

September 1, 1994

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STATE OF MINNESOTA
MINNESOTA STATE BOARD OF EDUCATION (SBE)

The Matter of the Proposed
Rules 3525.0200-3525.4400
Governing Special Education
and 3500.1000, A Rule Governing
Experimental Programs

STATEMENT OF NEED AND REASONABLENESS

I. INTRODUCTION

The 1993 session of the Minnesota State Legislature continued the evolution of the public education system toward one that is results-oriented for students rather than one based on the completion of a prescribed set of courses and of input requirements. Among the first steps was the transition of laws and rules from a "how-to" design to a more limited number of laws and rules that establish standards and require evaluation and data collection to provide the foundation for a continuously improving system. As the state legislature reviewed laws and rules governing special education, it became obvious that those rules are a combination of student and parent rights and "how-to" requirements, many of which are required by federal laws and rules. To study the issue more thoroughly, the legislature established a task force to examine and make recommendations regarding special education. Specifically, the legislature enacted the following:

LAWS OF 1993 ARTICLE 3

Sec. 35. **TASK FORCE ON EDUCATION FOR CHILDREN WITH DISABILITIES.**

Subdivision 1. **[ESTABLISHMENT.]** A task force to review the state's special education rules established to recommend to the Legislature changes that can be made to simplify the rules while ensuring that the rules meet applicable federal requirements and support the state's interest in education outcomes.

Subd. 2. **[MEMBERSHIP.]** The task force on education for children with disabilities consists of 15 members appointed by the commissioner of education. The membership shall include parents of children with disabilities, students with disabilities, special education teachers and general education teachers, school administrators, special education directors, representatives of higher education, representatives of advocacy organizations for children with disabilities, and no more than one representative of state government. At least five members shall be parents of children with disabilities or representatives of advocacy groups. One member shall be a student with a disability.

Subd. 3. **[DUTIES.]** The task force established under subdivisions 1 and 2 shall review the educational needs of children with disabilities and the current system of services, including the state and federal regulatory scheme and associated costs, and recommend ways to remove barriers to effective education and improve measurable learner outcomes. The task force shall make recommendations to:

- (1) reduce paperwork and other administrative burdens on classroom teachers to increase the amount of time they spend educating students;
- (2) improve access to effective education for children with disabilities by increased coordination of special and general education services, including staff development programs;
- (3) assure that education for children with disabilities is outcome-based while maintaining due process protection for students and their families;
- (4) eliminate duplication in the regulatory scheme; and
- (5) state the outcomes of the state's special education rules.

Subd. 4. **[STAFF SUPPORT.]** The department of education and any other state agency shall provide information and other assistance requested by the task force.

Subd. 5. **[ADMINISTRATIVE RULES.]** To accommodate the task force's review of the state's special education rules, and notwithstanding Minnesota's Statutes, section 121.11, subdivision 12, or any other law to the contrary, the state board of education shall not adopt, amend or repeal a special education rule until June 1, 1994, unless compelled by a newly enacted or adopted federal requirement.

Subd. 6. **[REPORT.]** The task force shall submit its recommendations for simplifying the state's special education rules to the education committees of the Legislature by February 1, 1994.

The Commissioner of Education named a task force as indicated and an organizational meeting was held in July, 1993. The Chairpersons of the respective state legislative committees and the Commissioner of Education delivered the charge to the task force members. The task force met for a total of 140 hours across 18 days during which time it gathered information regarding future projections, identified issues with the current special education rules, developed its vision of the future, and considered a variety of options as it worked to fulfill its charge. The task force convened panels of parents, teachers, and administrators and put out a call for written input regarding what should be added, deleted, or changed in the special education rules to meet the legislative charge. That input provided the foundation for its vision and the recommendations contained in its report.

The following issues were raised repeatedly and no single answer was acceptable in all instances:

- o Sole reliance on federal laws and rules without state rules
- o Duplication of federal laws and rules in state statutes and rules;
- o Need for citation of federal laws and rules in state statutes and rules;
- o Need to make rules more user friendly; and
- o Need for "best practice" elements in the state rules.

The task force's report was submitted to the education committees of the state legislature on February 1, 1994. Subsequent action led to the following legislation:

LAWS OF 1994 ARTICLE 3

Sec. 20. [STATE BOARD OF EDUCATION SHALL ADOPT RULES.]

The state board of education shall use the recommended rules in the final report of the task force on education for children with disabilities and Minnesota rules 3525.2925 subpart 1, as its proposed rules. The statement of need and reasonableness under Minnesota Statute, sections 14.131 shall address the effects of proposed changes regarding individual student needs and student access to necessary services. The office of administrative hearings shall hold a public hearing under Minnesota Statute, sections 14.14. The board shall adopt the new rules to be effective at the start of the 1995-96 school year. Any future amendments to rules adopted or amended under this section are covered by Minnesota Statute, chapter 14.

II. STATEMENT OF THE STATE BOARD OF EDUCATION'S STATUTORY AUTHORITY

In addition to the explicit direction given to the SBE, as cited above, Minnesota Statutes (1988) Section 120.17 subdivision 3 charges the SBE with the responsibility to promulgate rules that provide standards and procedures appropriate for the implementation of special education for students with disabilities by all school districts. The rules shall include standards and procedures relative to qualifications of essential personnel, courses of study, methods of instruction, pupil eligibility, size of classes, rooms, equipment, supervision, parent consultation, and any other rules it deems necessary for the instruction of children with a disability. Among other things the statute also stipulates that these rules shall provide standards and procedures appropriate for the implementation of and within the limitations of Section 120.17 subdivisions 3a and 3b.

III. STATEMENT OF NEED

The legislative direction enacted into the laws of 1994 and cited above provides adequate need in terms of justifying changes across the state's special education rule package. However, in the matter of determining which specific changes are needed, the SBE relies on the recommendation of the legislative task force. In its deliberations regarding changes in the rules, the task force used multiple sources of input to identify issues. Those sources included legislative testimony, several discussion panels with educators and parents from Minnesota, panels of educators and parents from the states of Ohio and Vermont, the personal experience of the 15 task force members, and more than 80 written responses to a request for public comment. A summary of the written comments provided to the task force is contained in Appendix B of its report.

Following is a brief summary of the written and oral testimony given to the task force in terms of the major issues in the special education rules.

A. Administration and Monitoring

Two general issues surfaced from field input and discussion among task force members. One issue was the expressed need to change the focus of state monitoring of local school district special education programs from an emphasis on paperwork compliance to one of program quality and student progress.

A second issue was the need and requirement for school administrators to possess special education knowledge. There was a strong consensus from the input the task force received from parents, advocacy organizations, teachers and administrators that mixed messages were being sent regarding the legislative desire for quality, outcomes, and adherence to rules, while at the same time eliminating state fiscal aids for the staff employed to address those concepts. School districts are required by SBE rule to employ a director of special education, but legislative action now prohibits the payment of special education state aid for any staff employed to provide supervision and related administrative duties, program evaluation, staff development, and curriculum development.

B. Paperwork and Individual Education Plans (IEP's)

Comments relating to an overburden of paperwork were legion. The majority of commentators said they were often forced to reduce instructional time to complete documentation subject to monitoring. Three issues relating to paperwork were identified by respondents: a) current requirements would be more manageable if technology was more widely available; b) current requirements would be manageable if teacher caseloads were more realistic; and c) districts often self-impose significant amounts of paperwork over-and-above that required by federal and state rules.

A wide variety of comments were offered on ways to improve/fix the IEP. Overall, there was acceptance of the basic design of the form currently recommended by MDE. However, there were many suggestions for reducing the amount of information to be recorded. In some instances there appears to be duplication with other documents. Many of the recommendations, such as limiting IEP revisions to every three years, conflicted with federal regulations.

C. Assessment

Assessment is a major activity in special education which has always been surrounded by some controversy. The most prominent assessment issues reported to the task force were: a) the need for guidance on nondiscriminatory practices to address the needs of the state's increasing population of minority students; b) a call for less emphasis on repeated intelligence testing and categorical assessment that appear to have little use for program development;

and c) increased assessment demands on schools from outside agencies. There are conflicting views over the Minnesota-required Assessment Summary Report, with many acknowledging its usefulness while others seek to discard it as a means of reducing the volume of paperwork. Federal rules require only that an assessment summary be completed for students determined to have a specific learning disability.

D. Eligibility

Pursuant to legislative direction, SBE rules governing eligibility for special education instruction and services were adopted, effective January 2, 1992. The intent was to provide statewide consistency and to assure that only students with significant disabilities were served. The task force heard relatively few comments regarding the design and content of these rules. The comments that were made generally addressed very technical recommendations such as the change in preferred language from "hearing impaired" to "deaf and hard of hearing," and the size of the deficit in achievement that constitutes a deficit significant enough to warrant classification as a disability. A few commentators expressed a concern over labeling any student for eligibility purposes because schools should accommodate the learning needs of all students, regardless of the cause.

E. Parent Involvement and Due Process

Minnesota has a fine record of parent involvement in special education. However, disagreements are inevitable and require the full range of due process safeguards to reach resolution. A panel of nine parents representing a diversity of disability areas reported to the task force that appropriate services would not have been provided to their children without these safeguards. Several parents expressed concern that they do not have enough of a voice in the formulation of programs that effect their children.

There are indications that the system has become overly ponderous with the required frequency and formality of team meetings, written notices, documented parent contacts, and duplicate (and costly) dissemination of paperwork for students, including those with less severe disabilities. It was also reported that districts often have more meetings and disseminate more documents than are required.

F. Staff Qualifications and Caseloads

Many concerns over staff qualifications and availability were raised in several letters from the field, but the most often-cited staff need was for inservice training. The need for extensive, ongoing staff development was expressed by all categories of stakeholders, especially in the areas of teacher collaboration

and teaming, and general classroom-based services for students with emotional/behavioral problems. In addition, concerns were expressed that the requirements for and availability of training for para-professionals and other support staff is inadequate.

The task force received a large number of comments from the field about the need to restore reasonable teacher caseloads. Two specific issues were voiced: a) current caseload limits for early childhood programs do not allow consideration for the amount of time each student is served; and b) extensive caseloads contribute to the burden of paperwork and due process demands, thus limiting the ability of teachers to provide appropriate education.

G. Behavior Intervention Rule

Pursuant to legislative direction, the SBE adopted the Behavior Intervention Rule (3525.2925) effective January 2, 1992. There were more comments and frustrations expressed over this rule than any other single issue except that of paperwork. There is a consensus that the rule is unclear and local staff need training before it can be implemented. Opinions varied on the extent of revision needed, ranging from full repeal, to a shortened rule that lists only prohibited practices, to making the process a part of the IEP process, to minor changes in the rule with a significant statewide training initiative.

H. Funding

The range of issues surrounding funding is too extensive and interrelated with other issues to describe in a few paragraphs. It was not surprising that funding concerns were widely expressed by all categories of stakeholders. Four specific problems were identified and a few partial solutions were provided by commentors.

First, the actual amount of state funds allocated for special education has held steady or increased over the last decade. Meanwhile, the state share of special education costs has decreased, forcing increased reliance on each district's general fund and local taxes. This has resulted in increasing resentment among stakeholders in competing school programs.

Second, during this same time period student needs have increased both in number and severity as a result of the identification of new disabilities, improvements in assessment techniques, and medical science saving more children's lives. As a result, the need for more services per student is driving up costs beyond early estimates.

Third, there is increased awareness that many students with disabilities are better served in the general education program, with adequate supports, than in

separate pull-out type categorical programs. Across Minnesota and the nation the movement to address this awareness, generally referred to as “inclusion,” exacerbates two other problems: (a) Support programs in general education classrooms are not less costly than pull-out programs and general education budgets are increasingly austere, as evidenced by increased general education class sizes. (b) Today’s large class sizes make it more difficult to deliver the instruction needed by students with disabilities within the general education program. A clash between the inclusion movement and steadily increasing class sizes is a second cause for increasing resentment toward special education, as well as the increased overall costs.

Fourth, the legislature's decision to prohibit the use of state funds for special education administrators and coordinators has reportedly had an immediate negative impact on staff who serve students directly. The effect has been a loss of administrative support, training, and coordination for all staff and programs.

Among the potential solutions identified by commentators were (a) changes in state rules could provide some flexibility in the use of staff to help resolve some of these funding issues. (b) Increased coordination, collaboration, and financial commitment among public and private agencies would also help alleviate the financial burden on schools. (c) The IFSP model from early childhood to other age groups will help all agencies focus their resources, thus eliminating duplication and gaps. [The IFSP is the Individual Family Service Plan for preschool-age children with disabilities and their families.] (d) The most often cited solution to the fiscal dilemma was to allocate more state funding to the system.

I. Services

Service-related comments ranged widely and often overlapped with other issues. Collaboration across agencies was repeatedly cited as an area that needs improvement.

Another suggestion was that schools should serve more as an access point and less as providers of related services such as social work and occupational and physical therapy.

A third area of concern was that services for students with low incidence disabilities, such as vision, hearing, and physical impairments are difficult to maintain in sparsely populated areas of Minnesota.

Another commonly mentioned service need was for greater availability of assistive technology. There are needs for significant improvement in equipment availability, training, and coordination to share expertise and equipment.

In responding to the wide-ranging needs summarized above, the task force examined the entire state rule package pertaining to special education and identified numerous SBE rules in need of repeal or modification. Some rules, however, are not under consideration at this time because they are needed as written to comply with federal requirements, while others require further study before recommendations can be properly developed.

IV. STATEMENT OF REASONABLENESS

The December 13, 1993 issue of U. S. News and World Report featured a lengthy report on special education. The authors stated, "Imprecise state and federal regulations not only allow frequent misdesignation of special education students, they also drive up the size and cost of the special education system.(p. 47)." The task force understood and agreed with this analysis and considered that perspective in its deliberations and recommendations. What has been learned since the passage of The Education of Handicapped Children Act of 1975 (PL-94-142), and dramatically pointed out in this article, supports the set of rule revisions recommended by the task force and improves the precision and reasonableness of SBE rules essential for high quality programs for all students.

Task Force Rationale for Rule Changes

As a result of its deliberations, the task force divided proposed rule actions into three categories: a) those recommended for repeal; b) those recommended for modification; and c) those which must be added or modified due to emerging federal requirements. This categorization was based on input received by the task force and are intended to improve rule clarity and to meet emerging needs. All recommended actions were made for one of more of the following reasons:

- o To eliminate "how to" portions of rules so that the standard for "what" must be done is contained in the rule rather than requiring "how" something must be done;
- o To simplify and eliminate redundancy by combining parts of existing rules and by eliminating some direct reiterations of federal rules;
- o To eliminate obsolete and unnecessary language; or
- o To meet emerging federal requirements.

In all cases, federal requirements were considered as the rules were reviewed and modifications recommended. The Office of Special Education Programs in the U. S. Department of Education (OSEP) has reviewed the task force recommendations and has informally indicated that they are in compliance with federal requirements.

Subsequent Legislative Testimony/Actions in 1994

During its deliberations on the task force's recommendations the 1994 state legislature received additional testimony from some stakeholders relating to dissatisfaction with

some of the recommendations. They included:

1. Support for the recommendation that parts G, H, I, and J of 3525.1310 STATE AID FOR SPECIAL EDUCATION PERSONNEL be reinstated. While the task force also agreed with this recommendation, the legislature maintained its intention to disallow payment of state special education aid for these four activities as enacted at its 1993 session.
2. Support for the maintenance of Subpart 1 of 3525.2925 USE OF BEHAVIOR INTERVENTION WITH PUPILS. While the task force recommended its elimination, the legislature agreed with the testimony and directed that it be included in the SBE's proposed rules.
3. Support for the maintenance of all "best practice" portions of the rules which the task force recommended be repealed. The legislature delegated this decision to the SBE and the Board's public hearing process for these rule actions.
4. Support for the maintenance of 3525.0200 DEFINITIONS FOR SPECIAL EDUCATION subpart 6a.B. INDIVIDUAL EDUCATION PROGRAM PLAN OR IEP as it currently exists. The legislature delegated this decision to the SBE and the Board's public hearing process for these rule actions.
5. Support for the maintenance of 3525.0200 DEFINITIONS FOR SPECIAL EDUCATION subpart 6a. E INDIVIDUAL EDUCATION PROGRAM PLAN OR IEP as it currently exists. The legislature delegated this decision to the SBE and the Board's public hearing process for these rule actions.
6. Support for the maintenance of 3525.0200 DEFINITIONS FOR SPECIAL EDUCATION subpart 9b. PROGRAM SUPPORT ASSISTANT OR PUPIL SUPPORT ASSISTANT as it currently exists. The legislature delegated this decision to the SBE and the Board's public hearing process for these rule actions.
7. Support for the maintenance of 3525.0200 DEFINITIONS FOR SPECIAL EDUCATION subpart 6a. E INDIVIDUAL EDUCATION PROGRAM PLAN OR IEP as it currently exists. The legislature delegated this decision to the SBE and the Board's public hearing process for these rule actions.
8. Support for the addition of language in 3525.0200 DEFINITIONS FOR SPECIAL EDUCATION (PROPOSED) subpart 35. CONDITIONAL PROCEDURES to make suspension a conditional procedure and to make time-out for exclusion as well as seclusion a conditional procedure. The legislature delegated this decision to the SBE and the Board's public hearing process for these rule actions.
9. Support for the rescission of 3525.0200 DEFINITIONS FOR SPECIAL EDUCATION (PROPOSED) subpart 38 TIME OUT FOR EXCLUSION. The

legislature delegated this decision to the SBE and the Board's public hearing process for these rule actions.

10. Support for the maintenance of 3525.0300 PROVISION OF FULL SERVICES as it currently exists. The legislature delegated this decision to the SBE and the Board's public hearing process for these rule actions.
11. Support for the maintenance of 3525.2350 MULTIDISABILITY TEAM TEACHING MODELS as it currently exists. The legislature delegated this decision to the SBE and the Board's public hearing process for these rule actions.
12. Support for the maintenance of 3525.2750 EDUCATIONAL ASSESSMENT subpart B. as it currently exists. The legislature delegated this decision to the SBE and the Board's public hearing process for these rule actions.
13. Support for the maintenance of 3525.2750 EDUCATIONAL ASSESSMENT subpart 3 as it currently exists. The legislature delegated this decision to the SBE and the Board's public hearing process for these rule actions.
14. Support for the maintenance of the best practice language currently in 3525.2900 DEVELOPMENT AND CONTENT OF INDIVIDUAL EDUCATION PROGRAM PLAN and 3525.2925 USE OF BEHAVIORAL INTERVENTIONS WITH PUPILS. The legislature delegated this decision to the SBE and the Board's public hearing process for these rule actions.
15. Support for the insertion of a requirement that a team meeting must be held within five days if a parent requests that a conditional procedure be discontinued. This provision would be placed in 3525.2900 DEVELOPMENT AND CONTENT OF INDIVIDUAL EDUCATION PROGRAM PLAN. The legislature delegated this decision to the SBE and the Board's public hearing process for these rule actions.

In addition, the 1994 state legislature adopted a set of outcomes for all special education rules. Enacting these outcomes into statute has the effect of requiring that each rule adopted by the SBE must lend support to the achievement of one or more of the outcomes, assuring they are reasonable for local school districts to carry out. The outcomes enacted by the legislature are:

LAWS OF 1994 ARTICLE 3

Section 3. **Minnesota Statutes 1993 Supplement, section 120.17, subdivision 3, is amended to read:**

Subd. 3b. **[RULES OF THE STATE BOARD.]**

1. Increased amount of time available for teachers to spend educating students through direct and indirect instruction.
2. Consistency and uniformity of access to effective education programs for students with

disabilities regardless where they live in the state.

3. Reduction of inequalities, conflict, and court actions related to the delivery of special education instruction and services for students with disabilities.

4. Clarity in the expectations placed on all service providers for students with disabilities.

5. Focus for the accountability of all individuals, groups, and agencies that provide instruction and services for students with disabilities.

6. Focus for the state and local resources committed to the education of students with disabilities.

7. Focus to facilitate the evaluation of the evolving unified education system.

In general, the proposed rules are deemed as reasonable because:

1. A broadly representative task force recommends their adoption based on significant input from a wide range of stakeholders.
2. The legislature heard additional testimony (beyond that of the task force), decided to accept all but two of the task force recommendations, and directed the SBE to propose the remaining recommendations for a public hearing.
3. Adoption of the proposed rules would result in the desired outcomes for all rules as enacted by the legislature in 1994 (cited above).
4. The legislature directed that the Commissioner of Education develop a manual for parents and teachers to provide a user-friendly guide for the rules and to provide the "best practice" suggestions removed as requirements in the rules. This directive was enacted at the recommendation of the task force to provide assistance to parents and school staff. The legislature required that the manual be completed within three months of the adoption of new rules. Department staff have begun developing such a document.
5. The federal OSEP has reviewed the proposals and has stated, informally, that they meet federal requirements.

Recommended Revisions of Current SBE Rules

The proposed changes to current SBE rules are listed sequentially in this section. This package of changes includes a combination of repeals, modifications, and new rules needed to meet emerging federal requirements. A statement of reasonableness follows the citation for each proposed rule change.

3500.1000 EXEMPTIONS FOR EXPERIMENTAL AND FLEXIBLE SCHOOL YEAR PROGRAMS

This is a current general education rule that does not address special education concerns. This rule provides the State Board of Education with the authority to grant experimental status to schools under certain conditions. The proposed changes are reasonable because

they result in one inclusive rule to clarify and simplify the process through which all experimental educational programs will be approved, and, at the same time, update this rule for the specificity required for special education.

The change in Subpart 1.D. includes language that provides a fourth allowable reason for applying for experimental status: an alternative eligibility criteria for special education.

Subpart 4. adds a provision which assures parent and student participation rather than current language which requires a less substantial “exposure” in the development of the proposal.

Subpart 5. adds a third change which alters the provisions for continuation to indicate the period of time that the experimental program be allowed to continue to operate. At the discretion of the State Board of Education, continuation may be permanent or it may be an unspecified time period such as when changes in federal laws/rules are enacted. An additional modification of this Subpart clarifies that waivers cannot be granted to state laws or federal laws and rules.

3525.0200 DEFINITIONS FOR SPECIAL EDUCATION

There are three types of changes recommended in this rule: (1) the consolidation of definitions that are currently scattered about in numerous other rules, (2) modifications or deletions that are no longer needed, and (3) new definitions that provide clarity to issues brought to the attention of the task force.

In Subpart 1a., it is reasonable to drop the requirement in this subpart that goes beyond the definition of a term because it places an unrealistic demand on staff participation at IEP meetings. Proposed modifications to 3525.2900 address this requirement for administrative participation.

In Subpart 1b., it is reasonable to modify this subpart because it corrects a rule reference.

In Subpart 6a., it is reasonable to delete items A-G because they are redundant with proposed changes in 3525.2900.

In Subpart 8b., it is reasonable to delete this definition because it is too broad to be meaningful in the context of this rule package and there is no compelling reason to retain it.

In Subpart 9b., it is reasonable to change this subpart because the proposed language replaces outdated and cumbersome phrases defining a “paraprofessional,” while clarifying and broadening the uses for this role within the context of special education programs. The portion of this rule dealing with supervision and conditions for services of paraprofessionals goes beyond the scope of a definition and these provisions are more appropriately covered in recommendations for 3525.1310.

In Subpart 10, it is reasonable to (1) delete part A because it just restates language which occurs elsewhere and is redundant and (2) move part B to 3525.2750 because it goes beyond the scope of a definition. However, it is especially important to maintain the remaining parts because they deal with the issue of nondiscrimination.

In Subpart 16a., it is reasonable to repeal this subpart because it is redundant to federal regulations for IDEA and state eligibility criteria in this rule package.

In Subpart 18a., it is reasonable to modify the definition of a “regular education program” because it is both cumbersome and outdated. The proposed change greatly simplifies this notion by allowing local standards and content of an educational program to apply for each pupil.

In Subpart 18b., it is reasonable to delete this definition because it is both outdated and redundant with the most recent federal rules defining related services. The federal rules apply with or without this citation. Also, if federal rules are changed the SBE would be required to go through the rule-making process.

In Subpart 20a., it is reasonable to modify this definition because it contains some outdated (such as “affective” and “psychomotor needs”) and one misspelled word (“designated”) which should be replaced, plus the current definition fails to include the entire range of student needs which are expanded by the proposed modification.

In Subparts 27 and 28, it is reasonable to move these two items from 3525.2335 so that definitions may be consolidated into one section of the rules. The language is modified so that direct and indirect services are defined for the entire age range served in special education programs.

In Subpart 29, it is reasonable to establish a definition for an Individual Family Service Plan, as necessitated by the recent adoption of state statutes governing interagency collaboration of services to pupils with disabilities, including infants and toddlers. The proposed definition establishes the equivalency between this plan and the IEP to reduce duplication of paperwork, procedural requirements and services.

In Subparts 30-38, this series of terms are moved and/or supplemented from 3525.2925 so that all definitions are consolidated into one section. Subparts 33 and 34 are adapted from definitions promulgated by the Minnesota Department of Human Services for manual and mechanical restraint, and are needed to clarify their use in education programs. Subparts 37 and 38 expand the definitions of “time out” to clarify the application of these procedures for education purposes.

In Subpart 39, it is reasonable to clarify the term “aids” because this term is used by the general public for multiple purposes. The concept of educational “aids” applies to a specified range of resources needed by a pupil as required by the policy in 3525.0400.

In Subpart 40, it is reasonable to define the term “community-based” in order to clarify the meaning of optional settings for early childhood programs as described in 3525.2335 Subp.2.b.3.

In Subpart 41, it is reasonable to move the definition of “surrogate parent” from 3525.2430 to consolidate definitions in one section. No changes in language are proposed.

In Subpart 42, it is reasonable to move the definition of “Significant change in program or placement” from 3525.3600B to consolidate definitions in one section. The addition of a new component (item #6) is necessary to provide consistency with proposed changes in 3525.2900 to assure that, if a conditional procedure is considered by the district, the parents have the opportunity to approve the procedure.

3525.0300 PROVISION OF FULL SERVICE

This is a rule that must be maintained to meet a federal requirement that a state policy exist that demonstrates state compliance with the federal requirement for full service. The recommended change is reasonable because it simplifies the policy and reduces redundancies with other provisions of this rule package, does not reduce student or parent rights, and continues to meet the federal requirement.

3525.0400 LEAST RESTRICTIVE ENVIRONMENT

This is a rule that must be maintained to meet the federal requirement for a state policy to provide special education services in the least restrictive environment. The recommended changes are reasonable because they simply remove obsolete language and clarify intent.

3525.0650 INTERAGENCY COMMITTEES

It is reasonable that this rule be repealed because it is redundant to state law M. S. 120.17 subdivision 12. and 3525.1100 Subp.2. The proposed special education manual will include the best practice elements contained in subpart 1. A. and B. of this rule.

3525.0700 PARENT INVOLVEMENT

There is a federal requirement for a state policy which provides for parent involvement; therefore, this rule must be maintained. The proposed change is reasonable because it only removes best practice language and simplifies the requirement. The best practice component will be included in the forthcoming MDE manual as previously described.

3525.0750 IDENTIFICATION OF CHILDREN WITH DISABILITIES

This is not a new requirement, but represents separate provisions which are currently

found in 3525.0200 Subp. 10 and 3525.2500. This change is reasonable because recodifying these federally required provisions simplifies the rule package by consolidating policies in one section.

3525.0800 RESPONSIBILITY FOR ENSURING THE PROVISION OF
INSTRUCTION AND SERVICES.

This is a recommendation for rewording a policy statement that is required by federal rule. The recommended changes are reasonable because they update this policy to include: a) the option for using mediation as a conflict resolution process which the legislature made available to parents and districts since the original rule was adopted; and b) address the change in age required by the federal government and as enacted by the state legislature.

3525.0850 BEHAVIOR INTERVENTIONS

The state legislature directed that this statement representing a state policy on the use of positive behavior interventions be retained in this rule package. It is reasonable to transfer this provision from 3525.2925 to consolidate it with other state policy statements.

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

This rule must be maintained to meet the federal requirement for an annual application from each school district. The recommended change for Subpart 2D is reasonable because it adds a requirement that parents be involved in district policy and decision making, and that this effort be described in the district's annual TSES plan.

Subpart 2G is reasonable because it retains the requirement from 3525.2925 for a local policy on the use of conditional procedures with pupils, and is consolidated with other policy requirements. No changes in language are proposed.

3525.1150 PROVIDING SPECIAL EDUCATION TO SHARED TIME
PUPILS

This rule is a clarification of state statute that must be maintained to specify district responsibility for shared time pupils. The recommended change is reasonable because it clarifies that the requirement applies to assessment and the provision of services.

3525.1200 ANNUAL APPLICATION FOR PROGRAMS AND BUDGET

It is reasonable to repeal this rule based on the assumption that districts want the state and federal funds that are disbursed and a mandate that they make application is unnecessary.

3525.1310 STATE AID FOR SPECIAL EDUCATION PERSONNEL

This rule must be maintained to clarify the use of state aids for special education activities as intended by the state legislature. The recommended revisions are reasonable because (1) they update the rule to meet specific changes made by recent legislation, and (2) clarify eligible expenditures for the use of paraprofessionals.

It is reasonable to strike the parts formerly labeled G., H., I. and J. because the state legislature determined that state aid not be approved for those purposes.

3525.1320 EXPERIMENTAL PROPOSAL

It is reasonable to repeal this rule because the proposed additions to 3500.1000 include the unique considerations necessary for special education. Two separate experimental program rules are unnecessary.

3525.1347 TEAM OVERRIDE ON ELIGIBILITY DECISIONS

It is proposed that this rule be renumbered as 3525.1354, which is reasonable because it applies to all entrance criteria and should sequentially follow those rules. No other changes are proposed at this time.

3525.1348 TRAUMATIC BRAIN INJURY

Federal rules require the addition of traumatic brain injury as a category of pupils eligible for special education. The state legislature directed the SBE to adopt eligibility criteria for each disability category. The proposed rule is reasonable because (a) it was developed by an advisory group which included representatives of all stakeholders, and (b) the definition and criteria conform to accepted professional standards. It is also reasonable to use the a format parallel to that used for other categories in 3525.1325-1345

3525.1349 EXIT PROCEDURES

This rule change drops the requirement to formally discontinue special education when a student officially withdraws from the district. This change is reasonable because it eliminates unnecessary paperwork and procedural steps. Once a student officially withdraws from a district, the district is no longer required to provide special education and, therefore, is not obligated to formally discontinue services.

It is also proposed that this rule be renumbered as 3525.1356, which is reasonable because it applies to all entrance criteria and should sequentially follow those rules.

3525.1350 EARLY CHILDHOOD SPECIAL EDUCATION

These eligibility criteria are moved from 3525.2335 so that all eligibility criteria are consolidated in one section. They are not changed.

3525.1352 DEVELOPMENTAL ADAPTED PHYSICAL EDUCATION:
SPECIAL EDUCATION

These eligibility criteria are moved from 3525.2345 so that all eligibility criteria are consolidated in one section. They are not changed.

3525.1400 FACILITIES

This rule is needed to assure that students with disabilities are provided with facilities and instructional materials equivalent to those provided for all students. The recommended changes are reasonable because they are only simple clarifications.

3525.1500 STAFF

It is reasonable to repeal this rule based on the fact that it is redundant to M. S. 125.04. Should that statute be repealed, federal statute requires that each state have a policy related to staff qualifications so that this rule, or its equivalent, would have to be reinstated.

3525.1510 PERSONNEL VARIANCES

This rule is needed to insure that as shortages of teachers and related service personnel continue, districts have the opportunity to utilize partially trained staff rather than completely untrained staff or staff whose performance record has been unsatisfactory in other districts. The change is reasonable because it eliminates the need for unnecessary documentation and clarifies that availability is based on district qualifications.

3525.1550 CONTRACTED SERVICES

This rule must be maintained to assure that programs provided by districts through a contract for service option meet the same standards as those operated directly by the school. The change is reasonable because it reduces fragmentation of the rule package by transferring a related provision from 3525.2335.

3525.2300 SCHOOL DAY

It is reasonable to repeal this rule as redundant because it is recommended that a modified school day be included as part of the process for developing the IEP. By transferring this

requirement to 3525.2900, it assures that the team of persons designing the student's entire program considers the length of school day as part of its deliberations. In addition, this modification will result in one less paper application that the district must make to the Commissioner.

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

The proposed changes are reasonable because they simply update rule references and replace archaic terms (i.e., "handicapping condition") with more acceptable language ("disability").

3525.2330 REQUIREMENT FOR EARLY CHILDHOOD SERVICES

It is reasonable that this rule be repealed because it is redundant to M. S. 120.03, which requires special education programs for children with disabilities at birth.

3525.2335 EARLY CHILDHOOD CRITERIA FOR ELIGIBILITY AND
PROGRAM ALTERNATIVES

This rule should be retitled with the following parts inserted into more appropriate sections of the rule package:

All definitions throughout this rule are moved to 3525.0200
Eligibility criteria (Subpart 1) are moved to 3525.1350
Contract provision (Subpart 3) is moved to 3525.1550
Caseloads (Subpart 4) are moved to 3525.2340

The remaining parts of this rule deal exclusively with early childhood services, alternatives and settings.

These changes are reasonable because they simplify the total rule package without changing the basic content of the parts.

3525.2340 EDUCATIONAL SERVICE ALTERNATIVES

This rule should be retitled to consolidate caseload requirements, move some parts to more appropriate sections of the rule package, and drop others due to redundancy:

- o Subparts 1 and 3 are dropped due to redundancy
- o Subpart 2 definitions are moved to 3525.0200
- o Subpart 4 is retained
- o Subpart 5 is transferred from 3525.2335

This combination of changes is reasonable because it has the result of simplifying the total rule package without omitting any provisions.

3525.2345 DEVELOPMENTAL ADAPTED PHYSICAL EDUCATION:
SPECIAL EDUCATION

Federal rules require that a student with a disability whose only need is for physical education be eligible for an adapted physical education program. It is reasonable to move this rule, without changes, to the section that covers eligibility for services. Therefore, it is repealed here and recodified as 3525.1352.

3525.2350 MULTIDISABILITY TEAM TEACHING MODEL

The recommended change in Subpart 3 is reasonable because local districts would not be not forced to provide weekly consultation and direct services as a minimum since there are cases where less frequency is appropriate. In addition, the change clarifies that this decision is made by the IEP team.

It is reasonable to delete Subpart 5 because this provision is essentially obsolete due to legislative action that removed caseload limits.

3525.2380 CONSIDERATIONS WHEN DETERMINING RATIOS

The changes to this rule are reasonable because they do not reduce student or parent rights. In addition, the change in Subpart 1 is reasonable because field input indicated that such a variance was useful for students with severe disabilities, but was confusing (and unnecessary) when applied to all levels of severity.

The deletion of Subpart 3 is also reasonable because it is “how-to” language that is more appropriately dealt with in a manual which describes promising or recommended practices. The legislature has mandated that MDE provide such a manual upon the adoption of this rule package.

3525.2405 DIRECTORS

It is reasonable to repeal Subpart 4 because the stated timelines have passed and the provision is obsolete.

3525.2410 ASSISTANT DIRECTORS

It is reasonable to repeal this rule because it is redundant to the suggested changes in 3525.2415.

3525.2415 OTHER SUPERVISORY PERSONNEL

The recommended change simply includes assistant directors as one of the types of supervisory personnel. It is reasonable to add Assistant Directors to this rule because of the repeal of 3525.2410, which contributes to the objective of simplifying the total rule package without reducing district flexibility or parent and student rights.

3525.2430 DEFINITION (Surrogate parent)

It is reasonable to move this rule, without changes, to the section that covers definitions. Therefore, it is repealed here to be recodified in 3525.0200.

3525.2470 SUSPENSION, EXCLUSION, AND EXPULSION

The proposed changes are reasonable because they simply replace archaic terms (i.e., “handicapping condition”) with more acceptable language (“disability”).

3525.2500 IDENTIFICATION OF CHILDREN WHO ARE HANDICAPPED

It is reasonable that this rule be repealed because it is redundant to M. S.120.03 and the proposed rule 3525.0750.

3525.2550 CONDUCT BEFORE ASSESSMENT

This is another example where “how-to” language is eliminated from a rule and more appropriately dealt with in the manual which will describe promising or recommended practices.

The changes in this rule are reasonable because they still retain the rights of parents and pupils while dropping “how-to” requirements and duplicative documentation. With these changes, districts are still required to adhere to the following sequence of steps from initial referral to long-term services:

- Review the result of pre-referral interventions (3525.2550, Subp.1B);
- Review other screening and referral data (3525.2550 Subp. 1A);
- Develop an assessment plan for areas of suspected problems and notify parents (3525.2550 Subp.2A; 3525.2650);
- Conduct the assessment (3525.2550 Subp. 2C; 3525.2750);
- Prepare an assessment summary report (3525.2750 Subp. 3);
- Develop an initial IEP, if special education is indicated (3525.2900);
- Annually evaluate pupil progress and rewrite the IEP, including the pupil’s current levels of performance in areas where special education services are needed (3525.2900);
- Conduct a three-year reassessment with an updated assessment summary

(3525.2750 Subp. 1B, Subp. 3).

Written information regarding “conduct before assessment” can be found in the parental notice before assessment (3525.2650) and assessment summary report (3525.2750), i.e., existing documentation which shows the basis of the district’s assessment plan for a pupil

The added reference to M. S. 126.237 identifies the legislative requirement that calls for pre-referral interventions and drops the duplicate provision in Subpart 1B.

3525.2750 EDUCATION ASSESSMENT

The modification of this rule includes many kinds of changes, most of which are minor in nature, e.g., editorial corrections for sequencing items, addition of rule citations, insertion of assessment-related provisions from other locations and updated provisions. Because of this variety of changes, there are several aspects of reasonableness to be cited:

The intent of federal requirements for the content and sequence of the assessment is made clearer by including Subpart 2 as a portion of Subpart 1 and renumbering the subsequent provisions.

By expanding the list proposed for Subpart 1A, this rule will become consistent with the skill areas identified with other federal and state rules.

The additional language proposed for Subpart 1B will reduce unnecessary testing of intellectual ability by school psychologists for pupils who have been tested at least three times previously.

The change proposed for Subpart 1D clarifies that a student over age 18 can request an assessment.

By adding the rule reference to Subpart 1E, related desegregation concerns are addressed without duplicating those provisions.

The item requiring an environmental review has produced a lot of confusion because it uses “how-to” language which overlaps with other components of this rule, plus the concept of “anticipated environment” has proven difficult to operationalize; by deleting this requirement the rule is greatly simplified.

The language regarding nondiscrimination proposed for Subpart 1I is moved from 3525.0200 so that assessment requirements are consolidated in a single location in the rule package.

The language regarding the use of conditional intervention procedures proposed for Subpart 1J is moved from 3525.2925 so that assessment requirements are consolidated in a single location in the rule package.

The changes proposed for Subpart 3 modify the content of the assessment summary report to make it a less burdensome requirement, while retaining those components reported to be useful for conveying information to parents and district staff; the changes remove unnecessary duplication of information documented elsewhere, allow for a list of team names instead of requiring signatures, and limit the content of the report to areas actually assessed.

3525.2900 DEVELOPMENT AND CONTENT OF INDIVIDUAL
 EDUCATION PLAN (IEP) AND INTERAGENCY FAMILY
SERVICE PLAN (IFSP)

This is another example where extensive “how-to” language reportedly limits the flexibility of local district staff and creates minimum requirements not needed in all cases. As explained previously, it is recommended that this rule package set standards for what must be done by districts and included in the IEP; promising or recommended practices for actually meeting these standards, however, are more appropriately described in a separate manual that can be more frequently and easily updated than subsequent rule revisions.

Because of this variety of changes included in this rule, there are several aspects of reasonableness to be cited. These citations of reasonableness which follow occur in sequence with the proposed rule:

The additional language proposed for Subpart 1A will clarify that expenditures to implement a pupil’s IEP are authorized by the IEP team, not through unilateral decisions by administrators or other individuals.

The revised list of prospective members of the IEP team in Subpart 1A(1-9) will make this rule more consistent with federal requirements. Furthermore, (2) updates the provision to get pupil input for transition needs; (8) consolidates an IEP-related item from 3225.2925 regarding the use of conditional behavioral intervention procedures; and (9) merely relocates a provision regarding team membership.

The provision regarding pupils below kindergarten age is obsolete.

The new language in Subpart 1B clarifies that the IEP merely has to document which team members attended meetings without requiring signatures.

By adding the “pupil” to Subpart 1C, the change clarifies that a pupil has a right to participate in the IEP process.

The changes in Subpart 1D clarify district requirements when pupils receive services outside the home district.

The change in Subpart 1E merely updates the rule reference.

The change in Subpart 1F replaces confusing language to more clearly state that the duration of an IEP is limited to 12 months.

Proposed changes in Subpart 1G will alleviate confusion among districts by more clearly stating that the district must “provide,” not just “consider,” extended year “services” when needed by a pupil.

The revision of Subpart 1H clarifies that the educational components of an IFSP must meet all requirements of an IEP.

The provision that the IEP be based on assessment data and other relevant information is redundant and should be deleted to simplify this rule.

Subparts 3A-E have been rewritten to drop extensive “how to” language, leaving the basic requirements in tact for documenting present level of performance, instructional goals and objectives, etc. These changes substantially simplify the IEP rule, provide more flexibility for districts, and make this rule more consistent with federal requirements.

Subpart 3F reduces paperwork by using the IEP process to replace a separate application to the Commissioner in 3525.2300. Furthermore, the language clarifies that alterations of a pupil’s school day must be based on his/her needs.

Subpart 3G reduces paperwork by using the IEP process to incorporate the pupil’s transition plan.

Subpart 3H reduces paperwork by using the IEP process instead of a separate behavior intervention plan when conditional intervention procedures are under consideration for a pupil. This change, along with the repeal of 3525.2925, would also eliminate duplication of effort for a separate team and review committee currently, thus reducing the number of meetings and paperwork demands on parents and district staff without sacrificing procedural safeguards.

Subpart 4 is moved from 3525.2950 to consolidate IEP requirements in one location in the rule package.

Subpart 5 moves provisions regarding the use of conditional procedures from 3525.2925 to consolidate IEP requirements in one location in the rule package. Subpart 5 retains the intention of the corresponding provisions in 3525.2925, but with much simpler, straightforward language that establishes the basic requirements. The reasonableness of transferring “how-to” language to a manual which describes promising or recommended practices has been previously cited.

The legislature has mandated that the MDE provide such a manual upon the adoption of this rule package.

3525.2925 USE OF BEHAVIOR INTERVENTIONS WITH PUPILS

Extensive input to MDE and the Task Force has established that this rule in its present form is both confusing and burdensome, though its basic tenets are needed. It is reasonable to repeal this rule because recommended revisions throughout the rule package will retain the basic requirements and greatly simplify them by (1) transferring the major parts of 3525.2925 to other rules; and (2) referring “how to” language, which is extensive in 3525.2925, to a manual which describes promising or recommended practices. The legislature has mandated that MDE provide such a manual upon the adoption of this rule package.

The following parts should be moved to more appropriate sections of the rule package:

- o Definitions would be moved to 3525.0200
- o Assessment requirements are moved to 3525.2750
- o Written program requirements are moved to the IEP rule 3525.2900
- o Requirements for a local policy are moved to 3525.1100
- o A state policy statement regarding the use of positive interventions is moved to 3525.0850

By incorporating the planning and documentation of the IEP process for the use of behavioral interventions, it is no longer necessary to have a separate written plan and local review committee as currently mandated by 3525.2925. The current requirement for a local review committee will be included as a promising practice in the forthcoming manual being developed by MDE.

3525.2950 SECONDARY TRANSITION PLANNING

It is reasonable to repeal this rule and consolidate this requirement with other components of the IEP. Therefore, it is repealed here and recodified in 3525.2900.

3525.3100 FOLLOW-UP REQUIREMENTS

This rule should be modified to specify the conditions under which a student can be reinstated to special education services after all services have been discontinued. These changes are reasonable because they reduce paperwork by dropping an unnecessary follow-up review, clarify that assessments and pre-referral interventions need not be unnecessarily duplicated, and do not reduce a parent or student’s rights.

3525.3150 REQUIREMENTS FOR A HIGH SCHOOL DIPLOMA

Only minor changes proposed are proposed for this rule. These changes are reasonable

because they simply remove obsolete language and align the rule with the federal requirement for providing public education through age 21.

3525.3200 FORMAL NOTICE TO PARENTS

The proposed changes are reasonable because they simply replace archaic terms (i.e., “handicapping condition”) with more acceptable language (“disability”).

3525.3300 CONTENTS OF NOTICE

The proposed changes are reasonable because they simply replace archaic terms (i.e., “handicapping condition”) with more acceptable language (“disability”).

3525.3500 NOTICE OF PERFORMANCE OR REFUSAL TO PERFORM
ASSESSMENT

The proposed change is reasonable because it simply updates a rule reference.

3525.3600 NOTICE OF CHANGE OR REFUSAL TO CHANGE
EDUCATIONAL PLACEMENT OR PROGRAM

Part B of this rule constitutes a definition and should be moved to 3525.0200, where definitions are consolidated. This change is reasonable because it helps simplify the rule by consolidating definitions in 3525.0200 without reducing parent or student rights.

3525.3700 CONCILIATION CONFERENCE.

The proposed change is reasonable because it clarifies a point of confusion expressed by several stakeholders without changing any of the requirements.

3525.3800 WHEN A HEARING MUST BE HELD

The proposed change is reasonable because it simply updates a rule reference.

3525.3900 NOTICE OF HEARING

The proposed changes are reasonable because they simply replace archaic terms (i.e., “handicapping condition”) with more acceptable language (“disability”).

3525.4300 HEARING PROCEDURES

The proposed changes are reasonable because they simply replace archaic terms (i.e., “handicapping condition”) with more acceptable language (“disability”).

3525.4400

DECISIONS OF HEARING OFFICER

The proposed changes are reasonable because they simply replace archaic terms (i.e., “handicapping condition”) with more acceptable language (“disability”).