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 The proposed rules were withdrawn from the public hearing process on November 9, 1981 after much concern was expressed that there needed to be further input from interested parents, teachers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.).