

7/6/91

STATE OF MINNESOTA  
STATE BOARD OF EDUCATION

In the Matter of the Proposed Rules  
Governing Special Education, Minn.  
Rules Parts 3525.0200-3525.7500

STATEMENT OF NEED  
AND REASONABLENESS

I. INTRODUCTION

Initial rules for special education were developed in 1976. Revisions, additions and amendments were made in 1979, 1983 and 1989. As the field of special education evolves, the need for special education proposed rules is prompted by a number of factors such as: (1) changes in state statutes and federal laws relating to special education, (2) monitoring citations by the federal Office of Special Education (OSEP) requiring changes in order to continue receiving federal funds, (3) the Department's resulting corrective action plan submitted to OSEP as a result of the monitoring report, (4) increased amount of district data from the department's monitoring of local district programs and formally filed complaints, and (5) State Board of Education (SBE) policies relating to special education that have been discussed and passed.

II. STATEMENT OF BOARD'S STATUTORY AUTHORITY

Minnesota Statutes (1988) Section 120.17, Subdivision 3 charges the Board with the responsibility to promulgate rules that will provide standards and procedures appropriate for the implementation of special education services for students with disabilities by all school districts. Specifically, this Minnesota Statute directs the Board to adopt rules to determine eligibility for special education services. Minnesota Statute 127.44 specifically directs the SBE to adopt rules regarding the use of behavioral interventions that are aversive or include deprivation procedures.

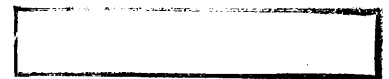
III. STATEMENT OF NEED

Several basic issues must be cited as the underlying need for the proposed regulations.

1. Direction from the 1987, 1988 and 1989 Legislature.

The Legislative Commission to  
Review Administrative Rules

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2. The call for more clarity of standards and expectations of school districts and parents.
3. Compliance with the federal act (The Individuals with Disabilities Education Act (IDEA) of 1990, P.L. 101-476, formerly known as the Education of All Handicapped Act referred to as P.L. 94-142) and regulations (CFR, Title 34, Chap. III).

These three needs will be addressed in order. The first issue is that the 1987 through 1989 Legislatures have directed the State Board to promulgate rules to assure that individuals with disabilities are afforded an appropriate education.

Minnesota Statute 120.17 Subd. 3a requires all school districts to insure that: (a) all children who are disabled and require specialized instruction be provided the special education instruction and related services appropriate to their needs according to an individual education plan, (b) children with disabilities and their parents are afforded procedural safeguards and the right to participate in decisions regarding appropriate identification, assessment and placement, (c) that to the maximum extent appropriate, children with disabilities will be educated with children who are not handicapped and that children will be removed from the regular educational environment only when and to the extent that education in regular classes with the use of supplementary services cannot be achieved satisfactorily, and (d) that testing and evaluation materials utilized for the assessment and placement procedures will be selected and administered so as not to be racially or culturally discriminatory. Minnesota Statute 120.17 Subd. 3b provides that districts will afford procedural safeguards to parents or guardians of children with disabilities.

Recently passed legislation requires the State Board of Education (SBE) to be responsible for promulgating rules in the following specific areas:

- (1) Standards and procedures for determining eligibility for special education services (Minnesota Statute 120.17, Subd. 3); and
- (2) Regulation of behavioral interventions which are considered aversive or employ deprivation procedures. (Minnesota Statute 127.44).

In addition, there is a need for technical changes in the current rule to clarify current statute and rules. Therefore, the Legislature has clearly directed that rules be developed and has provided direction as to the terms of those rules.

While legislative direction is a significant reason for promulgating these rules, the second issue relates to the need to set clear and comprehensive standards so that both the schools and the parents can identify what is expected. Although Minnesota has had minimal litigation in education, there is currently a sharp increase in the number of formal complaints and due process hearings with the potential for court proceedings and litigation to follow. There is also an effort to have more local input in making educational decisions. This rule proposal would aid districts by establishing clear policy and direction in special education process while allowing local decisions regarding specific services and possibly deterring expensive and time consuming litigation.

The third issue relates to the federal Individuals with Disabilities Education Act (IDEA) as amended. The federal act has served, to a degree, as an impetus for the development of more comprehensive rules. Currently, Minnesota is required to implement several procedural changes in order to insure full compliance with the federal act. This is specifically documented in the latest State Plan which details the state's policies and procedures assuring individuals with disabilities a free and appropriate public education. Unless the state assures through the State Plan all children with disabilities will be served appropriately, the Department and local school districts could be deprived of more than 27 million dollars annually in revenue by 1991. The state has a responsibility to assure compliance with all state and federal laws and regulations in order that its citizens are not deprived of this revenue and the programs and services which it can generate.

#### IV. STATEMENT OF REASONABLENESS

In preparing these proposed rules, the Department of Education, Special Education Unit, has sought advice and input from the State Special Education Advisory Committee (SEAC), school officials and staff from Minnesota's public schools, the Attorney General's Office and from parents and parent advocate organizations. In addition to forming specific small working committees made up of practitioners, adult consumers, and

parents in an effort to gain a broad base of input, the Department distributed four drafts of proposed language dating from January, 1990 through December, 1990. The State Board of Education then conducted a total of 18 regional meetings; eight in January and February, 1990 and ten in October, 1990 for the purpose of providing an opportunity to examine the content of the proposed rule and gather response for its modification prior to presentation to and action by the State Board of Education. During the months of January through March, more than 268 persons attended the regional meetings and an additional 81 letters were received representing another 192 persons, districts and organizations. During the month of October, 1990, separate regional meetings were conducted to discuss the proposed entrance criteria for Specific Learning Disabilities. Approximately 124 persons attended these meetings and an additional 136 submitted written comment. It is from this vast amount of draft copy distribution, meetings and the feedback received from at least 720 persons, districts and organizations that these rules were developed.

#### 3525.0200 DEFINITIONS

The change in Subpart 1b. is editorial and does not change its meaning. The words "support assistant" are added to the title of Subpart 9b. to more clearly identify the contents of the subpart. The reference to "levels" is deleted to reflect the revisions and renumbering changes made in Section 3525.2340.

The word "widely" is added to Subpart 17a. to convey that professional standards come into being when it is supported and utilized by many within the profession. It is a reasonable addition as it assists in better defining the meaning of the term.

The deleted words in Subpart 20a. reflect the changes made in Subpart 18B. and the deletion of Subpart 23. The term "communicative" is added to identify a major domain which frequently requires the provision of special education and related services. It is a reasonable addition in that this domain has been an area in which many pupils with disabilities have experienced need for service. The addition serves to list the presence of this domain within special education.

The changes in Subpart 24 are reasonable because they correct the changes in the coding of special education licenses made by the State Board of Teaching.

Deleted Subpart 23 and modified Subpart 18B., Related Services, include services currently listed in Subpart 23, Support Services. This amendment is needed because of the confusion created by having two state defined terms describe services that derive from one term ("related services") in the federal regulation. This amendment is reasonable because it is consistent with federal regulations and the reason for the distinction (i.e. licensure or professional standards for the persons serving in these roles) is no longer pertinent. Each of the services listed has either a nationally accepted professional standard or a standard set in Minnesota rules.

#### 3525.0550 PUPIL IEP MANAGER

The addition of "or licensed-related service staff" is reasonable because it provides greater flexibility of options in assigning a pupil IEP manager. Professionals who may additionally serve as the IEP manager for a pupil about whom they have particular knowledge include; school psychologists, school social workers, occupational therapists, physical therapists, nurses and audiologists. This addition should reduce the numbers of pupils some teachers are assigned yet ensure that a knowledgeable team member performs the important coordination tasks of the IEP Manager. The deletion in the Subpart reflects the change made in Subpart 18b.; the remaining changes are editorial and do not change the meaning or intent of the Subpart.

#### 3525.1100 STATE AND DISTRICT RESPONSIBILITY FOR TOTAL SPECIAL EDUCATION SYSTEM (TSES)

The amendments in Subpart 2, B are necessary to make this subpart consistent with the amendments to section 3525.2340. The amendment describes those components to be included in the district's TSES to meet the federal requirement that a full range of services be available in a certain form but allows the district to describe the available options. It is expected that local district plans may vary depending on a variety of factors such as size of the district, number of schools in the district or whether it is a single district, a member of a cooperative or an intermediate district.

This subpart is also consistent with 3525.2900. Each pupil's IEP will specifically describe the service alternative determined for that student including the site, setting, type of instructional service and the manner in which it will be delivered, i.e. directly or indirectly.

Subpart 2., E, is reasonable because it describes the action a district will take to receive approval from the Commissioner of Education for its TSES. This subpart is necessary because the Federal Monitoring report requires the state to carry out a corrective action plan (CAP) in response to a district found to be non-compliant with state and federal regulations.

### 3525.1150 PROVIDING SPECIAL EDUCATION TO SHARED TIME PUPILS

Minnesota School districts have always been required to make available and provide special education services to pupils who are handicapped when they attend a non-public school. Minnesota Statutes, Section 124A.034 define the public school district's responsibility to these students. This part is needed because of the long standing confusion over the requirement of providing special education services to non-public pupils who have a disability. It is reasonable because this clarification is consistent with statutes regulating services to non-public students and provides explanation of standards which apply when providing special education and the requisite due process. The term equipment is meant to include items such as wheelchairs, walkers, computers, a phonic ear, etc. that are not included in the definition of individualized instructional materials according to Minnesota Statute 23.932, subd. 1e. This rule allows flexibility for districts in meeting their obligation to students who have a disability. All comments received in public meetings have been favorable regarding this clarification.

### 3525.1310 STATE AID FOR SPECIAL EDUCATION PERSONNEL

The rule was amended in 1989 to allow for the "necessary short term indirect or consultative services that are provided in conjunction with regular education prereferral activities" item (B). The amendment made in "K" is needed to clarify special education state aid reimburseable services provided by school psychologists and school social workers. It is reasonable because of the flexibility already afforded in B of this part and yet allows a school psychologist or social worker to provide specific services to pupils with emotional/behavioral disorders alone or in

conjunction with other instructional services as written in the IEP for any pupil identified as handicapped. Services provided beyond this scope may be provided but would not be eligible for special education state aid reimbursement. Ongoing services provided for at-risk students such as those listed in the rule also go beyond the scope of reimbursement from state special education aids. Again, the flexibility described in B of this part allows for the necessary links between regular education, special education and at-risk programs.

#### 3525.1320 EXPERIMENTAL PROPOSAL

The amendments to this part are needed because of Minnesota Statute 120.17, Subp. 3 which allows for districts to submit proposed experimental eligibility criteria as an alternative to the criteria proposed in this rule (3525.1325-3525.1345). It is reasonable because it uses an existing process for application rather than establishing a new procedure. Subpart 2, as amended, describes the procedure for application and the components of an experimental proposal. Component G. includes reasonable impartial evaluation procedures so results can be objectively analyzed. Using this existing process allows a district three years to implement an alternative criteria standard described in the proposal to determine if the results are valid.

#### 3525.1325-3525.1345 ENTRANCE CRITERIA

This(ese) section(s) are needed because of specific legislation (Minnesota Statute 120.17) directing the State Board of Education to write rules to set specific standards for entrance criteria.

These sections are reasonable because these criteria would identify only those students who are disabled and in need of special instruction. This is consistent with federal regulation and state statute and would distinguish non-handicapped students who might benefit from individualized instruction but who do not have a disability.

Each disability area listed in federal regulation and state statute has been defined in this rule. Criteria for each disability is based on Minnesota Department of Education guidelines and recommended criteria that have been written and revised over the past seven years; they are generally accepted as the current recognized professional standard across the state.

These criteria address issues of ENTRANCE to special education services and do not address changes in, continuance or exit from special education services. The impact on most pupils currently being served should be minimal, if any, as a result of implementing these criteria.

Some students currently being served will, no doubt, be phased back into the regular classroom entirely. It is not the State Board's intention that these students be immediately dropped from special education and left to fail. Rather, appropriate support, planned for and agreed upon at the exit conference, should be in place to assure a successful transition to the regular curriculum.

It should also be understood that these criteria only define who is initially eligible and in need of special education services and not what type of program should be provided, how much service may be necessary or where the instructional services should be provided. Once the pupil is determined eligible according to the criteria the type, amount and location of services are determined by the team and written on the pupil's IEP plan according to 3525.2900.

The criteria for each disability has been written using a similar format. The format consists of A) a definition and B) specific measurable criteria to establish two factors: first, the existence of a disability and secondly, the need for special education instruction due to the impact of the disability. Every effort has been made to provide criteria which are clear and implementable. Health, sensory and physical disabilities rely on medical confirmation of the disability and the team members' professional knowledge and experience of a disabilities impact on the student's functioning. The identification of cognitive, learning and emotional/ behavioral disabilities rely on the specialized training and experience of a variety of professionals employed or contracted by the schools, in collaboration with the parents/guardians, to verify that a cognitive, learning or emotional/behavioral disability exists and significantly impacts the pupil's school functioning in an adverse way. Knowledge and research in these three areas continues to expand but establishing criteria for these three types of disabilities is not without controversy. At this time, there appears to be more agreement within the medical field about learning disabilities and emotional disorders than in



the field of education. However, requiring a medical diagnosis for the areas of learning and emotional disorders is not comparable to the more straight forward audiological measures and medical diagnosis of hearing, visual, physical and health impairments.

These proposed entrance criteria are reasonable in that they: (1) require the medical and audiological diagnosis necessary to determine the extent of medical, health, physical and sensory impairment, and (2) require appropriately trained and licensed professionals employed or contracted by the schools to assess the impact of these impairments on educational performance. For emotional disorders, learning disabilities and cognitive impairments, the multi-disciplinary assessment team must determine both (1) the presence of a disorder/disability/impairment and, (2) their impact on educational functioning. The use of contracted medical evaluations to assist in diagnosing cognitive, learning and emotional problems is an option available to public schools and should be used to supplement school assessment data when appropriately trained personnel are not available within the district. The determination that a student has an impairment, disorder or disability is a serious one. It is as important to protect those who are not disabled from being so identified as it is to ensure those who are disabled be identified and served.

Every effort has been made to eliminate temporary, cultural, ethnic and other situational factors from being the sole reasons for identifying a student as disabled. The proposed criteria rules are reasonable in that they are, in the opinion of the majority of those who assisted in their development or responded to draft materials, consistent with state and federal standards, case law and recognized professional standards.

The criteria are reasonable because the district can seek experimental status for alternative eligibility criteria or exercise the team override provision in those instances when the team can document a pupil is disabled and in need of special education even though the pupil does not meet the criteria requirements in parts 3525.1325 to 3525.1345.

#### 3525.1325 AUTISM

The definition and criteria for the disability of autism is reasonable because it is consistent with the definition in the Diagnostic and Statistical Manual Third Revision (DSM III-R) of the American Psychiatric

Association, the current accepted standard in the field utilized by psychologists, psychiatrists and others in the medical profession. No written or oral concerns were raised about the autism definition or criteria following draft criteria distribution or at the public meetings.

### 3525.1327 DEAF-BLINDNESS

Deaf-Blind is a disability defined in federal regulation and included in Minnesota Statutes. The definition for the disability of deaf-blind is reasonable because it utilizes the proposed criteria for both hearing impairment (3525.1331) and visually impaired (3525.1345). This definition was developed by teachers, a pediatrician, Department of Health professionals and consumers. This working group concluded that separate entrance criteria were not necessary because the proposed criteria for visually and hearing impaired are appropriate. This section includes broad statements about children who are at risk for deaf-blindness due to certain circumstances and conditions; when present these may warrant further assessment and monitoring. The statements are reasonable because they clarify indicators of potential or related disabilities.

### 3525.1329 EMOTIONAL BEHAVIORAL DISORDERS

Serious Emotional Disturbance is a disability defined by federal regulation and referred to as Emotional/Behavioral Disorders in Minnesota Statutes. The definition and criteria for Emotional/Behavioral Disorders is reasonable because it establishes appropriate eligibility for this disability. It is based on the 1986 Minnesota guideline definition which many districts have adopted and adapted during the past seven years. It was developed by professionals in the fields of education, health, and human services. The terminology and definition are consistent with the proposed definition of the Council for Children with Behavior Disorders, a division of the International Council for Exceptional Children, and the National Mental Health and Special Education Coalition, a group of some 30 professional mental health and education associations working with them.

Both the presence of an emotional/behavioral condition and the educational need criteria must be met in order to qualify for these services. Because some behaviors of very young children could be confused with behaviors described, paragraph E addresses how these criteria should be used to identify children not yet enrolled in

kindergarten as Emotionally or Behaviorally Disordered. The criteria allows a DSM-III-R diagnosis to serve as one of the multiple data sources for establishing the existence of an E/BD condition. Planned documented interventions are required. Factors which may occur with but which in and of themselves do not constitute an E/BD condition are identified. Given the number of years these criteria have been used and the number of people involved in their evolution, these criteria stand as a reasonable compromise at this time for a historically controversial disability.

### 3525.1331 HEARING IMPAIRMENT

Hearing Impairment is a disability in Minnesota Statute. This disability includes pupils who are deaf as well as those who are hard of hearing as listed in the federal regulation. The criteria are reasonable because they are consistent with the research and clinical literature in the field of hearing impairment. This standard has been developed over the past seven years with broad input from audiologists, psychologists, teachers, and persons who have a hearing impairment. These criteria set measurable standards when a hearing loss as measured by an audiologist is significant and constitutes an impairment. An audiologist is a professional who has graduated from a university graduate program with an approved training program in audiology. Paired with the identifiable impairment are criteria that measure the need for specialized instruction. Included are measures which use standard scores (B.2.b and B.4.b), but because norm-referenced instruments are not always appropriate for students with a significant hearing loss there are alternative criteria where professional judgement based on observations of the student by appropriately licensed teachers are utilized to determine need for special instruction.

### 3525.1333 MENTALLY IMPAIRED

Mentally Impaired is a disability in both the federal regulation and Minnesota Statute. The criteria is divided into two levels of impairment: Moderate-Severe and Mild-Moderate. These criteria are reasonable because they include concurrent measures of intellectual functioning and adaptive behavior. Results from both are necessary to determine eligibility and need for special education. The standard score requirements in this criteria are reasonable because they assure that only those students with mental impairments will be identified. The standard scores for ability as well as adaptive behavior are consistent with nationally accepted standards.

### 3525.1335 OTHER HEALTH IMPAIRED

This disability is needed because it is listed in both the federal regulation and Minnesota Statute. The criteria listed here are reasonable because they include a medical determination of a health impairment as well as a standard for documenting a student's need for special education due to the health impairment. The criteria allow for the use of a standard score when appropriate or the use of professional observations when a standardized measure is not appropriate. These criteria were developed by professionals in the fields of health and education

### 3525.1337 PHYSICALLY IMPAIRED

This disability is needed because it is in both the federal regulation and Minnesota Statute. These criteria are reasonable because they include a medical determination of a physical impairment and documentation of the need for special education. The criteria allow for the use of a standard score when appropriate or the use of professional observations when a standardized measure is not appropriate. These criteria were developed by professionals in the fields of health and education.

The disabilities of Physically Impaired and Other Health Impaired were formerly paired under one label as Physical and Other Health Impaired (POHI). The same professionals developed both criteria but because these disabilities are listed separately in federal law and regulations and Minnesota Statute it was decided to address each separately. Because a student may qualify under one or the other criteria should not have an effect on what or where the pupil's program is and who might provide the special education services. As previously discussed, student's eligibility is determined by disability criteria. The student's specific needs determine type and amount of services as well as when and who will provide them.

### 3525.1339 SEVERELY MULTIPLY IMPAIRED

This disability is needed because it is included in the federal regulation and is used in the annual federal child count. The criteria are reasonable because they are consistent with referenced criteria included in this proposal but recognizes the severity of the impairment when two or more of the disabilities exist concurrently.

The disability of Speech and Language Impaired is not included for two reasons. First, it is typically an area of delay associated with other disabilities such as when a pupil has a hearing impairment or is mentally impaired. Second, speech or language impairments are two of the most frequently identified impairments. Therefore, to allow a student with an articulation, fluency or voice impairment and one of the impairments listed under B of this part to be counted as Severely Multiply Impaired would not be in concert with the intent of defining this disability area. This definition is consistent with the federal definition and has been supported during the public meetings and field response phases.

### 3525.1341 SPECIFIC LEARNING DISABILITY

These criteria are needed because Specific Learning Disabilities is a disability listed in both the federal regulations with its supporting subsections and Minnesota Statute. This disability does not include students considered to be slow learners or whose learning difficulties can be remedied by general education support systems such as Chapter I and Assurance of Mastery (AOM), or by modifications within the general education curriculum and environment.

During all of the various meetings related to this disability, considerable discussion took place over the use of curriculum based measurement (CBM) as a sole procedure for determining specific learning disability eligibility. Use of only this procedure would not meet the federal requirement that two facts be established: a) the existence of a disability; and b) the need for special instruction and services due to the impact of the disability. CBM is a very good procedure for assisting in establishing b) but does not address the issue of the existence of a disability as specified in a).

These criteria are reasonable because they reflect what is believed to be a specific learning disability based on a systematic review of the professional literature, written and verbal input from the field, and careful consideration of the parameters set by federal regulations and case law. The foundation for this process rests in the knowledge that a definition is a philosophical statement reflecting the view of the State Board of Education and the direction for selection of criteria. The criteria are, actually, the operationalization of that philosophy; and, together, the product should result in appropriate programming for children thus identified.

Essentially, the process involved the following: the use of a field study group to develop a working paper which was presented to the state populace for feedback and comment; the advice of professionals outside of the State who are actively involved in scholarly productivity and present a national opinion; ten State Board of Education public meetings held throughout the state wherein any citizen who chose could present public comment on the working draft criteria; incorporation of written comments from the public to the working paper; revision of the working paper based upon an analysis of the public comment and feedback as well as an analysis of the fundamental requirements set down by federal regulation and case law.

These revisions were then tested via the case study model with one school district's professional specific learning disabilities staff. Comment and feedback from this effort were overwhelmingly positive to the overall document and process with minimal changes offered, those being only in the way of language clarification and readability. A questionnaire on the implementability of the proposed criteria was sent to 711 professionals from the field of special education: 100 (total number in the state) directors of special education, 13 special education licensed supervisors, 189 school psychologists (a statistically significant number based on .05 level of significance), and 409 specific learning disabilities teachers (a statistically significant number based on .05 level of significance). There was an overall return rate of 75.6% with each subgroup having a within group return rate of greater than 50%. The percentage of agreement for each criteria element was never less than 57% and the overall agreement that these criteria can be implemented in Minnesota given appropriate technical assistance was 76% with 12% more neither agreeing or disagreeing.

A compilation of this information was presented to the Minnesota State Board of Education and given a unanimous vote to go forward with the criteria as revised for inclusion in the proposed entrance rules.

#### 3525.1343 SPEECH/LANGUAGE IMPAIRMENTS

This area of criteria is needed because it is included in both the federal regulation (speech impaired) and Minnesota Statute (speech or language impaired). These criteria are reasonable because they have had extensive field testing insuring that students will be correctly identified as speech

or language impaired using appropriate standard scores for the areas of articulation and language disorders. The area of articulation has an additional criteria which makes it unlikely that students with developmental errors would be involved in direct speech services. Rather, students with single phonemes (sounds) in error, must have reached the age of nine and also demonstrate that sound to be consistently in error before consideration into speech/language services can begin. In the area of language disorders, an entrance eligibility score of -2 S.D. on 2 technically adequate, norm referenced language tests ensures that individuals qualifying for language services demonstrate true language disorders. In cases where an individual is suspected of having a language disorder but does not score at -2 S.D., the team may utilize the additional criteria component which permits entrance criteria for language disorders at -1.5 S.D., if the individual scores between -1.5 and 2 S.D. over 2 testing periods 4 months apart.

A survey compiled by the Minnesota Speech and Hearing Association comparing the number of students served at -2 S.D. versus -1.5 S.D. in language disorders concluded that no difference in numbers of students served at either criteria cut-off. In June, 1989, the president and the criteria chairperson of the Minnesota Speech and Hearing Association wrote a position paper in support of this proposed criteria.

### 3525.1345 VISUALLY IMPAIRED

These criteria are needed because Visually Impaired is a disability in both the federal regulation and Minnesota Statute. This disability includes those persons who are blind as well as those with a verified limitation in sight which interferes with interaction such that special education is necessary. Both medical and educational criteria must be met in order to qualify for service as a visually impaired student. The medical nature of visual impairments often requires the involvement of additional professionals which may include ophthalmologists, optometrists, orthopterists, geneticists, as well as educators. The term "licensed eye specialist" is intended to mean an ophthalmologist or optometrist. The need is for someone with training in anatomy, physiology and optics of the visual system to make the necessary medical evaluations. This person should be licensed by the appropriate state or professional board to verify adherence to professional standards.

The establishment of acuity at 20/60 is arbitrary. Traditionally, 20/70 is used in educational settings and 20/60 in vocational settings. With the need to provide transitional services to students with disabilities smoother transition services would occur if the same criteria for service were used by both. The number of children who fall between the 20/60 and 20/70 levels of visual acuity are minimal. Visual Impairment is a low incidence disability; approximately 800 students currently qualify for vision services in Minnesota. It is estimated that lowering the criteria to 20/60 might result in an increase of five students statewide.

It is difficult to accurately assess acuity in infants and in severely impaired children who do not have the cognitive skills to cooperate with the evaluator. Nationally, approximately half of the identified visually handicapped children are multiply impaired. To accurately determine their acuity requires expensive, time-consuming procedures. Often a professional can estimate acuity from ocular examination and gross behavior. An estimation of acuity would permit more economical identification of children who are visually impaired and enable more appropriate service to those identified.

The medical diagnosis of many eye conditions may not be severe enough to qualify a person for service. However, the known etiology is such that the individual will assuredly be visually impaired or totally blind in the future. Criteria that allow for the identification and inclusion of such individuals will permit proactive programming at a minimal cost to the school district.

A professional in the field of education with knowledge in visual impairment needs to conduct a functional assessment. Such an assessment assists in appropriate recommendations based on the specific visual abilities and limitations of the student.

Students must be able to do visual tasks in diverse environments. Consequently, it is necessary to assess a student's abilities in the specific environments in which educational programming is to take place. The need for modification of the materials, the task, or the environment can then be determined.

Children not yet enrolled in kindergarten would be eligible for special education with only the medical determination of a visual impairment.



The visual system of an infant or very young child is not fully developed. The range of acuities for normal infants at birth are within the criteria of visual impairment in adults. In order to avoid the inappropriate identification of all normal infants as visually impaired it is necessary to modify medical criteria (A) to reflect developmental norms of infants. With these modifications, an infant identified by the medical conditions alone would be eligible for service. The purpose of educational programming for infants with medically verified visual deficits is to stimulate the development of the visual system and provide practice to develop better vision.

The criteria as they are stated would not result in any significant changes in the number of children identified as visually handicapped in Minnesota. It would provide more precise and consistent practice in identification of visually handicapped children while excluding children with amblyopia or visual-motor problems who would be better served in other categories.

#### 3525.1347 TEAM OVERRIDE OF ENTRANCE CRITERIA

This part is needed because of specific legislation (Minnesota Statute 120.17, subd. 3) directing the State Board of Education to address a process for reviewing district criteria variance requests.

Federal regulations (CFR 300.600a2ii) require each State Education Agency to set standards for local districts to implement the federal Individuals with Disabilities Education Act. These standards include criteria which districts use to determine if a student is disabled and in need of specialized instruction, and, therefore, is eligible for special education services and procedural safeguards. This eligibility decision must be made by a team of persons who are knowledgeable about the student and his/her special education needs (CFR 300.533).

While the proposed statewide entrance criteria will be sufficient for teams to make the eligibility decision for most referrals, there will be occasional cases where a component of the criteria will not be applicable. One possible example could be the limited validity of standardized test scores for students with sensory impairment or physical impairment. Another possible example is the potential discriminatory effect of an assessment procedure for a culturally diverse student. In such cases, the U.S. Office of Education and Office of Civil Rights have ruled that the

prescribed team process must still prevail and that the team must draw upon, document and carefully consider information from a variety of sources in making this decision.

The proposed rule 3525.1347 is reasonable because it provides a procedure for the team to use and document an override decision for those unusual, infrequent cases where the eligibility criteria does not apply or cannot be fairly applied. Neither the Director of Special Education or any other administrator has the authority to override a team decision.

Because of the expectation that this override procedure would be used infrequently it is required that the Director of Special Education maintain a log of all district team overrides. This log could promote self-monitoring and alert the district to take necessary steps to correct any problems that arise in the district's identification procedures. The team override decision logs will be kept in the district; logs do not need to be sent to the Commissioner of Education for approval.

#### 3525.1350 EXIT PROCEDURES

This part is needed as a component of the entrance criteria required by Minnesota Statute 120.17, subd. 3.

At the time the pupil was first placed in special education it was demonstrated that: a) a disability existed; and, b) due to the disability the pupil was experiencing difficulty learning. The purpose of special education is to provide the pupil with the opportunity to develop skills to learn in spite of the disability and to use these skills to improve learning. Special education does not purport to "cure" disabilities.

The proposal is reasonable because the procedures outlined in this part are primarily based on the pupil's ability to succeed in the general education program or the medical correction of the pupil's disability. Exit decisions are not to be the result of a test score(s), but rather the pupil's ability to function and progress in the education program without special instruction and services. All program decisions, including exit from special education are made by the IEP team and are based on adequate assessment information. Exceptions to this procedure are listed in the rule and include exceeding the legal school age, withdrawing from the district or successful completion of graduation requirements.

## 3525.1500 STAFF

Technical amendments to this part are needed because of a change in the State Board of Education Rules which regulate staff and administrative licenses. A new Director of Special Education license (M.R. 3510.9100) replaces any previous special education supervision license. It is reasonable because the requirement is consistent with the new State Board of Education Rule.

## 3525.2325 EDUCATION PROGRAMS FOR K-12 PUPILS AND REGULAR EDUATION STUDENTS PLACED IN CENTERS FOR CARE AND TREATMENT

The deletion in Subpart 2.B.(3) and Subpart 3.B is reasonable because it is anticipated state criteria will be adopted and districts will no longer use district developed criteria.

In Subpart 3.A.(2) the term "interim" replaced "short term". This change is reasonable because it is consistent with 3525.2900, Subp. 1.G. The intent is to have an interim IEP for no longer than 30 school days while the assessment is being conducted. Thirty school days is the length of time allowed for an initial placement (reference: 34CFR Part 300, Appendix C, II. IEP Requirements, Question 5, paragraphs a. and c.).

## 3525.2335 EARLY CHILDHOOD CRITERIA FOR ELIGIBILITY AND PROGRAM ALTERNATIVES

It is necessary to delete Subpart 1., D. in this part because it is now addressed in 3525.1347. This change is reasonable because the procedure described in 3525.1347 will apply to all disability and program areas and negates the need for a separate override procedure for early childhood: special education criteria.

## 3525.2340 EDUCATIONAL SERVICE ALTERNATIVES

Changes in this part are needed because the current "Levels of Service" delivery model is obsolete and promotes the concept of a continuum with more and lesser restrictive placements rather than an appropriate placement based on a pupil's needs. This rule requires updating to more accurately reflect current practices in the schools. Levels of service only offers five alternatives (Levels II through VI) which districts report as

limiting. The current levels of service model has the placement or location in which the educational services are being provided as the focus rather than the appropriateness of the actual program. The IEP team discussion often starts with where the services will be provided rather than what the goals and objectives should be and what services the pupil needs. This is often true in cases where the pupil has a severe physical or mental impairment and the family may want an integrated program or if the pupil is deaf and the family wants their child placed in the state academy. Placement in a current Level VI program, which is appropriate based on the child's needs, is often considered as a more restrictive placement than a placement in a regular classroom where the pupil's needs cannot be met.

The changes are reasonable because they give more flexibility to district teams to create programs that would be appropriate to individual pupil's needs. Decisions regarding where a learner is served can only be made by a team, based on the specific educational program designed for the pupil. The Educational Service Alternatives model does not convey a value of more or less restrictive options. It provides the framework for the district to create appropriate program alternatives. The change in the title of this section is reasonable to more accurately reflect the content of this part.

Subpart 1 Is reasonable because it restates what is currently in rule but changes the reference to educational service alternatives. It is also restated that the educational service alternative is appropriate to meet the pupil's needs and documented on the pupil's IEP plan.

Subpart 2 This subpart provides a description of the types of special education instruction and related services, indirect and direct. This subpart is reasonable because it clarifies what is a direct and indirect service and what must be documented on the IEP. This Subpart is consistent with the requirement in Minnesota Statutes 120.17 subd. 2 which requires districts to inform parents of available methods of instruction. Documentation required in this subpart in the district's TSES would meet the statutory obligation while giving districts the flexibility to describe their own programs.

Subpart 3 Changes in this part are needed because of changes made in Minnesota Statute 120.17 prohibiting the Department from enforcing caseloads for Level 2 and 3 services. Caseloads for services for less than

one-half the day are eliminated and shall be determined by local district policy. Caseloads are determined by disability category and whether the pupil receives instruction for more than one-half of the pupil's day or for the entire instructional day.

#### 3525.2345 DEVELOPMENTAL AND ADAPTIVE PHYSICAL EDUCATION (D/APE)

Developmental and Adapted Physical Education (D/APE) is an instructional service for pupils who have been determined to have a disability according to 3525.1325 to 3525.1341 and 3525.1345 and have a substantial delay or disorder in physical development. This subpart is needed because DAPE is an instructional service mandated by federal regulations. While D/APE is an instructional service and must be provided when the team determines the service is necessary for an individual pupil, it has been provided in an inconsistent manner across the state. This part is necessary because of the confusion about who is eligible for D/APE and when it must be provided to a pupil so there is consistent access throughout the state.

This part is reasonable because it describes criteria for teams to use when determining whether D/APE instructional services are to be included on a pupil's IEP. This part does not describe eligibility criteria in the same manner as 3525.1325 through 3525.1345 because D/APE is not a disability in itself but rather an instructional service which may be required by a pupil who is eligible according to disability criteria. Subpart 2 refers to the disability eligibility criteria and goes on to describe the criteria to be used to determine the need for specially designed physical education instruction. The criteria includes a standardized measure to be used when possible and an alternative measure based on professional judgement when a standardized measure can not be used.

#### 3525.2350 MULTIDISABILITY TEAM TEACHING MODELS

The amendments to this section are necessary to make it consistent with the terms and item outline changes in part 3525.2340.

#### 3525.2370 PUPIL PERFORMANCE PLAN

This section is repealed because it refers to caseloads based on the levels of service model which was eliminated by Statute in 1983 and now in this proposed rule.

## 3525.2380 CONSIDERATIONS WHEN DETERMINING RATIOS

These amendments are necessary to make this part consistent with 3525.2335. It eliminates references to levels of service, deletes the obsolete subpart referring to caseloads for level 2 and corrects the rule references. It is reasonable because it is now consistent with the rule and State Statute.

## 3525.2750 EDUCATIONAL ASSESSMENT

The change in 1.A. is editorial. It does not change the intent or meaning of the part. The change in item 1.D. is necessary to accommodate implementation of the State Plan. This item requires the district to conduct an assessment whenever a parent requests. If the district determines that an assessment is not necessary or appropriate the district may go to hearing according to the procedures described in this rule. This part is consistent with 3525.3500.F. and 3525.3800.

## 3525.2900 DEVELOPMENT AND CONTENT OF THE INDIVIDUAL EDUCATION PLAN

This section is intended to provide clarity to several federal requirements which pertain to the pupil's individual education program plan (IEP) (see CFR 300.340 through 300.349). These revisions are needed because IEP-related problems are central to many monitoring citations, formal complaints and due process hearings which have occurred in Minnesota. Implementation of the proposed rule will greatly reduce the frequency of these problems and the potential litigation which accompanies unresolved due process challenges. In addition, the standardization of practices proposed in this rule will improve MDE's ability to meet CFR 300.130, which requires MDE to assure that local districts maintain programmatic records for individual students with disabilities. The authority for these changes are in Minnesota Statute 120.17, subd. 3 in which the Board is to promulgate rules to provide standards and procedures appropriate for the implementation of special education for pupils with disabilities.

Subpart 1 is reasonable because it restates procedural requirements stated in federal regulations and in current State Board of Education rules. Also, this subpart clarifies district requirements for some increasingly important issues that are only superficially addressed by federal

regulations, especially the need for extended school year programs and compatibility with service programs carried out by agencies other than the local school district.

Paragraphs A, B, C, D, E, F, J and K are currently in rule but have been re-written in this manner in order for all of the general requirements to be referenced in one part of the rule.

Paragraphs G and H clarify the duration of the IEP and address the issue of an extended school year. Because the IEP is an annual plan, this proposal states the intention for the IEP to be in place for a school year unless otherwise noted. This clarification is reasonable because the vast majority of pupils will require services during the regular school year only. An extended year, which means services would be provided during the summer, must be considered by the team in those circumstances listed in Paragraph H. This requirement is a new addition to the IEP rule but is consistent with federal policy, state policy, court and hearing decisions. By including these standards in rule, teams will be consistent when they consider the need for an extended year program for a pupil. Teams will determine the type and amount of service needed for pupils for whom an extended year is necessary. A traditional four or six week summer school program will not necessarily be appropriate for all pupils in order to maintain performance on IEP goals.

Paragraph I simply states the need for all of the requirements of this part be in place for pupils beginning at birth. Minnesota Statute mandates special educational services including an IEP be available to children who have disabilities beginning at birth. A federal law allows states to develop interagency services for children with disabilities under age three and requires an Individual Family Services Plan (IFSP) be written with each family. Meeting the requirements under this law, it is anticipated that Minnesota will achieve fourth year status in summer, 1991.

During the past eighteen months, families and local educational, health and social service agencies have developed and piloted the IFSP decision making process and format which meets the components outlined in federal regulation.

While Minnesota does not have an IFSP defined or addressed in policy, it is possible for a district to implement an IFSP which includes the components listed in subpart 2 and meets the requirements of subpart 1. Therefore because Minnesota Statute 120.17 mandates individualized special education beginning at birth, requires interagency coordination, involves families and requires each pupil to have an IEP, this clarification is reasonable.

Subpart 2 is reasonable because it eliminates the ambiguity and vagueness of the documentation requirements for the IEP. The latest Federal monitoring report specifically cited the Department for having inadequate procedures of assuring that IEP's include: appropriate address as to the Least Restrictive Environment, and all other required components such as current levels of performance, annual goals, short term objectives, objective criteria for evaluating progress, etc. This section is a necessary part of our responsibilities. This subpart restates the required components and the sequence teams must follow to assure the validity of and individualized plan for each pupil. This sequence assures that assessment results identify an individual's current level of performance and the pupil's instructional needs, and that these instructional needs are then translated into appropriate annual goals and short-term instructional objectives that are measurable. There has been variability among Minnesota districts in the quality and adequacy of the documentation of this sequence of program planning, and this rule will assure comparability and minimum acceptable standards among districts. It is reasonable for a parent to expect comparability among districts because many pupils transfer among districts; this inter-district movement is increased by Minnesota's open enrollment options.

There has been a recommended IEP form developed and distributed by Minnesota Administrators of Special Education (MASE) and the Department of Education each of the last two years. Most districts have adopted these forms for use in their districts and teachers have expressed some frustration about having to learn new forms each year. There has been confusion about whether MDE is mandating these forms in the rule. There is no IEP form mandated in this proposal but rather this subpart details the components and a sequence for addressing the components. As discussed before, the components are reasonable because they are consistent with current rule and federal regulations. This sequence is reasonable because it follows the logic expressed in federal rules which



begin with an identification of the pupil's current level of performance and ends with a description of the special and regular program to be provided and why it is needed. The latter is a requirement to clearly state why the designed program is the least restrictive environment possible for the pupil. The latest federal monitoring report cited Minnesota for inadequate address to these components based on the fact that some schools were found to have identified pupils' placements prior to developing and writing the pupils' individual education plans (IEPs).

This subpart is consistent with 3525.0200 subpart 6a of this rule and defines practices which have been found implementable by local districts and are not prohibitive in terms of local staff skills. Furthermore, the implementation of these practices will assure that pupils with disabilities will receive a free and appropriate public education appropriate to their unique instructional needs. By following these procedures, districts will improve their program planning and provide a basis to evaluate the effectiveness of their programs on an individual and program-wide basis.

#### 3525.2925 THE USE OF BEHAVIORAL INTERVENTIONS WITH PUPILS

This section is needed because of specific legislation passed in 1988 (Minnesota Statutes 127.44) directing the State Board of Education to adopt rules regulating the use of aversive and deprivation procedures with students who are handicapped. The legislature clarified this mandate in the past legislative session.

It is reasonable because it addresses the many, very sensitive issues regarding the use of aversive and deprivation procedures by promoting the use of positive interventions and requiring adequate assessment, planning, notification, informed consent and assurances whenever a regulated procedure is considered to be part of a pupil's plan or for use in an emergency procedure. This proposed rule also reflects national and local public debates and efforts among advocates and professionals to promote effective treatment and prevent harm. This rule is written to apply only to students who have been identified as eligible for special education according to 3525.1325 through 3525.1347.

Throughout the development of this rule there was regard for the Department of Human Services Rule 40 and other sources which regulate and the use of aversive and deprivation procedures with persons who have

developmental disabilities. This rule, however, goes beyond Rule 40 because it regulates uses of such procedures with all students who are identified as handicapped including those students who are emotionally or behaviorally disordered and not just students who have mental, physical, autistic or developmental impairments. Students who have an emotional or behavioral disorder often provide educators with the most difficult challenges in providing instruction and related services. Throughout this section of the rule there is emphasis on the use of positive and preventive behavior intervention procedures. The basic, underlying intent of this section is to regulate the use of behavior intervention procedures considered aversive or deprivation, to ensure their use for the sole purpose of enabling pupils to benefit from an educational program, and to promote positive and preventive interventions. Suggestions from the Assistant Attorney General have been incorporated throughout this part.

Subpart 1. Purpose. This subpart is reasonable because it defines the purpose of the rule and emphasizes the use of positive approaches to behavior intervention when teaching skills to a pupil.

Subpart 2. Application. This subpart is reasonable because it makes clear that this rule applies to the planned application or emergency use of behavioral intervention procedures and distinguishes between the three types of behavioral interventions: exempted, regulated and prohibited procedures. Exempted procedures are those procedures that are commonly used in classrooms by both regular and special educators and are included in the district's discipline policy. Pupils are expected to adhere to the district's discipline policy except where it is written on the pupil's IEP according to 3525.2900. This part provides examples of exempted procedures to offer specific illustrations.

Regulated procedures are those planned behavioral interventions that go beyond the interventions described as exempt, but are considered necessary by the team for the pupil to acquire skills. Five regulated procedures are listed in this part.

The use of manual restraint involves physically holding or restraining a pupil so that he or she cannot move freely. There are various types of holds from completely restricting pupils' movements by holding them face down on the floor, to holding a pupil's arms and restricting all voluntary movement.

The use of mechanical or locked restraints includes the use of handcuffs, straitjackets, and any other device used to restrain a pupil's movement.

The use of suspension or dismissal from school as a planned intervention refers to any instance when a student is suspended or dismissed from school, even for the last hour of the school day, as a consequence of a pupil's behavior. As a planned regulated procedure, suspension or dismissal must be written into a behavioral intervention plan in the IEP, and is subject to the requirements identified in this rule. The use of a time out procedure is further explained in Subp. 8.

The temporary withholding of regularly scheduled meals or water means withholding a regularly scheduled meal or water for a short period of time following a behavior and returned at such time that the pupil is in control and able to accept the meal or water. A short period of time should rarely exceed 20 to 30 minutes unless a pupil is not in control of his or her behavior when the scheduled meal or water would be offered.

Two conditions must be met prior to using any regulated procedure. First, positive approaches must have been tried, documented and proved unsuccessful. This is reasonable to assure that each pupil is afforded every appropriate and effective opportunity to acquire skills using positive behavior intervention approaches prior to using any of the regulated intervention procedures and to reduce the likelihood that undesired behaviors are due to skill deficits, and unnecessary, negative or inadvertent environmental circumstances. Second, any regulated procedure must be used solely for the purpose of enabling a pupil to benefit from instruction. It is reasonable to expect that these regulated procedures are used only as a part of a wholly integrated individual educational plan and not simply to eliminate unwanted behaviors or for the convenience of staff or program administration. Such conditions would not justify the use of any of the regulated procedures for all pupils simply because it is a standard component of any program and would be allowed only as it is written on the pupil's IEP.

Prohibited procedures are those procedures which shall not be used in an educational program at any time including an emergency. This part is needed because of legislative directive. It is reasonable because of the conflicting research regarding the long-term effectiveness of such procedures and the potential risks of harm to the pupil. The prohibited list in this subpart is consistent with DHS Rule 40.

Subpart 3. Definitions. This subpart provides definitions of terms used in this part. It is necessary because these terms frequently have different meanings across situations when applied by different people, for different purposes. These specific definitions are reasonable because they are the generally accepted technical definitions of these terms and are consistent with the definitions in statute and in DHS Rule 40. Many pupils for whom regulated procedures may be necessary are served by multiple agencies and thus similar language facilitates consistent program planning, implementation and effective outcomes.

Subpart 4. District Policy. This subpart is needed because a district may choose to have a more restrictive policy than that set forth in this rule. This subpart is reasonable because this rule sets a minimum standard for the use of behavioral interventions yet a district may choose to prohibit some or all of the procedures on the regulated list or provide more direction regarding their use. This subpart identifies the components a district must address in its policy including the requirement that the policy must emphasize the use of positive approaches, train staff to in that effect, and establish an independent review committee to be available upon request. Despite these minimum requirements, for district policy in this subpart allows considerable flexibility. This is reasonable because it provides direction, yet allows each district the flexibility to determine its own procedures such as setting criteria for identifying independent review committee members and their qualifications.

Subpart 5. Assessment. This section is needed because of the statutory requirements that behavioral interventions that are aversive or involve deprivation procedures be included on the pupil's IEP. It is reasonable because a comprehensive, systematic and non-discriminatory assessment must be completed to assure adequate understanding of a pupil's needs prior to developing an IEP and to avoid the possible unnecessary use of regulated procedures. Comprehensive assessment is an essential basis for planning including preventative and environmental modifications, prior to the use of any behavioral intervention. This subpart is consistent with and refers to the current assessment rule.

Requiring the same number of positive behavioral interventions prior to using a regulated procedure is reasonable because it requires a degree of program activity that has been found manageable and because pupils' behaviors are frequently amenable to nonaversive strategies and

environmental modifications. Assurance that any other health or medically treatable cause be ruled out prior to using a regulated procedure is also reasonable because such causes require medical treatment outside the purview of the school and can eliminate the need for regulated procedures.

Requiring that a professional whose background and expertise in the use of both positive approaches and the use of aversive and deprivation intervention be on a pupil's team when a regulated procedure is being considered is a reasonable assurance that alternatives will be reviewed and the team will be equipped to determine an appropriate program for a pupil. There is not a specific educational licensure for this professional role and he/she may be any member of the team who has specific training and experience in these areas. Some professional associations or agencies specify criteria for practice among their members and this information might be useful to school districts in identifying areas of knowledge and skill. A "professional" includes, but is not limited to persons such as teachers, psychologists, behavior analysts and social workers. This professional will assist the team in reviewing assessment data and assuring that adequate information is available to write the IEP including a behavioral intervention plan for the pupil.

Subpart 6. IEP process and required documentation. This subpart is needed because the statute requires that the use of regulated procedures be included on the pupil's IEP. This subpart is reasonable because it lists the specific components of a behavioral intervention plan that would become part of the IEP if a regulated procedure is used. Typically, specific strategies are not written on the IEP. However, in the case of using a regulated procedure specificity about the conditions, persons responsible, specific procedures, evaluation, review and consent on the IEP is a reasonable requirement. All due process procedural safeguards that apply to the IEP are in effect when a behavior management plan is included on the IEP except that if a parent withdraws consent for the behavior management plan the procedure will be discontinued and the procedural safeguards according to 3525.3200 through 3525.4700 will be followed at that point.

Subpart 7. An independent committee review. This subpart is reasonable because it reflects current practice in civil rights protections for individuals in institutions and community programs as well as growing

trends in educational settings to develop protective systems through various review mechanisms. This subpart allows either the parent or any district staff person the option to request a review by an independent committee. This committee is advisory but may give an unbiased, objective review of a recommended procedure. Because of the controversy often surrounding the use of any regulated procedure this review committee is a permissive and positive opportunity for any member of the IEP team including the parent to seek an independent review and unbiased opinions as a resource to aid the team in making the most appropriate decision. Currently, a number of districts who use the regulated procedures listed in subpart 2 have committees, sometimes called a Human Rights or Peer Review Committee who review a team's recommendations for use of certain procedures. Although the opinion of this independent review committee is advisory and does not override the IEP team decision, it provides additional and useful guidance that the team may choose to consider and use.

While the rule requires that at least two persons independent of the pupil's IEP team and who are not employees of the district be on the committee, there is not a required number of persons who must be on the committee. The make up of this committee should be addressed in the district's policy according to subpart 4 of this part.

If the parent chooses to appoint someone to the independent review committee the district shall honor that request. The independent review committee is not required to review all uses of regulated procedures but rather is to be available upon request by either the parent or school personnel. The committee's review is not binding but intended to provide additional information to members of the pupil's team including the parent. Use of this committee is not intended to be on par with having a conciliation conference according to 3525.3700 for use when the team has exhausted the IEP process. If, after the use of an independent review of the behavior intervention plan, the team cannot reach agreement about an appropriate program, a conciliation conference must be offered.

Subpart 8. Time-out procedures and isolation room specifications. This subpart is needed because of statutory directives to the State Board of Education to write rules regarding the use of Timeout rooms and procedures. This subpart is reasonable because it defines the term timeout, the procedures to be used with a timeout procedure and the

specifications for rooms used specifically for timeout. The definition is reasonable because it applies only to those procedures that go beyond what is typically done in educational settings and defined as exempt according to Subpart 2 of this part. Timeout procedures are reasonable because they may be consistent with the behavior intervention plan of the pupil's IEP. This part assures the pupil's safety and that the procedure will be used with an educational purpose.

Requirements for dimensions and specifications of the timeout room are reasonable to assure the safety of the pupil. Although this subpart contains specific or substantially equivalent dimensions of five by six feet, this may vary by a few inches but in no case more than twelve inches. These requirements are generally consistent with DHS Rule 40. Changes in this part occurred as results of suggestions by the Assistant Attorney General.

Subpart 9. Informed consent assurances. This subpart is reasonable because it assures that the pupil's parent will be adequately informed of the intended use of any regulated procedure including all information related to previous assessment and interventions. It is also consistent with other recognized sources that promote informed consent which assures parental understanding, knowledge and voluntariness of decision-making. The Assistant Attorney General strongly recommended that this subpart be included and require consent by both parents when there is joint custody. However, provisions are made so that if only one parent responds, the district may proceed with the agreed upon plan as long as proper notice has been given to both parents. This subpart makes it clear that a parent may withdraw his or her consent for a behavior plan at any time. If a parent wants the procedure to end he/she must notify the program administrator and upon notification from the parent, the district shall discontinue the procedure as requested. In the event that the parent withdraws consent for a regulated procedure the district must provide appropriate notification to the parent regarding a team meeting to review the IEP, including the regulated procedure in the Behavior Intervention Plan.

In those unusual circumstances when a parent may refuse or fail to participate in the IEP meeting, the district may proceed with the proposed behavioral intervention plan decided upon at the IEP meeting, including the regulated procedure, which the district believes is in the best interest of

the pupil. This provision is reasonable because the ten day period offered to the parent for the IEP meeting is consistent with other procedural safeguards in the IEP process.

Subpart 10. Emergency. This subpart is reasonable because it describes when and how an emergency procedure may be used and the notification requirements that apply. Procedures used in an emergency situation must be the least intrusive interventions possible to reasonably react to the pupil's behavior and these emergency procedures must be described and reviewed according to this district's discipline policy as specified in Subp. 3. To assure that emergency procedures are not used as an intervention repeatedly, a district must convene a team meeting within three days of their commencement to determine if the pupil's IEP is appropriate or needs revision.

#### 3525.3000 PERIODIC AND ANNUAL REVIEWS

This part is needed because of confusing language and federal regulations requiring an annual review. It is reasonable because it both clarifies and simplifies the existing rule regarding periodic reviews. The change distinguishes between a periodic and an annual review and describes what is required at each step. It does not require an additional team meeting be held unless a significant change is necessary. This is consistent with current rules 3525.3600 and 3525.2900.

#### 3525.3100 FOLLOW-UP REVIEW REQUIREMENTS

This change is technical and does not change current rule. It provides clarification that a follow-up review is not required when a pupil graduates or discontinues receiving special education services because of age.

#### 3525.3300 CONTENTS OF NOTICE

The change in "M." is necessary because of a federal standard which requires that states include in their state plan a provision which allows parents to compel the attendance of any official or employee of the involved school districts to attend a public hearing. The previous language "request" was not considered sufficient to assure parents of this right. This change is reasonable because it is consistent with federal requirements.



Language in "V." was added to this part and is needed to clarify when a pupil is no longer eligible for special education. It is reasonable because it does not add a requirement but includes in the Notice this right for the purpose of parent notification according to federal regulations and state statute.

#### 3525.3500 NOTICE OF PERFORMANCE OR REFUSAL TO PERFORM ASSESSMENT

The addition of F. is needed for clarification in the State Plan. It is reasonable because it does not add a requirement but rather clarifies the district's responsibility according to federal regulations and state statute.

#### 3525.3800 WHEN A HEARING MUST BE HELD

The addition of (C) to this section is reasonable because it will be consistent with the proposed amendment to section 3525.3500 and clarifies the district's refusal to conduct a reassessment requested by a parent warrants a hearing as provided for by federal regulations.

#### 3525.4100 PREHEARING REVIEW BY THE HEARING OFFICER

Paragraph B. is added to Subpart 2 for clarification in the State Plan. It is necessary and reasonable because a full and fair hearing could be inhibited if a person or document relevant to the proceedings could not be accessed. This requirement is consistent with federal regulation.

#### 3525.4200 HEARING RIGHTS OF THE RESPECTIVE PARTIES

The changes in this part are needed for clarification in the State Plan. The first change clarifying the time in which either party may introduce evidence is reasonable because it sets a standard for when new evidence can be introduced. This part also allows the hearing officer to continue the hearing and allow new evidence when the hearing officer deems it necessary in the interest of fairness and the child's needs.

The second change which compels the attendance of a witness is reasonable because it is consistent with federal requirements and the contents of the parent notice according to 3525.3300 of this chapter.

## REPEALERS

Part 3525.0200, Subpart 23. Support services.

This subpart is repealed to eliminate terms more appropriately defined in amended Subpart 18b. The need and reasonableness of this subpart is addressed in 3525.0200, subpart 18b.

Part 3525.2370. Pupil Performance Plan

This part needs to be repealed because the case loads for levels 2 and 3 were eliminated from this rule some years ago by legislative action. The need and reasonableness of this part is addressed in part 3525.2340.

Part 3525.2380, Subpart 2. Method of counting pupils.

This subpart needs to be repealed for the same reason described in Part 3525.2370 above.

Part 3525.2900, Subpart 2. Development of individual education program plan.

This subpart needs to be repealed because its content is more appropriately incorporated as part of amended Subpart 1 of this part.

Part 3525.2900, Subpart 4. Individual conference scheduled to interpret assessment.

This subpart needs to be repealed to eliminate the repetition of content contained within other parts of this rule.

Part 3525.2900, Subpart 5. Notice to parent after completion of program plan and prior to placement.

This subpart needs to be repealed to eliminate the repetition of content contained within other parts of this rule.