

1 State Board of Education

2 Department of Education

3 Instruction Division

4

5 Adopted Rules Governing Special Education (5 MCAR SS

6 1.0120-1.0127) and Adopted Repeal of Parts of 5 MCAR SS

7 1.0120-1.0123

8

9 Rules as Adopted

10 5 MCAR S 1.0120 Policies for special education.

11 1. [Reletter as A.]

12 2. [Reletter as B.]

13 3.-4. [See Repealer.]

14 5. [Reletter as C.]

15 6. [Reletter as D.]

16 7.-8. [See Repealer.]

17 5 MCAR S 1.01201 Definitions for special education.

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

20 1.-14. [See Repealer.]

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

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

28 D. Individual education program plan or IEP. "Individual
29 education program plan" or "IEP" means a written individualized
30 educational plan developed for a pupil. It is based on an
31 assessment of the pupil's performance utilizing licensed
32 personnel, a determination of the pupil's needs in a team
33 process, an identification of appropriate goals and objectives,
34 a selection of teaching strategies designed to enhance learning,
35 delivery of services in an environment which is conducive to

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1 learning, and periodic review and evaluation of the pupil's
2 performance.

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

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

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

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

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

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

28 b. provide procedures that ensure that, in accordance
29 with recognized professional standards, testing and evaluation
30 materials and procedures utilized for the purposes of
31 identification, assessment, classification, educational program
32 plan development, educational placement including special
33 education services, program implementation, review and
34 evaluation, notice and hearing are selected and administered so
35 as not to be discriminatory including cultural discrimination.
36 All such procedures and materials shall take into account the

1 special limitations of handicapped persons and the racial or
2 cultural differences presented by persons and must be justified
3 on the basis of their usefulness in making educational program
4 decisions which will serve the individual pupil.

5 17.-21. [See Repealer.]

6 J. Parent. "Parent" or "parents" means the mother, father, -
7 legally-appointed guardian, conservator, or surrogate parent for
8 a pupil under age 18 years-and. For a pupil over age 18 years
9 ~~old-or-older-and-under-legal-guardianship~~, it means the pupil
10 ~~if-a-pupil-is-18-years-old-or-older-and-not-under-legal~~
11 guardianship unless a guardian or conservator has been
12 appointed, in which case it means the guardian or conservator.

13 When the parents are separated or divorced, it means the parent
14 who has the legal right, by court decree or agreement, to
15 determine the pupil's education, even though the pupil may be
16 living with the other parent ~~may-have-custody-of-the-pupil~~.

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

20 L. Pupil. "Pupil" means a handicapped person eligible for
21 special education according to Minnesota Statutes, sections
22 120.03 and 120.17. Persons who are pregnant or chemically
23 dependent and do not have a handicapping condition are not
24 handicapped.

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

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

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

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

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

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

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

20 S. Teacher. "Teacher" means a person licensed according to
21 5 MCAR SS 3.090, 3.0901, 3.0902, and 3.0909, or successor rules,
22 by the Board of Teaching to instruct pupils with specific
23 handicapping conditions.

24 5 MCAR S 1.0121 Application.

25 A. District special education plan. Each district shall
26 submit to the commissioner the district's plan for providing
27 instruction and related services for all pupils as required by
28 Minnesota Statutes, section 120.17. The plan may represent the
29 plan of a single district or a plan for all of the member
30 districts of a formal special education cooperative. The plan
31 shall be considered as part of the annual school district
32 application for program review, but will not be required to be
33 resubmitted annually. If a cooperative changes administrative
34 organization, it shall submit a revised plan. The new plan must
35 be submitted prior to the beginning of the next school year.
36 The plan shall include descriptions of the district's:

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

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

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

7 4. [See Repealer.]

8 B. On or before January 1, 1978, and as soon as possible
9 after receiving revised plans, the commissioner shall approve or
10 implement appropriate procedures for modification of the
11 district plan. The commissioner may grant the district a
12 reasonable period of time to make necessary modifications of the
13 plan if the commissioner has satisfactory assurances of
14 compliance with standards for the education of pupils.

15 C. Annual application for programs and budget.

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

23 2. Districts shall submit separate applications for
24 program and budget approval for summer school. The commissioner
25 shall approve, disapprove, or modify each application and notify
26 the district of the action and the estimated level of special
27 education aid within 45 days.

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

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

36 D. [See repealer.]

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

- 5 1. child find and pupil identification;
- 6 2. necessary short-term activities to determine whether
7 referrals for assessments shall be made;
- 8 3. assessment and IEP planning for individual pupils;
- 9 4. instruction or related and support services to pupils
10 who have an IEP;
- 11 5. necessary follow-up activities after termination from
12 special education;
- 13 6. parental involvement and due process;
- 14 7. personnel development;
- 15 8. special education curriculum development;
- 16 9. special education program evaluation;
- 17 10. supervision and administration of the total special
18 education system; and
- 19 11. school psychological services and school social
20 worker services provided alone or in conjunction with the
21 instructional program;
- 22 12. other related services provided in conjunction with
23 the instructional program other-activities-approved-through-the
24 annual-application-for-programs-and-budget.

25 E. Experimental proposal.

- 26 1. The State Board of Education shall approve or
27 disapprove a district's experimental proposal for exemption from
28 its rules. No exemption shall be given from federal
29 regulations, Minnesota Statutes, 5 MCAR SS 1.0122 B.1. and
30 1.01225 B. A proposal shall be designed to accomplish at least
31 one of the following:
 - 32 a. improved instructional quality;
 - 33 b. increase cost effectiveness; or
 - 34 c. make better use of community resources or available
35 technology.

- 36 2. When a district applies for exemption it shall submit

1 a proposal which sets forth:

2 a. the proposal's goals and objectives;

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

5 c. annual review procedures for up to three years;

6 d. rules from which it seeks exemption;

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

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

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

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

20 5 MCAR S 1.0122 Facilities and staff.

21 A. Facilities.

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

25 a. be accessible as defined in Code of Federal
26 Regulations, title 34, section 104;

27 b. be essentially equivalent to the regular education
28 program;

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

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

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

36 B. Staff.

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

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

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

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

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

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

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

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

36 4. [Renumber as 7.]

1 C.-D. [See Repealer.]

2 E. [Reletter as D.]

3 5 MCAR S 1.01222 Pupils placed for care and treatment.

4 A. Handicapped pupil placement.

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

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

20 3.--In-a-facility.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20

21 Consultation and indirect services program 24

22

23 Center-based program

24 Deaf/blind, autistic, or severely

25 multiply handicapped

26 One class, with one aide 4

27 One class, with two aides 6

28 More than one class, with one aide 8

29 More than one class, with two aides 12

30 All other disabilities

31 One class, with one aide 8

32 More than one class, with one aide 16

33

34 Home-based program 12

35

36 D. Early childhood teams. A district may assign one

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

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

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

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

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

28 5 MCAR S 1.01223 Early childhood program alternatives.

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

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

8 5 MCAR S 1.01224 School-age levels of service.

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

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

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

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

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

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

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

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

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

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

12

13 Level 2

14 Speech and language handicapped and	
15 developmental adaptive physical education	60
16 All other disabilities	30

17

18 Level 3

19 Speech and language handicapped and	
20 developmental adaptive physical education	40
21 All other disabilities	18

22

23 Level 4

24 Deaf/blind, autistic, or severely multiply	
25 handicapped	3
26 With one aide	6
27 Mildly mentally handicapped or specific	
28 learning disabled	12
29 With one aide	15
30 All other disabilities	8
31 With one aide	10
32 With two aides	12

33

34 Levels 5 and 6

35 Deaf/blind, autistic, or severely multiply	
36 handicapped	

1	With one aide	4
2	With two aides	6
3	All other disabilities	
4	With one aide	8

5 5 MCAR S 1.01225 Multidisability team teaching.

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

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

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

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

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

1 related services staff members.

2 5 MCAR S 1.01226 Single disability case management services.

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

10 B. A district may assign a teacher to perform case
11 management for school-age pupils who are in levels 3, 4, 5, and
12 6 services and who all have the same disability.

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

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

18 ~~1. 18 pupils, times~~

19 ~~2. the number of teachers in the team plus the case~~

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

24 5 MCAR S 1.01228 Pupil performance plan.

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

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

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

35 3. Criteria for the modification of instruction, related

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

3 5 MCAR S 1.01229 Considerations to be made when determining
4 ratios.

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

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

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

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

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

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

26 4. is providing instruction at more than one building.

27 5 MCAR S 1.01232 Supervision.

28 A. Directors.

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

1 educational cooperative service unit.

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

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

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

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

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

14 3. Conditions for special education reimbursement of a
15 part-time director of special education include an enrollment of
16 2,000 in public and nonpublic schools within a district or group
17 of districts cooperating to provide special education or any
18 cooperative having between five and seven districts cooperating
19 to provide special education through a host district, joint
20 powers agreement, or educational cooperative service unit. The
21 maximum reimbursement shall equal the ratio of the actual
22 enrollment to 5,000 within a district or 4,000 in a group of
23 cooperating districts, as applicable, but not less than
24 one-half. A part-time director must be assigned duties other
25 than direct instruction for unreimbursed time.

26 4. Reimbursement for the ~~1983-1984~~ 1984-1985 through
27 1986-1987 school years shall be based on the 1982-1983
28 enrollment as reported to the State Department of Education.
29 The enrollment year, as the basis for reimbursement, shall be
30 changed every fourth year. When a district or cooperative has
31 an increase or decrease in enrollment of ten percent or more,
32 the district or cooperative shall have its reimbursement
33 recalculated based on the actual enrollment for that year. The
34 district must notify the State Department of Education of the
35 increase by July 1 prior to the school year for which the
36 adjustment is sought.

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

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

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

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

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

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

22 5 MCAR S 1.01233 Surrogate parent.

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

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

34 C. The district shall appoint the surrogate parent when:

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

2. parental rights have been terminated; or

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

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

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

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

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

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

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

4. failure to appear to represent the pupil; or

5. change in eligibility for special education.

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

1. state and federal requirements;

2. district structure and procedures;

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

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

5 MCAR S 1.01234 Suspension, exclusion, and expulsion.

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

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

9 E. Team meeting required. A team meeting shall be held
10 prior to a suspension, exclusion, or expulsion of a pupil.
11 Within five school days of a suspension, a team meeting shall
12 occur. The team shall:

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

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

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

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

28 5 MCAR S 1.0124 Identification and assessment procedures.

29 A. [Unchanged.]

30 B. Formal educational assessment.

31 1. An assessment:

32 a. [Unchanged.]

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

35 c. [Unchanged.]

36 2.-4. [Unchanged.]

1 5 MCAR S 1.0126 Periodic reviews, reassessment, and follow-up.

2 A. Periodic reviews.

3 1. [Unchanged.]

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

7 3.-5. [Unchanged.]

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

13 C. [Unchanged.]

14 5 MCAR S 1.0127 Formal notice to parents.

15 A. General notice provisions.

16 1.-4. [Unchanged.]

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

22 a.-d. [Unchanged.]

23 e. inform the parents that they may:

24 (1)-(2) [Unchanged.]

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

1 uses when it initiates an evaluation.

2 f.-t. [Unchanged.]

3 6. [Unchanged.]

4 B.-C. [Unchanged.]

5

6 Repealer. 5 MCAR SS 1.0120 A.3., A.4., ~~A.6.~~, A.7., A.8., B.1.,

7 B.2., B.3., B.4., B.5., B.6., B.7., B.8., B.9., B.10., B.11.,

8 B.12., B.13., B.14., B.17., B.18., B.19., B.20., B.21.; 5 MCAR

9 SS 1.0121 A.4., D.; 1.0122 ~~E.~~ and D.; and 1.0123 are repealed. _

10 5 MCAR S 1.0122 C. is repealed effective for the school year
11 beginning in 1984.

12

13 Effective date. 5 MCAR SS 1.01223, 1.01224, and 1.01232 are

14 effective for the school year beginning in 1984. The remaining

15 rules are effective five working days after the notice of

16 adoption is published in the State Register.