

1 Board of Education

2

3 Adopted Permanent Rules Relating to Special Education Entrance
4 and Exit Criteria and Related Changes

5

6 Rules as Adopted

7 3525.0200 DEFINITIONS FOR SPECIAL EDUCATION.

8 [For text of subps 1 and 1a, see M.R.]

9 Subp. 1b. **Assessment or reassessment.** "Assessment" or
10 "reassessment" means an appropriate individual educational
11 evaluation of a pupil's performance or development conducted by
12 appropriately licensed personnel according to recognized
13 professional standards and parts 3525.2500 to 3525.2850.

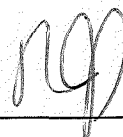
14 [For text of subps 2 to 8b, see M.R.]

15 Subp. 9b. **Program support assistant or pupil support**
16 **assistant.** "Program support assistant" or "pupil support
17 assistant" means a district employee who is engaged in direct
18 interaction with one or more pupils for instructional
19 activities, physical or behavior management, or integration
20 purposes under the direction of a regular education or special
21 education teacher. A program or pupil support assistant shall
22 only provide services to a pupil under the direction of a
23 regular education or special education teacher or related
24 services provider. The services must be:

25 A. to enhance the instruction provided by the teacher
26 or related services staff in the areas of academic instruction,
27 physical or behavior management programs, transition, and other
28 integration activities; and

29 B. to supplement instructional activities or to
30 provide extended practice in instances in which the support
31 assistant has had training from a special education teacher or
32 related services staff and continues to receive ongoing
33 direction and support from a special education teacher.

34 The pupil's need for and the specific responsibilities of a
35 pupil support assistant shall be described in writing on the



1 pupil's IEP. A program support assistant is required in an
 2 early childhood special education center-based classroom as such
 3 classroom is described in part 3525.2335, subpart 2, and may be
 4 assigned to programs described in part 3525.2340, subpart 3 4,
 5 ~~item~~ items A and B.

6 [For text of subps 10 to 16a, see M.R.]

7 Subp. 17a. **Recognized professional standards.** "Recognized
 8 professional standards" means reasonable principles and concepts
 9 widely accepted by acknowledged experts that bear a direct
 10 relationship to the particular needs of the pupil.

11 [For text of subp 18a, see M.R.]

12 Subp. 18b. **Related services.** ~~"Related services" means any~~
 13 ~~specially-designed services not provided by regular education or~~
 14 ~~special education instruction to meet the unique needs of a~~
 15 ~~pupil to benefit from the educational program. This includes~~
 16 ~~psychological services, social worker services, occupational~~
 17 ~~therapy, physical therapy, audiology, orientation and mobility~~
 18 ~~training, health services, medical services for diagnostic~~
 19 ~~purposes, music therapy, braillists, interpreter services,~~
 20 ~~transportation, and other similar services.~~ The definition of
 21 "related services" in Code of Federal Regulations, title 34,
 22 section 300.13, as amended through November 1, 1991, is
 23 incorporated by reference into this part.

24 [For text of subp 19a, see M.R.]

25 Subp. 20a. **Special education.** "Special education" means
 26 any specially designated instruction and related services to
 27 meet the unique cognitive, communicative, affective, or
 28 psychomotor needs of a pupil as stated in the IEP.

29 Subp. 23. [See repealer.]

30 Subp. 24. **Teacher.** "Teacher" means a person licensed
 31 under parts 8700.5501 to 8700.5511 by the Board of Teaching to
 32 instruct pupils with specific ~~handicapping~~ disabling conditions.

33 [For text of subps 25 and 26, see M.R.]

34 3525.0550 PUPIL IEP MANAGER.

35 The district shall assign a teacher or licensed related

1 service staff who is a member of the pupil's IEP team as the
 2 pupil's IEP manager to coordinate the instruction and related
 3 services for the pupil. The IEP manager's responsibility shall
 4 be to coordinate the delivery of special education services in
 5 the pupil's IEP and to serve as the primary contact for the
 6 parent. A district may assign the following responsibilities to
 7 the pupil's IEP manager: assuring compliance with procedural
 8 requirements; communicating and coordinating among home, school,
 9 and other agencies; regular and special education programs;
 10 facilitating placement; and scheduling team meetings.

11 3525.1100 STATE AND DISTRICT RESPONSIBILITY FOR TOTAL SPECIAL
 12 EDUCATION SYSTEM (TSES).

13 [For text of subpart 1, see M.R.]

14 Subp. 2. District responsibility. A district shall submit
 15 to the commissioner the district's plan for providing
 16 instruction and related services upon request for all pupils as
 17 required by Minnesota Statutes, section 120.17. The plan may
 18 represent the plan of a single district or a plan for the member
 19 districts of a formal special education cooperative. The plan
 20 shall be considered as part of the annual school district
 21 application for program review, but will not be required to be
 22 resubmitted annually. If a cooperative changes administrative
 23 organization, it shall submit a revised plan. The new plan must
 24 be submitted before the beginning of the next school year. The
 25 plan shall include descriptions of the district's:

26 A. Child study procedures for the identification and
 27 assessment of students or other persons suspected of having a
 28 handicap disability beginning at birth that include a plan for
 29 receiving referrals from parents, physicians, private and public
 30 programs, and health and human services agencies.

31 B. Method of providing the special education services
 32 for the identified pupils. The district shall have, as part of
 33 the district's TSES plan, a description of the full range of
 34 available educational service alternatives. ~~The district shall~~
 35 ~~include a statement in the plan regarding the availability of~~

1 ~~appropriate educational services to meet the specific needs of~~
 2 ~~pupils.~~ The district's TSES plan shall include:

3 (1) a description of the sites available in which
 4 services may occur. Sites describe the building or other
 5 location where special education occurs; and

6 ~~(2) a description of the settings available in~~
 7 ~~which special education may occur. Settings describe the~~
 8 ~~specific location within the site where special education~~
 9 ~~occurs;~~

10 ~~(3) a description of the available instruction~~
 11 ~~and related services; and.~~

12 ~~(4) the availability of both direct and indirect~~
 13 ~~services through the district. Direct services refers to~~
 14 ~~services provided directly to the pupil from a teacher or~~
 15 ~~related service professional. Indirect services refers to~~
 16 ~~services provided indirectly through consultation with a regular~~
 17 ~~education teacher, teacher, parent, or other persons or~~
 18 ~~professionals who have direct contact with the pupil.~~

19 C. Administration and management plan to assure
 20 effective and efficient results of items A and B, including due
 21 process procedure assurances available to parents.

22 D. Operating procedures of interagency committees
 23 required in statute.

24 E. Interagency agreements the district has entered.

25 The commissioner shall approve or implement appropriate
 26 procedures for modification of the district plan. The
 27 commissioner shall grant the district a reasonable time to make
 28 necessary modifications when the commissioner receives a
 29 satisfactory corrective action plan that complies with standards
 30 for the education of pupils.

31 3525.1150 PROVIDING SPECIAL EDUCATION TO SHARED-TIME PUPILS.

32 Districts shall identify and make available special
 33 education to all students who are ~~handicapped~~ disabled
 34 regardless of whether they attend a nonpublic school. For those
 35 students who attend a nonpublic school according to Minnesota

1 Statutes, section 124A.034, and who are referred for special
2 education services, the district shall inform parents of their
3 right to special education services for eligible students. In
4 the assessment or provision of special education to eligible
5 pupils, the district may:

6 A. assess the student at the nonpublic school,
7 including observing the student in the classroom as part of the
8 formal assessment;

9 B. meet periodically with the nonpublic school staff
10 to review progress of the pupil in the pupil's special education
11 program;

12 C. periodically observe the pupil in the nonpublic
13 school classroom to evaluate the result of the special education
14 provided; and

15 D. hold IEP or IFSP meetings at the nonpublic school.

16 Special education services provided indirectly or directly
17 to the pupil must be provided at a neutral site that is
18 consistent with Minnesota Statutes, section 123.932, subdivision
19 9. The district may provide indirect or consultative special
20 education services to the pupil's nonpublic school on the
21 specific skills identified in the pupil's IEP by phone or at a
22 meeting in a neutral site.

23 The district shall ensure that equipment or individualized
24 instructional materials placed in a nonpublic school are used
25 only to implement a pupil's IEP for the period needed for that
26 plan. Public school staff shall not become involved with the
27 pupil's day-to-day curriculum in the nonpublic school program.
28 Program funds must not be used to support instruction in a
29 nonpublic school or otherwise benefit the nonpublic school, but
30 rather to meet the specific needs of pupils enrolled in the
31 nonpublic school.

32 The district shall, in addition, provide necessary
33 transportation for a pupil to receive special education from the
34 nonpublic school to the neutral site where special education is
35 provided on a shared-time basis. If the resident pupil attends
36 a nonpublic school located in a district contiguous to the

1 resident district and no agreement exists under Minnesota
 2 Statutes, section 124A.034, the district of residence shall
 3 provide necessary transportation for that pupil between the
 4 boundary of the district of residence and the educational
 5 facility where special education is to occur. The district of
 6 residence may provide necessary transportation for that pupil
 7 between its boundary and the nonpublic school attended, but the
 8 nonpublic school shall pay the costs of the transportation
 9 provided outside the district boundary.

10 3525.1310 STATE AID FOR SPECIAL EDUCATION PERSONNEL.

11 Salaries for essential personnel who are teachers, related
 12 services and support services staff members, directors, and
 13 supervisors are reimbursable for the following activities:

- 14 A. child find and pupil identification;
- 15 B. necessary short-term indirect or consultative
 16 services that are provided in conjunction with regular education
 17 prereferral activities to an individual suspected of having a
 18 ~~handicapping~~ disabling condition to determine whether referrals
 19 for assessments shall be made;
- 20 C. assessment and IEP planning for individual pupils;
- 21 D. instruction or related and support services to
 22 pupils who have an IEP;
- 23 E. necessary follow-up activities after termination
 24 from special education;
- 25 F. parental involvement and due process;
- 26 G. personnel development;
- 27 H. special education curriculum development;
- 28 I. special education program evaluation;
- 29 J. supervision and administration of the total
 30 special education system;
- 31 K. school psychological services and school social
 32 worker services provided alone for pupils identified as
 33 emotional or behavioral disordered according to ~~part~~ parts
 34 3525.1329 and 3525.2900 or in conjunction with the instructional
 35 program as outlined in any pupil's IEP; and

1 L. other related services provided in conjunction
2 with the instructional program as outlined in the pupil's IEP.

3 Ongoing services for at-risk students such as truancy,
4 suicide prevention, child abuse, or protection are not
5 reimbursable.

6 3525.1320 EXPERIMENTAL PROPOSAL.

7 Subpart 1. General requirements. The State Board of
8 Education shall approve or disapprove a district's experimental
9 proposal for exemption from its rules. No exemption shall be
10 given from federal regulations, Minnesota Statutes, part
11 3525.1500, subpart 1, and part 3525.2350, subpart 2. A proposal
12 shall be designed to accomplish at least one of the following:

13 A. improved instructional quality;

14 B. increase cost effectiveness;

15 C. make better use of community resources or
16 available technology; or

17 D. an alternative eligibility criteria intended to
18 identify persons as ~~handicapped~~ disabled.

19 Subp. 2. Proposal requirements. A district must apply for
20 exemption before implementing an experimental program by
21 submitting a proposal which sets forth:

22 A. the proposal's goals and objectives;

23 B. the method by which the proposal will improve
24 effectiveness and efficiency;

25 C. annual review procedures for up to three years;

26 D. rules from which it seeks exemption;

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

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

35 G. the annual evaluation procedures ~~conducted-by-an~~

1 ~~impartial-evaluator-from-outside-the-district~~ to be used to
 2 demonstrate attainment of the proposal goals and objectives, and
 3 the effectiveness of the proposal; and

4 H. standards that are consistent with state and
 5 federal standards and recognized professional standards.

6 [For text of subp 3, see M.R.]

7 ENTRANCE AND EXIT CRITERIA

8 3525.1325 AUTISM.

9 Subpart 1. Definition. "Autism" is a lifelong
 10 developmental disability ~~that-occurs~~ with onset usually in the
 11 first three years of life. It is a behaviorally defined
 12 syndrome characterized by an uneven developmental profile and
 13 disturbances in interaction, communication, and perceptual
 14 organization. Autism occurs on a continuum from mild to
 15 severe. It occurs by itself or in association with other
 16 disorders such as mental retardation or fragile X syndrome. It
 17 may include the diagnosis of pervasive developmental disorder.
 18 Because of the low incidence and complexity of this disability,
 19 professionals with experience and expertise in the area of
 20 autism need to be included on the team determining the
 21 disability and educational program.

22 Subp. 2. Criteria. The team shall determine that a pupil
 23 meets criteria for autism according to the Diagnostic and
 24 Statistical Manual, Third Revision (DSM-III-R) of the American
 25 Psychiatric Association, the current accepted standard in the
 26 field. The criteria for autism in (DSM-III-R) are incorporated
 27 by reference, DSM-III-R is subject to frequent change and is
 28 available through the Minitex interlibrary loan system.
 29 Consider a criterion to be met only if the behavior is abnormal
 30 for the person's developmental level. DSM-III-R states that a
 31 pupil meets criteria when at least eight of the following 16
 32 items are present, these to include at least two items from item
 33 A, one from item B, and one from item C:

34 A. qualitative impairment in reciprocal social
 35 interaction (the examples within parentheses are arranged so

1 example, does not anticipate being held, stiffens when held,
2 does not look at the person or smile when making a social
3 approach, does not greet parents or visitors, has a fixed stare
4 in social situations);

5 (3) absence of imaginative activity, such as
6 play-acting of adult roles, fantasy characters, or animals; lack
7 of interest in stories about imaginary events;

8 (4) marked abnormalities in the production of
9 speech, including volume, pitch, stress, rate, rhythm, and
10 intonation (for example, monotonous tone, question-like melody,
11 or high pitch);

12 (5) marked abnormalities in the form or content
13 of speech, including stereotyped and repetitive use of speech
14 (for example, immediate echolalia or mechanical repetition of a
15 television commercial); use of "you" when "I" is meant (for
16 example, using "You want cookie?" to mean "I want a cookie");
17 idiosyncratic use of words or phrases (for example, "Go on green
18 riding" to mean "I want to go on the swing"); or frequent
19 irrelevant remarks (for example, starts talking about train
20 schedules during a conversation about sports); and

21 (6) marked impairment in the ability to initiate
22 or sustain a conversation with others, despite adequate speech
23 (for example, indulging in lengthy monologues on one subject
24 regardless of interjections from others);

25 C. markedly restricted repertoire of activities and
26 interests, as manifested by the following:

27 (1) stereotyped body movements (for example,
28 handflicking or twisting, spinning, head-banging, complex
29 whole-body movements);

30 (2) persistent preoccupation with parts of
31 objects (for example, sniffing or smelling objects, repetitive
32 feeling of texture of materials, spinning wheels of toy cars) or
33 attachment to unusual objects (for example, insists on carrying
34 around a piece of string);

35 (3) marked distress over changes in trivial
36 aspects of environment (for example, when a vase is moved from

1 usual position);

2 (4) unreasonable insistence on following routines
3 in precise detail (for example, insisting that exactly the same
4 route always be followed when shopping);

5 (5) markedly restricted range of interests and a
6 preoccupation with one narrow interest (for example, interested
7 only in lining up objects, in amassing facts about meteorology,
8 or in pretending to be a fantasy character);

9 D. onset during infancy or early childhood;

10 E. other symptoms that may occur with the syndrome:

11 (1) sensory disturbances as evidenced by atypical
12 responses to stimuli (for example, touch, sound, light,
13 movement, smell, taste). Responses may include overreaction,
14 indifference, or withdrawal; and

15 ~~F. (2) uneven acquisition of skills, and/or~~
16 ~~difficulty in integrating and generalizing acquired skills;~~ and

17 F. the pupil's need for instruction and services must
18 be supported by at least one documented systematic observation
19 in the pupil's daily routine setting by an appropriate
20 professional and verify the criteria categories in items A to

21 D. In addition, corroboration of developmental or medical
22 information with a developmental history and at least one other
23 assessment procedure that is conducted on a different day must
24 be included. Other documentation should include parent reports,
25 functional skills assessments, adaptive behavior scales,
26 intelligence tests, criterion-referenced instruments, language
27 concepts, developmental checklists, or an autism checklist.

28 3525.1327 DEAF-BLINDNESS.

29 Subpart 1. Definition and criteria. "Deaf-blindness"
30 means medically verified visual impairment coupled with
31 medically verified hearing impairment that, together, interfere
32 with acquiring information or interacting in the environment.
33 Both conditions need to be present simultaneously and must meet
34 the criteria for both vision and hearing impairments.

35 Subp. 2. Criteria Pupils at risk. Pupils at risk for

1 deaf-blindness include, but are not limited to:

2 A. those that are already identified as hearing or
3 vision impaired and have not yet had medical or functional
4 assessment of the other sense (vision or hearing);

5 B. have an identified syndrome, such as Usher
6 Syndrome or Rubella Syndrome, that includes a potential
7 deterioration of vision or hearing in the future;

8 C. those that have a medically or functionally
9 identified hearing impairment and a verified deficit in vision
10 determined by a functional assessment in the learning
11 environment; and

12 D. those that have a medically or functionally
13 identified vision impairment and verified deficit in hearing
14 determined by a functional assessment in the learning
15 environment.

16 3525.1329 EMOTIONAL OR BEHAVIORAL DISORDERS.

17 Subpart 1. Definition. "Emotional or behavioral disorder"
18 means an established pattern characterized by one or more of the
19 following behavior clusters:

20 A. severely aggressive or impulsive behaviors;

21 B. severely withdrawn or anxious behaviors, general
22 pervasive unhappiness, depression, or wide mood swings; or

23 C. severely disordered thought processes manifested
24 by unusual behavior patterns, atypical communication styles, and
25 distorted interpersonal relationships.

26 ~~The condition~~ This category may include ~~7-but-is-not~~
27 ~~necessarily-limited-to, disorders-such-as-schizophrenia,~~
28 ~~depression, anxiety~~ children or youth with schizophrenic
29 disorders, affective disorders, attention-deficit anxiety
30 disorders, or other sustained disturbances disorders of conduct
31 or adjustment when they adversely affect educational
32 performance. The established pattern adversely affects
33 educational performance and results in either an inability to
34 build or maintain satisfactory interpersonal relations necessary
35 to the learning process with peers, teachers, and others, or

1 failure to attain or maintain a satisfactory rate of educational
2 or developmental progress that cannot be improved or explained
3 by addressing intellectual, sensory, health, cultural, or
4 linguistic factors.

5 Subp. 2. **Criteria.** The team shall determine that a
6 ~~learner~~ pupil is eligible as having an emotional or behavioral
7 disorder and in need of special education and related services
8 when the pupil meets the criteria in items A to D.

9 A. An established pattern must exist that is
10 characterized by one or more of the following clusters:

11 (1) severely aggressive or impulsive behaviors
12 that are developmentally inappropriate; physically or verbally
13 abusive; impulsive or violent, destructive, or intimidating;
14 threatening to others or excessively antagonistic;

15 (2) severely withdrawn or anxious behaviors,
16 pervasive unhappiness, depression, or wide mood swings that
17 include behaviors as: isolating self from peers; displaying
18 intense fears or school phobia; overly perfectionistic; failing
19 to express emotion, displaying a pervasive sad disposition;
20 developing physical symptoms related to stress or eating
21 problems; or

22 (3) severely disordered thought processes
23 manifested by unusual behavior patterns, atypical communication
24 styles, or distorted interpersonal relationships such as:
25 reality distortion beyond normal developmental fantasy and play
26 or talk; situationally inappropriate laughter, crying, sounds
27 and language; self-mutilation or self-stimulation; rigid,
28 ritualistic patterning; perseveration or obsession with specific
29 objects; overly affectionate behavior towards unfamiliar
30 persons; or hallucinating or delusions of grandeur.

31 The condition involves behavioral or emotional responses in
32 school that differ significantly from normative standards,
33 taking into consideration ethnic or cultural variables, as
34 supported by multiple data sources using two or more of the
35 following: behavior checklists, personality or projective
36 measures, interviews with the child or knowledgeable adults,

1 case history, or a an appropriate DSM-III-R diagnosis.

2 The team, when determining the existence of an emotional or
3 behavioral disorder, must give due consideration to a diagnosis
4 of an emotional disorder made by an appropriately licensed
5 mental health professional.

6 B. The condition adversely affects educational
7 performance to the degree it results in:

8 (1) a pattern of inability to build or maintain
9 satisfactory interpersonal relations with peers, parents,
10 teachers, and other significant adults necessary to the learning
11 process; or

12 (2) a pattern of failure to attain or maintain a
13 satisfactory rate of educational progress that cannot be
14 improved or explained by addressing intellectual, sensory,
15 health, cultural, linguistic factors, or a mismatch between the
16 student, the teacher or the curriculum or classroom, or learning
17 environment.

18 C. The combined results of prior documented
19 interventions and the assessment data must establish significant
20 impairments in one or more of the following areas: ~~self-care~~
21 personal, ~~social relations~~, ~~academic progress~~, ~~classroom~~
22 ~~demeanor~~, or ~~work-adjustment~~ vocational skills. This finding
23 must be supported by data from two or more of the following
24 procedures: adaptive behavior scales, sociometric or social
25 skill measures, achievement or cognitive tests; grades,
26 systematic behavioral checklists or observations, vocational
27 skill inventories, or reports. The data must document that the
28 impairment:

29 (1) severely interferes with the pupil's or other
30 students' academic performance;

31 (2) is pervasive as evidenced by occurrences
32 across educational settings, the home, or in community settings;

33 (3) has been in evidence for six months; or

34 (4) occurs suddenly as a crisis of such intensity
35 it results in imminent danger or harm to the ~~learner~~ pupil or
36 others.

1 D. The team verifies that:

2 (1) the established pattern may occur with, but
3 is not primarily the result of, intellectual, sensory, health,
4 cultural, linguistic factors, or stressors such as transient
5 medical or psychosocial events, chemical use, abuse or
6 addiction, or a history of an inconsistent educational program;
7 ~~or~~ and

8 (2) identification is not based solely on a
9 conflict between the individual and a political entity, a
10 governmental entity, or for purposes of disciplinary action.

11 E. Children not yet enrolled in kindergarten are
12 eligible for special education and related services if they meet
13 the criteria listed in items A; B; C, subitem (2), (3), or (4);
14 and D. The behaviors of concern must be determined by the team
15 to be significantly inappropriate for the age of the child being
16 assessed. To establish item C, subitem (2), (3), or (4), data
17 from the assessment process must find developmentally
18 significant impairments in self-care, social relations, or
19 social or emotional growth. The findings must be supported by
20 data from two or more of the following procedures: adaptive
21 behavior scales, sociometric or social skill measures,
22 systematic behavioral checklists, systematic documented
23 observations, interventions, or written reports.

24 3525.1331 HEARING IMPAIRMENT.

25 Subpart 1. Definition. "Hearing impairment" means a
26 diminished sensitivity to sound that is expressed in terms of
27 standard audiological measures.

28 Hearing impairment has the potential to affect educational,
29 communicative, or social functioning that may result in the need
30 for special education instruction and related services.

31 Subp. 2. Criteria. The team shall determine that a pupil
32 who has a hearing impairment is eligible for special education
33 instruction and related services if the pupil meets one of the
34 criteria in item A and one of the criteria in item B, C, or D,
35 ~~or~~-E.

1 A. There is audiological documentation provided by a
2 certified audiologist that verifies one of the following:

3 (1) a sensorineural hearing loss with an unaided
4 pure tone average, speech threshold, or auditory brainstem
5 response threshold of 20 decibels hearing level (HL) or greater
6 in the better ear;

7 (2) a conductive hearing loss with an unaided
8 pure tone average or speech threshold of 20 decibels hearing
9 level (HL) or greater in the better ear persisting over three
10 months or occurring at least three times during the previous 12
11 months as verified by audiograms with at least one measure
12 provided by a certified audiologist;

13 (3) a unilateral sensorineural or persistent
14 conductive loss with an unaided pure tone average or speech
15 threshold of 45 decibels hearing level (HL) or greater in the
16 affected ear; or

17 (4) a sensorineural hearing loss with unaided
18 pure tone thresholds at 35 decibels hearing level (HL) or
19 greater at two or more adjacent frequencies (500 hertz, 1000
20 hertz, 2000 hertz, or 4000 hertz) in the better ear.

21 B. The pupil's hearing impairment affects educational
22 performance as demonstrated by:

23 (1) a need to consistently use amplification
24 appropriately in educational settings as determined by
25 audiological measures and systematic observation; and or

26 (2) an achievement deficit in one or more of the
27 following that is at the 15th percentile or 1.0 standard
28 deviations or more below the mean on a technically adequate
29 norm-referenced achievement test that is individually
30 administered by a licensed professional:

31 (a) basic reading skills;

32 (b) reading comprehension; or

33 (c) written language.

34 C. The pupil's hearing impairment affects the use and
35 understanding of spoken English as documented by one or both of
36 the following:

1 (1) under the pupil's typical classroom
 2 condition, the pupil's classroom interaction is limited as
 3 measured by systematic observation of communication behaviors;
 4 or

5 (2) the pupil uses American sign language or one
 6 or more alternative or augmentative systems of communication
 7 alone or in combination with spoken English as documented by
 8 parent or teacher reports and language sampling conducted by a
 9 knowledgeable professional.

10 D. The pupil's hearing impairment affects the
 11 adaptive behavior required for age-appropriate social
 12 functioning as supported by:

13 (1) documented systematic observation within the
 14 pupil's primary learning environments by a licensed professional
 15 and the pupil, when appropriate; and

16 (2) scores on a standardized scale of social
 17 skill development are below the average scores expected of
 18 same-age peers.

19 ~~E.--Children-not-yet-enrolled-in-kindergarten-are~~
 20 ~~eligible-for-special-education-instruction-and-related-services~~
 21 ~~if-they-meet-one-of-the-criteria-in-item-A-~~

22 3525.1333 MENTALLY IMPAIRED: MILD-MODERATE/MODERATE-SEVERE.

23 Subpart 1. Definition. "Mentally impaired" refers to
 24 pupils with significantly subaverage general intellectual
 25 functioning resulting in or associated with concurrent deficits
 26 in adaptive behavior that may require special education
 27 instruction and related services.

28 Subp. 2. Criteria for mild-moderate. The team shall
 29 determine that a pupil is eligible as having a mild-moderate
 30 mental impairment and is in need of special education
 31 instruction and service if the pupil meets the criteria of both
 32 items A and B.

33 A. Performance that falls at or below the 15th
 34 percentile ~~is-one-or-more-of~~ in the ~~four~~ following adaptive
 35 behavior domains measured in both school and home or community

1 on a nationally-normed, technically adequate measures of
2 adaptive behavior instrument:

3 (1) personal or independent functioning includes
4 competencies associated with looking after one's self. It
5 identifies all the essential behaviors a person must exhibit in
6 order to be regarded as at least minimally competent in a
7 typical environment;

8 (2) personal or social functioning includes all
9 those behaviors involving the individual with other people that
10 must be exhibited at minimally competent levels in order for the
11 individual to be considered acceptable and successful in
12 interpersonal relations;

13 (3) functional academic competencies address
14 basic fundamental literacy skills and knowledge of the basic
15 concept of time and money. Functional academics refers to very
16 basic reading and writing skills and to practical every day
17 demands for knowledge of numerical and temporal relationships;
18 or

19 (4) vocational or occupational competencies
20 associated with this domain are not expected to develop until
21 early school-age years. They become increasingly important at
22 progressively higher grade levels. The vocational or
23 occupational domain includes three subdomains: knowledge about
24 careers and work; appropriate attitudes and values concerning
25 careers and work; and specific skills associated with job or
26 career.

27 ~~The-pupil's-performance-does-not-exceed-the-25th-percentile~~
28 ~~in-more-than-two-domains.~~

29 This data is supported by written evidence drawn from two
30 or more of the following sources:

- 31 (a) documented, systematic observation;
32 (b) checklist;
33 (c) classroom or work samples;
34 (d) interviews;
35 (e) sociometric measures;
36 (f) criterion-referenced measures;

1 (g) educational history; or

2 (h) medical history.

3 B. Significantly subaverage intellectual functioning
4 as indicated by an intelligence quotient below ~~75~~+ 70 plus or
5 minus 1 Standard Error of Measurement (using instruments with a
6 reliability coefficient of ~~0.90~~ .90 or greater) on an
7 intelligence test that is standardized, nationally-normed,
8 technically adequate, and individually administered.

9 Subp. 3. **Criteria for moderate-severe.** The team shall
10 determine that a pupil is eligible as having a moderate-severe
11 mental impairment and is in need of special education
12 instruction and service if the pupil meets the criteria of both
13 items A and B.

14 A. Performance that falls below the ~~15th~~ 10th
15 percentile in ~~two-or-more~~ the ~~four~~ following adaptive behavior
16 domains measured in both school and home or community on a
17 nationally-normed, technically adequate measures of adaptive
18 behavior ~~instrument~~:

19 (1) personal or independent functioning, personal
20 or social functioning, functional academic competencies, or
21 vocational or occupational competencies;

22 (2) the pupil's performance does not exceed the
23 25th percentile in more than one domain; and

24 (3) the data is supported by written evidence
25 drawn from two or more of the following sources:

26 (a) documented, systematic observation;

27 (b) checklist;

28 (c) classroom or work samples;

29 (d) interviews;

30 (e) sociometric measures;

31 (f) criterion-referenced measures;

32 (g) educational history; or

33 (h) medical history.

34 B. Significantly subaverage intellectual functioning
35 as indicated by an intelligence quotient below ~~50~~+ 50 plus or
36 minus 1 Standard Error of Measurement (using instruments with a

1 reliability coefficient of ~~0.90~~ .90 or greater) on an
 2 intelligence test that is standardized, nationally-normed,
 3 technically adequate, and individually administered.

4 3525.1335 OTHER HEALTH IMPAIRED.

5 Subpart 1. Definition. "Other health impaired" means
 6 a broad range of medically diagnosed chronic or acute health
 7 condition that may adversely affect academic functioning and
 8 result in the need for special education instruction and related
 9 services. ~~Examples of health impairment include, but are not~~
 10 ~~limited to, epilepsy, cancer, traumatic brain injury, Tourette's~~
 11 ~~syndrome, juvenile rheumatoid arthritis, and cystic~~
 12 ~~fibrosis.~~ The decision that a specific health condition
 13 qualifies as other health impaired will be determined by the
 14 impact of the condition on academic functioning rather than by
 15 the diagnostic label given the condition.

16 Subp. 2. Criteria. The team shall determine that a pupil
 17 is eligible and in need of special education instruction and
 18 services if the pupil meets the criterion in item A and one of
 19 the criteria in item B.

20 A. There is documentation of a medically diagnosed
 21 health impairment.

22 B. The pupil's:

23 (1) need for special education instruction and
 24 service is supported by ~~a functional level of organizational and~~
 25 ~~independent work skills~~ evidence of inadequate academic progress
 26 attributable to excessive absenteeism as verified by attendance
 27 records, or impaired organizational and independent work skills
 28 as assessed by functional and other appropriate assessment
 29 procedures due to limited strength, endurance,
 30 alertness, ~~inconsistent performance,~~ or intrusive health
 31 ~~procedures, or excessive absenteeism~~ as verified by a minimum of
 32 two or more documented, systematic observations or structured
 33 interviews in daily routine settings, one of which is to be
 34 completed by a special education teacher; or

35 (2) need for special education instruction and

1 service is supported by evidence of an inability to manage or
2 complete classroom tasks within time-constraints routine
3 timelines due to excessive absenteeism as verified by attendance
4 records, or limited strength, endurance, alertness, inconsistent
5 performance, intrusive health procedures, or excessive
6 absenteeism medications that affect cognitive functioning as
7 verified by a minimum of two or more documented, systematic
8 observations or structured interviews in daily routine settings,
9 one of which is completed by a special education teacher; or
10 (3) health impairment interferes with educational
11 performance as shown by an achievement deficit of ~~±0~~ 1.5
12 standard deviations or more below the mean on an individually
13 administered reliable, valid, and adequately normed achievement
14 test.

15 3525.1337 PHYSICALLY IMPAIRED.

16 Subpart 1. Definition. "Physically impaired" means a
17 medically diagnosed chronic, physical impairment, either
18 congenital or acquired, that may adversely affect physical or
19 academic functioning and result in the need for special
20 education and related services.

21 Subp. 2. Criteria. The team shall determine that a pupil
22 is eligible and in need of special education instruction and
23 services if the pupil meets the criterion in item A and one of
24 the criteria in item B.

25 A. There is documentation of a medically diagnosed
26 physical impairment.

27 B. The pupil's:

28 (1) need for special education instruction and
29 service is supported by a functional level of organizational or
30 independent work skills as verified by a minimum of two or more
31 documented, systematic observations in daily routine settings,
32 one of which is completed by a special education teacher;

33 (2) need for special education instruction and
34 service is supported by an inability to manage or complete
35 motoric portions of classroom tasks within time constraints as

1 verified by a minimum of two or more documented, systematic
2 observations in daily routine settings, one of which is
3 completed by a special education teacher; or
4 (3) physical impairment interferes with
5 educational performance as shown by an achievement deficit of
6 1.0 standard deviations or more below the mean on an
7 individually administered reliable, valid, and adequately normed
8 achievement test.

9 3525.1339 SEVERELY MULTIPLY IMPAIRED.

10 Subpart 1. Definition. "Severely multiply impaired" means
11 a pupil who has severe learning and developmental problems
12 resulting from two or more disability conditions determined by
13 assessment under part 3525.2500.

14 Subp. 2. Criteria. The team shall determine that a pupil
15 is eligible as being severely multiply impaired if the pupil
16 meets the entrance criteria for two or more of the following
17 disabilities:

- 18 A. hearing impaired, part 3525.1331;
19 B. physically impaired, part 3525.1337;
20 C. moderate-severe mentally impaired, part 3525.1333,
21 subparts 1 and 3;
22 D. visually impaired, part 3525,1345;
23 E. emotional or behavioral disorders, part 3525.1329;
24 or
25 F. autism, part 3525.1325.

26 3525.1341 SPECIFIC LEARNING DISABILITY.

27 Subpart 1. Definition. "Specific learning disability"
28 means a condition within the individual affecting learning,
29 relative to potential.

30 A specific learning disability is manifested by
31 interference with the acquisition, organization, storage,
32 retrieval, manipulation, or expression of information so that
33 the individual does not learn at an adequate rate when provided
34 with the usual developmental opportunities and instruction from
35 a regular school environment.

1 A specific learning disability is demonstrated by a
2 significant discrepancy between a pupil's general intellectual
3 ability and academic achievement in one or more of the following
4 areas: oral expression, listening comprehension, mathematical
5 calculation or mathematics reasoning, basic reading skills,
6 reading comprehension, and written expression.

7 A specific learning disability is demonstrated primarily in
8 academic functioning, but may also affect self-esteem, career
9 development, and life adjustment skills. A specific learning
10 disability may occur with, but cannot be primarily the result of:
11 visual, hearing, or motor impairment; mental impairment;
12 emotional disorders; or environmental, cultural, economic
13 influences, or a history of an inconsistent education program.

14 Subp. 2. Criteria. The team shall determine that a pupil
15 has a specific learning disability and is in need of special
16 education and related services when the pupil meets the criteria
17 described in items A to C. Information about each item must be
18 sought from the parent and included as part of the assessment
19 data. The assessment data must confirm that the disabling
20 effects of the pupil's disability occur in a variety of settings.

21 A. The pupil must demonstrate severe underachievement
22 in response to usual classroom instruction. The performance
23 measures used to verify this finding must be both representative
24 of the learner's pupil's curriculum and useful for developing
25 instructional goals and objectives. The following assessment
26 procedures are required at a minimum to verify this finding:

27 (1) evidence of low achievement from sources such
28 as cumulative record reviews, classwork samples, anecdotal
29 teacher records, formal and informal tests, curriculum based
30 assessment results, and results from instructional support
31 programs such as Chapter 1 and Assurance of Mastery; and

32 (2) ~~at least two-systematic-prereferral~~
33 ~~interventions-must-be-conducted-in-the-regular-classroom-setting~~
34 ~~over-at-least-a-30-day-period-involving-curriculum-modification,~~
35 ~~alternative-instructional-strategies,-and-other-relevant~~
36 ~~adjustments-by-regular-classroom-staff-that-attempt-to~~

1 ~~accommodate-for-the-individual-instructional-needs-of-the~~
 2 ~~learner,-and~~
 3 ~~(3)-at-least-one-formal-observation-of-the~~
 4 ~~learner's-academic-performance-in-the-regular-classroom-setting~~
 5 ~~is-required.--This-observation-must-be-carried-out-by-someone~~
 6 ~~other-than-the-regular-classroom-teacher-to-confirm-the-presence~~
 7 ~~of-a-specific-learning-disability; one team member other than~~
 8 ~~the pupil's regular teacher shall observe the pupil's academic~~
 9 ~~performance in the regular classroom setting. In the case of a~~
 10 ~~child served through an Early Childhood Special Education~~
 11 ~~program or who is out of school, a team member shall observe the~~
 12 ~~child in an environment appropriate for a child of that age.~~

13 B. The ~~learner~~ pupil must demonstrate a severe
 14 discrepancy between general intellectual ability and achievement
 15 in one or more of the following areas: oral expression,
 16 listening comprehension, written expression, basic reading
 17 skills, reading comprehension, mathematical calculation, or
 18 mathematical reasoning. The demonstration of a severe
 19 discrepancy shall not be based solely on the use of standardized
 20 tests. The team shall consider these standardized test results
 21 as only one component of the eligibility criteria.

22 (1) The instruments used to assess the ~~learner's~~
 23 pupil's general intellectual ability and achievement must be
 24 individually administered and interpreted by an appropriately
 25 licensed person using standardized procedures.

26 (2) For initial placement, the severe discrepancy
 27 must be equal to or greater than 1.75 standard deviations ~~of-the~~
 28 discrepancy below the mean of the distribution of difference
 29 scores for the general population of individuals at the pupil's
 30 chronological age level.

31 C. The team must agree that it has sufficient
 32 assessment data that verify the following conclusions:

33 (1) the ~~learner~~ pupil has an information
 34 processing condition that is manifested by behaviors such as:
 35 inadequate or lack of expected acquisition of
 36 information, ~~disorganization-behaviors~~ lack of organizational

1 skills (such as in following directions, written and oral;
 2 spatial arrangements; correct use of developmental order, in
 3 relating events; transfer of information onto paper), memory
 4 (visual and auditory), expression (verbal and nonverbal), and
 5 motor control for written tasks such as pencil and paper
 6 assignments, drawing, and copying;

7 (2) the disabling effects of the learner's
 8 pupil's information processing condition occur in a variety of
 9 settings; and

10 (3) the learner's pupil's underachievement is not
 11 primarily ~~attributable to~~ the result of: visual, hearing, or
 12 motor impairment; mental impairment; emotional or behavioral
 13 ~~disorders, sensory or health impairments, economic disadvantage,~~
 14 ~~lack of educational opportunity, inflexible curricula, or~~
 15 ~~inappropriate teaching methods; and~~ or environmental, cultural,
 16 economic influences, or a history of an inconsistent education
 17 program.

18 ~~(4) the learner requires specialized~~
 19 ~~instructional methods because the learner's underachievement has~~
 20 ~~not improved as a result of curriculum and teaching~~
 21 ~~modifications by regular classroom teachers.~~

22 3525.1343 SPEECH OR LANGUAGE IMPAIRMENTS.

23 Subpart 1. Fluency disorder; definition and criteria.

24 "Fluency disorder" means the intrusion or repetition of sounds,
 25 syllables, and words; prolongations of sounds; avoidance of
 26 words; silent blocks; or inappropriate inhalation, exhalation,
 27 or phonation patterns. These patterns may also be accompanied
 28 by facial and body movements associated with the effort to
 29 speak. Fluency patterns that can be attributed only to
 30 dialectical, cultural, or ethnic differences or to the influence
 31 of a foreign language should not be identified as a disorder.

32 The team shall determine that a pupil has a fluency
 33 disorder and is eligible for speech or language special
 34 education when:

35 A. the behavior interferes with communication as

1 judged by a teacher of communication disorders and either
2 another adult or the child; and

3 B. dysfluent behaviors occur during at least five
4 percent of the words spoken on two or more speech samples.

5 Subp. 2. **Voice disorder; definition and criteria.** "Voice
6 disorder" means the absence of voice or presence of abnormal
7 quality, pitch, resonance, loudness, or duration. Voice
8 patterns that can be attributed only to dialectical, cultural,
9 or ethnic differences or to the influence of a foreign language
10 should not be identified as a disorder.

11 The team shall determine that a pupil has a voice disorder
12 and is eligible for speech or language special education when:

13 A. the behavior interferes with communication as
14 judged by a teacher of communication disorders and either
15 another adult or the child; and

16 B. achievement of a moderate to severe vocal severity
17 rating is demonstrated on a voice assessment profile
18 administered on two separate occasions, two weeks apart, at
19 different times of the day.

20 Subp. 3. **Articulation disorder; definition and criteria.**
21 "Articulation disorder" means the absence of or incorrect
22 production of speech sounds that are developmentally
23 appropriate. Articulation patterns that can be attributed only
24 to dialectical, cultural, or ethnic differences or to the
25 influence of a foreign language should not be identified as a
26 disorder.

27 The team shall determine that a pupil has an articulation
28 disorder and is eligible for speech or language special
29 education when:

30 A. the behavior interferes with communication as
31 judged by a teacher of communication disorders and either
32 another adult or the child; and

33 B. test performance falls 2.0 standard deviations
34 below the mean on a technically adequate, norm-referenced
35 articulation test; ~~or~~ and

36 C. speech intelligibility is affected as documented

1 by two three-minute conversational speech samples; or

2 D. performance on a pressure consonant test indicates
3 problems in nasal resonance; or

4 ~~D.~~ E. a pupil is nine years of age or older and a
5 sound is consistently in error during speech samples as
6 documented by two three-minute conversational speech samples.

7 Subp. 4. **Language disorder; definition and criteria.**

8 "Language disorder" means a breakdown in communication as
9 characterized by problems in expressing needs, ideas, or
10 information that may be accompanied by problems in
11 understanding. Language patterns that can be attributed only to
12 dialectical, cultural, or ethnic differences or to the influence
13 of a foreign language should not be identified as a disorder.

14 The team shall determine that a pupil has a language
15 disorder and is eligible for speech or language special
16 education services when:

17 A. the behavior interferes with communication as
18 judged by a teacher of communication disorders and either
19 another adult or the child; and

20 B. an analysis of a language sample or documented
21 observation of communicative interaction indicates the pupil's
22 language behavior falls below or is different from what would be
23 expected given consideration to chronological age, developmental
24 level, or cognitive level; and

25 C. the pupil scores 2.0 standard deviations below the
26 mean on at least two technically adequate, norm-referenced
27 language tests if available; or

28 ~~D. the pupil scores between 1.5 and 2.0 standard~~
29 ~~deviations below the mean on at least two language tests and two~~
30 ~~documented measurement procedures show a lack of spontaneous~~
31 ~~improvement after four months; or~~

32 ~~E.~~ if technically adequate, norm-referenced language
33 tests are not available to provide evidence of a deficit of 2.0
34 standard deviations below the mean in the area of language, two
35 documented measurement procedures indicate a substantial
36 difference from what would be expected given consideration to

1 chronological age, developmental level, or cognitive level.
2 These procedures may include additional language samples,
3 criterion-referenced instruments, observations in natural
4 environments, and parent reports.

5 3525.1345 VISUALLY IMPAIRED.

6 Subpart 1. Definition. "Visually impaired" means a
7 medically verified visual impairment accompanied by limitations
8 in sight that interfere with acquiring information or
9 interaction with the environment to the extent that special
10 education instruction and related services may be needed.

11 Subp. 2. Criteria. The team shall determine that a pupil
12 is eligible as having a visual handicap disability and in need
13 of special education if the pupil meets one of the criteria in
14 item A and one of the criteria in item B.

15 A. There is medical documentation of a diagnosed
16 visual impairment by a licensed eye specialist establishing one
17 or more of the following conditions:

18 (1) visual acuity of 20/60 or less in the better
19 eye with the best conventional correction; estimation of acuity
20 is acceptable for difficult-to-test learners;

21 (2) visual field of 20 degrees or less, or
22 bilateral scotomas; or

23 (3) a congenital or degenerating eye condition
24 including, but not limited to, progressive cataract, glaucoma,
25 retinitis pigmentosa, albinism, or nystagmus.

26 B. A functional assessment of visual abilities
27 conducted by a licensed teacher of the visually handicapped
28 disabled determines that:

29 (1) the pupil has limited ability in visually
30 accessing program-appropriate educational media including, but
31 not limited to, textbooks, photocopies, ditto copies,
32 chalkboards, computers, or environmental signs, without
33 modification;

34 (2) the pupil has limited ability to visually
35 access the full range of program-appropriate educational

1 materials and media without accommodating actions including, but
2 not limited to, changes in posture, body movement, focal
3 distance, or squinting;

4 (3) the pupil demonstrates variable visual
5 ability due to environmental factors including, but not limited
6 to, lighting, contrast, weather, color, or movement, that cannot
7 be controlled; and

8 (4) the pupil experiences reduced ability due to
9 visual fatigue.

10 ~~C.---Pupils-not-yet-enrolled-in-kindergarten-are~~
11 ~~eligible-for-visually-impaired-services-if-they-meet-the~~
12 ~~requirements-in-item-A, subitem-(2)-or-(3),-or-have-a-measured~~
13 ~~acuity-less-than-that-of-age-appropriate-developmental-ranges.~~

14 3525.1347 TEAM OVERRIDE ON ELIGIBILITY DECISIONS.

15 Subpart 1. Documentation required. If the team determines
16 that a pupil is eligible for special instruction and related
17 services because the pupil has a disability and needs special
18 instruction even though the pupil does not meet the specific
19 requirement in parts 3525.1325 to 3525.1345 and 3525.2335, the
20 team must include the documentation in the pupil's special
21 education record listed in items A to D.

22 A. The pupil's record must contain documents that
23 explain why the standards and procedures, that are used with the
24 majority of pupils, resulted in invalid findings for this pupil.

25 B. The record must indicate what objective data were
26 used to conclude that the pupil has a disability and is in need
27 of specialized instruction. These data may include test scores,
28 work products, self-reports, teacher comments, previous
29 testings, observational data, ecological assessments, and other
30 developmental data.

31 C. Since the eligibility decision is based on a
32 synthesis of multiple data and not all data are equally valid,
33 the team must indicate which data had the greatest relative
34 importance for the eligibility decision.

35 D. The team override decision must include a sign-off

1 by the team members agreeing to the override decision. For
 2 those team members who disagree with the override decision, a
 3 statement of why they disagree and their signature must be
 4 included.

5 Subp. 2. ~~Log requirement.--The district director of~~
 6 ~~special education must keep a log of team overrides granted from~~
 7 ~~part 3525.1347.--Team override decisions do not have to be~~
 8 ~~submitted to the commissioner for approval.~~ Record of team
 9 overrides. The district director of special education shall
 10 keep sufficient records regarding the extent of the team
 11 override provision to assist the state in evaluating the
 12 adequacy of the various entrance criteria.

13 3525.1349 EXIT PROCEDURES.

14 The team shall discontinue special education instruction
 15 and services when:

16 A. the pupil has achieved IEP goals ~~and has~~
 17 demonstrated and objectives such that the pupil demonstrates the
 18 ability to succeed in the regular education program or an
 19 appropriate community-based environment without special
 20 instruction and services;

21 B. the medical disease or condition originally
 22 diagnosed has been corrected and the pupil no longer needs
 23 special instruction and services;

24 C. the pupil's physical or other health impairment no
 25 longer adversely affects educational performance;

26 D. the pupil graduates having successfully completed
 27 graduation requirements as prescribed by the board of education
 28 or the ~~learner's~~ pupil's IEP;

29 E. the pupil exceeds school age of 21 years; or

30 F. the pupil has been officially withdrawn from the
 31 district.

32 For any pupil discontinuing special education and services,
 33 the IEP manager shall summarize: (a) the pupil's last IEP goal
 34 or objectives attainment status; (b) the most recent assessment
 35 data; and (c) any recommendations about future anticipated

1 service needs for postsecondary education, training, and any
2 other relevant areas.

3 3525.1500 STAFF.

4 [For text of subpart 1, see M.R.]

5 Subp. 2. **Directors.** Every director and assistant director
6 shall hold a license as a director of special education.

7 Subp. 3. **Other supervisory personnel.** Every supervisor
8 shall hold either an appropriate supervisory license for one or
9 more program areas coordinated or supervised, or as a director
10 of special education.

11 [For text of subp 4, see M.R.]

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

14 Subpart 1. **When education is required.** The district in
15 which the facility is located must provide regular education,
16 special education, or both, to a pupil or regular education
17 student in kindergarten through grade 12 placed in a facility,
18 or in the student's home for care and treatment. Education
19 services must be provided to a pupil or regular education
20 student who is:

21 A. prevented from attending the pupil's or student's
22 normal school site for 15 consecutive days; or

23 B. predicted to be absent from the normal school site
24 for 15 consecutive days according to the placing authority, such
25 as a medical doctor, psychologist, psychiatrist, judge, or other
26 court-appointed authority; or

27 C. health-impaired and in need of special education
28 and predicted by the team to be absent from the normal school
29 site for 15 intermittent days.

30 A pupil or regular education student shall begin receiving
31 instruction as soon as practicable under treatment conditions.

32 Special education services must be provided as required by
33 a pupil's IEP, and to the extent that treatment considerations
34 allow the pupil to participate. Number of school days for
35 determining due process procedures shall begin upon enrollment

1 in an education program. Placement for care and treatment does
2 not of itself require special education placement.

3 D. For those education programs run by the Department
4 of Corrections, the district shall be the Department of
5 Corrections for the purpose of this part. The district is
6 responsible for ensuring that a cooperative agreement is reached
7 with the care and treatment center facility which addresses all
8 the requirements of Department of Human Services Rules, parts
9 9545.0900 to 9545.1090 and 9545.1400 to 9545.1500 which pertain
10 to the provision of education services for students placed in
11 centers for care and treatment. Provision of special education
12 services requires implementation of all due process safeguards
13 defined in state and federal law. Some procedures are modified
14 to assure the pupil's access to education.

15 For purposes of this part, pupils and regular education
16 students placed in the following facilities by someone other
17 than the district are considered to be placed for care and
18 treatment:

- 19 (1) chemical dependency and other substance abuse
20 treatment centers;
21 (2) shelter care facilities;
22 (3) home, due to accident or illness;
23 (4) hospitals;
24 (5) day treatment centers;
25 (6) correctional facilities;
26 (7) residential treatment centers; and
27 (8) mental health programs.

28 Subp. 2. Education programs for students and pupils and
29 regular education students placed in short-term programs for
30 care and treatment. A placement for care and treatment is a
31 short-term placement if the anticipated duration of the
32 placement is less than 31 school days. The school district must
33 begin to provide instruction to the pupil or regular education
34 student immediately after the pupil or student is enrolled in
35 the education program. If the student is enrolled in the
36 educational program without an educational record or IEP, the

1 district's procedures must include immediate phone contact with
2 the home school to see if the regular education student has been
3 identified as **handicapped disabled**.

4 [For text of item A, see M.R.]

5 B. If a regular education student has not been
6 identified as **handicapped disabled** or if the providing district
7 cannot determine if a student has been identified as **handicapped**
8 **disabled**:

9 (1) Regular education instruction must begin
10 immediately upon enrollment in the education program.

11 (2) A screening must be conducted by education
12 staff to determine the student's academic, social, and
13 behavioral needs.

14 (3) Based on the documented results of the
15 screening, a decision must be made about the need for
16 prereferral interventions or an appropriate special education
17 assessment according to parts 3525.2500 to 3525.2850. It is not
18 required that an appropriate assessment be started unless it
19 appears that it can be completed.

20 (4) During the student's placement, regular
21 education instruction must be provided.

22 Subp. 3. Education programs for pupils and regular
23 education students placed in long-term programs for care and
24 treatment. A placement made for care and treatment is long term
25 if it is anticipated to extend beyond 30 school days. The pupil
26 or regular education student must receive educational services
27 immediately upon enrollment in the education program:

28 A. If the student has been identified as **handicapped**
29 **disabled** and has a current IEP.

30 If the education staff of the providing district decides
31 that the pupil's current IEP can be implemented while the pupil
32 is placed for care and treatment, the education staff must
33 contact the parents to secure an agreement to continue to
34 provide special education services according to the IEP. If the
35 parents do not agree with the providing district's proposal, the
36 district shall hold a team meeting as soon as possible.

1 If the education staff needs additional assessment
2 information or the pupil's current IEP cannot be fully
3 implemented while the pupil is placed for care and treatment,
4 the education staff must:

5 (1) contact the parents to secure an agreement to
6 provide special education on an interim basis while an
7 assessment is being completed; or

8 (2) call a team meeting to revise the current IEP
9 or develop an interim IEP while the pupil is undergoing
10 additional assessment to determine an appropriate program.

11 B. If the student has not been identified as
12 ~~handicapped~~ disabled or if the providing district cannot
13 determine if the student has been identified
14 as ~~handicapped-~~ disabled, the student entering a residential
15 facility for a long-term placement must be screened to determine
16 if there is a need for an appropriate educational assessment.
17 An assessment must begin with a review of screening and other
18 information such as the parent or student interview, available
19 educational and social history, and the purpose of the treatment
20 placement. The assessment must be conducted according to parts
21 3525.2500 to 3525.2850.

22 If the student meets entrance criteria for special
23 education, an IEP must be developed. Special education services
24 must be provided by appropriately licensed staff in accordance
25 with the IEP. If the student was not assessed or was assessed
26 and does not meet entrance criteria for special education,
27 regular education services must be provided in accordance with
28 the student's education plan.

29 [For text of subps 4 and 5, see M.R.]

30 Subp. 6. Placement, services, and due process requirements
31 for pupils.

32 A. The IEP developed by the team must include the
33 provisions of part 3525.2900, the location of the special
34 education services, the projected duration of the special
35 education services, and provisions for coordinating the care and
36 treatment and the special education services.

1 B. The nature of and the restrictiveness of some
2 long-term facilities require the pupils to remain on site. When
3 a pupil's treatment and educational needs allow, integration
4 shall be provided in a regular educational setting. The
5 determination of the amount and site of integrated services must
6 be a joint decision between parents, the treatment and education
7 staff, and when possible final educational placement decisions
8 must be made by the IEP team of the providing educational
9 agency. If the IEP team concludes a pupil can benefit from an
10 average of more than three hours of educational services, it
11 must, in conjunction with care and treatment center staff,
12 consider the feasibility and appropriateness of an education
13 placement at a regular school site.

14 C. If a pupil is placed in a residential facility
15 outside the resident district, the providing district must
16 provide appropriate special education services. The placement
17 of the pupil in a residential center for care and treatment
18 outside the resident district is not an initial placement in the
19 receiving district. The providing district shall make every
20 effort to implement the resident district's IEP, making the
21 modifications necessary due to the restrictive care and
22 treatment setting and based on agreements reached with the
23 parent. The providing district shall comply with the due
24 process procedures of parts 3525.2500 to 3525.4700. Districts
25 shall develop alternative procedures for implementing the legal
26 requirements for observing the student in a regular classroom
27 and document previous interventions that have been tried before
28 the student placed for care and treatment is identified as
29 having a specific learning disability or an emotional or
30 behavioral disorder. These alternative procedures must be
31 included in the district's entrance criteria. The district and
32 facility shall cooperatively develop procedures to be used in
33 emergency situations that comply with the Pupil Fair Dismissal
34 Act according to Minnesota Statutes, sections 127.26 to 127.39,
35 and the district's discipline policy.

36 [For text of subp 7, see M.R.]

1 3525.2335 EARLY CHILDHOOD CRITERIA FOR ELIGIBILITY AND PROGRAM
2 ALTERNATIVES.

3 Subpart 1. Definition and criteria for eligibility.

4 [For text of items A to C, see M.R.]

5 [For text of subps 2 to 5, see M.R.]

6 3525.2340 EDUCATIONAL SERVICE ALTERNATIVES.

7 Subpart 1. Instruction and related services required. If
8 a pupil is school-age and is not provided instruction and
9 related services in an early childhood program alternative, the
10 pupil shall be provided instruction and related services in one
11 or more school-age educational service alternatives. The
12 educational service alternative must be developed by the team as
13 appropriate to meet the pupil's IEP plan and documented on the
14 pupil's IEP plan.

15 Subp. 2. Types of service. The following are types of
16 special education instruction and related services:

17 A. Indirect services for a pupil in the general
18 education classrooms or settings. Instruction and related
19 services are provided indirectly through the general education
20 teachers, parents, or other persons who have direct contact with
21 the pupil. The consultation and indirect services include
22 ongoing progress review, cooperative planning, demonstration and
23 team teaching, modification and adaptation of the environment
24 and curriculum, supportive and adapted materials and equipment,
25 and direct contact with the pupil for monitoring and observation
26 purposes.

27 B. Direct services for a pupil in the special or
28 general education classrooms or settings. Instruction and
29 related services are provided directly to the pupil.
30 Consultation and indirect services are also provided.

31 ~~E-Subp. 3.~~ IEP documentation. After the team has
32 determined the pupil's goals, objectives, and services necessary
33 to achieve the pupil's goals and objectives, under part
34 3525.2900, the team shall document the following on the pupil's
35 IEP plan: the site in which services will occur; the setting in

1 which services will occur; whether the service will be provided
2 directly or indirectly; and the amount and frequency of special
3 education and related services.

4 Subp. 3- 4. Case loads for school-age educational service
5 alternatives. Items A and B set the maximum number of
6 school-age pupils that may be assigned to a teacher. Item C
7 deals with caseloads of pupils who receive special education
8 less than 50 percent of the instructional day.

9 A. For pupils who receive direct instruction from a
10 teacher 50 percent or more of the instructional day, but less
11 than a full day:

12 (1) deaf/blind, autistic, or severely multiply
13 impaired, three pupils;

14 (2) deaf/blind, autistic, or severely multiply
15 impaired with one program support assistant, six pupils;

16 (3) mild-moderate mentally impaired or specific
17 learning disabled, 12 pupils;

18 (4) mild-moderate mentally impaired or specific
19 learning disabled with one program support assistant, 15 pupils;

20 (5) all other disabilities with one program
21 support assistant, ten pupils; and

22 (6) all other disabilities with two program
23 support assistants, 12 pupils.

24 B. For pupils who receive special education for a
25 full day:

26 (1) deaf/blind, autistic, or severely multiply
27 impaired with one program support assistant, four pupils;

28 (2) deaf/blind, autistic, or severely multiply
29 impaired with two program support assistants, six pupils; and

30 (3) all other disabilities with one program
31 support assistant, eight pupils.

32 C. For pupils who receive special education less than
33 50 percent of the instructional day, caseloads are to be
34 determined by the local district's policy based on the amount of
35 time and services required by pupils' IEP plans.

1 3525.2345 DEVELOPMENTAL OR ADAPTED PHYSICAL EDUCATION: SPECIAL
2 EDUCATION.

3 Subpart 1. Definition. "Developmental or adapted physical
4 education: special education" means specially designed physical
5 education instruction and services for pupils with ~~handicaps~~
6 disabilities who have a substantial delay or disorder in
7 physical development. Developmental or adapted physical
8 education: special education instruction for pupils age three
9 to 21 may include development of physical fitness, motor
10 fitness, fundamental motor skills and patterns, skills in
11 aquatics, dance, individual and group games, and sports.

12 Students with conditions such as obesity, temporary
13 injuries, and short-term or temporary illness or disabilities
14 are termed special needs students. Special needs students are
15 not eligible for developmental or adapted physical education:
16 special education. Provisions for these students must be made
17 within regular physical education as described in Minnesota
18 Statutes, section 126.02.

19 Subp. 2. Criteria. A pupil is eligible for developmental
20 or adapted physical education: special education when the team
21 determines the pupil has met the criteria in items A and B.

22 A. The pupil has one of the following disabilities
23 ~~according to item B7-subitem (1)~~, in each respective criteria in
24 parts 3525.1325 to 3525.1341, 3525.1345, and 3525.1347: autism,
25 deaf/blind, emotional or behavioral disorders, hearing impaired,
26 specific learning disabilities, mentally impaired, severely
27 multiply impaired, other health impaired, physically impaired,
28 visually impaired, or part 3525.2335, subpart 1, item C.

29 B. The pupil is determined by the team to need
30 specially designed physical education instruction because:

31 (1) The pupil's performance on an appropriately
32 selected, technically adequate, norm-referenced psychomotor or
33 physical fitness instrument is 1.5 standard deviations or more
34 below the mean. The instrument must be individually
35 administered by appropriately licensed teachers; or

36 (2) The pupil's development or achievement and

1 independence in school, home, and community settings is
2 ~~insufficient~~ inadequate to allow the pupil to succeed in the
3 regular physical education program as supported by written
4 documentation from two or more of the following: motor and
5 skill checklists~~;~~; informal tests~~;~~; criterion-referenced
6 measures~~;~~; deficits in achievement related to the defined
7 curriculum~~;~~; medical history or reports~~;~~; parent and staff
8 interviews~~-and;~~; systematic ~~observation~~ observations; and
9 social, emotional, and behavioral assessments.

10 3525.2350 MULTIDISABILITY TEAM TEACHING MODELS.

11 Subpart 1. **Team staff.** A district may assign more than
12 one teacher licensed in different areas or one or more teachers
13 and related services staff as a team to provide instruction and
14 related services to pupils in a school-age educational service
15 alternative.

16 [For text of subp 2, see M.R.]

17 Subp. 3. **Team member responsibility.** The team member
18 licensed in a pupil's disability shall be responsible for
19 conducting the pupil's assessment and participating at team
20 meetings when an IEP is developed, reviewed, or revised. At
21 least weekly, consultation and indirect services as defined in
22 part 3525.2340, subpart 2, items A and B, must be provided to
23 the general or special education teacher providing instruction
24 if not licensed in the disability. The frequency~~;~~ and amount of
25 time~~-and-documentation-of-the~~ specific consultation and
26 indirect services shall be included in the pupil's IEP.

27 [For text of subps 4 and 5, see M.R.]

28 3525.2380 CONSIDERATIONS WHEN DETERMINING RATIOS.

29 Subpart 1. **Variances.** The district may apply to the State
30 Board of Education or its designee for a variance from the case
31 loads in parts 3525.2335 and 3525.2340. The state board or its
32 designee shall grant a variance for less than 90 days when it is
33 demonstrated that unanticipated special education enrollment
34 increases have occurred.

35 Subp. 2. [See repealer.]

1 Subp. 3. Reduction of ratios. The district shall reduce
 2 the teacher to pupil case loads to the extent necessary, to
 3 ensure the provision of services delineated in each pupil's IEP,
 4 if a teacher;

5 A. is assigned to more than one early childhood
 6 program alternative;

7 B. is assigned to pupils in more than one educational
 8 service alternative;

9 C. is serving pupils representing a significant range
 10 of severity of problems; or

11 D. is providing instruction at more than one building.

12 3525.2750 EDUCATIONAL ASSESSMENT.

13 Subpart 1. Assessment. An assessment:

14 A. must be conducted when a person's academic or
 15 functional skill acquisition in the present educational
 16 placement indicates a disability and a need for a special
 17 educational placement, program, or service;

18 B. must be conducted at least every three years;

19 C. may be conducted if the student or other agency
 20 requests; and

21 D. must be conducted if the parent requests.

22 [For text of subps 2 and 3, see M.R.]

23 3525.2900 DEVELOPMENT AND CONTENT OF INDIVIDUAL EDUCATION
 24 PROGRAM PLAN.

25 Subpart 1. General requirement to develop an IEP for
 26 pupils who are **handicapped disabled**. Following an initial
 27 assessment, and annually thereafter, an IEP must be developed
 28 and implemented for each pupil determined to be **handicapped**
 29 **disabled** under parts 3525.1325 to 3525.1347. ~~This requirement~~
 30 ~~does not preclude the development of any other personalized~~
 31 ~~learning plans in regular education.~~ The responsible district
 32 shall:

33 A. Designate a team of persons responsible for
 34 determining the IEP of pupils kindergarten to age 21, which, at
 35 a minimum, shall include the parent, the pupil, when

1 appropriate, a school administrator or designee, the student's
2 regular classroom teacher when the pupil is enrolled in regular
3 education classes or an appropriate regular classroom teacher
4 when one is not presently providing instruction or the pupil has
5 no regular education placement, and the special education
6 teacher.

7 For pupils below kindergarten age, the team shall include,
8 at a minimum, the parent, a school administrator or designee,
9 and the special education teacher. The plan must indicate which
10 team members attended the IEP meeting.

11 B. Consider including other appropriate special
12 education staff as members of the team. According to part
13 3525.0700, parents may bring anyone of their choosing to
14 accompany them to the meeting.

15 C. Upon request of the parent, have the team
16 determine whether it is appropriate to involve additional staff
17 or other persons on the team including someone who is a member
18 of the same minority or cultural background or who is
19 knowledgeable concerning the racial, cultural, or handicapping
20 disabling differences of the student.

21 D. Schedule the IEP team meeting at a time and place
22 that is mutually acceptable to the school and parents according
23 to part 3525.0700. The district shall proceed if the parents do
24 not respond to the district's efforts for the parent to
25 participate.

26 E. Prepare an IEP in writing for each person
27 determined to be handicapped disabled according to parts
28 3525.1325 to 3525.1347. If the responsible district is not the
29 resident district, a copy of the IEP must be sent to the
30 resident district.

31 F. Provide notice according to parts 3525.3200 to
32 3525.3600, whenever the responsible school district proposes to
33 initiate or change or refuse to initiate or change the
34 educational placement. For the purposes of this part, the terms
35 "initiate" or "change" must be construed to include the
36 proposals in Minnesota Statutes, section 120.17, subdivision 3b,

1 paragraph (d), clauses (2) to (5); "significant change" is
2 defined in part 3525.3600.

3 G. Implement the IEP for a regular school year unless
4 otherwise specified on the IEP, except that the duration cannot
5 exceed 12 calendar months. For a team to determine the
6 appropriateness of the placement or to resolve questions
7 regarding the content of the IEP including instructional goals
8 and objectives, an interim IEP may be written for a period of no
9 more than ~~30~~ 60 school days.

10 H. Consider an extended school year for those pupils
11 when it is determined:

12 (1) that the pupil will experience "significant
13 regression" in the absence of an educational program;

14 (2) the time required to relearn the skills lost
15 is excessive; or

16 (3) the effects of the breaks in programming are
17 such to prevent the student from attaining the state of
18 self-sufficiency that the student would otherwise reasonably be
19 expected to reach.

20 The amount of service, including a reduction of services,
21 or type of service for summer, must be appropriate to maintain
22 performance on IEP goals.

23 I. Meet all the IEP requirements of this part for
24 pupils who are eligible for special education and who are
25 provided special education based upon an individual family
26 services plan (IFSP).

27 J. Base the IEP on the assessment data and other
28 relevant reports and information.

29 K. Prepare an IEP when contracting for special
30 education services from a public, private, or voluntary agency.

31 Subp. 2. [See repealer.]

32 Subp. 3. Content and sequence of individual educational
33 program plan. In preparing the IEP, the district shall follow
34 this sequence and shall include the following:

35 A. The pupil's current levels of functioning in all
36 performance areas included in part 3525.2550. This information

1 is based on assessment and progress review data. If a more
2 extensive assessment is not necessary, as in part 3525.3000 or
3 3525.3100, parent or teacher reports or screening data can be
4 used to summarize a pupil's level of performance.

5 B. A description of the pupil-based special education
6 instructional needs identified through assessment.

7 The team shall document on the IEP the pupil's
8 instructional needs to function and participate in the
9 activities and environments relevant to the pupil.
10 Instructional needs refer to pupil-based skills, functions, or
11 outcomes that affect performance and adjustment and do not refer
12 to special education services, categories, teaching strategies,
13 prescriptions for specific therapy, or broad curricular goals.

14 C. A statement of annual instructional goals based on
15 the identified instructional needs.

16 The goals are a component of the IEP that set the academic
17 and functional behaviors the pupil is expected to master within
18 12 months. Annual goals must be broad statements of academic
19 and functional behavior to be demonstrated by the student and be
20 based on the pupil's identified instructional needs.

21 Goal statements shall consist of the behavior to be changed
22 and the expected annual ending level of performance.

23 D. Instructional objectives including the criteria
24 for attainment.

25 Each annual goal will have more than one short-term
26 objective and each objective must be a subtask or otherwise
27 address a component of the goal. Objectives must be pupil-based
28 and attainable within a year, with most target dates within a
29 shorter time span.

30 E. A description of the special education and related
31 services needed to accomplish the goals and objectives,
32 including the type of service, amount of time and frequency of
33 each service, starting date and anticipated duration of each
34 service, the site and setting for the services, and the names
35 and school telephone numbers of the personnel responsible for
36 providing the services. For each related service, an

1 explanation must be included why that service is necessary for
2 the pupil to benefit from the educational program.

3 F. According to the principle of least restrictive
4 alternatives, substantiate why the proposed educational
5 placement is the most appropriate in terms of the person's
6 educational needs. The IEP shall include:

7 (1) the changes in staffing, transportation,
8 facilities, curriculum, methods, materials, equipment, and
9 regular education that will be made to permit successful
10 accommodation and education of the pupil in the least
11 restrictive environment, including any modifications to the
12 district's standardized testing program, district graduation
13 requirements, or district discipline policy; and

14 (2) a description of the educational activities,
15 frequency, and amount of time in which the pupil will
16 participate in environments which include ~~nonhandicapped~~
17 nondisabled peers. This provision must be included in the plan
18 only when the pupil will be placed in a segregated special
19 education program more than 50 percent of the school day.

20 Subp. 4. and 5. [See repealer.]

21 3525.2925 USE OF BEHAVIORAL INTERVENTIONS WITH PUPILS.

22 Subpart 1. **Purpose.** This part is intended to encourage
23 the use of positive approaches to behavioral interventions. The
24 objective of any behavioral intervention must be that pupils
25 acquire appropriate behaviors and skills. It is critical that
26 behavioral intervention programs focus on skills acquisition
27 rather than merely behavior reduction or elimination.
28 Behavioral intervention policies, programs, or procedures must
29 be designed to enable a pupil to benefit from an appropriate,
30 individualized educational program as well as develop skills to
31 enable them to function as independently as possible in their
32 communities.

33 Subp. 2. **Application.** This part applies to the planned
34 application or emergency use of aversive or deprivation
35 behavioral intervention techniques and procedures. For the

1 purpose of this part, there are three types of behavioral
2 interventions: exempted procedures, regulated procedures, and
3 prohibited procedures.

4 A. Exempted procedures are the use of planned
5 instructional techniques and intervention procedures that are
6 common practices in regular education settings or that are
7 consistent with the district's discipline policy if it has been
8 determined to be appropriate for the pupil according to part
9 3525.2900, subpart 2 1, are not subject to the restrictions
10 established by subparts 4 to 10. The discipline policy of the
11 school district must be given to the parent at the time any
12 behavioral interventions are considered.

13 The procedures in subitems (1) to ~~(6)~~ (7) are examples of
14 intervention that are exempted from the restriction established
15 by subparts 4 to 10. They include, but are not limited to:

16 (1) the use of corrective feedback or prompts to
17 assist a pupil in performing a task or exhibiting a response;

18 (2) the use of physical assistance to facilitate
19 a pupil's completion of a response in a situation where the
20 pupil offers no physical resistance to the assistance;

21 (3) the use of positive reinforcement alone or in
22 combination with procedures described in items A and B to
23 develop new behaviors or increase the frequency of existing
24 behaviors;

25 (4) temporary interruptions in instruction or
26 ongoing activity in which a pupil is directed to leave an
27 activity for a brief period of time to a location where the
28 pupil can observe the ongoing activity and see others receiving
29 positive reinforcement for appropriate behavior. This procedure
30 is often referred to as contingent observation;

31 (5) temporary interruptions in instruction or
32 ongoing activity in which a pupil is directed to leave an
33 activity for a brief period of time to another location ~~such as~~
34 ~~the hallway or the principal's office but not to a time-out room~~
35 under the supervision of a licensed staff member such as a
36 counselor, mental health practitioner, principal, or assistant

1 principal;

2 (6) temporary delay or withdrawal of goods,
3 services, or activities to which a pupil would otherwise have
4 access as a natural consequence of the pupil's inappropriate use
5 of the good, service, or activity. Examples of situations in
6 which the exemption applies are delaying the return of a pupil's
7 beverage at mealtime after the person has thrown the beverage
8 across the kitchen or the temporary removal of an object the
9 person is using to hit another individual; and

10 (7) the use of restraints prescribed medically to
11 position, maintain posture, or aid in the acquisition of
12 self-help or other functional skill.

13 B. Regulated procedures are interventions used in a
14 planned manner that meet the definitions of aversive or
15 deprivation procedures in subpart 3 and are not exempted in item
16 A or prohibited in item C. Regulated procedures may only be
17 used when:

18 (1) written on a pupil's IEP as part of a
19 behavioral intervention plan that warrants the severity of a
20 regulated procedure; or

21 (2) in an emergency situation according to
22 subpart 10.

23 Regulated procedures must be specified and governed by the
24 district's behavioral intervention policy. Regulated procedures
25 include:

26 (a) the use of manual restraint;

27 (b) the use of mechanical or locked

28 restraints;

29 (c) the planned use of suspension or

30 dismissal from school;

31 (d) time-out procedures consistent with

32 subpart 8; and

33 (e) temporary delay or withdrawal of

34 regularly scheduled meals or water not to exceed 30 minutes

35 except as provided in subpart 10.

36 Before implementing any regulated behavioral intervention

1 as a part of the IEP, two conditions must be met: (1)
 2 documentation that positive approaches have been tried and have
 3 been unsuccessful; and (2) the stated purpose for the use of any
 4 behavioral intervention must be to enable a pupil to benefit
 5 from educational services in order to develop appropriate skills
 6 and behaviors, ~~and not just for the elimination of unwanted~~
 7 ~~behaviors, or for the convenience of staff or program~~
 8 ~~administration.~~

9 C. Prohibited procedures are interventions that are
 10 prohibited from use in schools by school district employees,
 11 contracted personnel, and volunteers. The procedures or actions
 12 listed in subitems (1) to ~~(8)~~ (9) are prohibited:

13 (1) corporal punishment as defined in Minnesota
 14 Statutes, section 127.45;

15 (2) requiring a pupil to assume and maintain a
 16 specified physical position or posture that induces physical
 17 pain as an aversive procedure;

18 (3) presentation of intense sounds, lights, or
 19 other sensory stimuli as an aversive stimulus;

20 (4) use of noxious smell, taste, substance, or
 21 spray as an aversive stimulus;

22 (5) denying or restricting a pupil's access to
 23 equipment and devices such as hearing aids and communication
 24 boards that facilitate the person's functioning except
 25 temporarily when the pupil is perceived to be destroying or
 26 damaging equipment or devices;

27 (6) faradic skin shock;

28 (7) totally or partially restricting a pupil's
 29 auditory or visual sense not to include study carrels when used
 30 as an academic intervention; and

31 (8) withholding regularly scheduled meals or
 32 water; and

33 (9) denying a pupil access to toilet facilities.

34 Subp. 3. Definitions. There is a continuum of procedures
 35 that are considered aversive or deprivation procedures, some of
 36 which are more intrusive than others. For the purpose of this

1 part, the definitions in items A to C apply.

2 A. "Aversive procedure" means the planned application
3 of an aversive stimulus: (1) contingent upon the occurrence of
4 a behavior identified for reduction or elimination in the IEP;
5 or (2) in an emergency situation governed by subpart 10.

6 B. "Aversive stimulus" means an object that is used,
7 or an event or situation that occurs immediately after a
8 specified behavior in order to suppress that behavior.

9 C. "Deprivation procedure" means the planned delay or
10 withdrawal of goods, services, or activities that the pupil
11 would otherwise receive: (1) contingent upon the occurrence of
12 a behavior identified for reduction or elimination on the IEP;
13 or (2) in an emergency situation governed by subpart 10.

14 Subp. 4. District policy. Each district shall have a
15 specific policy describing the district's procedures for
16 implementing this part on the use of regulated procedures as a
17 part of a behavioral intervention plan with pupils. The policy
18 shall promote the use of positive approaches for behavioral
19 interventions. The policy must be included in the district's
20 TSES and be available upon request. Policies must be reviewed
21 regularly and shall include, at a minimum, the following
22 procedural components:

23 A. personnel development activities for all staff,
24 contracted personnel, and volunteers who work with pupils who
25 are handicapped disabled and have IEPs that (a) promote the use
26 of positive approaches, (b) provide an awareness of how to limit
27 the use of aversive and deprivation procedures, (c) how to avoid
28 abuse of such procedures, and (d) specific cautions for the use
29 of regulated procedures with specific populations of pupils or
30 for the use of certain procedures;

31 B. staff training requirements for the design and use
32 of behavioral interventions;

33 C. documentation procedures of the use of such
34 interventions and the maintenance and retention of records of
35 use;

36 D. district procedures for complaints and appeals

1 from parents;

2 E. description of the district's procedures and
3 membership for an independent review committee including their
4 standards for identifying persons who are knowledgeable to serve
5 on this committee; and

6 F. description of the district's procedure for
7 reviewing emergency situations where regulated procedures are
8 used.

9 Subp. 5. **Assessment.** An assessment must be performed
10 consistent with the requirements in parts 3525.2500 to 3525.2750
11 before recommending or initiating a behavioral intervention
12 using a regulated procedure. The assessment shall include an
13 analysis of purpose and the effect of the behavior and the
14 seriousness of the behavior to warrant the use of a regulated
15 procedure. A minimum of two positive behavioral interventions
16 must be attempted and documented as part of an assessment. The
17 assessment summary report shall include:

18 A. a description of the pupils target behavior for
19 which a regulated procedure is being considered;

20 B. baseline measurement of the target behavior;

21 C. documentation of the two positive behavioral
22 interventions and any other behavioral intervention attempted
23 including exempted procedures and the effectiveness of each;

24 D. review of frequent use of exempted procedures,
25 e.g. sitting in the hallway;

26 E. documentation that the assessment team has ruled
27 out any other treatable cause such as a medical or health
28 condition for the interfering behavior;

29 F. a description of the alternative procedures that
30 have been considered and an explanation for why these are not
31 expected to work; and

32 G. the proposed regulated procedures for the
33 behavioral intervention planning.

34 If the use of a regulated procedure is being considered, a
35 professional whose background and expertise in the use of
36 positive approaches to behavioral intervention and the use of

1 aversive and deprivation intervention must be on the pupil's
2 team.

3 If a pupil's behavior is such that positive behavioral
4 intervention has not been effective in achieving the goals of
5 the IEP and the team recommends that a regulated procedure be
6 used, an IEP team meeting must be scheduled to review the
7 student's IEP. The team must specify what assessment data
8 exists and if additional assessment is needed to determine
9 which, if any, regulated procedure would be appropriate.

10 Subp. 6. IEP process and required documentation. If,
11 after completing the initial parts of the IEP including present
12 levels of performance, pupil needs, and goals according to part
13 3525.2900, the IEP team determines that a behavioral
14 intervention plan that outlines the use of a regulated procedure
15 is necessary to achieve the goal, the procedure must be
16 addressed in the IEP in a behavioral intervention plan that
17 includes the following components as part of the IEP:

- 18 A. a description of the target behavior;
- 19 B. baseline measurement of the target behavior;
- 20 C. a detailed description of the proposed procedure,
21 including data collection procedures and monitoring schedule;
- 22 D. conditions under which the aversive or deprivation
23 intervention will be used;
- 24 E. an explanation of why the proposed procedure is
25 selected;
- 26 F. a statement of the expected change in the target
27 behavior that will occur;
- 28 G. a description of any discomforts, risks, or side
29 effects that it is reasonable to expect to occur;
- 30 H. conditions or circumstances when the intervention
31 can or must be discontinued prior to team review;
- 32 I. the anticipated effects on the pupil if the
33 procedure is not implemented;
- 34 J. person or persons responsible for implementing the
35 program;
- 36 K. team review and evaluation dates, not to exceed

1 two months;

2 L. coordination with home or care facility; and

3 M. parent's informed consent consistent with subpart

4 9.

5 The use of a regulated procedure for behavior reduction
6 must be a part of a comprehensive educational program that
7 includes goals and objectives on the pupil's IEP that
8 specifically address the corresponding appropriate behaviors
9 that the pupil needs to acquire or demonstrate.

10 The individuals who conduct the periodic review shall
11 review the behavioral intervention plan according to the
12 schedule agreed to and written on the IEP. This team may review
13 and amend procedures on the behavioral intervention plan as
14 necessary throughout the year without reviewing all of the IEP
15 unless the team determines a more thorough review is necessary
16 and a change in the IEP is required. Any change in the
17 behavioral intervention plan is subject to informed consent as
18 provided in subpart 9.

19 Subp. 7. An independent committee review. The parent or
20 the district staff may request a review of a behavioral
21 intervention plan that includes a regulated procedure by the
22 independent committee as established under subpart 4, item E.
23 The district shall inform the parents they may appoint one
24 member of the independent review committee if the parent so
25 desires. Before implementing a behavioral intervention plan as
26 part of the pupil's IEP or in any review or amendment of the
27 behavior intervention plan, the parent must be informed of the
28 right to request an independent committee review. The
29 independent committee would review the assessment summary
30 report, the behavioral intervention plan, and all pertinent
31 information and provide recommendations to the district and the
32 parents from that review. The independent committee must be
33 comprised of at least two persons who are independent of the
34 pupil's IEP and are not employees of or under contract with the
35 district except a contract to serve on this committee. The
36 independent review committee shall include at least one person

1 who is independent of the pupil's IEP and is knowledgeable about
2 behavioral interventions. One person on the committee shall
3 also be knowledgeable about ethnic and cultural issues relevant
4 to the pupil's behavior and education. The recommendation of
5 the independent review committee is advisory and must not be
6 used to overrule a pupil's IEP team decision. The district is
7 responsible for costs associated with the independent committee
8 review including reasonable fees consistent with district policy
9 for appropriate experts.

10 Subp. 8. **Time-out procedures and isolation room**
11 **specifications.**

12 A. For the purpose of this part, "time-out" means
13 exclusion procedures in which the pupil is completely removed
14 from the regularly scheduled educational program and seclusion
15 procedures in which the pupil is placed in a specially
16 designated isolation room or similar space.

17 B. The pupil's IEP that includes the use of time-out
18 must include the following in addition to subpart 6:

19 (1) provision for the pupil to be continuously
20 monitored by trained staff;

21 (2) criteria for returning pupil to the routine
22 activities and regular education environment;

23 (3) adequate access to drinking water and to a
24 bathroom for a time-out that exceeds 15 minutes; and

25 (4) documentation of the length of time spent in
26 each time-out procedure and the number of occurrences each day.

27 C. When a room is used specifically for time-out
28 where seclusion is in a specially designated isolation room, the
29 room shall:

30 (1) provide a safe environment for the pupil
31 where all fixtures are tamper proof, walls and floors are
32 properly covered, and control switches are located immediately
33 outside the room;

34 (2) have an observation window or other device to
35 permit continuous monitoring of the pupil;

36 (3) measure at least five feet by six feet or be

1 substantially equivalent to these dimensions and be large enough
2 to allow the pupil to stand, to stretch the pupil's arms, and to
3 lie down;

4 (4) be well-lighted, well-ventilated, adequately
5 heated, and clean; and

6 (5) have smoke and fire monitoring devices that
7 are acceptable to the state fire marshal.

8 Subp. 9. **Informed consent assurances.** The pupil's parents
9 must be informed of any proposed behavioral intervention plan.
10 The behavioral intervention plan must be implemented consistent
11 with parts 3525.3200 to 3525.3600 and any modifications to that
12 plan. Consistent with parts 3525.3200 to 3525.3600, parents
13 must be informed of assessment results, and the information
14 comprising the behavioral intervention plan, and must be given a
15 demonstration, and answers to any questions about the proposed
16 regulated procedure. A statement of parents' rights must be
17 included. Parents, upon being given proper notice and being
18 informed of their due process rights, may give their consent to
19 an IEP which includes a behavioral intervention plan according
20 to subpart 6.

21 If parents have joint custody, the district must notify
22 both parents and consent is required from both in order to
23 implement the behavioral intervention plan except as noted
24 below. After appropriate notice is sent, if only one parent
25 participates in the IEP conference including the development of
26 a behavioral intervention plan or a meeting to amend the
27 behavioral intervention plan, consent from the participating
28 parent shall serve as informed consent.

29 A parent has the right to withdraw consent for a behavioral
30 intervention plan at any time by notifying the program
31 administrator or designee and districts will stop the procedure
32 immediately. After parental consent is withdrawn and the
33 procedure stopped, the school must send written acknowledgment
34 to the parent and request a parental signature. If a parent's
35 signature to withdraw consent cannot be obtained, the district
36 must document its efforts to communicate and obtain the

1 signature. Parents must be contacted within three school days
2 to determine the need to review and amend the behavioral
3 intervention plan and the need to convene the IEP team for a
4 change in placement or program.

5 Subp. 10. **Emergency.** "Emergency" means a situation in
6 which immediate intervention is necessary to protect a pupil or
7 other individual from physical injury, emotional abuse due to
8 verbal and nonverbal threats and gestures, or to prevent severe
9 property damage. The emergency intervention must be the least
10 intrusive intervention possible to reasonably react to the
11 emergency situation. This part does not prohibit staff persons
12 from using reasonable force to protect themselves or other
13 pupils or students as provided in Minnesota Statutes, section
14 609.379. If an emergency intervention is used twice in a month
15 or a pupil's pattern of behavior is emerging that interferes
16 with the achievement of the pupil's educational goals and
17 objectives, a team meeting must be called to determine if the
18 pupil's IEP is adequate, if additional assessment is needed,
19 and, if necessary, to amend the IEP including the behavioral
20 intervention plan. Districts may use regulated procedures in
21 emergencies until the IEP team meets, provided the emergency
22 measures are deemed necessary by the district to protect the
23 individual pupil or others from harm. The IEP team shall meet
24 as soon as possible but no later than three school days after
25 emergency procedures have commenced. The further use of
26 regulated procedures is governed by the standard process for
27 implementing a behavioral intervention plan as provided in this
28 part. Districts must document their efforts to involve parents.

29 District administration and parents must be notified
30 immediately when a regulated procedure is used in an emergency
31 situation. Procedures for reviewing any use of a regulated
32 procedure in an emergency situation must be addressed in the
33 district's policy.

34 3525.3000 PERIODIC ~~AND-ANNUAL~~ REVIEWS.

35 The providing school district shall determine the

1 effectiveness of the pupil's IEP by conducting periodic and
 2 annual reviews of the pupil's program plan. The IEP team shall
 3 address the plan for, location of, and frequency of at least one
 4 periodic review and one annual review of the pupil's progress in
 5 achieving the prescribed educational goals and objectives and
 6 the appropriateness of the program and placement, and, if only
 7 one periodic review is done, it must not be done at the same
 8 time as the annual review. The periodic review shall determine:

9 A. ~~A periodic review is to gather information and
 10 data from all service providers to determine the degree to which
 11 periodic review objectives as identified in the IEP are being
 12 achieved. The IEP manager shall coordinate the recording of the
 13 data on the periodic review form and share the results with the
 14 IEP team including the parents. The results of periodic reviews
 15 must be included in the pupil's school records and a copy sent
 16 to the parent and to the resident district if different from the
 17 providing district. This copy shall inform the parents and the
 18 resident district that they may request a conference to review
 19 the pupil's program plan at any time and the procedure to do
 20 so. The periodic review does not require a meeting with the
 21 parents unless a significant change is to be considered.~~

22 B. ~~The annual review is to gather information and
 23 data from all service providers to determine the pupil's present
 24 levels of performance in the total education program. These
 25 data, together with input from the parents, will assist the team
 26 in determining an appropriate program for the pupil.~~

27 the degree to which the periodic review
 28 objectives as identified in the educational program plan are
 29 being achieved;

30 B. the appropriateness of the educational
 31 program plan as it relates to the pupil's current needs;

32 C. what modifications, if any, need to be made
 33 in the program plan.

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

36 E. These periodic and annual reviews shall be made by

1 those persons directly responsible for implementing the
 2 educational program and by other school district agents as may
 3 be needed to ensure an informed and adequate review to-determine:

4 ~~(1)-the-appropriateness-of-the-educational~~
 5 ~~program-plan-as-it-relates-to-the-pupil's-current-needs,~~

6 ~~(2)-what-modifications,-if-any,-need-to-be-made~~
 7 ~~in-the-goals,-objectives,-services,-or-placement-of-the-pupil,~~
 8 and

9 ~~(3)-whether-the-pupil-continues-to-require~~
 10 ~~special-education-based-on-exit-criteria-in-part-3525.1349.~~

11 The results of periodic reviews shall be included in the
 12 pupil's school records and a copy sent to the parent and to the
 13 resident district if different from the providing district.

14 This copy shall inform the parents and the resident district
 15 that they may request a conference to review the pupil's program
 16 plan at any time and the procedure to do so.

17 The reviews shall be made in accordance with ~~according to~~
 18 the requirements for nondiscrimination and recognized
 19 professional standards.

20 3525.3100 FOLLOW-UP REVIEW REQUIREMENTS.

21 The responsible school district shall conduct a follow-up
 22 review of the student's current performance no later than 12
 23 calendar months after special education services are
 24 discontinued to determine if progress is satisfactory, except if
 25 the pupil has graduated or ~~services-have~~ been discontinued at
 26 age 21.

27 3525.3300 CONTENTS OF NOTICE.

28 Notices must be sufficiently detailed and precise to
 29 constitute adequate notice for hearing of the proposed action
 30 and contain a full explanation of the procedural safeguards
 31 available to parents under parts 3525.0200 to 3525.4700.

32 Notices must:

33 [For text of items A to L, see M.R.]

34 M. Inform the parents of their right to compel the
 35 attendance of any official or employee of the providing or

1 resident school district or any other person, who may have
2 evidence relating to the proposed action and the manner and time
3 in which to do so.

4 [For text of items N to U, see M.R.]

5 V. Inform parents of a pupil's entitlement to special
6 education until age 21 unless the team agrees the pupil no
7 longer needs special education or the pupil is eligible for a
8 high school diploma according to part 3525.3150.

9 3525.3500 NOTICE OF PERFORMANCE OR REFUSAL TO PERFORM ASSESSMENT.

10 Before the performance of or refusal to perform an
11 educational assessment or reassessment as provided in parts
12 3525.2550 to 3525.2850, the providing school district shall
13 prepare and serve a notice that meets the requirements of parts
14 3525.3200 to 3525.3400. The portion of the notice which is
15 specific to assessment or reassessment shall:

16 A. include the reasons for assessment or the refusal
17 to assess and how the results may be used;

18 B. include a description of areas to be assessed and
19 the procedures to be used;

20 C. state where and by whom the assessment will be
21 conducted;

22 D. inform the parents that the district will not
23 proceed with the initial formal assessment as defined in part
24 3525.0200, without prior written consent of the child's parents;

25 E. inform the parents that except for the initial
26 formal assessment, the district shall proceed with the proposed
27 assessment unless the parent objects on the enclosed response
28 form or otherwise in writing within ten days after receipt of
29 the notice; and

30 F. inform the parents that if the district refuses to
31 perform the requested reassessment, the district shall initiate
32 a hearing according to parts 3525.3800 to 3525.4700.

33 3525.3800 WHEN A HEARING MUST BE HELD.

34 A hearing regarding a proposed action under parts 3525.2550
35 to 3525.2850 or 3525.2900 shall be held whenever: (a) the

1 district receives the parents' request for a hearing; (b) a
2 parent refuses to provide written permission for the initial
3 formal assessment or the initial placement and provision of
4 special education services, within ten days after the receipt of
5 the notice and response form, provided the district has made at
6 least one offer to enter into conciliation in an attempt to
7 obtain this written consent; and (c) when the district refuses
8 to conduct a reassessment requested by a parent.

9 3525.4100 PREHEARING REVIEW BY HEARING OFFICER.

10 [For text of subpart 1, see M.R.]

11 Subp. 2. Duties of hearing officers after receipt of the
12 information. Upon receipt of the information in subpart 1, the
13 hearing officer:

14 A. shall review the same for compliance with parts
15 3525.0200 to 3525.4700;

16 B. may subpoena any person or paper considered
17 necessary for an adequate review of the appropriateness of the
18 proposed action that is the subject of the hearing;

19 C. may meet with the parties together before the
20 hearing;

21 D. may require the district to perform an additional
22 educational assessment or reassessment;

23 E. may require the district to propose an alternative
24 IEP;

25 F. may require the district to send additional notice
26 to the parents;

27 G. may do the additional things necessary to comply
28 with parts 3525.0200 to 3525.4700;

29 H. may postpone the hearing for up to 15 days to
30 achieve the purposes of this subpart; and

31 I. may grant specific extensions of time beyond the
32 45-day period established in part 3525.3900, item E, at the
33 request of either party.

34 3525.4200 HEARING RIGHTS OF RESPECTIVE PARTIES.

35 The hearing shall be closed unless the parents request an

1 open hearing. The parties shall have the right to
2 representatives of their own choosing, including legal counsel.

3 At a reasonable time before the hearing, the parties or
4 their representatives shall be given access to the providing and
5 resident school districts' records and such other records
6 pertaining to the child that are authorized by law to be
7 disclosed, including but not limited to all tests, evaluations,
8 assessments, reports, and other written information concerning
9 the educational assessment or reassessment, conducted pursuant
10 to parts 3525.2550 to 3525.2850 upon which the proposed action
11 may be based.

12 At least five days before the hearing the parents shall
13 receive from the school districts, who are parties of the
14 hearing, a brief resume of additional material allegations
15 referring to conduct, situations, or conditions which are
16 discovered and found to be relevant to the issues to be
17 contested at the hearing and which are not contained in the
18 original notice or memorandum provided pursuant to parts
19 3525.3200 to 3525.3600 or 3525.3700, subpart 2. Any party to
20 the hearing may prohibit the introduction of any evidence that
21 has not been disclosed to that party at least five days before
22 the hearing. Within five days after the written request is
23 received, any party shall receive from the other parties a list
24 of witnesses who may be called to testify at the hearing. The
25 list must be filed with the person conducting the hearing. The
26 lists may be modified at any time but each party should be
27 notified immediately if possible. The parties or their
28 representatives have the right to compel the attendance of any
29 employee of the school district, or any other person who may
30 have evidence relating to the proposed action, and to confront,
31 and to cross examine any witness. Any request must be made to
32 the appropriate school district or to the person whose
33 attendance is compelled at least five days in advance of the
34 hearing. The written requests shall also be filed with the
35 person conducting the hearing at the time of hearing.

36 If the person conducting the hearing determines at the

1 conclusion of the hearing that there remain disputes of fact
2 which, in the interest of fairness and the child's educational
3 needs, require the testimony of additional witnesses, or if the
4 hearing officer concludes that alternative educational programs
5 and opportunities have not been sufficiently considered, the
6 hearing officer may continue the hearing for not more than ten
7 days, for the purpose of obtaining the attendance of witnesses
8 or considering alternative programs and opportunities. The
9 parties' right to cross examination and confrontation and other
10 applicable rights and procedures shall continue and be given
11 full force and effect.

12 INSTRUCTION TO REVISOR. On the effective date of the repeal of
13 part 3525.2900, subpart 5, the Revisor shall change the
14 reference in Minnesota Rules, part 3525.3600 from "part
15 3525.2900, subpart 5" to "part 3525.2900, subpart 1, item F."

16 REPEALER. Minnesota Rules, parts 3525.0200, subpart 23;
17 3525.2370; 3525.2380, subpart 2; and 3525.2900, subparts 2, 4,
18 and 5, are repealed.