th, 1983.

DUANE R. HARVES
Chief Hearing Examiner

EDU-83-001-JL

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE STATE BOARD OF EDUCATION

In the Matter of Proposed Adoption of Rules of the State Board of Education Governing Special Education, 5 MCAR §§ 1.0120-1.0127, and Repealing Parts of 5 MCAR §§ 1.0120-1.0123.

REPORT OF THE CHIEF HEARING EXAMINER

The above-entitled matter came on for review by the Chief Hearing Examiner pursuant to the provisions of Minn. Stat. § 14.15, subds. 3 and 4 (1982) which provide in part:

> If the [hearing examiner's] report contains a finding that the proposed rule is substantially different from that which was proposed at the public hearing, or that the agency has not met the requirements of sections 14.13 to 14.18 it shall be submitted to the chief hearing examiner for approval. If the chief hearing examiner approves the finding of the hearing examiner, he shall advise the agency of actions which will correct the defects, and the agency shall not adopt the rule until the chief hearing examiner determines that the defects have been corrected. If the chief hearing examiner determines that the need for and reasonableness of the rule has not been established pursuant to section 14.14, subdivision 2, and if the agency does not elect to follow the suggested actions of the hearing examiner to correct that defect, then the agency shall submit the proposed rule to the legislative commission to review administrative rules for the commission's advice and comment. The agency shall not proceed to adopt the rule until it has received and considered the advice of the commission; provided, that the agency is not required to delay adoption longer than 30 days after the commission's receipt of the agency's submission.

Based upon a review of the record in this proceeding, the Chief Hearing Examiner hereby approves the Report of the Hearing Examiner in all respects.

In order to correct the defects enumerated by the Hearing Examiner, the agency shall either take the action recommended by the Hearing Examiner or reconvene the rule hearing if appropriate. If the agency chooses to reconvene the rule hearing, it shall do so as if it is initiating a new rule hearing, complying with all substantive and procedural requirements imposed on the agency by law or rule.

If the agency chooses to take the action recommended by the Hearing Examiner, it shall, prior to submitting the rules to the Attorney General for review, submit to the Chief Hearing Examiner a copy of the rules as initially published in the State Register, a copy of the rules as proposed for final adoption in the form required by the State Register for final publication, and a copy of the agency's Findings of Fact and Order Adopting Rules. The Chief Hearing Examiner will then make a determination as to whether the defects have been corrected and whether the modifications in the rules are substantial changes.

Should the agency make changes in the rules other than those recommended by the Hearing Examiner, it shall also, prior to submitting the rule to the Attorney General, submit the complete record to the Chief Hearing Examiner for a review in regard to substantial changes.

Dated: June 2nd, 1983.

DUANE R. HARVES
Chief Hearing Examiner

State of Minnesota
State Board of Education
Department of Education

Before Jon L. Lunde
Hearing Examiner
Office of Administrative
Hearings

In the Matter of Proposed Adoption of Rules of the State Board of Education Governing Special Education 5 MCAR ss 1.0120 - 1.0127 and Repealing parts of 5 MCAR ss 1.0120 - 1.0123

Findings of Fact and Conclusions:

The above entitled matter came on for hearing before Jon L. Lunde, Hearing Examiner, on Wednesday, April 13, 1983, at 9:00 a.m. in the Auditorium at the Sheraton Midway Hotel, I-94 and Hamline Avenue in St. Paul, Minnesota, after proper notice as required by Minnesota Statute, Chapter 14 was served upon all persons, associations, and other interested groups registered with the State Board of Education 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, the State Board of Education finds that the Findings of Fact of the Hearing Examiner accurately reflect the facts in the record.

NOW THEREFORE, BE IT IS RESOLVED that the State Board of Education accepts as its own, rejects or modifies the Report of the Hearing Examiner dated June 1, 1983, relative to the above entitled matter as set forth below:

1. The State Board of Education accepts the findings contained in sections 1 through 14, 16, 18 through 19, 21, 22, 25, 27 through 28, 31, 33, 36 through 37, 39 through 40, 42 through 56, 61 through 64, 66 through 69, 77 through 78, 80 and 82 through 84 of the Hearing Examiner's Report.

The State Board of Education accepts the remaining sections of the Hearing Examiner's Report, except as rejected or modified below.

2. Section 15 refers to the definition of a "management aide or aide." The Board finds the Hearing Examiner's recommendation needed and reasonable and proposes the amendment "and under the direct supervision of a teacher" be included at the end of the last sentence of the definition.

3. Section 17 refers to the definition of "Parent". The Board rejects the proposed amendment on the basis that it makes an assumption of rights which the rule was intended to overcome. Instead, the Board proposes that this part be amended as follows to avoid confusion:

> J. Parent. "Parent" or "parents" means the mother, father, guardian, conservator, or surrogate parent of a pupil under age 18. For a pupil over age 18, it means the pupil unless a guardian or conservator has been appointed, in which case it means the guardian or conservator. When the parents are separated or divorced, it means the parent who has the legal right, by court decree or agreement, to determine the pupil's education, even though the pupil may be living with the other parent.

4. Section 20 refers to the definition of "resident district." The Board accepts the Hearing Examiner's recommendation with regard to paragraph 20 with the exception of amending the word "his" to "the" in order to avoid any language which may appear discriminatory.

Thus, the definition would read as follows:

> "Resident district" means the district in which the pupil's parent resides, if living, or the guardian, or the district designated by the commissioner as provided in Minn. Stat. s 120.17, subds. 6 and 8a. It does not mean the district in which a surrogate parent resides.

5. Sections 23 and 24 pertain to the annual application for program and budget approval that must be submitted to the Commissioner. The Board finds the Hearing Examiner's recommendation to add the words "within 45 days" to the end of 5 MCAR s 1.0121 C.2. as needed and reasonable.

6. Section 26 contains language which specifies when the salaries for special education personnel qualify for state aid. The Board finds the Hearing Examiner's recommendation to "add language indicating what related services are apporpriate and may stand alone" as needed and reasonable. The Board, therefore, proposes to retract the amendment D.11. submitted at the hearing, renumber the original D.11. as D.13. and add the following amendments to 5 MCAR s 1.0121 D.:

11. School psychological services and school social worker services provided alone or in conjunction with the instructional program;
12. Other related services provided in conjunction with the instructional program;

7. Section 29 refers to experimental proposals for exemptions from the Board's special education rules. The Board accepts the Hearing Examiner's directive that "new language must be added stating the standards and criteria for the approval of experimental proposals under Part E" and proposes that language from 5 MCAR s 1.0010 A. Experimental Programs be included also in 5 MCAR s 1.0121 E.3. This is the criteria and standards currently used to approve experimental programs in elementary schools: These criteria and standards would also apply to special education programs and is, therefore, incorporated in 5 MCAR s 1.0121 E.1. below. This is a situation where flexibility in rules is needed since it is not feasible to determine, under present conditions, all of the local experimental proposals which might be submitted. Section 30 also refers to experimental proposals. The Board finds the Hearing Examiner's suggestion to add a reference to statutory standards as needed and reasonable and therefore, proposes the following amendments regarding statutory standards and criteria and standards to 5 MCAR s 1.0121 E.1.:

1. The State Board of Education shall approve or disapprove a district's experimental proposal for exemption from its rules. No exemption shall be given from federal regulations, Minnesota Statutes, 5 MCAR ss 1.0122 B.1 and 1.01225 B. A proposal shall be designed to accomplish at least one of the following:
   a. improved instructional quality;
   b. increase cost effectiveness; or
   c. make better use of community resources or available technology.

8. Section 32 pertains to the special education facilities school districts must provide to handicapped pupils. The Board accepts the recommendation to reference the particular federal standard or regulation which defines accessibility and proposes to add the following language to 5 MCAR s 1.0122 A.1.a.:

a. be accessible <u>as defined in 34 C.F.R. 104.</u>;

9. Section 34 pertains to licensure of personnel when a district contracts for services. The Board agrees that there is a need for clarification of personnel qualifications under contracts for services. However, the Board does not accept the example as some related services are not licensed by either the Board of Teaching nor the State Board of Education and other states do not have the requirement either. The following language is therefore proposed for 5 MCAR s 1.0122 B.5 to clarify and alleviate this concern:

> 5. Contracts. When contracting for assessments, instruction, or related services, a district shall contract with personnel who hold licenses issued by the Board of Teaching or State Board of Education. If either Board does not issue a license for a necessary related service, the district shall contract with personnel who are members in good standing of professional organizations which regulate the conduct of its members and set standards for that profession.

10. Section 35 refers to the authorization of personnel variances from staffing requirements. The Board finds it needed and reasonable to clarify the conditions for granting personnel variances. The Board wishes also to specify that personnel variances are not given for related services or contracts for service because in most situations personnel are licensed by boards other than the Board of Teaching or the State Board of Education. The proposed language for 5 MCAR s 1.0122 B.6. is as follows:

> 6. Personnel variances. A district may apply to the Commissioner of Education for a variance from 1.-5.3. with regard to its employees for one year or less when: ~~in-an-emergency-situation,-instruction-or-related services-must-be-initiated-or-continued-and-documented attempts-have-been-made-to-find-a-licensed-person.~~
>
> a. the district has made documented attempts to employ an appropriately licensed person and none are available, and
>
> b. the person who will be employed holds any license issued by the Board of Teaching or the State Board of Education.

11. Section 38 pertains to pupils placed for care and treatment. The Board did not intend that the word facility refer only to residential facilities for 24 hour care and treatment. There are handicapped pupils placed in foster homes who attend a facility as Level 5 placements. Therefore, the recommendation to consider changing the word facility to residential facility is not accepted.

12. Section 41 refers to confusion with the meaning of "one school year." The Board finds the Hearing Examiner's recommendation to define "one school year" in the body of 5 MCAR s 1.01222 A.3 as needed and reasonable. To accomplish this, with clarity and without changing the substance, the Revisor of Statute's Office recommends and the Board proposes rewording the section and the two preceeding sections as follows:

1. When district services required. A district must provide regular education, instruction, and related services in a facility or home to a pupil placed there for care and treatment. The services must be provided to a pupil who is:

a. prevented from attending the usual school site for 15 consecutive days; or

b. other health-impaired and predicted by the team to be absent from the usual school site for 15 intermittent days.

The services must be provided as required by the pupil's IEP, and to the extent that treatment considerations allow the pupil to participate. The services also must be provided for each day the pupil would otherwise attend the usual school site.

2. Mimimum hours of service required. The team must predict how long the pupil will be restricted because of treatment from leaving the facility or home on a daily basis. If the prediction is for a restricted period of more than 175 days or its equivalent, exclusive of summer school, an average of at least three hours of services must be provided. If the predicted restricted period is 175 days, or its equivalent, exclusive of summer school, or shorter, an average of at least one hour of services must be provided.

3. Consideration of school site placement. If the team concludes a pupil can benefit from an average of more than three hours of services, it must consider placement at a school site.

13. Section 57 pertains to submission of a pupil performance plan. It was suggested that the Board consider whether it is "statistically possible to conduct any meaningful, individual performance review on a monthly basis." The Board is aware of districts which conduct individual performance reviews on a weekly basis. While granted, a computer system of some type would need to be employed, it is statistically possible and valid to do so. The frequency of review is needed to monitor the continued progress on each pupil's IEP objectives and the need for providing alternative instructional strategies.

14. Sections 58 and 59 specifies under what conditions variances to case loads may be given. The Board accepts the Hearing Examiner's recommendations to clarify "special circumstances" and to specify when a variance will be given as needed and reasonable. Upon further consideration, it was determined that special circumstances really meant unanticipated enrollment increases. The Board proposes the following for 5 MCAR s 1.01229 A. to clarify this matter:

> A. Variances. The district may apply to the State Board of Education or its designee for a variance from the ~~ratios~~ case loads in 5 MCAR ss 1.01223, 1.01224 and 1.01226. ~~for one year or less when special circumstances exist or~~ The State Board or its designee shall grant a variance for less than 90 days when it is demonstrated that unanticipated special education enrollment increases, have occurred.

15. Section 60 refers to counting pupils in the teacher's case load. The Board accepts the recommendation and proposes the following amendment to 5 MCAR s 1.01229 B.:

> B. Method of counting pupils. For the purposes of the ~~ratios~~ case loads in 5 MCAR ss 1.01223, 1.01224, and 1.01226, each pupil receiving instruction or Level 2 services shall be counted as one pupil in the teacher's case load.

16. Section 65 includes policy considerations for the cooperative employment of a single director by a large number of school districts. This issue was discussed extensively through the proposed rule development process and it was determined that due to the vast number of variables; size of disticts, availability of personnel, permissiveness of joining a cooperative, etc., the Board would not propose such rule language.

17. Section 70 pertains to the permissive employment of supervisors. It is the intent of the Board that the employment of such supervisors be permissive so that districts and cooperatives have the flexibility to determine their own needs for such positions. Therefore, the word "may" on page 17, line 23, would remain.

18. Section 71 refers to the granting of a variance for the employment of directors. As alluded to, it is the intent of the Board to only permit variances only from the employment of directors under Part A.1. and the Hearing Examiner's recommendation is accepted.

19. Sections 72 and 73 also refer to the granting of a variance for the employment of directors. The Board finds the hearing examiner's recommendation to delete lines 27 and 28 on page 17 and replace them with the amendment as needed and reasonable except, that a variance may be granted from A.1.-A.4. rather than limiting it to A.1. A variance could be granted, for example, for conditions for reimbursement if the growth patterns of a district will increase in the next two years. Also, it is the intention of the Board to grant a variance under any one of the three conditions and the word "or" in D.2. is correct. The Board proposes to also add the word "or" to the end of D.1. so that the intent is clearly stated. The section 5 MCAR s 1.01232 D. would read:

> D. Variance. A district may apply to the Commissioner of Education for a variance from the mandatory employment of a director and conditions for reimbursement. The Commissioner shall grant a variance from A., when:

1. the growth patterns of a district or cooperative demonstrate that the public and non-public school enrollment will increase over the minimum in the next two years; or

2. districts cannot efficiently cooperate due to geographical isolation; or

3. the variance will result in a decrease in combined state and local costs and better delivery of instruction and related services to pupils.

20. Sections 74, 75 and 76 pertain to the appointment of a surrogate parent. The Board finds the recommendation to include the word "conservator" to 5 MCAR s 1.01233 C. and the addition of a new subpart 4 as needed and reasonable. The section would read:

C. The district shall appoint the surrogate parent when:

1. the parent, guardian, or <u>conservator</u> is unkown or unavailable; or

2. parental rights have been terminated; or

3. the pupil has reached the age of majority, continues to be eligible for public education, and is not represented by a parent: or

<u>4. the parent requests in writing the appointment of a surrogate parent; the request may be revoked in writing at any time</u>.

21. Section 79 refers to the appointment and removal of surrogate parents by the district school board. The Board rejects the suggestion that the school board should be specifically designated to appoint the surrogate parent under 5 MCAR s 1.01233 A. as the school board only meets once a month. The need for team meetings and IEP development is an ongoing process and the need for such an appointment could unnecessarily delay services to a handicapped pupil.

22. Section 81 pertains to the duties of a surrogate parent. The Board finds it very difficult to reinterate all of the duties of a surrogate parent, as such a person is considered a parent (see definition of parent 5 MCAR s 1.01201 J.) and is provided all the due process rights and responsibilities of a parent pursuant to these rules. A surrogate parent performs whatever responsibilities a parent would have in the team meetings and IEP process, only the surrogate parent is obligated to participate in these matters, while it is permissive in regard to the parents. The Board, therefore, proposes that 5 MCAR s 1.01233 E.1. read:

> 1. failure to perform the duties required in the team meeting and IEP process and those cited in 34 C.F.R. 300.,a federal regulation to implement Part B of the Education of the Handicapped Act;

The Board also accepts the recommendation to reference the federal regulation regarding conflicts of interest. The proposed amendment to 5 MCAR s 1.01233 E.2. would read:

2. conflict of interest as referenced in 34 C.F.R. s 300.514 (c)(2).

23. Section 83 refers to the suspension, exclusion and expulsion of handicapped pupils. The following language was proposed by the agency in amending 5 MCAR s 1.01234:

> Pupils may also be suspended for one day or less for the same reasons allowed for a longer suspension pursuant to the Pupil Fair Dismissal Act.

Upon further consideration by the agency, and with input from Lawrence Ringer, a special education attorney for Legal Advocacy for Developmentally Disabled Persons in Minnesota, it was determined that this amendment was not needed. Instead, it caused further confusion between the meanings of dismissal and suspension in the Pupil Fair Dismissal Act. The Board desires to retract the above proposed amendment.

24. The State Board of Education has carefully considered all other comments and suggestions, no other changes in the proposed rules will be made at this time.

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

State of Minnesota

State Board of Education

Ruth E. Randall

Ruth E. Randall, Secretary

Member, State Board of Education

CERTIFICATE OF BOARD'S

RESOLUTION ADOPTING RULES

I, Ruth E. Randall, do hereby certify that I am the Secretary of the Board of Education, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Board of Education, duly and properly called and held on the 12th day of July, 1983, that a quorum was present at said meeting, that a majority of those present voted for the resolution, and that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> "RESOLVED, that the permanent rules relating to Special Education 5 MCAR ss 1.0120 - 1.0127 and Repealing parts of 5 MCAR ss 1.0120 - 1.0123, be and they hereby are approved and adopted, pursuant to authority vested in us by Minnesota Statutes s 120.17, subd. 3, and that the Secretary of the Board of Education, be and hereby is authorized to sign an order adopting these rules and further is authorized to perform the necessary acts to provide that these rules shall have the force and effect of law.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 12th day of July, 1983.

Ruth E. Randall

Ruth E. Randall, Secretary

William J. Hudley

Member, State Board of Education

STATEMENT OF NEED AND REASONABLENESS FOR PROPOSED RULES 5 MCAR SS 1.0120-1.0127 AND REPEALING PARTS OF 5 MCAR SS 1.0120-1.0123

RULES OF THE STATE BOARD OF EDUCATION GOVERNING SPECIAL EDUCATION

Division of Instruction
Minnesota Department of Education

BACKGROUND

During the 1981 State Legislative session questions and concerns regarding special education rules were raised by school personnel and legislators. Specific concerns were expressed about the clarity of the rules and the lack of flexibility that districts have in determining staff-to-student ratios and for determining their administrative needs.

On February 26, 1981, a letter was sent to the Department of Education by the School Aids Division of the Education Committee of the Minnesota House of Representatives expressing that they felt "very strongly that the Department and State Board should reassess the need for and reasonableness of all rules relating to special education ..." It expressed "particular concern" for the "Special Education staff-to-student ratios" and noted that "(t)hese rules have not changed in many years even though there have been significant changes in the delivery of Special Education service." They went on to request a report on "proposed amendments ... staff-to-student ratios" by October 1981.

The Department of Education, Special Education Section subsequently drafted proposed rules to clarify those which were unclear and to incorporate flexibility in calculating the ratios. A Notice of Intent to Solicit Outside Opinion to draft rules appeared in the June 29, 1981, State Register. On September 8, 1981, the State Board of Education granted authority to hold a public hearing for the purpose of promulgating rules governing special education staff-to-student ratios. The proposed rules were withdrawn from the public hearing process on November 9, 1981 after much concern was expressed that there needed to be further input from interested parents, teachers and administrators.

The 1981 Minnesota Legislature amended Minnesota Statutes 1980, Section 120.03 by adding the following subdivision:

> Subd. 5. A child with a short-term or temporary physical or emotional illness or disability, as determined by the standards of the state board, is not a handicapped child.

Legislative Committee discussion indicated that the changes in Minnesota Statutes 120.03 were directed at the elimination of state special education funding of homebound programs for nonhandicapped students. A memorandum was distributed on September 29, 1981, to school district superintendents by the Commissioner of Education which explained the Department's position during the interim.

The 1982 Minnesota Legislature enacted Minnesota Laws 1982, Ch. 548, Art. 3, SS 27 and 28 which provide that:

> Sec. 27. Supervision. For the 1982-83 school year, the rules on supervisory personnel of 5 MCAR S 1.0122 D., D.1., D.2., D.3., and D.4. are suspended.

By February 1, 1983, the Department of Education shall report to the Education Committees of the Legislature regarding the need to reinstate the rules or its recommendations for alternative rules for supervisory personnel.

Sec. 28. Student To Staff Ratios; 1982-83 School Year. For the 1982-83 school year, a school district may increase the student to staff ratios established pursuant to 5 MCAR S 1.0122 C. by an amount not to exceed 20 percent. By February 1, 1983, the Department shall report to the Education Comittees of the Legislature regarding recommendations on promulgating new student to staff rules which provide greater flexibility to school districts and which have cost containment features, including incentives for cooperation among school districts.

The Department of Education, Special Education Section submitted a Notice of Intent to Solicit Outside Opinion to draft rules which appeared in the April 19, 1982, State Register. The Notice requested written comments on special education definitions, supervision, staff-to-student ratios and other related topics for the promulgation of rules.

Numerous input meetings were held to discuss particular issues (e.g. alternatives to ratio rules) or to review drafts of the rules. The meetings were attended by members of local school boards, superintendents, principals, directors of special education, parents, teachers, program supervisors, related services staff, and various other interested persons. Following is a list of some of the input meetings that were held:

DATE	WHERE	NUMBER OF PERSONS
May 27, 1982	St. Paul	60
August 4, 1982	St. Paul	40
September 22,1982	Mankato	13
September 23, 1982	Marshall	31
September 27, 1982	St. Cloud	21
September 28, 1982	Fergus Falls	11
September 30, 1982	St. Anthony	19
October 1, 1982	Minneapolis (ACLD)	50
October 5, 1982	Eveleth	32
October 6, 1982	Thief River Falls	25
October 8, 1982	Bloomington	91
October 11, 1982	Rochester	40
October 14, 1982	Brainerd (Director's Conf.)	100
October 27, 1982	St. Paul (PACER)	30
October 28, 1982	Minneapolis (Metro Teachers)	150

A state-wide mailing of 1000 copies of the proposed rules was made during the first week of September, 1982, to special education directors, superintendents, parent advocates, and all other persons who had indicated an interest.

Draft copies were reviewed with the Special Education Advisory Council (SEAC) on June 6, September 6, November 1, and December 10, 1982. The SEAC is an

advisory group required by federal law to consist of at least one representative from each of the following: handicapped individuals, teachers of handicapped children, parents of handicapped children, state and local education officials, special education program administrators and other groups. (Education for All Handicapped Children's Act of 1975, 20 USC S 1401 and regulations promulgated pursuant thereto, hereinafter cited as Pub. L. 94-142).

At the December 14, 1982, meeting of the State Board of Education, a request was made to hold a public hearing on the proposed rules. The request was tabled until the next month to allow the Department to meet with leaders of the House and Senate Education Committees. Meetings were held the first two weeks of January. On January 18, 1983, the State Board of Education granted authority to hold an April 13, 1983, public hearing on the proposed rules as amended.

The authority of the State Board of Education to promulgate the proposed permanent rules is provided in Minnesota Statutes 1982 Section 120.17, subd. 3 which states:

> 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....

An additional statutory citation referenced in the proposed rules provides the authority of the state to reimburse school districts for essential personnel, instructional supplies and equipment, contracted services, and for placement of handicapped pupils (Minn. Stat. S 124.32).

INTRODUCTION

The initial impetus to draft proposed special education rules as previously mentioned, was a memo sent to the Department and legislation enacted in Minnesota Laws 1982, Ch. 548, Art. 3, SS 27 and 28 directing that the Department consider flexibiliy, cost containment and incentives for cooperation in drafting proposed rules for staff ratios, and special education supervision or its alternatives.

FLEXIBILITY. The proposed rules, which allow team teaching, give greater flexibility to the local education agencies for establishing a variety of staffing patterns to meet the needs of handicapped students. These include: early childhood teams (5 MCAR S 1.01223 D.), multidisability team teaching (5 MCAR S 1.01225) and single disability case management services (5 MCAR S 1.01226).

Flexibility is achieved by allowing an increase in staff to student ratios if management aides are added to a level 4 program alternative. Greater flexibility is achieved by allowing local education agencies to apply to the State Board of Education for exemptions to particular rules through applications for experimental programs (5 MCAR S 1.0121 E.) and pupil

performance plans (5 MCAR S 1.01228) and by providing criteria to be used by the Department in approving district requests to operate at variance to certain rules.

Most special education supervisory positions would be permissible, but not required, under the proposed rules. The school board in every district would be required to employ a director of special education and would be reimbursed under certain conditions while all other supervisory positions would not be required but would be reimbursable.

Licensure requirements for supervisory personnel would be more flexible. Such personnel may "hold either an appropriate supervisory license for one or more program areas coordinated or supervised," thereby allowing for cross categorical supervision, or hold "an appropriate license for general special education supervision" (5 MCAR S 1.0122 B. 3.).

COST CONTAINMENT. The legislative mandate to include both cost containment and flexibility requires that the Department rely on local decision making to realize cost containment. Therefore, cost containment within these proposed rules is based largely on local education agency decision making through use of built in flexibility features. Each of the options listed above has the potential of creating savings at both state and local levels depending on the level of implementation by the local education agencies.

INCENTIVES TO COOPERATE. It has proved difficult to propose rules which provide highly effective incentives to encourage cooperation by local school districts. The suggestions received, such as authority of cooperatives to levy taxes and/or for the state to provide higher rates of reimbursement for cooperative efforts are legislative issues not rule issues.

Cooperation is encouraged however, by setting minimum conditions for reimbursement for the director of special education positions (5 MCAR S 1.01232 A.). During school year 1981-82 there were 13 districts without a director of special education, which under this proposal would have to cooperatively employ at least a part-time person. There were seven districts which employed directors that would not be eligible for aid under this rule. Also in the same year, there were nine districts and eight cooperatives which employed full-time directors and would only be eligible for part-time directors under this rule. The use of cooperative or part-time directors would also result in cost containment.

OTHER EVENTS. Other events occurred during the same time frame which caused the Department to consider other rule amendments. These included:

1. A directive to the Revisor of Statutes Office to eliminate redundant and obsolete rules, to improve language consistency, and to reformat rules into a more simple and clear outline.

2. Changes in Minnesota Statutes 1980, Section 120.03 requiring that the Department include provisions for homebound programs "as determined by the standards of the state board."

3. Changes in Minnesota Statutes for 1982, Ch. 548, Art. 3, SS 30 and 31 which amended due process requirements.

4. Interpretations of Pub. L. 94-142 that require clarification and modification of the rule on surrogate parents.

5. Recent court decisions clarifying the suspension, exclusion and expulsion of handicapped students with individual educational programs (IEPs).

6. An impetus to clarify and draft into rule some of the Departmental policies not previously in writing (e.g. contracts for services, definition and reimbursement of management aides, and criteria for granting program variances).

7. An awareness of outdated rules which appear not to apply to new programs (eg. early childhood program alternatives).

AN ITEM BY ITEM STATEMENT OF NEED AND REASONABLENESS

5 MCAR S 1.0120 POLICES FOR SPECIAL EDUCATION. The Revisor of Statutes Office (hereinafter the Revisor's Office) has recommended that policy statements be either deleted from or incorporated into the body of the rules. This recommendation is based on the belief that if the statements are to be enforced they must be in rule not in policy and if they are not to be enforced the statements should be deleted.

Three policy statements are retained because they provide the philosophy and direction that undergirds all special education rules. Though they are covered elsewhere, either in the body of the state rules or in the Pub. L. 94-142 rules, their retention as policy is reasonable because they provide the reader and implementer with an overview and a foundation on which the rules are based.

Deletion of the other five policy statements is reasonable because the statements are not needed to provide overall direction and they are covered specifically in the body of the rules.

"Individual programs" has been incorporated into the definition of individual education program plan or IEP (5 MCAR S 1.01201 D.). "Procedural safeguards" was a brief summary of the identification, assessment, individual education program plan (hereinafter IEP), conciliation and hearing procedures outlined in detail in 5 MCAR SS 1.0124-1.0129. "Exclusion and expulsion from school" is expanded and clarified under the proposed 5 MCAR S 1.01234 suspension, exclusion and expulsion section. "Physical facilities" is clarified further under 5 MCAR S 1.0122 facilities and staff.

5 MCAR S 1.01201 DEFINITIONS FOR SPECIAL EDUCATION. The Revisor's Office has recommended the changes in the introduction of a definition as necessary for the rules to be as concise as possible. The Revisor's Office has also recommended alphabetizing the definitions and deleting those definitions not used or seldom used in the body of the rules. To accomplish that, it was less complicated to repeal most of the section and to reformat and resubmit the definitions as new amendments.

5 MCAR S 1.01201 B. ASSESSMENT. This term was formerly defined as "Formal educational assessment" and was used interchangeably with assessment. The word educational was inserted between the words individual and evaluation to clarify that the assessment is educational not medical. The Revisor's Office recommended deletion of redundant words such as "referred to in the rules also as..." These changes are needed and are reasonable because of the recommendations made and because of the clarity they provide with the changed meaning.

5 MCAR S 1.01201 C. DAYS. The changes here are needed as recommended by the Revisor's Office to delete redundant language and are reasonable because they make no significant change in an already acceptable definition.

5 MCAR S 1.01201 D. INDIVIDUAL EDUCATION PROGRAM PLAN OR IEP. The definition as proposed remains the same except that it incorporates language previously used in the policy statement on "Individualized programs". It is both needed and reasonable because it is a consolidation of two previous rules, a policy and a definition, thereby reducing redundant language.

5 MCAR S 1.01201 E. INITIAL FORMAL ASSESSMENT. The amendment proposed is needed to clarify who conducts the first assessment. The proposal is reasonable because it adds no significant mandate and it aids in assuring appropriate parental involvement when implementing the procedures.

5 MCAR S 1.01201 F. INITIAL PLACEMENT. The amendment proposed is needed to clarify who initiates the first placement. The proposal is reasonable because it adds no significant mandate and it aids in assuring appropriate parental involvement when implementing the procedures.

5 MCAR S 1.01201 G. INSTRUCTION. The addition of this definition is needed to clarify a common confusion about the difference between the provision of instruction versus the provision of related services. It is reasonable because it is clarifying rather than additive in terms of mandates to be implemented.

5 MCAR S 1.01201 H. MANAGEMENT AIDE OR AIDE. The addition of this term is needed to clarify what type of aide services are reimbursable with special education state aids. It is reasonable because it describes a support service for which districts determine the need while eliminating the use of other aides (e.g. clerical aides). This is a cost containment feature. It is also reasonable because it provides for district uniformity in employing such persons.

5 MCAR 1.01201 I. NONDISCRIMINATION. The changes are needed as recommended by the Revisor's Office to delete redundant language and are reasonable in that no meaning or intent is changed.

5 MCAR S 1.01201 J. PARENTS. The amendments are needed because recent court decisions have clarified some of the issues relating to parents and they are reasonable because they are consistent with those decisions.

5 MCAR S 1.01201 K. PROVIDING DISTRICT. The revision is needed to more clearly state which district is the providing district and to delete, where

possible, specific references to Minnesota Statutes which may change and create a need to update rules frequently. It is reasonable because it does not change the meaning or intent of the definition.

5 MCAR S 1.01201 L. PUPIL. This language change was needed to ensure consistent meanings throughout the rules. Previously such terms as handicapped persons, handicapped children, students, individuals, and child were used interchangeably. Consistency of interpretation and an avoidance of confusion are ensured when one term is used throughout the rules. The change is reasonable because it clarifies the terms.

5 MCAR S 1.01201 M. RECOGNIZED PROFESSIONAL STANDARDS. This definition has changed minimally but has been alphabetized with the other definitions for easier reference.

5 MCAR S 1.01201 N. REGULAR EDUCATION PROGRAM. The addition of early childhood and vocational education offerings are needed to more accurately reflect the full age range of educational services provided to nonhandicapped pupils. The definition "Education" has been deleted because it was seldom used by itself in the body of the rules. The changes are reasonable because the terms regular education program, instruction and related services are more commonly used and in combination mean education.

5 MCAR S 1.01201 O. RELATED SERVICES. The definition of this term is needed to distinguish the difference between it and the instruction provided by a special education teacher and between it and support services. It is also needed to clarify which services are considered under this term in Pub. L. 94-142.

It is reasonable because it is consistent with definitions in the federal rules. The differentiation between related and support services is reasonable so that related service staff (professionals) can, at district discretion, be used as team members to count student/staff ratios for the various programming options, while support staff (generally paraprofessionals) can not be used to determine ratios.

5 MCAR S 1.01201 P. RESIDENT DISTRICT. The amendments are needed to delete references to specific statutes where possible and to clarify whether or not the district where the surrogate parent lives is considered the resident district. It is reasonable because the meaning or intent have not changed.

5 MCAR S 1.01201 Q. SPECIAL EDUCATION. This term needed to be redefined to clarify whether it included both special education instruction and related services or whether related services could be provided without special education instruction and be reimbursable with special education state aids. The term also needed to be revised because the previous definition was long, redundant and allowed open interpretations of which services were reimbursable with special education monies. It is reasonable because it differentiates between the various services and because it adds no mandates.

5 MCAR S 1.01201 R. SUPPORT SERVICES. The addition of this term was needed to define those services not provided for under instruction and related services but which are reimbursable as special education services. The addition is reasonable because it clarifies those special education services not included

under instruction and related services definitions but are reimbursable with special education aids.

5 MCAR S 1.01201 S. TEACHER. This term needed to be defined to assist in the clarification of the difference between special education instruction, related services and support services. It is reasonable because it reflects existing law.

5 MCAR S 1.0121 APPLICATION. Deletion of the references to dates are reasonable because either the dates have passed and are no longer relevant or they have been revised in statute and are not needed in rule. The amendment concerning cooperative administrative organizational changes is needed to insure that the new administrative procedures are reflected in the plans as submitted, reviewed, approved and on file in the Department. This change is reasonable as it emphasizes the need to have a current program application on file for approval.

5 MCAR S 1.0121 C. 4. was transferred here from 5 MCAR S 1.0121 A. District special education plan. The assurances have previously been a part of the annual application rather than a part of the district plan on file in the Department which is revised only as changes occur. Other changes in 5 MCAR S 1.0121 A.-C. are recommended to reduce redundacy, ensure consistent information and delete discriminitive references.

5 MCAR S 1.0121 D. STATE AID FOR SPECIAL EDUCATION PERSONNEL. This section is needed to summarize which activities are reimbursable with special education categorical state aids. This section is reasonable as it provides one list of activities that can be consistently implemented across the state and that can be consistently interpreted for program approval.

5 MCAR S 1.0121 E. EXPERIMENTAL PROPOSAL. This section provides a procedure for special education parallel to the existing rules governing requests for approval of experimental programs for general education (5 MCAR S 1.0010). This would make experimental program applications available to districts for both handicapped and nonhandicapped pupils. It is needed to provide added flexibility for local school districts and is considered reasonable because it provides a process where a district or districts may apply to the State Board of Education for waiver of specific state board rules in order to implement programs which readily meets local needs in providing special education services to handicapped pupils.

5 MCAR S 1.0122 A. FACILITIES. Amendments to the section on facilities are needed to specify more clearly what is meant by "facilities ... shall be adequate". The proposed changes are reasonable as they are consistent with Section 504 of the Vocational Rehabilitation Act of 1973.

5 MCAR S 1.0122 B. STAFF. The changes in rules covering licensure are needed to delete unnecessary words as recommended by the Revisor's Office, to allow local school districts the flexibility to provide services through teams of teachers when appropriate and to clarify what "appropriate licensure" means for a director of special education. This change is reasonable as it allows flexibility for local school districts to employ directors with any of the special education supervisory licenses rather than requiring a specific supervisory license.

Clarification of licensure for other supervisory personnel is also needed to clarify what "appropriate licensure" means when applied to these positions. Current policy requires that a supervisor be licensed in the program area he/she is supervising. The proposal is reasonable as it allows districts the flexibility to consolidate program areas for supervisory purposes. It also allows for flexibility by stipulating a choice of special education supervisor licenses rather than a specific license for each area supervised.

Amendments to licensure requirements for other essential professional personnel is needed to explain which staff persons are meant by these terms. They are also needed to specify that those related services areas licensed under rules of the Board of Teaching or the State Board of Education shall be the appropriate licenses for those staff. Where such licensure requirements are not specified, related services staff shall meet recognized professional standards. Other language changes are recommended by the Revisor's Office to ensure concise but clear statements. The proposal is reasonable because it does not add mandates nor change meaning or intent.

Licensure requirements for district contractual agreements are reasonable because they provide for a consistent interpretation in rule where no rules existed previously. Criteria for personnel variances from the above licensure requirements are also needed to stipulate in the criteria by which variance requests will be approved. This is reasonable since the new proposal states in rule the circumstances under which a variance will be granted and will therefore provide for consistency in the approval of such requests.

Repeal of 5 MCAR S 1.0122 C. and D. was needed because the sections covered supervision and staff/student ratios which were rewritten in their entirety and were formatted into new separate sections as recommended by the Revisor's Office.

5 MCAR S 1.01222 PUPILS PLACED FOR CARE AND TREATMENT. The addition of this section is needed because the 1981 Minnesota Legislature amended Minnesota Statutes 1980, Section 120.03 by adding the following subdivision:

> Subd. 5. A child with a short-term or temporary physical or emotional illness or disability, as determined by the standards of the state board, is not a handicapped child.

These proposals are needed to meet the intent of "... as determined by the standards of the state board, ..." and because specific rules governing "homebound" or "pupils placed for care and treatment" have never been promulgated and practice has varied from district to district.

This section was also added to interpret Minnesota Statute S 120.17 Subd. 6 (c) which states:

> When a child is temporarily placed in a residential program for care and treatment, the nonresident district in which the child is placed is responsible for providing an appropriate educational program for the child and necessary transportation within the district while the

child is attending the educational program; and shall bill the district of the child's residence for the actual cost of providing the program, as outlined in subdivision 4, except that the board, lodging, and treatment costs incurred in behalf of a handicapped child placed outside of the school district of his residence by the commissioner of public welfare or the commissioner of corrections or their agents, for reasons other than for making provision for his special educational needs shall not become the responsibility of either the district providing the instruction or the district of the child's residence.

The two sections 5 MCAR S 1.01222 A. HANDICAPPED PUPIL PLACEMENT and B. NONHANDICAPPED PUPIL PLACEMENT are needed to clarify specifically when "homebound" or "pupils placed for care and treatment" rules apply to handicapped or nonhandicapped pupils and they are reasonable because they follow a natural division as determined by the due process procedures for handicapped pupils.

5 MCAR S 1.01222 A.1. SERVICES REQUIRED. This section is needed to specify which services (i.e. regular education, special instruction and related services) shall be provided, where it is provided (i.e. in the home or a facility), to whom it is provided (i.e. a handicapped pupil who is receiving services at level 2 through level 6 and who is prevented from attending the usual school site), and when it is provided (i.e. when a pupil is unable to attend for 15 or more consecutive days or is other health impaired and is unable to attend for 15 or more intermittent days during the school year).

This section is reasonable because it specifies: (1) that all services available in school are to be available in other facility settings, (2) that all handicapped pupils are eligible if they cannot attend the usual school site for medical reasons, and (3) that services must be provided after 15 days of absence. Public comment has raised the concern that the required minimum amount of service time a pupil receives may be more than is necessary. A minimum requirement of "to the extent that medical considerations allow a pupil to participate" is reasonable because of the potential that a pupil could be placed in a residential facility and receive only one hour of instruction per day for four years. The proposal is reasonable because it allows the amount of instruction and related service to be based on individual pupil needs established in a team meeting that includes the parents.

5 MCAR S 1.01222 A.2. IN A HOME. This section is needed to establish the minimum amount of service the district must make available and is reasonable because it maintains the minimum of one hour of service, the accepted standard for all "homebound" services prior to the passage of Minnesota Statutes 1980, Section 120.03 Subd. 5.

5 MCAR S 1.01222 A.3. IN A FACILITY. This section is needed to delineate the amount of service the providing district shall make available when a pupil is placed for care and treatment in a facility. It is also needed to specify when consideration shall be made for placement at a school site on a day school basis. It is reasonable because it provides districts some options as to where the services are provided while protecting the pupil's right to a minimal level of services.

It is not unusual for pupils placed in residential treatment centers to have problems which preclude them from leaving the center. While placement decisions need to be made by the center, the parent and the district, the center is the agency which ultimately must determine when patients are sufficiently rehabilitated to leave for a partial or full day to attend school.

Because of the length of time in which pupils may be placed in treatment (i.e. several years) the need to provide educational opportunities beyond the "one hour per day" standard must be afforded. The "up to three hour" provision is reasonable as a "ceiling" because if a student is able to participate in an educational program for a longer period of time during the school day, it is expected that he/she could leave the treatment center and attend an appropriate regular and/or special education program in a public school facility. This proposal is also reasonable because if a pupil can benefit from more than three hours of services then "consideration" by a team meeting would determine that a pupil would best be served at a school site, at the facility or some combination thereof. Due process must be afforded to parents throughout this entire process.

Part b. is needed to assure that pupils who are able to attend school on a full time basis, albeit are temporarily placed for care and/or treatment at a residential facility for that purpose, are afforded the opportunity to attend the public school program and are not required to receive their education at the hospital or treatment center. This section is reasonable because it encourages the placement of pupils in a less restrictive environment as medical considerations allow.

Part c. is needed to assure that schools provide a full day program for pupils incarcerated at correctional facilities. When the court permits a pupil to attend school outside of the correctional facility this section would not apply. This section is reasonable when pupils are placed by the courts, not because of medical considerations, and can therefore benefit from a full day educational program.

5 MCAR S 1.0222 A.4. DUE PROCESS REQUIRED. This section is needed to stipulate which due process procedures apply when a handicapped pupil is placed for care and treatment and is reasonable because it adds no mandates nor does it change any meaning or intent. It is also reasonable because it emphasizes that the same due process applies for these pupils as for all other handicapped pupils.

5 MCAR S 1.01222 A.5. TEAM MEETING REQUIRED. This section is needed to delineate which persons shall be notified to attend a team meeting for a pupil placed for care and treatment. While Minnesota Statutes SS 124.2133 provide that the placing agency is responsible for involving the district of residence if placement is to be outside of the district, in emergency situations placement may be made without any contact with the resident district. Emergency placements are the most common placements for these pupils. As a result, no educational involvement occurs by either the resident or the providing districts. Furthermore, the current statute only requires, under nonemergency situations, that the district of residence be involved and not the district providing the program. As a result, little if

any communication occurs between the district which will be providing the treatment, the resident district, the county and the parents. This section is reasonable because such a meeting is necessary to communicate and share previous assessment and educational information and to develop an agreed upon IEP to meet the individual pupil's special education needs.

5 MCAR S 1.01222 A.6. IEP REQUIRED. These requirements are needed to stipulate the minimum information needed in an IEP to prevent misinformation or lack of communication between the agency involved, the providing and the resident districts. The amendments are reasonable as they incorporate and expand the IEP requirements in 5 MCAR S 1.0125 to include the location of services when not at a facility and the provisions for coordinating with the care and treatment program.

5 MCAR S 1.01222 A.7. NOTICE OF ANTICIPATED RETURN. This is needed to encourage communication between the facility, the providing district and the resident district so appropriate preparations can be made for a smooth educational transition of the pupil. It is reasonable because it requires notification, "when possible".

5 MCAR S 1.01222 A.8. AID FOR SPECIAL EDUCATION ONLY. These amendments are needed to clarify in rule which activities are reimbursable with special education categorical aids. The rule specifies activities that are consistent with existing practice and do not change meaning or intent. They are also needed to emphasize in rule that the cost of care and treatment for which a child is placed is not an educational cost.

5 MCAR S 1.01223 EARLY CHILD PROGRAM ALTERNATIVES. This section is needed because early childhood alternatives are not specified in current rules and it is confusing whether early childhood services are incorporated into the "Continuum of Placement Model" (5 MCAR S 1.0120 B.11.). Very young pupils have different educational needs than school-age pupils and can more appropriately be served in specially designed models of service. This section is reasonable because it will result in a more uniform interpretation made by those persons who implement the rules. Also, this section is reasonable because it balances the need for flexibility for administrative control at the local level with the unique educational needs of very young handicapped pupils.

The rules in this section allow for flexibility in determining the appropriate program alternatives for pupils between the ages of four and seven. The needs of pupils in this age group overlap with the needs of pupils within the school-age group. Therefore, as determined by the local child staffing team, a pupil between the ages of four and seven may be placed in either an early childhood or a school-age program alternative whichever is appropriate.

5 MCAR S 1.01223 B. PROGRAM ALTERNATIVES. These proposed statements are needed to illustrate, for the purposes of determining caseloads, the alternatives available for early childhood handicapped pupils. They are reasonable because they reflect the array of services needed by young pupils. These alternatives are also most commonly provided by school districts both in-state and out-of-state.

5 MCAR S 101223 C. CASELOADS FOR EARLY CHILDHOOD PROGRAM ALTERNATIVES. Early childhood program alternatives are needed and reasonable because there is an increasing amount of significant evidence (e.g. Weikart, D.P. "Young Children Grow Up: The Effects of the Perry Preschool Program on Youths Through Age 15." Ypsilanti, MI: High/Scope Press, 1980.) that demonstrates the earlier in life that handicapped children receive specialized services, the less resouces are required over a lifetime.

This section is similar to current rules but is needed as a separate section to clarify which caseloads apply to the early childhood services. This need is best demonstrated by the significant disparity among districts in the interpretation of caseloads or staff-to-student ratios for early childhood programs. The proposed rules are intended to clarify the standards and provide for more uniform application of the rules. They are reasonable because of the exceedingly individualized needs of these young pupils primarily due to age. Public comment has indicated a degree of concern that the mandate for an aide is excessive. The safety needs of a group of these pupils cannot be met by one adult alone. A teacher may have an emergency with one pupil and may have to step out of the room, or may be providing individual instruction to one pupil; at the same time someone else needs to be overseeing the activities of the other pupils in the room. This section is reasonable because to leave even one very young handicapped pupil alone unsupervised is to jeopardize their health and safety if not their life.

5 MCAR S 1.01223 D. EARLY CHILDHOOD TEAMS. This section is needed to allow for district flexibility in assigning related services staff and teachers to serve as full-time partners in providing services for early childhood handicapped pupils. This concept is used only when appropriate to meet individual pupil needs and is reasonable because it is not mandated but does provide an alternative which is considered feasible in much of the literature published today.

Other persons may participate on the early childhood team for one period in the day in order to meet the needs of an individual pupil. However, for purposes of determining caseloads, the district may only count teachers and/or related service staff when they provide services full-time in the program. It is reasonable that only one full-time teacher and one full-time related services staff teacher may be included in an early childhood team because of the extreme immaturity of the pupils. Too many very young pupils in one classroom at one time can be distracting and not conducive to learning.

5 MCAR S 1.01224 SCHOOL-AGE LEVELS OF SERVICE. This section is a replacement for the current "Continuum of Placement Model" (5 MCAR S 1.0120 B.11). It is needed to describe a full range of services as required in Pub. L. 94-142 and to delineate the difference between each of the current levels of service by specifying the amount of time a handicapped pupil is receiving instruction and related services. Severely and profoundly handicapped pupils tend to need more direct contact from teachers and related services staff and less severely handicapped pupils tend to need less direct contact time or, at a minimum, indirect services from special education teachers. This section is reasonable as it provides a specific demarcation between alternatives used as the basis for describing staff-to-student caseloads.

5 MCAR S 1.01224 C. CASELOADS FOR SCHOOL-AGE LEVELS OF SERVICE. Caseload standards are needed, in general, to ensure that teachers, reimbursed with special education state aids, have at least a minimal amount of time available to individually help each pupil with specific objectives in his/her IEP. Evidence has shown that among pupils with unique learning problems, time on task and individualized instruction are two of the primary variables in the design of effective programs.

Larger caseloads are reasonable for level 2 because it is an indirect service provided through someone else, usually a regular education program teacher. This program alternative takes less time than services provided directly to pupils and therefore the needs of a larger number of pupils can be met by one teacher. However, public reaction has emphasized that these numbers should not be raised beyond that which is currently stated in rule because the indirect service requires significant amounts of staff time if it is to be conducted properly. These services require an in-depth discussion at least weekly with the service provider regarding instructional, behavioral or curriculum modifications for each individual handicapped pupil and the services may be itinerant or as a part of a teacher's caseload. The rule is reasonable in that it provides districts with flexibility to provide the service through a variety of staff models, (itinerant, resource, etc.) and provides that at least a minimum amount of time be available for each pupil assigned.

The proposed increased caseloads for level 3 "all other disabilities" is needed to allow districts the flexibility to increase staff-to-student caseloads where it can occur and individual pupil needs can still be met. This change is also needed to encourage cost containment as specified in Minnesota Laws of 1982, Ch. 548, Art. 3, Sec. 28.

No change is made in the ratio for level 3 "speech services" because public reaction indicated that, if anything, the current ratio is too high. However, the 40-1 ratio is reasonable because many of the speech and language characteristics of the pupils in elementary grades will change through maturation. Until guidelines are developed to assure that pupils with maturational problems are left out of therapy, it is not reasonable to reduce caseload maximums.

In the current rules (5 MCAR S 1.0122 C.3.a.) it is stated that "(e)ach person must receive service for a minimum of one hour per day ..." when in a level 3 service. School age program alternatives provide a continuum of service from consultative and indirect services to full-time services. It is unreasonable to place in rule a minimum amount of time that must be provided for each pupil when the rule describes a range of services that must be available. The most appropriate service for each pupil is selected by the team staffing (including consultation with the parents) from the full continuum of services. The rule is not needed because it reduces flexibility.

The proposed addition of caseload maximums for deaf/blind, autistic, or severely multiply handicapped at level 4 is needed to encourage deinstitutionalization and least restrictive alternative placements in district settings. The decrease to 12 pupils per caseload for mild mentally

handicapped or specific learning disabled was needed to reflect the fact that the existing maximum caseload was too high. This is demonstrated by the fact that an average of 9.9 pupils were reported statewide in 1981-82 per teacher in this category. The decrease was also needed to provide a continuum of services from level 4 to level 6 that is reflective of the least restrictive concept and a teacher can more effectively work with fewer severely or multiply handicapped pupils. This change is reasonable because the maximum caseload is still well above the statewide average per teacher and provides flexibility above the reported average caseload with the employment of an aide. It also maintains some probability that the needs of pupils can be met.

The caseload for "all other disabilities" under level 4 is reasonable because it remains unchanged with the exception that it allows districts the flexibility of increasing teacher caseloads through the employment of management aides. This feature has been available through the variance process in previous years and has proven to be a successful practice.

The addition of management aides at levels 5 and 6 is the only change in the proposed rule and is needed to ensure the safety of the pupils involved. These pupils are the most severely handicapped and in many cases are not able to care for themselves. It is reasonable and necessary that two adult persons are present for safety and emergency reasons.

5 MCAR S 1.01225 MULTIDISABILITY TEAM TEACHING. This section is needed to allow flexibility in providing services to school age pupils with specific handicapping conditions. This recognizes the reality that pupils who are mildly handicapped have fewer distinct differences than pupils who are more severely handicapped. Under the original language (5 MCAR S 1.0121 D.) a number of districts have applied for variances to implement a team teaching option. These requests established the need to propose rules so that the option will be more uniformly implemented. The requests also establish that the proposal is reasonable because many districts currently have such an option in place and they feel it is a successful practice as pupils are receiving an appropriate education service and in some cases more individualized assistance. Furthermore, this model is widely accepted across the country as a desirable way to deliver appropriate programs. Inclusion in the rule will eliminate the need to request and approve variances in this area and it will also allow other interested districts to implement the option without unnecessary application and approval.

Team teaching permits two or more teachers and an equal number of related services staff members to share instruction and related services for specific classes when appropriate. The Board of Teaching is reviewing a license which supports the cross-categorical concept. Qualified teachers are assured by requiring that a team member licensed in the pupil's disability shall be responsible for that pupil's IEP development and coordination and that there must be a teacher on the team who is licensed in each pupil's disability area. That person would be responsible for regular contact with the teacher providing the direct service.

The proposed rule "(P)upils may receive instruction and related services from any or all members of the team" is necessary to allow for implementation in appropriate situations, making it possible for pupils to receive instruction from other team members. The proposal is reasonable because it has worked in practice and where appropriate, it allows flexibility without modifying the requirements of identifying and providing for individual pupil needs.

5 MCAR S 1.01226 SINGLE DISABILITY CASE MANAGEMENT SERVICES. This proposal is flexible and is needed so teachers may be given differentiated assignments within a single disability area. Under this option districts assign one person to the nondirect instructional activities; e.g., initial screening and assessment, development and coordination of the IEP etc. The remaining team members provide the direct instruction. If a district assigns one case manager teacher and five level 3 teachers to a team, the caseload would be figured as follows:

1 case manager + 5 teachers = 6 teachers

6 teachers x 18 pupils maximum per teacher = 108 pupils

108 pupils ÷ 5 teachers = 21 pupils average per teacher for 5 teachers and 0 caseload for 1 case manager. Any variation could be appropriate.

This proposal is reasonable as demonstrated by an unpublished Department study conducted two years ago titled, "The Impact of Procedural Due Process on How School Staff Spend Their Time" more popularly known as the "Time Study." Results of that study revealed that on the average each special education teacher spends 1 hour and 10 minutes per day in case management type activities. Five teachers then would spend at least 5 hours and 50 minutes per day on case management activities. At this rate it would be feasible for one full-time teacher to conduct the case managment activities for five other teachers freeing these teachers to provide more direct instructional services.

5 MCAR S 1.01228 PUPIL PERFORMANCE PLAN. This option is needed to allow flexibility for those districts which have developed district-wide performance based systems for all enrolled pupils whether handicapped or not. These pupil performance based systems are sometimes more commonly known as basic skills, or minimum competencies. This option is reasonable because it allows an exemption to the ratio rules if and when such a system is in place. It was developed and inserted at the request of a number of districts who are implementing programs for handicapped pupils. It is reasonable because it provides an alternative for those districts operating a "results oriented" system rather than an "input oriented" system. Like other models, all due process procedures will remain in place, thereby providing a protection to individual pupil's needs and use of this option is at the discretion at each district. 5 MCAR S 1.01229 A. VARIANCES. This amendment is needed to clarify in rule the criteria that will be used to allow program variances for early childhood and school-age caseloads. It is reasonable because it provides an alternative to cover emergency situations without endangering the needs and rights of handicapped pupils.

5 MCAR S 1.01229 B. METHOD OF COUNTING PUPILS. This statement is needed in rule to clarify interpretations as to how the proposed rules on caseloads are used to determine an individual teacher caseload in instances such as when two special education teachers are providing services to the same student or when a teacher provides service at more than one level. The proposal is reasonable because it adds no mandate nor changes any meaning or intent. It simply provides the Department's interpretation.

5 MCAR S 1.01232 A. DIRECTORS. This section is needed because special education is a part of the total education structure and for the following reasons there needs to be a special education trained manager or director:

(1) The state and federal laws that govern the operations of programs for handicapped pupils are complex and very precise as to legal due process rights and other procedures. Maintaining an awareness of the many requirements cannot be accomplished without significant amounts of time.

(2) The handicapped pupils have truly unique educational needs, which require programming options not available through regular education systems and training is not provided to regular educators and administrators for designing the needed programming options.

(3) There are many diverse human, fiscal, and material resources available to school districts to meet unique needs of handicapped pupils. The requirements for a district to access those resources are often complex, ever changing and require the attention of a person trained to deal with each individual pupil's handicapping condition and educational problem.

(4) There is a need for inter-agency (Vocational rehabilitation, Developmental Achievement Centers, Head Start, Departments of Health and Welfare, etc.) coordination of specialized services to meet the unique needs of handicapped pupils and their parents.

The proposal is reasonable as it results in a net savings of dollars for local school districts. Based on 1981-82 data there were 13 districts (total school-age population of 9,031) which did not have directors. These districts would need to join a cooperative in order to employ a director who would be reimbursable. Under these rules some of the 13 districts may choose to appoint a director without being involved with a cooperative but the position would not be reimbursable with special education aids. One would, because of geographical isolation, be eligible for a variance and would therefore be eligible for a part-time director.

There are seven districts (based on 1981-82 data) which employ directors that would not be eligible for reimbursement under these rules because their public and non-public school enrollment is less than 2,000. All of these districts, except one, are geographically located close to a joint powers or host district cooperative. One district because of geographical isolation would be eligible for a variance. These changes would result in a estimated savings of $39,000.

There are nine districts and eight cooperatives which employ (1981-82 data) full-time directors but would be eligible for reimbursement for part-time directors under these rules. The net savings would be $96,720 using an average expenditure of $28,430 per full time director position. Some positions, for example, would be reduced from one FTE to .63 FTE or from one FTE to .84 FTE.

The requirement for part-time directors to "be assigned duties other than direct instruction for reimbursed time" is needed to ensure that directors will be available during the entire school day to hold scheduled and unscheduled team meetings with parents and teachers, and to handle due process issues, instructional and curriculum concerns and other general administrative matters. If he/she is scheduled for a class each day then either that time is not available for such activities or a substitute teacher must be employed to take over the class freeing the director to participate in such activities. Experience has demonstrated that often the pupils assigned to the part-time director are short changed in the amount of instructional time available to them.

5 MCAR S 1.01232. ASSISTANT DIRECTORS. This amendment is reasonable as it allows districts and cooperatives (particularly large districts and cooperatives) the flexibility to determine their own needs for additional administrative assistance to the directors. If they chose to hire such persons, the positions would be reimbursable. A separate section for assistant directors is needed to prevent a district or cooperative that is not eligible for reimbursement for a full time director from being eligible for reimbursement for an assistant director.

5 MCAR S 1.01232 C. OTHER SUPERVISORY PERSONNEL. This section is needed and reasonable as it allows districts and cooperatives the flexibility to determine their own needs for supervisors or coordinators of special education program areas. From 1981-82, when program supervisors were required, to 1982-83, when they were permissive, there has been a decrease of 23 from a total of 119 program supervisors for a savings of $416,400.

5 MCAR S 1.01232 D. VARIANCE. This proposal is needed to stipulate in rule criteria which will be used to approve variances from the requirement for employment of directors. There are a few districts which are either growing significantly or are geographically isolated so that cooperative services would not be feasible. This proposal is reasonable because it allows flexibility for those districts and because it allows for innovative proposals to decrease state and local costs.

5 MCAR S 1.01233 SURROGATE PARENT. This section is needed to clarify in state rule those requirements provided in Minnesota Statutes S 120.17 Subd. 3a. (e) and Pub. L. 94-142 for surrogate parents. The reference used for interpretation was DAS Information Bulletin #62, "Informal Letter to State Directors of Special Education, State Part B Coordinators and State P.L. 89-313 Coordinators," a draft policy paper on surrogate parents dated May 12, 1980. The draft was used in the absence of a final federal policy position. In short this federal requirement is that a person employed to care for a pupil cannot also act as surrogate parent. This includes county social workers who, in the past, have routinely been named as surrogate parents.

This section is also needed to clarify the districts' relationship with the Department of Public Welfare when the Commissioner of Public Welfare has been appointed public guardian for a child. The county social worker, as a designee of the Commissioner of Public Welfare, may participate in the team meeting but because he/she is a public employee and therefore has a conflict of interest, he/she cannot serve as a surrogate parent. The district would need to appoint a surrogate parent in this case. The proposal is reasonable because it is a requirement of Pub. L. 94-142 in order to receive federal monies and because only two options appear to be available. In the first option, districts may appoint the surrogate parents and in the second option, the state may appoint them. For a state agency, in St. Paul, to name persons living throughout the state to act as surrogate parents seems unreasonable in terms of knowing individual pupils and their needs as well as knowing potential surrogate parents and their abilities. Therefore, the most reasonable choice appears to be the one included in this proposal.

5 MCAR S 1.01234 SUSPENSION, EXCLUSION, AND EXPULSION. These amendments are needed to specify in rule the recent court rulings regarding the suspension and expulsion of handicapped pupils when their misconduct is or is not related to their handicapping condition. The amendments are also needed to clarify how "The Pupil Fair Dismissal Act of 1974" (Minnesota Statutes SS 127.26-127.39) and the procedural safeguards interact when considering suspension, exclusion or expulsion of a handicapped pupil. The proposal is reasonable because it does not add new mandates nor change any meaning or intent. Public reaction has indicated that the suggested approach is reasonable.

5 MCAR S 1.0124 IDENTIFICATION AND ASSESSMENT PROCEDURES and 5 MCAR S 1.0126 PERIODIC REVIEWS, REASSESSMENT AND FOLLOW-UP. The changes are needed because of a legislative mandate amending the requirements. The mandates from Laws of Minnesota for 1982, Ch. 548, Art. III, Sec. 30 and 31 are as follows:

> Sec. 30. STUDENT ASSESSMENT CONFERENCE. Beginning with the 1982-1983 school year, the assessment requirement established pursuant to 5 MCAR SS 1.0124 B.1.b. and 1.0126 B. shall be reduced to one assessment every three years.
>
> Sec. 31. PERIODIC REVIEW. Beginning with the 1982-1983 school year, the periodic review requirement established pursuant to 5 MCAR S 1.0126 A.2. shall be reduced to one review each year.

These rule changes are reasonable as they meet the intent of the State Laws as well as Pub. L. 94-142.

5 MCAR S 1.0127 FORMAL NOTICE TO PARENTS. These amendments are needed to clarify which public agency was intended. It is reasonable because the intent of the rule is not changed.

REPEALER. The repeal of these specific rules and sections of rules is needed because of the extensive revising and reformatting of the existing rules. It is reasonable because reformatting entire sections, as recommended by the Revisor's Office, was simpler and makes it easier for all persons to

understand the proposed changes.

EFFECTIVE DATE. The implementation of 5 MCAR SS 1.01223, 1.01224, and 1.01232 beginning with the 1984 school year is needed to allow districts time to plan and budget for any staffing changes prior to implementation in the next school year. It is anticipated that the rule-making process will culminate sometime in October, 1983, long after the school year 1983-84 budget has been established and the school year has begun. Allowing the remaining rules to become effective soon after publication of the Notice of Adoption is needed and reasonable to allow districts the flexibility to implement various staffing options as soon as possible. It is also needed and reasonable to clarify and disseminate policies in rule as soon as possible so all involved persons will have consistent information available.

ADDENDUM

Expert Witness Testimony

Agency Personnel

1. Dr. Gregory J. Waddick
   Assistant Commissioner
   Division of Instruction

2. Mr. Wayne A. Erickson, Manager
   Special Education Section
   Division of Instruction

3. Dr. Norena A. Hale, Assistant Manager
   Special Education Section
   Division of Instruction

Expert Witnesses

1. Mr. Charles Hagen, Special Education Director, St. Paul Public Schools, will provide testimony in support of the early childhood program alternatives (5 MCAR S 1.01223), the school-age levels of service (5 MCAR S 1.01224), and multidisability team teaching (5 MCAR S 1.01225).

2. Ms. Kyla Wahlstrom, Early Childhood-Special Education Coordinator, White Bear Lake Public Schools, will provide testimony in support of the early childhood program alternatives (5 MCAR S 1.01223).

3. Mr. Jerry Robicheau, Special Education Director, Cannon Valley Special Education Cooperative, will provide testimony in support of multidisability team teaching (5 MCAR S 1.01225), single disability case management services (5 MCAR S 1.01226) and pupil performance plan (5 MCAR S 1.01228).

4. Mr. David Peterson, Special Education Director, Montevideo Public Schools, will provide testimony in support of experimental proposal (5 MCAR S 1.0121 E.).

5. Ms. Marge Goldberg, Parent Advocate, will provide testimony in support of surrogate parents (5 MCAR S 1.01233) and suspension, exclusion and expulsion (5 MCAR S 1.01234).

6. Mr. Glenn Matejka, Superintendent, Hutchinson Public Schools, will provide testimony in support of supervision (5 MCAR S 1.01232).

7. A Minnesota Administrators of Special Education (MASE) representative will provide testimony in support of supervision (5 MCAR S 1.01232).

8. Ms. Barbara Flanigan, Minneapolis Association for the Hearing Impaired, will provide testimony in support of caseloads for levels IV, V and VI (5 MCAR S 1.01224 C.).

9. Mr. Virgil Likness, Superintendent, Madison Public Schools, will provide testimony in support of caseloads for school-age levels of service (5 MCAR S 1.01224 C.).

State of Minnesota
State Board of Education
Department of Education

In the Matter of the Proposed
Adoption of the Rules of the
State Board of Education
Governing Special Education
5 MCAR §§ 1.0120-1.0127, and Repealing
Parts of 5 MCAR §§ 1.0120-1.0123

STATEMENT OF
COMPLIANCE WITH
RULEMAKING PROCEDURES

I, Special Assistant Attorney General Laura E. Mattson, do hereby declare that I have examined the rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedure Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed. Any exceptions are noted below.

LAURA E. MATTSON
Special Assistant
Attorney General

Dated: August 16, 1983

State of Minnesota
State Board of Education
Department of Education

In the Matter of the Proposed Adoption of
the Rules of the State Board of Education
Governing Special Education
5 MCAR §§ 1.0120-1.0127, and Repealing
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AFFIDAVIT OF MAILING
NOTICE OF SUBMISSION
TO THE ATTORNEY GENERAL

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

John R. Jelinek, being first duly sworn, deposes and says:

That on the 16th day of August, 1983, in the City of St. Paul, County of Ramsey, State of Minnesota, he served the attached Notice of Submission to the Attorney General by depositing in the State of Minnesota Central Mail System for United States mailing at said City of St. Paul, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who requested notice that the hearing record, has been submitted to the Attorney General.

John R Jelinek

Subscribed and sworn to before me

this 16th day of August,

1983.

Lois E. Steinhaus

LOIS E. STEINHAUS
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES MAY 9, 1989

State of Minnesota
State Board of Education
Department of Education

In the Matter of the Proposed Adoption of
the Rules of the State Board of Education
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5 MCAR §§ 1.0120-1.0127, and Repealing
Parts of 5 MCAR §§ 1.0120-1.0123

NOTICE OF SUBMISSION
TO THE ATTORNEY GENERAL

Pursuant to your request and in accordance with Minnesota Statutes, Section 14.16.

PLEASE TAKE NOTICE that the above-captioned rules have been submitted to the Office of the Attorney General on this date, AUG 16, 1983, for review as to form and legality. Pursuant to 1 MCAR § 1.206 C., the Attorney General will not approve the rules for ten calendar days after receipt to allow any person or association time to comment on the legality of the rules, after which that Office will complete its review. If you desire to comment on the legality of the above-captioned rules, you should direct your comments to the Office of the Attorney General, 204 State Administration Building, 50 Sherburne Avenue, St. Paul, Minnesota 55155, telephone (612) 296-1288. Please note that the above-cited rule of the Attorney General also provides that a copy of any written comments submitted to the Attorney General must be submitted simultaneously to this agency.

If you are interested in determining what changes, if any, were made in the proposed rules after the hearing and before submission to the Attorney General you may contact Dr. Norena A. Hale, Division of Instruction, State Department of Education, 802 Capitol Square Building, 550 Cedar Street, St. Paul, Minnesota 55101, or telephone (612) 296-1793.

Ruth E. Randall

Ruth E. Randall, Secretary