



November 19, 2020

Legislative Reference Library  
645 State Office Building  
100 Rev. Dr. Martin Luther King Jr. Blvd.  
St. Paul, Minnesota 55155

**Re: In The Matter of the Proposed Rules of the Department of Education Relating to an IEP Team Including District and Statewide Assessment Results in an IEP, Minnesota Rules, 3525.2810; Revisor's ID Number RD-4630**

Dear Librarian:

The Minnesota Department of Education intends to adopt rules relating to an IEP team including district and statewide assessment results in an IEP. We plan to publish a Dual Notice of Hearing in the November 23, 2020, State Register.

The Department has prepared a Statement of Need and Reasonableness. As required by Minnesota Statutes, sections 14.131 and 14.23, the Department is sending the Library an electronic copy of the Statement of Need and Reasonableness at the same time we are mailing our Notice of Intent to Adopt Rules.

If you have questions, please contact me at (651) 582-8583 or [Kerstin.Forsythe@state.mn.us](mailto:Kerstin.Forsythe@state.mn.us).

Cordially,

A handwritten signature in black ink that reads "Kerstin Forsythe Hahn".

Kerstin Forsythe Hahn, J.D.  
Rulemaking Coordinator  
Minnesota Department of Education

Enclosure: Statement of Need and Reasonableness



**Proposed Amendments to Permanent Rules Relating to  
an IEP Team Including District and Statewide Assessment  
Results in an IEP**

**Minnesota Rules, 3525.2810**

**STATEMENT OF NEED AND REASONABLENESS (SONAR)**

**October 2020**

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## **STATEMENT OF NEED AND REASONABLENESS**

### **Proposed Amendment to Permanent Rules Relating to an IEP Team Including District and Statewide Assessment Results in an IEP, Minnesota Rules, 3525.2810; Revisor’s ID Number RD4630**

#### **INTRODUCTION**

Minnesota provides special education services for eligible children from birth to age 21. These services are governed by both state statute and rule, Minnesota Statutes, Chapters 120-125A and Minnesota Rules, Chapter 3525. These rules guide the provision of special education service for children in grades kindergarten through 12, and the provision of early intervention services. During the 2019 1<sup>st</sup> Special Session, the Minnesota Department of Education (the department) was directed by the legislature to amend Minnesota Rules, Chapter 3525.2810, Subp. 2, to reflect that it is permissive for an IEP team to include district and statewide assessment results in an IEP. This Statement of Need and Reasonableness (SONAR) sets out a brief history of the provision of special education at both the federal level and in Minnesota and the department’s proposed rule language to comply with the legislative directive.

#### **Individual with Disabilities Education Act (IDEA)**

The Individual with Disabilities Education Act (IDEA) is federal legislation that provides services and rights for students with disabilities. The United States Department of Education, Office of Special Education Programs (OSEP), developed administrative rules and guidance to assist states in

implementing this federal legislation. IDEA was most recently reauthorized in 2004<sup>1</sup> and the accompanying rules were published on August 14, 2006, and went into effect on October 13, 2006.<sup>2</sup>

## Special Education in Minnesota

Minnesota provides special education services to all children from birth through age 21.<sup>3</sup> The State of Minnesota receives funding under IDEA as a grantee, and then those funds are in large part sent to local education agencies as subgrantees. Both the State of Minnesota, which is the state education agency (SEA) and the local education agencies (LEA's) (i.e. school districts, charter schools, and special education cooperatives) must sign a statement of assurance prior to receiving the federal special education funding.

The State of Minnesota in its role as the SEA provides general supervision authority, which includes monitoring the implementation of IDEA and to annually report the State's performance. For the last six years, the State of Minnesota has met requirements, which include compliance and result indicators under both Part B (ages three to 21) and Part C (birth to three). This is the highest designation a state can receive. Specifically, as an SEA, our monitoring activities primarily focus on improving educational results and functional outcomes for all students with disabilities and ensure that the IDEA program requirements are being met, with an emphasis on those most closely related to improving educational results for children with disabilities. The State of Minnesota through its monitoring process must use both quantifiable data, as well as qualitative data as needed, to adequately measure performance in the priority areas which include the provision of FAPE in the least restrictive environment.<sup>4</sup>

The State of Minnesota has passed state statutes and accompanying rules that either define terms not contained in IDEA, provide more protections for students with disabilities, or codify the language from the administrative rules accompanying the 1997 and 2004 reauthorizations.<sup>5</sup> Pursuant to the 2004 IDEA, SEA's are required to identify state-level laws and rules that impose requirements not required

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<sup>1</sup>[20 U.S.C. § 1400 \(2004\)](https://www.law.cornell.edu/uscode/text/20/1400), available at <https://www.law.cornell.edu/uscode/text/20/1400> or <https://uscode.house.gov/view.xhtml?path=/prelim@title20/chapter33&edition=prelim> (last visited October 20, 2020).

<sup>2</sup> Congressional Research Service, *The Individuals With Disabilities Education Act (IDEA), Part C: Early Intervention for Infants & Toddlers With Disabilities* (August 9, 2019), available at <https://crsreports.congress.gov/product/pdf/R/R43631> (last visited October 20, 2020). Prior to 2004, the last reauthorization was in 1997, with accompanying rules, which went into effect in 1999.

<sup>3</sup> [Minn. Stat. § 125A.03\(b\)](#).

<sup>4</sup> [34 C.F.R § 300.600 \(2006\)](#).

<sup>5</sup> [Minnesota Statutes, Chapter 120-129C \(2019\)](#); and [Minnesota Rules, Chapter 3525](#).

by the federal laws or regulations.<sup>6</sup> Multiple formal stakeholder committees have reviewed and recommended revisions of Minnesota's special education laws. These committees generally sought to reduce the instances Minnesota duplicated or exceeded federal law. Some requirements are unique to Minnesota and are not driven by federal law but rather constitute Minnesota own formation and evolution of special education policy. Minnesota provided special education services before these services were mandated by the federal government and has developed its own policy at times, exclusive of the IDEA.

## Legislative Proposals Regarding Including Assessment Results in an IEP

Most recently, the state legislature considered a set of proposals developed by the New Ulm School District, dated November 18, 2018, (New Ulm Proposals) which were submitted during the 2019 legislative session. The District included in the proposals, legislative changes that it believed would assist with reducing the amount of time spent in documenting a district's compliance with IDEA and its accompanying regulations and state law.

One of the proposals addressed reporting state and district assessments on a student's individual education program (IEP). The proposal raised the concern that "Minnesota law suggests to report the results of the pupil's performance on any state or district-wide assessment within the IEP.<sup>7</sup> These results do not reflect on the student's specific educational needs. Parents of all students receive assessment results from school."<sup>8</sup> In the New Ulm document dated November 18, 2018, it requested that the requirement to include in a student's IEP state and district-wide testing results that are not specific to the student's educational needs, be removed from the current Minn. R. 3525.2810 subp 2(a).<sup>9</sup>

MDE informed the legislature that this was not an area that MDE considered for program monitoring purposes, and that it did not read the rule to require assessments to be included in every student's IEP. Nevertheless, MDE did not object to the proposal to amend its rule. The language that is currently in rule is based upon the language in IDEA 1999. As a result, the legislature gave MDE authority to amend its rule, and provided specific language to be included in the amended rule.

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<sup>6</sup> [34 C.F.R. 300.199 \(2006\)](#).

<sup>7</sup> See [Minn. R. 3525.2810 subp. 2\(a\)](#).

<sup>8</sup> New Ulm Special Education Proposal, article in the Mankato Free Press with proposal attached as a download, (November 1, 2018), *available at* [https://www.mankatofreepress.com/new-ulm-special-education-proposal/pdf\\_8826e4d2-de1c-11e8-9817-8b277ee6b241.html](https://www.mankatofreepress.com/new-ulm-special-education-proposal/pdf_8826e4d2-de1c-11e8-9817-8b277ee6b241.html), or <https://bloximages.chicago2.vip.townnews.com/mankatofreepress.com/content/tncms/assets/v3/editorial/8/82/8826e4d2-de1c-11e8-9817-8b277ee6b241/5bdb6f4d3abf6.pdf.pdf>.

<sup>9</sup> *Id.*

## Legislative Directive to Amend Rules

During the 2019 1<sup>st</sup> Special Session, the Minnesota Department of Education (MDE) was directed by the legislature to amend Minnesota Rules, Chapter 3525.2810, Subp. 2, to reflect that it is permissive for an IEP team to include district and statewide assessment results in an IEP. During the session, the legislature heard testimony from a school district that the current rule language is confusing and has been interpreted to require more reporting than MDE and the legislature intended. The proposed amendment includes the language authorized by the legislature, with additional language related to the consideration of academic, developmental and functional needs. The additional language is in alignment with 2004 changes to the federal Individuals with Disabilities Education Act (IDEA) and is needed because a review of that assessment data may be necessary to determine academic needs. That additional language is contained in 34 Code of Federal Regulation section 300.324(a), as reflected in the 2004 IDEA reauthorization.<sup>10</sup>

## Development of Amended Language

The amended language clarifies that the IEP team may report a student's performance on general state or district wide assessments in the pupil's individualized education program. In addition, during the language drafting process, the department was careful to ensure proposed language was consistent with IDEA 2004, and OSEP's accompanying administrative regulations. In reviewing the proposed amendment, it was determined that additional language needed to be added to Minn. R. 3525.2810 to ensure that the IEP team considered the student's district and school wide assessment results as it determined a student's academic, development, and functional needs of the pupil. When IDEA was reauthorized in 2004, it added language that as part of the evaluation/reevaluation process, the student's aptitude and achievement tests, must be considered in determining if a student is a student with a disability, and the educational needs of the child.<sup>11</sup> Therefore, the proposed amendment also mirrors the language in IDEA 2004, and its accompanying regulations, with the exception of the last sentence added by the legislature, and further analysis that is set forth in 34 C.F.R. Section 300.324(a).

When IDEA was reauthorized in 2004, it removed the language that the IEP team must consider the results of the student's performance on any general State or districtwide assessment programs in developing the student's IEP. In the comments to administrative regulations. OSEP states: We do not believe an explicit regulation is needed, however, because 34 CFR Section 300.324(a)(1)(iv) requires the IEP team, in developing each child's IEP, to consider the child's academic, developmental and

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<sup>10</sup> [34. C.F.R. § 324 \(2004\).](#)

<sup>11</sup> [34 C.F.R. § 300.306\(c\)\(1\) \(2004\).](#)

functional needs. A child's performance on a State or district wide assessment logically would be included in the IEP team's consideration of the child's academic needs. In addition, that data must be reviewed by the team for an initial or reevaluation.<sup>12</sup>

Thus, in order to ensure that IDEA 2004 is implemented by LEA's, MDE as the SEA under IDEA 2004, included language that LEA's must consider when developing or revising each student's IEP based upon each student's present levels of academic achievement and functional performance (PLAPF). The proposed rule amendment incorporates the legislative mandate to include specific language in the rule related to the permissive nature to include assessment results in the IEP, as well as the requirements under IDEA that the IEP team consider the student's academic, developmental and functional needs, which logically would include a student's results on district and statewide assessments.

### ***Feedback Received on the Proposed Amendment***

Prior to publication of the Request for Comments, the MDE sent its proposed amended language specifically to the Minnesota Administrators of Special Education (MASE). On September 3, 2019, agreement was reached on the amended language; the proposed rule amendment language was posted on the MDE Rulemaking webpage and sent out to external stakeholders for comment.

The department received five comments from two different service cooperatives on the proposed rule amendment in opposition to the majority of the changes; four were identical form letters and the fifth included a similar position in opposition to many of the proposed changes. Commenters stated they are opposed to the rule amendment because it required IEP teams to address the academic and functional areas related to a student's disability and needs and thus the rule amendment goes above and beyond federal language. The department disagrees with the commenters because as stated above, 34 C.F.R. section 300.324(a)(1)(iv) already requires the IEP team, in developing each child's IEP, to consider the child's academic, developmental and functional needs. Thus, IDEA requires that the IEP team, in developing each child's IEP, consider the child's academic, developmental and functional needs. This is not a new requirement and Minnesota rule is now being brought into compliance with existing federal law. As part of the consideration process, the IEP team may determine a student has no needs in one or more of the three areas of need listed above. A child's performance on a State or district wide assessment logically would be included in the IEP team's consideration of the child's academic needs. All commenters were fine with the language change from "shall" to "must."

Based upon the feedback received by MASE, and the comments received during the comments period, the changes are needed and reasonable and meet both the legislative mandate as well as the State of Minnesota's general supervisory authority to ensure that Students receive a free and appropriate

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<sup>12</sup> [Fed. Reg. Vol. 71, No. 156 \(August 14, 2006\), p. 46683.](#)



public education. See the rule-by-rule analysis section in this SONAR for more specific discussion of the comments and proposed rule amendments.

## ALTERNATIVE FORMAT

Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make a request, contact Kerstin Forsythe Hahn at the Minnesota Department of Education, 1500 Highway 36, Roseville, MN 555113; phone: (651) 582-8583; email: [Kerstin.Forsythe@state.mn.us](mailto:Kerstin.Forsythe@state.mn.us).

## STATUTORY AUTHORITY

During the 2019 1<sup>st</sup> Special Session, MDE was directed by the legislature to amend Minnesota Rules, Chapter 3525.2810, Subp. 2, to reflect that it is permissive for an IEP team to include district and statewide assessment results in an IEP. The Department's statutory authority to adopt the rules is stated in the Laws of Minnesota 2019, 1<sup>st</sup> Spec. Sess. Chapter 11, article 14, section 10<sup>13</sup>, which provides:

Sec. 10. INDIVIDUALIZED EDUCATION PROGRAM; RULE AMENDMENT.

The commissioner of education must amend Minnesota Rules, part 3525.2810, subpart 2, item A, to allow but not require an individualized education program to report a student's performance on general state or districtwide assessments.<sup>14</sup>

Under this statute, the Department has the necessary statutory authority to adopt the proposed rules.

## REGULATORY ANALYSIS

Minnesota Statutes, section 14.131, sets out eight factors for a regulatory analysis that must be included in the SONAR. Paragraphs (1) through (8) below quote these factors and then give the agency's response.

**“(1) a description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule”**

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<sup>13</sup> [Laws of Minnesota 2019, 1<sup>st</sup> Spec. Sess. Chapter 11, article 14, section 10.](#)

<sup>14</sup> *Id.*

The classes of persons affected by this rule include Minnesota children and their families; school districts, including teachers, special education teachers, special education directors, other school staff, and administrators. Any cost related to the rule change would be special education staff and administrator training to ensure that the rule is being implemented once it has been approved. The proposed rule change was requested by a district superintendent and special education director to reduce the time spent on developing a student's individualized education program. Accordingly, districts will also benefit from the proposed rules, which will also benefit Minnesota students with disabilities and their families.

**“(2) the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues”**

The proposed rules do not create any additional costs to the department. The department is already staffed to provide training and support regarding the proposed rules, and staff assignments and resources will be reallocated accordingly, as necessary. In fact, it is anticipated that the guidance and clarification provided by these proposed rules will ease slightly the burden of the Department's oversight responsibilities by clarifying some areas of confusion that have led to repeated questions to the Department.

**“(3) a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule”**

There are no less costly methods for achieving the purposes of the proposed rules. The legislature directed the department to amend Minnesota Rules 3525.2810, Subp. 2, to incorporate language that allows but does not require an individualized education program to report a student's performance on general state or districtwide assessments.

Other than utilizing its statutory authority to amend the rules, the department has no other satisfactory method by which to effectively incorporate into Minnesota rules the required language. In order to change these rules as directed, and for these rules to have general application and future effect, the department must amend the rules through the formal rulemaking process.

**“(4) a description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule”**

The department does not believe there are alternative methods for achieving the purpose of the proposed rule. The proposed rules comply with the legislative directive given to the department. The language being amended is not addressed in state statute so was not part of prior task forces and work groups who recommended changes to align Minnesota statutes and rules in the area of special education. Special education administrators and staff utilize the rules when the statutes are silent on a

particular topic. No other alternative methods for achieving the purpose of the proposed rule were seriously considered by the department.

**“(5) the probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals”**

The proposed rules are cost neutral. Any district costs associated in providing training on the amended rule will be offset by the clarity provided between IDEA 2004 and the amended rule. Districts will continue to implement the amended rules, as they do now with the current rules, and provide appropriate special education and related services to eligible Minnesota children as required by federal and state law. Any costs created by the implementation of these rules are already being borne by all entities involved. In fact, the proposed rules are intended to decrease confusion that stems from the current language which has been interpreted to require more reporting than MDE and the legislature intended.

**“(6) the probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals”**

The department risks loss of its rulemaking authority if it does not comply with the directive to amend the proposed rules. An additional consequence will be continued confusion related to the rule because the existing rule contains language from the Individuals with Disabilities Education Act (IDEA), from 1997. This language is no longer in federal law and was removed when IDEA was reauthorized in 2004.

**“(7) an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference”**

One of the goals of this rulemaking process is to alleviate confusion in the education community regarding the Minnesota requirement. The legislature heard testimony that the existing statutory language has been interpreted to require more reporting than MDE and the legislature intended. While MDE has not cited a district or found a violation through the complaint process related to the language being amended in this rule, and MDE does not read the existing rule to require that an IEP contain school or district wide scores, it understands that this misconception exists. The proposed rule amendment clarifies that inclusion of the district or statewide assessment scores within a student’s IEP is permissive and is not a requirement under Minnesota law. Additional language was also added to the proposed rule to align it with new language that was both added to and removed from the federal IDEA when it was reauthorized in 2004. These changes to IDEA related to determining a student’s present levels of academic achievement and functional performance in order to determine the

specialized instruction and related services needed for the student to make progress in the general education curriculum.<sup>15</sup>

There is not a significant difference between the proposed rule and existing federal regulations that govern state special education rules because this change will better align state rules with existing federal regulations.

**“(8) an assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule. . . . ‘[C]umulative effect’ means the impact that results from incremental impact of the proposed rule in addition to other rules, regardless of what state or federal agency has adopted the other rules. Cumulative effects can result from individually minor but collectively significant rules adopted over a period of time.”**

The department is proposing these rule amendments to improve and to provide clarity in the provision of special education services in the state of Minnesota for teachers, students and their families. The proposed rule amendments provide better alignment with IDEA by removing language from the proposed rule that was not included in the latest IDEA reauthorization in 2004. The proposed language also clarifies that while a student’s district and statewide assessment results may be considered in determining a student’s present levels of academic achievement and functional performance, it is not a requirement that the results themselves be documented in the IEP. This clarification will assist an IEP team, which includes the parent, to focus on developing a student’s specialized instruction, related services, and supplementary aids and supports based upon a student’s present levels of academic achievement and functional performance. In turn, this will make the IEP team process a better experience for the team, students, and families and focus on improving academic results for students with disabilities.

The cumulative effect of the proposed rules in combination with existing state statutes and the federal regulations will assist in clarifying the role district and school wide assessment results, along with other data has, in determining a student’s present levels of academic achievement and functional performance. This determination is crucial in order to develop an IEP that will meet the student’s needs, including educational needs that stem from the student’s disability and enable the child to be involved in and make progress in the general education curriculum. 34 C.F.R. § 300.320(a). Together, these requirements will provide a higher quality education for special education students in Minnesota. The department believes the proposed rules relating to the work of an IEP team will benefit all Minnesota families, students, educators and school communities.

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<sup>15</sup> IDEA 2004 removed the language related to the scores and added language that the IEP team would determine present levels. See 34 CFR Section 300.324(a). These changes are discussed in detail on p. 4 of this document.

## **PERFORMANCE-BASED RULES**

Throughout the development of the proposed rules and this SONAR, the Department made every attempt to develop rules that will be understandable for practitioners and families to ensure efficient and effective delivery of services while achieving positive results for children and youth with disabilities. Further, the Department proposes these amendments to make the rules clear in purpose and intent, flexible, and not overly prescriptive while allowing the state to fulfill its obligation of ensuring that federal law is implemented and that children receive appropriate services and protections.

## **ADDITIONAL NOTICE**

Minnesota Statutes, sections 14.131 and 14.23, require that the SONAR contain a description of the Department's efforts to provide additional notice to persons who might be affected by the proposed rules or explain why these efforts were not made.

This Additional Notice Plan was reviewed by the Office of Administrative Hearings and approved in a November 12, 2020, letter by Administrative Law Judge Kim Middendorf.

Our Notice Plan also includes giving notice required by statute. We will mail the rules and Notice of Intent to Adopt to everyone who has registered to be on the Department's rulemaking mailing list and rulemaking email list under Minnesota Statutes, section 14.14, subdivision 1a. We will also give notice to the Legislature per Minnesota Statutes, section 14.116.

Our Notice Plan did not include notifying the Commissioner of Agriculture because the rules do not affect farming operations per Minnesota Statutes, section 14.111.

## **Additional Notice Plan**

This document contains a description of the department's efforts to provide additional notice to persons who may be interested in and affected by the proposed amendment to Minn. R. 3525.2810, regarding the inclusion of assessments in an IEP.

In addition to mailing the proposed rules and the appropriate Notice to all persons who have registered to be on the department's paper and email rulemaking mailing lists under Minnesota Statutes, section 14.14, subd. 1a, the Additional Notice Plan includes notifying the following groups and organizations:

### Education Related Organizations/Entities

- African American Leadership Forum (AALF);
- Association of Metropolitan School Districts (AMSD);

- Board of Indian Education (BIE) Schools;
- Board of School Administrators (BOSA);
- Bridges Workplace Connection;
- Charter School Partners;
- Equity Alliance MN;
- Education Minnesota;
- Equal Employment Opportunity Commission (EEOC);
- Generation Next;
- Integration Districts, including East Metro Integration and N.W. Suburban Integration District;
- Intermediate School Districts;
- Learning Disabilities Association (LDA);
- Mentoring Partnership of Minnesota (MPM);
- MinnCAN;
- Minneapolis Urban League;
- Minnesota Administrators for Special Education (MASE);
- Minnesota Association for the Education of Young Children (NAEYC);
- Minnesota Association of Charter Schools (MACS);
- Minnesota Association of Colleges for Teacher Education (MACTE);
- Minnesota Association of School Administrators (MASA);
- Minnesota Association of Secondary School Principals (MASSP);
- Minnesota Business Partnerships (MBP);
- Minnesota Career College Association (MCCA);
- Minnesota Chamber of Commerce;
- Minnesota Citizens League;
- Minnesota Community Education Association;
- Minnesota Council on Foundations;
- Minnesota Department of Employment and Economic Development (DEED);
- Minnesota Education Equity Partnership (MnEEP);
- Minnesota Elementary School Principal's Association (MESPA);
- Minnesota Independent School Forum (MISF);
- Minnesota Office of Higher Education (OHE);
- Minnesota Parent Teacher Student Association (MNPTA);
- Minnesota Private College Council (MPCC);
- Minnesota Professional Educator Licensing and Standards Board (PELSB);
- Minnesota Rural Education Association (MREA);
- Minnesota School Boards Association (MSBA);
- Minnesota State Colleges and Universities (MnSCU);
- Minnesota State High School League (MSHSL);
- Minnesota Tribal Nations Education Committee (TNEC);
- MDE's Director of Indian Education, Jane Harstad (TNEC Liaison) and additional TNEC contacts;
- National Association for the Advancement of Colored People (NAACP)-St. Cloud, St. Paul, and Minneapolis branches;
- PACER Center;
- Parents United;

- Schools for Equity in Education (SEE);
- Minnesota Service Cooperatives/Regional Service Cooperatives; and
- University of Minnesota/University of Minnesota College of Education and Human Development; and
- Other relevant education organizations or parent and student advocacy groups as identified.

#### Additional Special Education Individuals/Organizations

- MN State Special Education Director, MN Department of Education, Robyn Widley;
- MN Chief Administrative Law Judge, Jenny Starr (to reach hearing officers who preside over special education hearings); and
- Special Education Director, MN Department of Corrections, Patty Popp.

#### MDE Webpage Postings and Listservs/Org Contact Lists

- MDE Superintendents listserv;
- MDE Minnesota Special Education Directors listserv;
- MDE Charter School Directors List via email/listserv;
  - Includes contacts from NAMI, MCCA, Aspire Minnesota, the ARC, additional PACER contacts, MN Disability Law Center, Additional contacts at intermediate districts, appropriate MDE program staff, DHS contacts, and MN Council for Exceptional Children (MNCEC) contact.
- MDE Special Education Rulemaking listserv;
- MDE Non-Publics Listserv;
- MDE Achievement and Integration Contacts listserv;
- Regional Centers for Excellence Directors;
- District Curriculum Leaders;
- School Board Chairs;
- Posting on the MDE special education rulemaking webpage; and
- Posting on the MDE program area webpage if appropriate.

#### Legislative Notification

- The department will notify the Minnesota Legislature. This will include sending the proposed rules and appropriate Notice to the chairs and ranking minority members of the legislative policy and budget committees with jurisdiction over the subject matter.

## **CONSULTATION WITH MMB ON LOCAL GOVERNMENT IMPACT**

As required by Minnesota Statutes, section 14.131, the Department consulted with Minnesota Management and Budget (MMB). The department sent MMB copies of the documents that we sent to the Governor's Office for review and approval on the same day we sent them to the Governor's office. The evaluation by MMB was completed on November 17, 2020. The department consulted with MMB before publishing the Dual Notice of Intent to Adopt. The documents submitted to MMB included: the

Governor's Office Proposed Rule and SONAR Form; the proposed rules; and the SONAR. The Department will submit a copy of the cover correspondence and the response received from Minnesota Management and Budget to OAH at the hearing or with the documents it submits for ALJ review.

MMB found that the proposed language clarifies that a student's IEP team must consider a student's academic, functional and developmental needs when creating the IEP. It also articulates that the team may, but is not required, to include any assessments in the IEP. MMB found that the proposed rules may impact Minnesotan special educator providers, school districts, and charter schools. MMB also found that of these entities, only school districts could be considered a local unit of government, however, the definition of local government under M.S. 14.128 does not include school districts. School districts may experience changes in service to comply with the new rules.

Based upon this information and consultation with agency staff, MMB found that the rule amendments proposed will not have costs to local units of government.

## **DETERMINATION ABOUT RULES REQUIRING LOCAL IMPLEMENTATION**

As required by Minnesota Statutes, section 14.128, subdivision 1, the agency has considered whether these proposed rules will require a local government to adopt or amend any ordinance or other regulation in order to comply with these rules. The agency has determined that they do not because the only changes required will be updating technical assistance provided by the department.

## **COST OF COMPLYING FOR SMALL BUSINESS OR CITY**

As required by Minnesota Statutes, section 14.127, the Department has considered whether the cost of complying with the proposed rules in the first year after the rules take effect will exceed \$25,000 for any small business or small city. The Department has determined that the cost of complying with the proposed rules in the first year after the rules take effect will not exceed \$25,000 for any small business or small city.

The Department has made this determination because the proposed rules will not result in additional costs to the districts. Districts are required to provide special education and related services to eligible Minnesota children regardless of the adoption of the proposed rules.

### ***Agency Determination of Cost***

As required by Minnesota Statutes, section 14.127, the Department has considered whether the cost of complying with the proposed rules in the first year after the rules take effect will exceed \$25,000 for any small business or small city. The Department has determined that the cost of complying with the



proposed rules in the first year after the rules take effect will not exceed \$25,000 for any small business or small city.

The Department has made this determination based on the probable costs of complying with the proposed rule, as described in the Regulatory Analysis section of this SONAR. The probable costs to comply with the proposed language will be minimal because the only change needed will be to update the technical assistance provided by districts and the department to reflect the proposed rule language change that it is permissible for an IEP team to include district and statewide assessment results in an IEP.

The rules are being proposed under a specific statutory mandate. The state law that mandates the proposed rules is discussed in more detail on page 4 of this SONAR. Therefore, under Minnesota Statutes, section 14.127, subdivision 4(b), no small business or small city can claim a temporary exemption from the proposed rules.

## **LIST OF WITNESSES**

If these rules go to a public hearing, the Department anticipates having the following witnesses testify in support of the need for and reasonableness of the rules:

1. Director or Acting Director, Division of Compliance & Assistance, Minnesota Department of Education, will testify about the proposed rule language.
2. Eric Kloos, Supervisor, Special Education Division, Minnesota Department of Education, will testify about the proposed rule language.

## **RULE-BY-RULE ANALYSIS**

The proposed rules are needed and reasonable because the legislature directed the department to amend existing Minnesota Rule 3525.3810, subp. 2 to reflect that it is permissible for an IEP team to include district and statewide assessment results in an IEP. This rule is needed because the existing rule language often leads to confusion as the language can be interpreted to require more than federal law requires. The proposed language is reasonable because the additional language clarifies that assessments can be used but are not required to be used by an IEP team in creating an appropriate IEP for a student with disabilities. The following language changes also provide additional clarity to the rule language and will promote better outcomes and improved implementation in the education community by incorporating plain language and common phrasing used in state statute.

The proposed rule language and relevant rationale for proposed amendments are as follows:

### **Department of Education Proposed Permanent Rules Relating to Individualized Education Program Plans**

### 3525.2810 DEVELOPMENT OF INDIVIDUALIZED EDUCATION PROGRAM PLAN.

Subpart 1. **Definitions.** As used in ~~parts 3525.0210 to 3525.4770~~ this chapter, the terms defined in this part have the meanings given them.

- A. "Individualized education program" or "IEP" means a written statement for each pupil that is developed, reviewed, and revised in a meeting in accordance with this part and that includes:

*[For text of subitems (1) and (2), see Minnesota Rules]*

(3) a statement of the special education and related services and supplementary aids and services to be provided to the pupil, or on behalf of the pupil, and a statement of the program modifications or supports for school personnel that will be provided for the pupil to advance appropriately toward attaining the annual goals, to be involved and progress in the general curriculum in accordance with subitem (1) and to participate in extracurricular and other nonacademic activities, and to be educated and participate with other pupils and students in the activities described in this paragraph;

*[For text of subitems (4) to (11), see Minnesota Rules]*

*[For text of item B, see Minnesota Rules]*

Rational for Amendments: Addition of the phrase "the chapter" is needed and reasonable because it is broader and makes it easier for additional amendments to be made moving forward because it covers all rules under Minnesota Rules, Chapter 3525.

#### Subp. 2. **Development of IEP.**

- A. In developing each pupil's IEP, the IEP team ~~shall~~ must consider the strengths of the pupil ~~and~~; the concerns of the parents for enhancing the education of the pupil; ~~the results of the initial evaluation or most recent evaluation of the pupil; and, as appropriate, the results of the academic, developmental, and functional needs of the pupil.~~ The IEP team may report the pupil's performance on any general state or districtwide assessment assessments in the pupil's individualized education program.

- B. The IEP team shall:

(1) in the case of a pupil whose behavior impedes his or her the pupil's learning or that of others, consider, when appropriate, strategies, including positive behavioral interventions and supports to address that behavior;

*[For text of subitems (2) to (5), see Minnesota Rules]*

*[For text of items C and D, see Minnesota Rules]*

*[For text of subparts 3 to 5, see Minnesota Rules]*

Rationale for Amendments: The change from the word “shall” to the word “must” provides stronger, easier to understand language for the education community that the items listed in this section are requirements for consideration by the IEP team when developing a students’ IEP. In addition, 34 CFR Section 300.324(a)(1) states that in developing each child’s IEP, the IEP team *must* consider.....(iv) the academic, developmental, and functional needs of the child. (emphasis added)). This language change is necessary and reasonable because it aligns Minnesota rules with the 2004 IDEA amendments and regulations.<sup>16</sup>

The removal of the language “as appropriate’ and addition of “academic, functional, and development needs” clarifies that the IEP team considers the comprehensive needs of the student. This proposed language is needed and reasonable because it aligns Minnesota rules with the current language in federal law. During the last authorization of IDEA 2004, language was both removed and added to IDEA that relates to determining a student’s present levels of academic achievement and functional performance in order to determine the specialized instruction and related services needed for the student to make progress in the general education curriculum. The proposed rule language supports the use of consistent language in both federal and state law that applies to IEP teams and the creation of a student’s IEP.

As discussed above, the department received comments that the addition of this language surpassed federal requirements. The department disagrees with this perspective as this language aligns Minnesota rules with existing IDEA requirements under 34 C.F.R. section 300.324(a)(1)(iv). This section of IDEA requires the IEP team, in developing each child’s IEP, to consider the child’s academic, developmental and functional needs. IDEA requires that the IEP team, in developing each child’s IEP, consider the child’s academic, developmental and functional needs. This is not a new requirement and Minnesota rule is now being brought into alignment with existing federal law. A child’s performance on a State or district wide assessment logically would be included in the IEP team’s consideration of the child’s academic needs.

The addition of the language, “The IEP team may report the pupil's performance on any general state or districtwide assessment assessments in the pupil's individualized education program,” is needed and

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<sup>16</sup> The comments to the federal regulations also provide that 34 CFR section 300.324(a)(1)(iv) requires the IEP team to consider the academic, developmental, and functional needs of the child. A child’s performance on State or districtwide assessments logically would be included in the IEP team’s consideration of the child’s academic needs. In addition, as a part of an initial evaluation or reevaluation, § 300.305(a) requires the IEP Team to review existing evaluation data, including data from current classroom based, local, and State assessments. See Fed Reg. Vol. 71, No. 156, August 14, 2006, p. 46683.

reasonable because it clarifies that the IEP team may, but is not required to include the student's performance in state assessments in the student's IEP. This language change directly complies with the legislative directive and alleviates the confusion that this was a requirement to include in the student's IEP, rather than an optional one.

## LIST OF EXHIBITS

If a hearing occurs, in support of the need for and reasonableness of the proposed rules, the Department anticipates that it will enter the following exhibits into the hearing record:

- 1) 2020 IEP Assessments SONAR and supporting appendices;
- 2) Revisor-Approved Proposed Rule Language; and
- 3) Relevant Code of Federal Regulations and supporting comments.

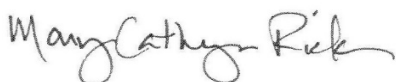
## CONCLUSION

The department's proposed rule amendments comply with the legislative directive given during the 2019 legislative session. The proposed rule language also aligns Minnesota rules with existing federal language found in the IDEA regulations. These amendments clarify confusing language in Minnesota Rules chapter 3525.2810 and will promote improved implementation and provision of special education services to all Minnesota students with disabilities.

Based on the foregoing, the proposed rules are both needed and reasonable.

10/27/2020

Date



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Mary Cathryn Ricker, Commissioner  
Minnesota Department of Education

## Bibliography

### Federal Law

[34 C.F.R. § 300.199 \(2006\).](#)

[34 C.F.R. § 300.306\(c\)\(1\) \(2004\).](#)

[34. C.F.R. § 300.324 \(2004\).](#)

[34 C.F.R § 300.600 \(2006\).](#)

[Fed. Reg. Vol. 71, No. 156 \(August 14, 2006\), p. 46683.](#)

[20 U.S.C. § 1400 \(2004\)](#), available at <https://www.law.cornell.edu/uscode/text/20/1400> or <https://uscode.house.gov/view.xhtml?path=/prelim@title20/chapter33&edition=prelim> (last visited October 20, 2020).

Congressional Research Service, *The Individuals With Disabilities Education Act (IDEA), Part C: Early Intervention for Infants & Toddlers With Disabilities* (August 9, 2019), available at <https://crsreports.congress.gov/product/pdf/R/R43631> (last visited October 20, 2020).

### Minnesota Rules

[Minnesota Rules, Chapter 3525.](#)

[Minn. R. 3525.2810, subp. 2\(a\).](#)

### Minnesota State Statutes

[Minnesota Statutes, Chapter 120-129C \(2019\);](#)

[Minn. Stat. § 125A.03\(b\).](#)

### Minnesota Session Law

[Laws of Minnesota 2019, 1<sup>st</sup> Spec. Sess. Chapter 11, article 14, section 10.](#)

### Other Resources

New Ulm Special Education Proposal, article in the Mankato Free Press with proposal attached as a download, (November 1, 2018), available at [https://www.mankatofreepress.com/new-ulm-special-education-proposal/pdf\\_8826e4d2-de1c-11e8-9817-8b277ee6b241.html](https://www.mankatofreepress.com/new-ulm-special-education-proposal/pdf_8826e4d2-de1c-11e8-9817-8b277ee6b241.html).

