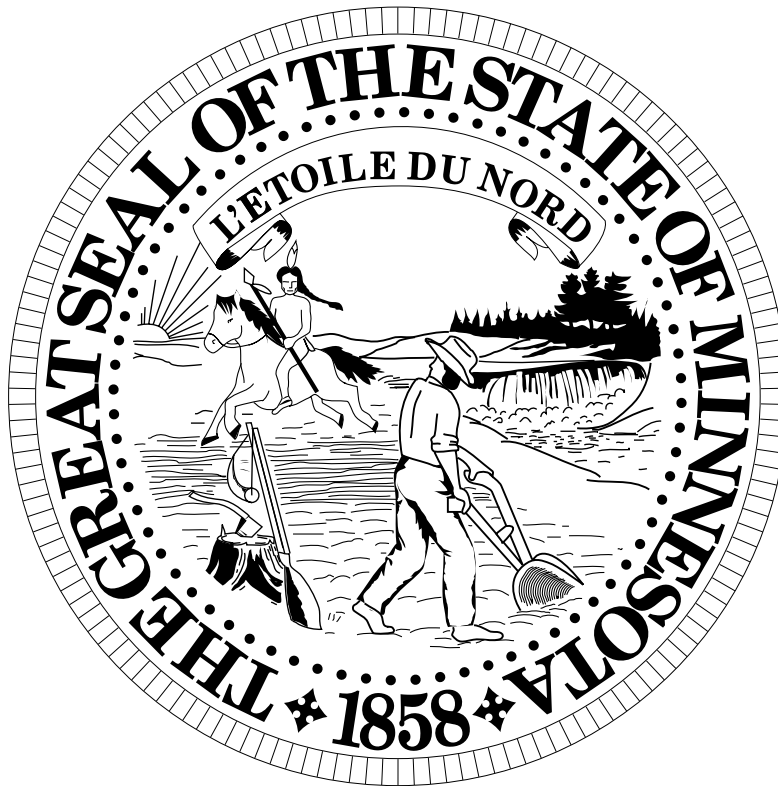


State of Minnesota

State Register

Rules and Official Notices Edition



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State Register

Judicial Notice Shall Be Taken of Material Published in the *State Register*

The *State Register* is the official publication of the State of Minnesota, published weekly to fulfill the legislative mandate set forth in *Minnesota Statutes* § 14.46. The *State Register* contains:

- proposed, adopted, exempt, expedited emergency and withdrawn rules
- executive orders of the governor
- appointments
- proclamations and commendations
- commissioners' orders
- revenue notices
- official notices
- state grants and loans
- contracts for professional, technical and consulting services
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Vol. 25 Issue Number	PUBLISH DATE	Deadline for both Adopted and Proposed RULES	Deadline for: Emergency Rules, Executive and Commissioner's Orders, Revenue and Official Notices, State Grants, Professional-Technical-Consulting Contracts, Non-State Bids and Public Contracts
#38	Monday 19 March	Noon Wednesday 7 March	Noon Tuesday 13 March
#39	Monday 26 March	Noon Wednesday 14 March	Noon Tuesday 20 March
#40	Monday 2 April	Noon Wednesday 21 March	Noon Tuesday 27 March
#41	Monday 9 April	Noon Wednesday 28 March	Noon Tuesday 3 April

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Minnesota Rules: Amendments & Additions	
Volume 25, Issue #27-38	1524
Proposed Rules	
Children, Families, and Learning Department	
Special Education.....	1526
Minnesota Housing Finance Agency	
Capitol contribution of investors	1559
Official Notices	
Agriculture Department	
Minnesota Rural Finance Authority public hearing on Agricultural Development Revenue bonds issued for:	
• Approx. 137 acres of bare land in Township 127N - R47W, Traverse County on behalf of Steven G. Lundquist	1561
• Approx 160 acres of bare land in Kintire Township, Redwood County on behalf of Todd R. Mertens	1561
• Approx. 80 acres of bare land in Normandia Township, Yellow Medicine County on behalf of Paul and Julie Neisius.....	1562
Bureau of Mediation Services	
Opinions sought for planned amendment to rules governing delivery of documents to the Bureau of Mediation Services.....	1562
Metropolitan Airports Commission	
Notice of public hearing concerning acquisition of property near the Minneapolis-St. Paul International Airport, Hennepin County, Minnesota	1563
Natural Resources Department	
Notice of sale of state metallic minerals exploration and mining leasing	1564
Pollution Control Agency	
Opinions sought on planned amendments to rules governing individual sewage treatment systems.....	1564
Opinions sought on planned rule governing the prohibition of distribution for sale or use of twenty-two specified or new products in Minnesota.....	1565
Public Safety Department	
Opinions sought regarding a petition submitted by the University of Minnesota to the Minnesota Emergency Commission	1567
Minnesota State Retirement System (MSRS)	
Board of directors, regular meeting	1567
State Grants and Loans	
Economic Security Department	
Funding available for coordinated employment services	1568
State Contracts	
Administration Department	
Proposals sought for energy efficiency improvement projects	1569
Agriculture Department	
Proposals sought for market study of identity-preserved agricultural products	1569
Colleges and Universities, Minnesota State Winona State University	
Proposals sought for a digital platemaker	1570
Corrections Department	
Proposals sought for blood/body fluid/material cleanup and disinfect on an on-call basis	1570
Minnesota Historical Society	
Proposals sought for a accessibility ramp.....	1571
Natural Resources Department	
Bids sought for deep borehole drilling & vibrating wire pressure transducer installation.....	1572
Pollution Control Agency	
Proposals sought for expert analysis and advice regarding petroleum refining in Minnesota.....	1572
Transportation Department	
Proposals sought for team building and shared process development.....	1573
Proposals sought for navigation systems technicians	1573
Non-State Contracts & Grants	
City of Rochester	
Proposals sought for a alternative urban areawide review (AUAR).....	1574
Metropolitan Council	
Proposals sought for Hiawatha line LRT public art & design program	1574
Proposals sought for Hiawatha line LRT - downtown east station public art & design program.....	1575
Metro Transit seeks bids for a in-ground heavy duty vehicle lift system, 3 post set, 1 set.....	1576
University of Minnesota	
Bid Information Service (BIS) available for all potential vendors.....	1576
Certificate of Assumed Name	
S. H. Smith Insurance Agency of Minnesota, Inc: File #0248077 (First Run).....	1576

Minnesota Rules: Amendments and Additions

NOTICE: How to Follow State Agency Rulemaking in the State Register

The *State Register* is the official source, and only complete listing, for all state agency rulemaking in its various stages. State agencies are required to publish notice of their rulemaking action in the *State Register*. Published every Monday, the *State Register* makes it easy to follow and participate in the important rulemaking process. Approximately 80 state agencies have the authority to issue rules. Each agency is assigned specific **Minnesota Rule** chapter numbers. Every odd-numbered year the **Minnesota Rules** are published. The current 1999 set is a 13-volume bound collection of all adopted rules in effect at the time. Supplements are published to update this set of rules. Generally speaking, proposed and adopted exempt rules do not appear in this set because of their short-term nature, but are published in the *State Register*.

An agency must first solicit **Comments on Planned Rules** or **Comments on Planned Rule Amendments** from the public on the subject matter of a possible rulemaking proposal under active consideration within the agency (*Minnesota Statutes* §§ 14.101). It does this by publishing a notice in the *State Register* at least 60 days before publication of a notice to adopt or a notice of hearing, or within 60 days of the effective date of any new statutory grant of required rulemaking.

When rules are first drafted, state agencies publish them as **Proposed Rules**, along with a notice of hearing, or a notice of intent to adopt rules without a hearing in the case of noncontroversial rules. This notice asks for comment on the rules as proposed. Proposed emergency rules and withdrawn proposed rules are also published in the *State Register*. After proposed rules have gone through the comment period, and have been rewritten into their final form, they again appear in the *State Register* as **Adopted Rules**. These final adopted rules are not printed in their entirety in the *State Register*, only the changes made since their publication as Proposed Rules. To see the full rule, as adopted and in effect, a person simply needs two issues of the *State Register*, the issue the rule appeared in as proposed, and later as adopted. For a more detailed description of the rulemaking process, see the most current edition of the *Minnesota Guidebook to State Agency Services*.

The *State Register* features partial and cumulative listings of rules in this section on the following schedule: issues #1-13 inclusive; issues #14-25 inclusive; issue #26 cumulative for issues #1-26; issues #27-38 inclusive; issue #39, cumulative for issues #1-39; issues #40-51 inclusive; and issues #1-52 (or 53 in some years), cumulative for issues #1-52 (or 53). An annual subject matter index for rules was separately printed usually in August, but starting with Volume 19 now appears in the final issue of each volume. For copies or subscriptions to the *State Register*, contact Minnesota's Bookstore, 117 University Avenue, St. Paul, MN 55155 (612) 297-3000, or toll-free 1-800-657-3757.

Volume 25, Issues # 27-38

Agriculture Department

1535.0020 ; .0030; .0040; .0050; .0060; .0070; .0080; .0090; .0100; .0110; .0120; .0130; .0140; .0150; .0160; .0170; .0180; .0190; .0200; .0210; .0220; .0230; .0240; .0250; .0260; .0270; .0280; .0290; .0300; .0310; .0320; .0330; .0340; .0350; .0360; .0370; .0380; .0390; .0400; .0410; .0420; .0430; .0440; .0450; .0460; .0470; .0480; .0490; .0500; .0510; .0520; .0530; .0540; .0550; .0560; .0570; .0580; .0590; .0600; .0610; .0620; .0630; .0640; .0650; .0660; .0680; .0690; .0760; .0770; .0780; .0790; .0800; .0810; .0820; .0830; .0840; .0860; .0860; .0870; .0880; .0890; .0900; .0910; .0920; .0930; .0940; .0950; .0960; .0970; .0980; .0990; .1000; .1010; .1020; .1030; .1040; .1050; .1060; .1070; .1080; .1090; .1100; .1110; .1120; .1130; .1140; .1150; .1160; .1170; .1180; .1190; .1200; .1210; .1220; .1230; .1240; .1250; .1260; .1270; .1280; .1290; .1300; .1310; .1320; .1330; .1340; .1350; .1360; .1370; .1380; .1390; .1400; .1410; .1420; .1430; .1440; .1450; .1460; .1470; .1480; .1490; .1500; .1510; .1520; .1530; .1540; .1550; .1560; .1570; .1580; .1590; .1600; .1610; .1620; .1630; .1640; .1650; .1660; .1670; .1680; .1690; .1700; .1710; .1720; .1730; .1740; .1750; .1760; .1770; .1780; .1790; .1800; .1810; .1820; .1830; .1840; .1850; .1860; .1870; .1880; .1890; .1900; .1910; .1920; .1930; .1935; .1940; .1950; .1960; .1970; .1980; .1990; .2000; .2010; .2015; .2020; .2030; .2040; .2050; .2060; .2070; .2080; .2090; .2100; .2110; .2120; .2130; .2140; .2150; .2160; .2170; .2180; .2190; .2200; .2210; .2220; .2230; .2240; .2250; .2260; .2270; .2280; .2290; .2300; .2310; .2320; .2330; .2340; .2350; .2360; .2370; .2380; .2390; .2400; .2410; .2420; .2430; .2440; .2450; .2460; .2470; .2480; .2490; .2500; .2510; .2520; .2530; .2540; .2550; .2560; .2570; .2580; .2590; .2600; .2610; .2620; .2640; .2650; .2660; .2670; .2680; .2690; .2700; .2710; .2720; .2930; .2740; .2750; .2760; .2770; .2780; .2790; .2800; .2810; .2820; .2830; .2840; .2850; .2860; .2930; .2940; .2950; .2960; .2970; .2980; .2990; .3000; .3090; .3100; .3130; .3140; .3150; .3170; .3180; .3190; .3200; .3210; .3220; .3230; .3240; .3250; .3260; .3270; .3280; .3290; .3300; .3310; .3320; .3330	
(proposed repealer)	1464
1535.0700 ; .0730 (proposed)	1464
1545.0230 (proposed)	1311
1545.3130 ; .3150 (adopted)	1241

1545.3130 s. 2 ; .3180; .3190; .3200; .3210; .3220; .3230; .3240; .3250; .3260; .3270; .3280; .3290; .3300; .3310; .3320; .3330; .3350 (repealed)	1241
Animal Health Board	
1705.1090 ; .1130; .1131; .1145; .1146; .1147; .1151; .1152; .1175; .1180; .1190; .1200; .1210; (adopted)	1378
Minnesota Board of Architecture, Engineering, Land Surveying, Landscaping Architecture, Geoscience, and Interior Design	
1800.1000 ; .1100; .1200 (proposed)	1399
Chiropractic Examiners Board	
2500.0100 (proposed)	1227
2500.0100 (proposed)	1281
2500.0400 (proposed)	1228
2500.0700 ; .0710; .0720; .0750; .1000 (proposed)	1283
2500.0730 ; .0740 (proposed repealer)	1283
2500.0800 (proposed)	1285
2500.1200 (proposed)	1287
2500.1200 ; .1500; .1550 (proposed)	1437
2500.1200 ; s.5 (proposed repealer)	1287
2500.1410 (proposed)	1289
2500.1600 (proposed)	1230
2500.2110 (proposed)	1231
2500.2520 (proposed)	1291
Crime Victims Reparations Board	
3050.0100 , s.2a; 7; .3400, s.1,A,C; .3600 (withdrawn proposed) ...	1336
Children, Families and Learning Department	
3501.0320 ; .0330; .0370; .0400; .0420; (adopted)	1402
3501.0360 ; .0370 s.1,2,4; .0420 s.4; .0430 (repealed)	1402
3525.0200 ; .0300; .0400; .0550; .0700; .0750; .0755; .0800; .1100; .1310; .1325; .1327; .1329; .1333; .1335; .1337; .1339; .1341; .1343; .1348; .1350; .1352; .1354; .1550; .2325; .2335; .2340; .2350; .2385; .2405; .2450; .2455; .2550; .2900; .2910; .2920; .2930; .3100; .3300; .3400; .3600; .3700; .3750; .3800; .3900; .4000; .4100; .4210; .4300; .4410; .4500; .4600; .4700; .4750; .4770 (proposed)	1526
3525.0200 s.2 ; .1329 s.2; .1333 s.3; .1510; .2550 s.1; .2750; .2900 s.1,3; .3700 s.2; .4200; .4400 (proposed repealer)	1526

Minnesota Rules: Amendments and Additions

Health Department		Psychology Board	
4630.4800; .4900; .5000; .5100; .5200; .5300; .5400; .5500; .5600;		7200.6100; 6105; .6175 (proposed)	1375
.5700; .5800; .5900; .6000; .6100; .6200; .6300; .6400; .6500;		7200.6170 (proposed repealed)	1375
.6550 (proposed repealer)	1329	Public Safety Department	
4717.7000 (proposed)	1329	7410.0700 (adopted)	1439
4900.0010 (proposed)	1599	Racing Commission	
Labor and Industry Department		7873.0185; .0190; 7877.0120; .0170; 7883.0100; .0130; .0140;	
5205.0030; 5207.0100; .1000 (adopted exempt)	1241	.0150; 7890.0100 (proposed)	1257
Natural Resources Department		7890.0100 s. 12 (proposed repealer)	1257
6115.0360 (proposed)	1331	Health Department and Pollution Control Agency	
6216.0350 (adopted expedited emergency)	1341	9400.0100; .0350; .0400; .0500; .0600; .0800; .1000; .1200;	
6216.0350 (ERRATA)	1403	.1300; .1500 (proposed)	1232
6236.0300; .0600; .0810; .1060 (adopted expedited emergency) ...	1337	9400.1500, s.3 (proposed repealer)	1232
6264.0300 (adopted exempt)	1379	Human Services Department	
6266.0700 (expedited emergency)	1404	9505.0390 (proposed)	1238
6266.0700,s.2 (repealed)	1404	9515.0200; .0310; .0450; .0500; .0600; .0700; 9525.2700	
Peace Officer Standards and Training Board		(adopted)	1313
6700.0300; .0601; .0700 (adopted)	1242	9515.0300; .0400; .0800 (repealed)	1313
6700.0300; .0400; .0900; .1000; .1101 (proposed)	1333		
6700.0900 s.12; .1120; .1130; .1700, s.2,5,6,7,8,9,10,11;			
.1000 (proposed repealer)	1333		

Proposed Rules

Comments on Planned Rules or Rule Amendments

An agency must first solicit **Comments on Planned Rules** or **Comments on Planned Rule Amendments** from the public on the subject matter of a possible rulemaking proposal under active consideration within the agency (*Minnesota Statutes* §§ 14.101). It does this by publishing a notice in the *State Register* at least 60 days before publication of a notice to adopt or a notice of hearing, and within 60 days of the effective date of any new statutory grant of required rulemaking.

Rules to be Adopted After a Hearing

After receiving comments and deciding to hold a public hearing on the rule, an agency drafts its rule. It then publishes its rules with a notice of hearing. All persons wishing to make a statement must register at the hearing. Anyone who wishes to submit written comments may do so at the hearing, or within five working days of the close of the hearing. Administrative law judges may, during the hearing, extend the period for receiving comments up to 20 calendar days. For five business days after the submission period the agency and interested persons may respond to any new information submitted during the written submission period and the record then is closed. The administrative law judge prepares a report within 30 days, stating findings of fact, conclusions and recommendations. After receiving the report, the agency decides whether to adopt, withdraw or modify the proposed rule based on consideration of the comments made during the rule hearing procedure and the report of the administrative law judge. The agency must wait five days after receiving the report before taking any action.

Rules to be Adopted Without a Hearing

Pursuant to *Minnesota Statutes* § 14.22, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing. An agency must first solicit **Comments on Planned Rules** or **Comments on Planned Rule Amendments** from the public. The agency then publishes a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. If, during the 30-day comment period, 25 or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of §§ 14.14-14.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

Department of Children, Families, and Learning

Division of Special Education

Proposed Permanent Rules Relating to Special Education

Amended Notice of Hearing

Proposed Rules Governing Special Education, *Minnesota Rules*, Chapter 3525

Public Hearing. The Department of Children, Families and Learning intends to adopt rules after a public hearing following the procedures set forth in the Administrative Procedure Act, *Minnesota Statutes*, §§ 14.131 to 14.20.

The Department will hold a public hearing on the above-entitled rules on Monday, April 23, 2001, from 2:00 to 6:00 p.m., at the Ramsey County Library, 2180 Hamline Avenue North, Roseville, Minnesota. All interested or affected persons will have an opportunity to participate by submitting either oral or written data, statements, or arguments. Statements may be submitted without appearing at the hearing. Additional days of hearing will be scheduled if necessary.

Administrative Law Judge. The hearing will be conducted by Administrative Law Judge Steve Mihalchick who can be reached at the Office of Administrative Hearings, 100 Washington Square, Suite 1700, Minneapolis, Minnesota 55401-2138, **phone:** (612) 349-2544, and **fax:** (612) 349-2665. The rule hearing procedure is governed by *Minnesota Statutes*, §§ 14.131 to 14.20, and by the rules of the Office of Administrative Hearings, *Minnesota Rules*, parts 1400.2000 to 1400.2240. Questions concerning the rule hearing procedure should be directed to the Administrative Law Judge.

Agency Contact Person. The agency contact person is Kristin Asche at the Minnesota Department of Children, Families and Learning, 1500 Highway 36 West, Roseville, MN 55113, **phone:** (651) 582-8248, **fax:** (651) 582-8725, **email:** kristin.ascher@state.mn.us, **TTY:** (651) 582-8201.

Subject of Rules and Statutory Authority. The subject of the hearing will be the proposed rules governing special education, *Minnesota Rules*, parts 3525.0200 to 3525.4770.

The proposed rules include amendments to part 3525.1333 governing the eligibility criteria for cognitive impairment and part 3525.1335 governing the eligibility criteria for other health impairments, as authorized by *1999 Minnesota Laws*, Chapter 123, § 19. The proposed rules also include, as authorized by *1999 Minnesota Laws*, Chapter 123, § 20, amendments to part 3525.1329 governing the eligibility criteria for emotional or behavior disorders; new language governing IEP team responsibilities for evaluation, IEP development, and placement; and the repeal of part 3525.1100, subpart 2, item D, governing parent advisory councils; part 3525.2550, subpart 1 and subpart 2, items A and B, governing conduct before assessment; part 3525.2750 governing educational assessment; part 3525.2900, subparts 1 and 3 governing IEP development and content; and part 3525.3300, item A and items C through V governing contents of notice. The repeals described above are mandated by the Legislature because the rule provisions are duplicative of state statute or federal statute and regulation.

The proposed rules also include a new definition of “cultural liaison” at part 3525.0200, subpart 1h; a new definition of “extended school year (ESY) services” at part 3525.0200, subpart 2e; new language governing the provision of ESY services at 3525.0755; the repeal of part 3525.1510 governing personnel variances; amendments to the hearing provisions at parts 3525.3700 through 3525.4770; and technical changes and corrections throughout the chapter to update statutory and rule references, clarify existing language, and comport the rules with federal law and regulation.

The proposed rules will be published in the *State Register* on March 19, 2001. You may obtain a free copy of the proposed rules upon request from the agency contact person listed above or from the agency website at <http://cfl.state.mn.us/rulemaking/>.

Statement of Need and Reasonableness. The Department issued a Statement of Need and Reasonableness on November 27, 2000, and an Addendum to the Statement of Need and Reasonableness on March 12, 2001. These statements contain a summary of the justification for the proposed rules, including a description of who will be affected by the proposed rules and the fiscal impact of the proposed rules. You may obtain a copy of the Statement of Need and Reasonableness or Addendum to the Statement of Need and Reasonableness from the agency contact person, the agency website at <http://cfl.state.mn.us/rulemaking/>, or the Office of Administrative Hearings.

Public Comment. All interested or affected persons, including representatives of associations and other interested groups, may participate by presenting their views on the proposed rules either orally at the hearing or in writing at any time before the close of the hearing record. All evidence presented must relate to the proposed rules. Written materials may be presented to the Administrative Law Judge to be recorded in the hearing record for five working days after the public hearing ends. This five-day comment period may be extended for a longer period not to exceed 20 calendar days if ordered by the Administrative Law Judge at the hearing. Following the comment period, there will be a five-working-day response period during which the agency and any interested person may respond in writing to any new information submitted. No additional evidence may be submitted during the five-day response period. All comments and responses submitted to the Administrative Law Judge must be received at the Office of Administrative Hearings no later than 4:30 p.m. on the due date. All comments or responses received will be available for review at the Office of Administrative Hearings.

The agency requests that any person submitting written comments or materials to the Administrative Law Judge also submit a copy of the written comments or materials to the agency contact person at the address stated above.

Alternative Format/Accommodation. Upon request, this Notice can be made available in an alternative format, such as large print, Braille, or cassette tape. To make such a request, or if you need an accommodation to make this hearing accessible, please contact the agency contact person at the address or telephone number listed above.

Modifications. The proposed rules may be modified as a result of the rule hearing process. Modifications must be supported by data and views presented during the rule hearing process, and the adopted rules may not be substantially different than these proposed rules. If the proposed rules affect you in any way, you are encouraged to participate.

Adoption Procedure After The Hearing. After the close of the hearing record, the Administrative Law Judge will issue a report on the proposed rules. Any interested person may ask to be notified of the date when the judge’s report will become available, and can make this request at the hearing or in writing to the Administrative Law Judge. Any interested person may also ask to be notified of the date on which the agency adopts the rules and files them with the Secretary of State, or ask to register with the agency to receive notice of future rule proceedings, and can make these requests at the hearing or in writing to the agency contact person stated above.

Lobbyist Registration. *Minnesota Statutes*, Chapter 10A, requires each lobbyist to register with the State Campaign Finance and Public Disclosure Board. Questions regarding this requirement may be directed to the Campaign Finance and Public Disclosure Board at: Suite 190, Centennial Building, 658 Cedar Street, St. Paul, Minnesota 55155, **phone:** (651) 296-5148 or (800) 657-3889.

Order. I order that the rulemaking hearing be held at the date, time, and location listed above.

Dated: 27 February 2001

Christine Jax, Ph.D.
Commissioner

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Proposed Rules

3525.0200 DEFINITIONS FOR SPECIAL EDUCATION.

Subpart 1. **Scope.** As used in parts 3525.0200 to ~~3525.4700~~ 3525.4770, the terms defined in this part have the meanings given them.

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

Subp. 1c. **Evaluation or reevaluation.** “Evaluation” or “reevaluation” means an appropriate individual educational evaluation of a pupil’s performance or development conducted by appropriately licensed personnel according to recognized professional standards ~~and, parts 3525.2550 to 3525.2750, and 3525.2910.~~

[For text of subps 1d to 1g, see M.R.]

Subp. 1h. **Cultural liaison.** “Cultural liaison” means a person who is of the same racial, cultural, socioeconomic, or linguistic background as the pupil, and who:

- A. provides information to the IEP team about the pupil’s race, cultural, socioeconomic, and linguistic background;
- B. assists the IEP team in understanding how racial, cultural, socioeconomic, and linguistic factors impact educational progress;
and
- C. facilitates the pupil’s parent’s understanding and involvement in the special education process.

If a person who is of the same racial, cultural, socioeconomic, or linguistic background as the pupil is not available, then a person who has knowledge of the pupil’s racial, cultural, socioeconomic, and linguistic background may act as a cultural liaison.

Subp. 2. [See repealer.]

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

Subp. 2e. **Extended school year (ESY) services.** “Extended school year (ESY) services” means special education instruction and related services for pupils who demonstrate the need for continued service beyond the instructional year as a necessary component of a free, appropriate public education.

[For text of subps 3a and 4a, see M.R.]

Subp. 7a. **Initial formal evaluation.** “Initial formal evaluation” means the first formal evaluation by the district that addresses the specific problems as outlined on the notice to evaluate in accordance with ~~parts 3525.2650 and 3525.3500~~ Code of Federal Regulations, title 34, section 300.503.

[For text of subps 8a to 8d, see M.R.]

Subp. 8e. **Manual restraint.** “Manual restraint” means physical intervention intended to hold a ~~person~~ pupil immobile or limit a ~~person’s pupil’s~~ pupil’s movement by using body contact as the only source of physical restraint.

Subp. 8f. **Mechanical restraint.** “Mechanical restraint” means the use of devices ~~such as, for example,~~ such as, for example, mittens, straps, or restraint chairs to limit a ~~person’s pupil’s~~ pupil’s movement or hold a ~~person~~ pupil immobile as an intervention precipitated by the ~~person’s~~ pupil’s behavior. Mechanical restraint applies to uses intended to prevent injury with ~~persons~~ pupils who engage in behaviors ~~such as, for example,~~ such as, for example, head-banging, gouging, or other self-injurious actions that result in tissue damage and medical problems. Mechanical restraint does not apply to restraint used to treat a ~~person’s pupil’s~~ pupil’s medical needs or to position a ~~person~~ pupil with physical disabilities.

[For text of subps 10 to 18a, see M.R.]

Subp. 19a. **Resident district.** “Resident district” means the district in which the pupil’s parent, as defined by ~~parts 3525.0200, subpart 11a, and part 3525.0800, subpart 9, and~~ Code of Federal Regulations, title 34, section 300.20, resides. It does not mean the district in which a surrogate parent resides. If the parents of the pupil are separated or divorced and both maintain legal rights to determine the pupil’s education, but are living in different districts, the district of residence is the district in which the pupil primarily resides for the greater part of the school year.

In those situations when a pupil is placed for care and treatment or foster care by an agency other than the school district, the district of residence is the district in which the pupil’s parent resides or the district designated by the commissioner as provided in *Minnesota Statutes*, sections 125A.03 to 125A.24. If the parents of the pupil are separated or divorced and both maintain legal rights to determine the pupil’s education, but are living in different districts, the district of residence is the district last responsible for education services when the pupil resided with either parent.

[For text of subps 19b to 20b, see M.R.]

Subp. 24. **Teacher.** “Teacher” means a person licensed under parts ~~8700.5501 to 8700.5514~~ 8710.5100 to 8710.5800 by the Board of Teaching to instruct pupils with specific disabling conditions.

[For text of subps 25 to 25b, see M.R.]

Subp. 26. **Vocational evaluation.** “Vocational evaluation” means an ongoing, comprehensive process used to assist the pupil and the team to determine the pupil’s strengths, interests, abilities, and needed support to be successful in a vocational setting. A vocational evaluation is one component of the ongoing special education multidisciplinary evaluation described in parts 3525.2550 ~~to 3525.2750~~ and 3525.2910.

3525.0300 PROVISION OF FULL SERVICES.

~~Children and youth~~ Pupils with disabilities ~~and~~ who are eligible for special education services based on an appropriate individual ~~assessment~~ evaluation shall have access to free appropriate public education, as that term is defined by applicable law.

3525.0400 LEAST RESTRICTIVE ENVIRONMENT.

To the maximum extent appropriate, ~~children~~ pupils with disabilities shall be educated with children who do not have disabilities and shall attend regular classes. A ~~person~~ pupil with ~~disabilities~~ a disability shall be removed from a regular educational program only when the nature or severity of the disability is such that education in a regular educational program with the use of supplementary aids and services cannot be accomplished satisfactorily. Furthermore, there must be an indication that the pupil will be better served outside of the regular program. The needs of the pupil shall determine the type and amount of services needed.

3525.0550 PUPIL IEP MANAGER.

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

3525.0700 PARENTAL INVOLVEMENT.

Parents of ~~children~~ pupils with disabilities have a right to be involved by the school district in the education decision-making process by participating or being afforded the opportunity to participate at each IEP meeting to develop, review, or revise the IEP. At the time of contact, the district shall inform the parents of their right to bring anyone of their choosing to accompany them to the meeting. The district shall inform the pupil’s parents about the alternatives and methods of instruction as described in *Minnesota Statutes*, section ~~420.17, subdivision 2~~ 125A.05.

3525.0750 IDENTIFICATION OF ~~CHILDREN~~ PUPILS WITH DISABILITIES.

School districts shall develop systems designed to identify ~~persons~~ pupils with disabilities beginning at birth, pupils with disabilities attending public and nonpublic school, and ~~persons~~ pupils with disabilities who are of school age and are not attending any school.

The district’s identification system shall be developed ~~in accordance with~~ according to the requirement of nondiscrimination and included in the district’s total special education system plan.

3525.0755 EXTENDED SCHOOL YEAR SERVICES.

Subpart 1. Scope. School districts are required to provide extended school year (ESY) services to a pupil if the IEP team determines the services are necessary during a break in instruction in order to provide a free, appropriate public education.

Subp. 2. Definitions. For the purposes of ESY, the terms in this subpart have the meanings given them.

A. “Recoupment” means a pupil’s ability to regain the performance of a skill or acquired knowledge to approximately the same level of performance just prior to the break.

B. “Regression” means a significant reduction in the performance of a skill or acquired knowledge, specified in the annual goals as stated in the pupil’s IEP, due to a break in instruction.

C. “Self-sufficiency” means a domain of functional skills necessary for a pupil to achieve a reasonable degree of personal independence as typically identified in the annual IEP goals for a pupil requiring a functional curriculum. Skill areas within the domain of self-sufficiency include:

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Proposed Rules

(1) basic self-help, including toileting, eating, feeding, and dressing;

(2) muscular control;

(3) physical mobility;

(4) impulse control;

(5) personal hygiene;

(6) development of stable relationships with peers and adults;

(7) basic communication; and

(8) functional academic competency, including basic reading and writing skills, concepts of time and money, and numerical or temporal relationships.

Subp. 3. **Determination of ESY entitlement.** At the annual IEP meeting, the IEP team must determine a pupil is in need of ESY services if the pupil meets the conditions of item A, B, or C.

A. there will be significant regression of a skill or acquired knowledge from the pupil's level of performance on an annual goal that requires more than the length of the break to recoup;

B. services are necessary for the pupil to attain and maintain self-sufficiency because of the critical nature of the skill addressed by an annual goal, the pupil's age and level of development, and the timeliness for teaching the skill; or

C. the IEP team otherwise determines, given the pupil's unique needs, that ESY services are necessary to ensure the pupil receives a free, appropriate public education.

The determination of the pupil's level of performance must be derived from the progress measurements reported during the school year as required by *Code of Federal Regulations*, title 34, section 300.347.

Subp. 4. **Sources of information for IEP team determination.** The IEP team must base its determination of need for ESY services on multiple sources of information, including:

A. prior observation of the pupil's regression and recoupment over the summer;

B. observation of the pupil's tendency to regress over extended breaks in instruction during the school year; and

C. experience with other pupils with similar instructional needs.

Subp. 5. **Other factors to be considered.** In making its determination of ESY needs, the IEP team must also consider the following factors:

A. the pupil's progress and maintenance of skills during the regular school year;

B. the pupil's degree of impairment;

C. the pupil's rate of progress;

D. the pupil's behavioral or physical problems;

E. the availability of alternative resources;

F. the pupil's ability and need to interact with nondisabled peers;

G. the areas of the pupil's curriculum which need continuous attention; and

H. the pupil's vocational needs.

3525.0800 RESPONSIBILITY FOR ENSURING PROVISION OF INSTRUCTION AND SERVICES.

Subpart 1. **Pupil's district of residence.** As provided in *Minnesota Statutes*, ~~sections section~~ 125A.05 and 125A.06, a pupil's district of residence is responsible for assuring that an appropriate program is provided for all eligible pupils placed by the district's team within the district or in an out-of-district placement regardless of the method or location of instruction used.

Subp. 2. **Purchased services.** The district shall not purchase special educational services for a pupil from a public or private agency when ~~such~~ the service is available or can be made available and can be more appropriately provided as the least restrictive alternative within the district. Whenever it is appropriate for a district to purchase special education service for pupils with disabilities ~~and~~ who reside in the district, it continues to be the responsibility of the school district, consistent with ~~the provisions of~~ *Minnesota Statutes* and parts 3525.0200 to ~~3525.4700~~ 3525.4770, to assure and ascertain that such pupils and youth receive the education and related services and rights to which they are entitled.

Subp. 3. **Initial activities.** The resident district is responsible for the pupil's initial ~~assessment~~ evaluation, initial IEP, due process procedures, and initial placement regardless of whether the placement is within the district or outside the district, unless the pupil is placed for care and treatment or through one of the education choice options.

If the team determines that it may be appropriate to consider placement options outside of the resident district, representatives from the outside district, agency, or academy must be invited to attend a team meeting as a participant to complete an appropriate IEP for the pupil including the needs, goals, objectives, services, and placement of the pupil.

[For text of subs 4 to 6, see M.R.]

Subp. 7. **Pupils placed for care and treatment.** The educational and financial responsibilities of the resident and providing districts for pupils placed for care and treatment under *Minnesota Statutes*, sections 125A.15 and 125A.16, are as ~~follow~~ follows:

A. District placements: If the resident district places a pupil for care and treatment, the resident district shall be responsible for providing and paying for an appropriate education program ~~in accordance with part 3525.2320 and~~ according to this part, either directly or through tuition agreement, and shall also be responsible for the costs associated with care and treatment.

B. Nondistrict placement:

(1) When the pupil is placed in a residential facility or foster care by someone other than the resident district, the district in which the facility is located is responsible for providing an appropriate education program as set forth in statutes and parts 3525.0200 to ~~3525.4700~~ 3525.4770 including the notice and hearing provisions. The resident district is responsible for assuming the cost of the educational program when notified ~~in accordance with~~ according to *Minnesota Statutes*, sections 125A.15 and 127A.47. The district is not responsible for the cost of care and treatment.

(2) When the pupil is placed in a day treatment program by an agency other than the resident district, the resident district is responsible for determining the location of the special education services in accordance with the options outlined in *Minnesota Statutes*, section ~~120.17, subdivision 6~~ 125A.15. The resident district shall be responsible for ensuring that an appropriate program is provided in accordance with subparts 4 to 6, including all costs for the education program and any due process proceedings regardless of the method or locations of services selected.

[For text of subp 8, see M.R.]

Subp. 9. **Financial and legal responsibility for pupils 18 through 21.** For a pupil who is age 18 through 21 years of age and is receiving special education, the district where the pupil's parents, legal guardian, or conservator lives shall be financially responsible for the cost of the special education program even in those cases where the pupil serves as the parent according to ~~part 3525.0200, subpart 11a~~ *Code of Federal Regulations*, title 34, section 300.20, for due process purposes.

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

Subpart 1. **State responsibility for all educational programs for pupils.** The Department of Children, Families, and Learning is responsible for ensuring that all pertinent requirements in the *Code of Federal Regulations*, and this part are carried out by the local education agencies. Each special education program within the state, including programs administered by any other public agency is under the general supervision of the persons responsible for special education in the Department of Children, Families, and Learning.

This shall be done, in part, by reviewing each district's and program's ~~TSES~~ total special education system (TSES) for compliance. Districts and programs ~~will~~ shall also be monitored periodically by the Department of Children, Families, and Learning for their implementation of the TSES and all requirements in *United States Code*, title 20, chapter 33, sections 1400 et seq., *Code of Federal Regulations*, title 34, ~~chapter III~~ part 300, *Minnesota Statutes*, and this part.

Subp. 2. **District responsibility.** A district shall submit to the commissioner the district's plan for providing instruction and related services upon request for all pupils as required by *Minnesota Statutes*, sections 125A.03 to 125A.24. The plan may ~~represent the plan of~~ be for a single district or ~~a plan~~ for the member districts of a formal special education cooperative. The plan shall be considered as part of the annual school district application for program review, but will not be required to be resubmitted annually. If a cooperative changes administrative organization, it shall submit a revised plan. The new plan must be submitted before the beginning of the next school year. The plan shall include descriptions of the district's:

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Proposed Rules

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

B. Method of providing the special education services for the identified pupils. The district shall have, as part of the district's TSES plan, a description of the full range of available educational service alternatives. The district's TSES plan shall include:

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

(2) a description of the available instruction and related services.

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

~~D. Specific programs for involving parents of children with disabilities and pupils in district policy making and decision making pursuant to federal regulations, including, but not limited to, a district or jurisdictional special education advisory council.~~

~~E. D.~~ Operating procedures of interagency committees required in statute.

~~F. E.~~ Interagency agreements the district has entered.

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

~~G. E.~~ Policy describing the district's procedures for implementing the use of conditional interventions with pupils. Policies must be reviewed regularly and shall include, at a minimum, the following components:

(1) ongoing personnel development activities for all staff, contracted personnel, and volunteers who work with pupils ~~who are disabled~~ with disabilities that:

(a) promote the use of positive approaches;

(b) provide an awareness of how to limit the use of aversive and deprivation procedures;

(c) provide an awareness of how to avoid abuse of such procedures;

(d) provide an awareness of specific cautions for the use of conditional procedures with specific populations of pupils or for the use of certain procedures; and

(e) provide staff training requirements for the design and use of all conditional interventions prior to their use;

(2) documentation procedures of the use of interventions and maintenance and retention of records of use; and

(3) description of the district's procedure for reviewing emergency situations where conditional procedures are used.

3525.1310 STATE AID FOR SPECIAL EDUCATION PERSONNEL.

Salaries for essential personnel who are teachers; and related services, and support services staff members are reimbursable for the following activities:

A. child find and pupil identification;

B. necessary short-term indirect or consultative services that are provided in conjunction with regular education prereferral activities to an individual suspected of having a disabling condition to determine whether referrals for ~~assessments~~ evaluation shall be made;

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

F. school psychological services and school social worker services provided for pupils identified as emotional ~~or~~ and behavioral disordered according to ~~parts part~~ 3525.1329 ~~and~~ 3525.2900 alone or in conjunction with the instructional program outlined in any pupil's IEP;

G. other related services provided in conjunction with the instructional program as outlined in ~~the~~ a pupil's IEP;

H. paraprofessional services provided under the direction of a regular or special education teacher or a related services provider. ~~The services must be that:~~

(1) ~~to~~ enhance the instruction provided by the teacher or related services staff; and

(2) ~~to~~ supplement instructional activities or ~~to~~ provide extended practice in instances in which the paraprofessional has had training and ongoing support from a special education teacher or related services staff;

- I. program coordination; and
- J. due process facilitation, ~~not including~~ except for attorney costs for suit preparation.

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

3525.1325 AUTISM SPECTRUM DISORDERS (ASD).

Subpart 1. **Definition.** “Autism spectrum disorders (ASD)” means a range of pervasive developmental disorders, with onset in childhood, that adversely affect a pupil’s functioning and result in the need for special education instruction and related services. ASD is a disability category characterized by an uneven developmental profile and a pattern of qualitative impairments in several areas of development, including social interaction, communication, or the presence of restricted, repetitive, and stereotyped patterns of behavior, interests, and activities, ~~with onset in childhood.~~ ~~Characteristics can~~ These core features may present themselves in a wide variety of combinations that range from mild to severe, ~~as well as in~~ and the number of ~~symptoms~~ behavioral indicators present, ~~for example may vary.~~ ASD may include Autistic Disorder, Childhood Autism, Atypical Autism, Pervasive Developmental Disorder- Not Otherwise Specified, Asperger’s Disorder, or other related pervasive developmental disorders.

Subp. 3. **Criteria.** ~~The~~ A multidisciplinary team shall determine that a pupil is eligible and in need of special education instruction and related services if the pupil ~~demonstrates patterns of behavior consistent with those~~ meets the criteria in item items A and ~~fulfills the requirements in item~~ B. A determination of eligibility must be supported by information collected from multiple settings and sources.

A. An educational evaluation must address all three core features in subitems (1) to (3). ~~For eligibility purposes, there~~ The team must be documented evidence document that the student pupil demonstrates ~~the specific~~ patterns of behavior described in at least two of these subitems, one of which must be subitem (1). ~~The eligibility determination must be supported by information collected from multiple settings and sources.~~

~~The~~ behavioral indicators ~~of these core features demonstrated~~ must be atypical for the pupil’s developmental level. ~~Documentation of~~ The team shall document behavioral indicators ~~must include the use of~~ through at least two of these methods: structured interviews with parents, autism checklists, communication and developmental rating scales, functional behavior assessments, application of diagnostic criteria from the current Diagnostic and Statistical Manual (DSM), informal and standardized evaluation instruments, or intellectual testing.

(1) Qualitative impairment in social interaction, as documented by two or more behavioral indicators, ~~such as for example:~~ limited joint attention and limited use of facial expressions directed toward others; does not show or bring things to others to indicate an interest in the activity; demonstrates difficulties in relating to people, objects, and events; a gross impairment in ability to make and keep friends; significant vulnerability and safety issues due to social naivete; may appear to prefer isolated or solitary activities; misinterprets others’ behaviors and social cues.

(2) Qualitative impairment in communication, as documented by one or more behavioral indicators, ~~such as for example:~~ not using finger to point or request; using others’ hand or body as a tool; showing lack of spontaneous imitations or lack of varied imaginative play; absence or delay of spoken language; limited understanding and use of nonverbal communication skills such as gestures, facial expressions, or voice tone; odd production of speech including intonation, volume, rhythm, or rate; repetitive or idiosyncratic language or inability to initiate or maintain a conversation when speech is present.

(3) Restricted, repetitive, or stereotyped patterns of behavior, interest, and activities, as documented by one or more behavioral indicators, ~~such as for example:~~ insistence on following routines or rituals; demonstrating distress or resistance to changes in activity; repetitive hand or finger mannerism; lack of true imaginative play versus reenactment; overreaction or under-reaction to sensory stimuli; rigid or rule-bound thinking; an intense, focused preoccupation with a limited range of play, interests, or conversation topics.

B. The team shall ~~verify~~ document and summarize in an evaluation report that an ASD adversely affects a pupil’s ~~present level of~~ performance and that the pupil is in need of special education instruction and related services. ~~This verification is completed through the multidisciplinary team evaluation and summarized in the pupil’s evaluation report.~~ Documentation must be supported by data from each of the following components include:

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Proposed Rules

(1) ~~The an~~ evaluation must identify of the pupil's present levels of performance and educational needs in each of the core features identified by the team in item A. In addition, ~~the evaluation process must give consideration to~~ team must consider all other areas of educational concern ~~consistent with the IEP process.~~ related to the suspected disability;

(2) ~~The pupil's need for instruction and services must be documented and supported by evaluation and~~ observations of the pupil in two different settings, on two different days; ~~and~~

(3) a ~~developmental history which summarizes~~ summary of the pupil's developmental ~~information~~ history and behavior patterns.

Subp. 4. **Team membership.** ~~The team determining eligibility and educational programming must include~~ at least one professional with experience and expertise in the area of ASD ~~must be included on the team determining eligibility and educational programming,~~ due to the complexity of this disability and the specialized intervention methods. The team must include a school professional knowledgeable of the range of possible special education eligibility criteria.

Subp. 5. **Implementation.** Pupils with various educational profiles and related clinical diagnoses may ~~be included as eligible if they~~ meet the criteria of ASD under subpart 3. However, a clinical or medical diagnosis is not required ~~for a pupil~~ to be eligible for special education services, and even with a clinical or medical diagnosis, a pupil must meet the criteria in subpart 3 to be eligible. ~~Due to the wide variation in characteristics and needs, pupils with different educational profiles or a specific clinical diagnosis must also be determined as eligible following the criteria in subpart 3. Following this eligibility determination process is essential to identify and document individual strengths and weaknesses and the pupil's unique educational needs so that an effective individual educational program may be planned and implemented.~~

3525.1327 DEAF-BLIND.

Subpart 1. **Definition and criteria.** "Deaf-blind" means medically verified visual loss coupled with medically verified hearing loss that, together, interfere with acquiring information or interacting in the environment. Both conditions need to be present simultaneously, ~~and the pupil must meet the criteria for both visually impaired and deaf and hard of hearing~~ to be eligible for special education and services under this category.

Subp. 2. **Pupils at risk.** Pupils at risk of being deaf-blind include pupils who:

A. are already identified as deaf or hard of hearing or visually impaired but have not yet had a medical or functional evaluation of the other sense (vision or hearing);

[For text of items B to D, see M.R.]

E. have an identified syndrome or condition ~~such as CHARGE Syndrome~~ that includes hearing and vision loss in combination with multiple disabilities, ~~for example, CHARGE Syndrome.~~

3525.1329 EMOTIONAL ~~OR~~ AND BEHAVIORAL DISORDERS.

Subpart 1. **Definition.** "Emotional ~~or and~~ behavioral disorder disorders" means an established pattern ~~characterized by~~ of one or more of the following ~~behavior clusters~~ emotional and behavioral responses:

A. ~~severely aggressive or impulsive behaviors~~ withdrawal or anxiety, depression, problems with mood, or feelings of self-worth;

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

C. ~~severely~~ disordered thought processes manifested by with unusual behavior patterns; and atypical communication styles; and distorted interpersonal relationships; or

~~This category may include children or youth with schizophrenic disorders, affective disorders, anxiety disorders, or other sustained disorders of conduct or adjustment when they adversely affect educational performance. The established pattern adversely affects educational performance and results in either an inability to build or maintain satisfactory interpersonal relations necessary to the learning process with peers, teachers, and others, or failure to attain or maintain a satisfactory rate of educational or developmental progress that cannot be improved or explained by addressing intellectual, sensory, health, cultural, or linguistic factors.~~

C. aggression, hyperactivity, or impulsivity.

The established pattern of emotional and behavioral responses must adversely affect educational or developmental performance, including intrapersonal, academic, vocational, or social skills; be significantly different from appropriate age, cultural, or ethnic norms; and be more than temporary, expected responses to stressful events in the environment. The emotional and behavioral responses must be consistently exhibited in at least three different settings, two of which must be educational settings. The responses must not be primarily the result of intellectual, sensory, or acute or chronic physical health conditions.

Subp. 2. [See repealer.]

Subp. 2a. **Criteria.** A pupil is eligible and in need of special education and related services for an emotional and behavioral disorder when the pupil meets the criteria in items A to C.

A. A pupil must demonstrate an established pattern of emotional and behavioral responses that is described in at least one of the following subitems and which represents a significant difference from peers:

(1) withdrawn or anxious behaviors, pervasive unhappiness, depression, or severe problems with mood or feelings of self-worth defined by behaviors, for example: isolating self from peers; displaying intense fears or school refusal; overly perfectionistic; failing to express emotion; displaying a pervasive sad disposition; developing physical symptoms related to worry or stress; or changes in eating or sleeping patterns;

(2) disordered thought processes manifested by unusual behavior patterns, atypical communication styles, or distorted interpersonal relationships, for example: reality distortion beyond normal developmental fantasy and play or talk; inappropriate laughter, crying, sounds, or language; self-mutilation, developmentally inappropriate sexual acting out, or developmentally inappropriate self-stimulation; rigid, ritualistic patterning; perseveration or obsession with specific objects; overly affectionate behavior towards unfamiliar persons; or hallucinating or delusions of grandeur; or

(3) aggressive, hyperactive, or impulsive behaviors that are developmentally inappropriate, for example: physically or verbally abusive behaviors; impulsive or violent, destructive, or intimidating behaviors; or behaviors that are threatening to others or excessively antagonistic.

The pattern must not be the result of cultural factors, and must be based on evaluation data which may include a diagnosis of mental disorder by a licensed mental health professional.

B. The pupil's pattern of emotional and behavioral responses adversely affects educational performance and results in:

(1) an inability to demonstrate satisfactory social competence that is significantly different from appropriate age, cultural, or ethnic norms; or

(2) a pattern of unsatisfactory educational progress that is not primarily a result of intellectual, sensory, physical health, cultural, or linguistic factors; illegal chemical use; autism spectrum disorders under part 3525.1325; or inconsistent educational programming.

C. The combined results of prior documented interventions and the evaluation data for the pupil must establish significant impairments in one or more of the following areas: intrapersonal, academic, vocational, or social skills. The data must document that the impairment:

(1) severely interferes with the pupil's or other students' educational performance;

(2) is consistently exhibited by occurrences in at least three different settings, including two educational settings, one of which is the classroom, except for children not yet enrolled in kindergarten, and either the home, child care, or community settings; and

(3) has been occurring throughout a minimum of six months, or results from the well-documented, sudden onset of a serious mental health disorder diagnosed by a licensed mental health professional.

Subp. 3. Evaluation.

A. The evaluation findings in subpart 2a must be supported by current or existing data from:

(1) clinically significant scores on standardized, nationally normed behavior rating scales;

(2) individually administered, standardized, nationally normed tests of intellectual ability and academic achievement;

(3) three systematic observations in the classroom or other learning environment;

(4) record review;

(5) interviews with parent, pupil, and teacher;

(6) health history review procedures; and

(7) a mental health screening.

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Proposed Rules

The evaluation may include data from vocational skills measures; personality measures; self-report scales; adaptive behavior rating scales; communication measures; diagnostic assessment and mental health evaluation reviews; environmental, socio-cultural, and ethnic information reviews; a functional behavioral assessment; gross and fine motor and sensory motor measures; or chemical health assessments.

B. Children not yet enrolled in kindergarten are eligible for special education and related services if they meet the criteria listed in subpart 2a, items A, B, and C, subitems (2) and (3). The evaluation process must show developmentally significant impairments in self-care, social relations, or social or emotional growth, and must include data from each of the following areas: two or more systematic observations, including one in the home; a case history, including medical, cultural, and developmental information; information on the pupil's cognitive ability, social skills, and communication abilities; standardized and informal interviews, including teacher, parent, caregiver, and child care provider; or standardized adaptive behavior scales.

3525.1333 ~~MENTALLY IMPAIRED: MILD-MODERATE/MODERATE-SEVERE~~ DEVELOPMENTAL COGNITIVE DISABILITY.

Subpart 1. **Definition.** ~~“Mentally impaired” refers to pupils with significantly subaverage general intellectual functioning resulting in or associated with concurrent deficits in adaptive behavior that may require special education instruction and related services. “Developmental cognitive disability (DCD)” means a condition that results in intellectual functioning significantly below average and is associated with concurrent deficits in adaptive behavior that require special education and may require related services. DCD does not include conditions primarily due to a sensory or physical impairment, traumatic brain injury, autism spectrum disorders, severe multiple impairments, cultural influences, or inconsistent educational programming.~~

Subp. 2. **Criteria for ~~mild-moderate~~ mental impairment DCD** and is in need of special education instruction and ~~service~~ may require related services if the pupil meets the criteria of ~~both~~ in items A and B.

~~A. Performance that falls at or below the 15th percentile in the following adaptive behavior domains measured in both school and home or community on nationally normed, technically adequate measures of adaptive behavior:~~

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

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

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

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

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

~~(a) documented, systematic observation;~~

~~(b) checklist;~~

~~(c) classroom or work samples;~~

~~(d) interviews;~~

~~(e) sociometric measures;~~

~~(f) criterion-referenced measures;~~

~~(g) educational history; or~~

~~(h) medical history.~~

A. The pupil demonstrates below average adaptive behavior across multiple environments which must include school and home, and community, if appropriate. For the purposes of this item, “below average” means:

(1) a composite score at or below the 15th percentile on a nationally normed, technically adequate measure of adaptive behavior; and

(2) documentation of needs and the level of support required, in at least four of the seven adaptive behavior domains, across multiple environments. Systematic observation and parent input must be included as sources to document need and level of support. All of the following adaptive behavior domains must be considered:

- (a) daily living and independent living skills;
- (b) social and interpersonal skills;
- (c) communication skills;
- (d) academic skills;
- (e) recreation and leisure skills;
- (f) community participation skills; and
- (g) work and work-related skills.

Other sources of documentation may include checklists; classroom or work samples; interviews; criterion-referenced measures; educational history; medical history; or pupil self-report.

B. The pupil demonstrates significantly ~~subaverage~~ below average general intellectual functioning as indicated by an intelligence quotient below 70 plus or minus 1 Standard Error of Measurement (using instruments with a reliability coefficient of .90 or greater) on an intelligence test that is standardized, nationally normed, technically adequate, and that is measured by an individually administered, nationally normed test of intellectual ability. For the purposes of this subitem, “significantly below average general intellectual functioning” means:

- (1) moderate range: two standard deviations below the mean, plus or minus one standard error of measurement; and
- (2) severe range: three standard deviations below the mean, plus or minus one standard error of measurement.

Significantly below average general intellectual functioning must be verified through a written summary of results from at least two systematic observations with consideration for culturally relevant information, medical and educational histories, and one or more of the following: supplemental tests of specific abilities, criterion-referenced tests, alternative methods of intellectual assessment, clinical interviews with parents, including family members, if appropriate, or observation and analysis of behavior across multiple environments.

Subp. 3. [See repealer.]

3525.1335 OTHER HEALTH ~~IMPAIRED~~ DISABILITIES.

Subpart 1. **Definition.** “Other health ~~impaired~~ disability” means having limited strength, endurance, vitality, or alertness, including a heightened or diminished alertness to environmental stimuli, with respect to the educational environment that is due to a broad range of medically diagnosed chronic or acute health ~~condition~~ conditions that ~~may~~ adversely affect ~~academic functioning and result in the need for special education instruction and related services~~ a pupil’s educational performance. ~~The decision that a specific health condition qualifies as other health impaired will be determined by the impact of the condition on academic functioning rather than by the diagnostic label given the condition.~~

Subp. 2. **Criteria.** The team shall determine that a pupil is eligible and in need of special education instruction and services if the pupil meets the ~~criteria~~ criteria in ~~item~~ items A ~~and one of the criteria in item, B, and C.~~

A. There is;

(1) written and signed documentation by a licensed physician of a medically diagnosed chronic or acute health ~~impairment~~ condition; or

(2) in the case of a diagnosis of Attention Deficit Disorder/Attention Deficit Hyperactivity Disorder (ADD/ADHD), there is written and signed documentation of a medical diagnosis by a licensed physician. The diagnosis of ADD/ADHD must include documentation that DSM-IV criteria in items A to E have been met. DSM-IV criteria documentation must be provided by either a licensed physician or a mental health or medical professional licensed to diagnose the condition.

For initial evaluation, all documentation must be dated within the previous 12 months.

~~B. The pupil’s:~~

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Proposed Rules

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

~~(2) need for special education instruction and service is supported by evidence of an inability to manage or complete classroom tasks within routine timelines due to excessive absenteeism as verified by attendance records, or limited strength, endurance, alertness, intrusive health procedures, or medications that affect cognitive functioning as verified by a minimum of two or more documented, systematic observations or structured interviews in daily routine settings, one of which is completed by a special education teacher; or~~

~~(3) health impairment interferes with educational performance as shown by an achievement deficit of 1.5 standard deviations or more below the mean on an individually administered reliable, valid, and adequately normed achievement test.~~

B. In comparison with peers, the health condition adversely affects the pupil's ability to complete educational tasks within routine timelines as documented by three or more of the following:

(1) excessive absenteeism linked to the health condition, for example, hospitalizations, medical treatments, surgeries, or illnesses;

(2) specialized health care procedures that are necessary during the school day;

(3) medications that adversely affect learning and functioning in terms of comprehension, memory, attention, or fatigue;

(4) limited physical strength resulting in decreased capacity to perform school activities;

(5) limited endurance resulting in decreased stamina and decreased ability to maintain performance;

(6) heightened or diminished alertness resulting in impaired abilities, for example, prioritizing environmental stimuli; maintaining focus; or sustaining effort or accuracy;

(7) impaired ability to manage and organize materials and complete classroom assignments within routine timelines; or

(8) impaired ability to follow directions or initiate and complete a task.

C. The health condition results in a pattern of unsatisfactory educational progress as determined by a comprehensive evaluation documenting the required components of items A and B. The eligibility findings must be supported by current or existing data from subitems (1) to (5):

(1) an individually administered, nationally normed standardized evaluation of the pupil's academic performance;

(2) documented, systematic interviews conducted by a licensed special education teacher with classroom teachers and the pupil's parent or guardian;

(3) one or more documented, systematic observations in the classroom or other learning environment by a licensed special education teacher;

(4) a review of the pupil's health history, including the verification of a medical diagnosis of a health condition; and

(5) records review.

The evaluation findings may include data from: an individually administered, nationally normed test of intellectual ability; an interview with the pupil; information from the school nurse or other individuals knowledgeable about the health condition of the pupil; standardized nationally normed behavior rating scales; gross and fine motor and sensory motor measures; communication measures; functional skills checklists; and environmental, social-cultural, and ethnic information reviews.

3525.1337 PHYSICALLY IMPAIRED.

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

Subp. 2. **Criteria.** A pupil is eligible and in need of special education instruction and services if the pupil meets the criterion in item A and one of the criteria in item B.

A. There must be documentation of a medically diagnosed physical impairment.

B. The pupil's:

[For text of subitem (1), see M.R.]

(2) need for special education instruction and service is supported by an inability to manage or complete motoric portions of classroom tasks within time constraints as verified by a minimum of two or more documented systematic observations in daily routine settings, one of which is completed by a physical and health disabilities teacher; or

(3) physical impairment interferes with educational performance as shown by an achievement deficit of 1.0 standard deviation or more below the mean on an individually administered ~~reliable, valid, and adequately~~ nationally normed ~~achievement test~~ standardized evaluation of the pupil's academic achievement.

3525.1339 SEVERELY MULTIPLY IMPAIRED.

Subpart 1. **Definition.** "Severely multiply impaired" means a pupil who has severe learning and developmental problems resulting from two or more disability conditions determined by ~~assessment under part 3525.2500~~ an evaluation as defined by Code of Federal Regulations, title 34, section 300.532.

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

- A. ~~hearing impaired~~ deaf or hard of hearing, part 3525.1331;
- B. physically impaired, part 3525.1337;
- C. ~~moderate severe mentally impaired~~ developmental cognitive disability: severe range, part 3525.1333, ~~subparts 1 and 3;~~
- D. visually impaired, part 3525.1345;
- E. emotional ~~or~~ and behavioral disorders, part 3525.1329; or
- F. autism spectrum disorders, part 3525.1325.

3525.1341 SPECIFIC LEARNING DISABILITY.

Subpart 1. **Definition.** "Specific learning disability" means a condition within the ~~individual pupil~~ affecting learning, relative to potential and ~~is~~:

A. manifested by interference with the acquisition, organization, storage, retrieval, manipulation, or expression of information so that the ~~individual pupil~~ does not learn at an adequate rate when provided with the usual developmental opportunities and instruction from a regular school environment;

[For text of items B and C, see M.R.]

Subp. 2. **Criteria.** A pupil has a specific learning disability and is in need of special education and related services when the pupil meets the criteria in items A, B, and C. Information about each item must be sought from the parent and must be included as part of the evaluation data. The evaluation data must confirm that the disabling effects of the pupil's disability occur in a variety of settings.

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

(1) evidence of low achievement from ~~sources such as, for example,~~ cumulative record reviews, classwork samples, anecdotal teacher records, formal and informal tests, curriculum based evaluation results, and results from instructional support programs such as Chapter 1 and Assurance of Mastery; and

[For text of subitem (2), see M.R.]

[For text of item B, see M.R.]

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

(1) the pupil has an information processing condition that is manifested by behaviors such as: inadequate or lack of expected acquisition of information, lack of organizational skills ~~such as in, for example,~~ following written and oral directions; spatial arrangements; correct use of developmental order in relating events; transfer of information onto paper; visual and auditory memory; verbal and nonverbal expression; and motor control for written tasks such as pencil and paper assignments, drawing, and copying;

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

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Proposed Rules

(3) the pupil's underachievement is not primarily the result of: visual, hearing, or motor impairment; ~~cognitive impairment~~ developmental cognitive disabilities; emotional ~~or~~ and behavioral disorders; ~~or~~ environmental, cultural, or economic influences; ~~or~~ a history of ~~an~~ inconsistent ~~education program~~ educational programming.

3525.1343 SPEECH OR LANGUAGE IMPAIRMENTS.

Subpart 1. **Fluency disorder; definition and criteria.** "Fluency disorder" means the intrusion or repetition of sounds, syllables, and words; prolongations of sounds; avoidance of words; silent blocks; or inappropriate inhalation, exhalation, or phonation patterns. These patterns may also be accompanied by facial and body movements associated with the effort to speak. Fluency patterns that are attributed only to dialectical, cultural, or ethnic differences or to the influence of a foreign language must not be identified as a disorder.

A pupil has a fluency disorder and is eligible for speech or language special education when:

A. the pattern interferes with communication as determined by an educational speech language pathologist and either another adult or the ~~child~~ pupil; and

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

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

A pupil has a voice disorder and is eligible for speech or language special education when:

A. the pattern interferes with communication as determined by an educational speech language pathologist and either another adult or the ~~child~~ pupil; and

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

Subp. 3. **Articulation disorder; definition and criteria.**

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

B. A pupil has an articulation disorder and is eligible for speech or language special education when the pupil meets the criteria in subitem (1) and either ~~subitem~~ subitem (2) or (3):

(1) the pattern interferes with communication as determined by an educational speech language pathologist and either another adult or the ~~child~~ pupil; and

[For text of subitems (2) and (3), see M.R.]

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

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

B. A pupil has a language disorder and is eligible for speech or language special education services when:

(1) the pattern interferes with communication as determined by an educational speech language pathologist and either another adult or the child; ~~and~~

[For text of subitems (2) to (4), see M.R.]

3525.1348 TRAUMATIC BRAIN INJURY (TBI) DEFINITION AND ENTRANCE CRITERIA.

Subpart 1. **Definition.** "Traumatic brain injury" means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that may adversely affect a ~~child's~~ pupil's educational performance and may result in the need for special education and related services. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as: cognition, speech/language, memory, attention, reasoning, abstract thinking, judgment, problem-solving, sensory, perceptual and motor abilities, psychosocial behavior, physical functions, and information processing. The term does not apply to brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma.

Subp. 2. **Criteria.** The team shall determine that a pupil is eligible and in need of special education and related services if the pupil meets the criterion in item A and the criteria in items B and C as documented by the information gathered according to item D:

A. There is documentation by a physician of a medically verified traumatic brain injury.

B. There is a functional impairment attributable to the traumatic brain injury that adversely affects educational performance in one or more of the following areas: intellectual-cognitive, academic, communication, motor, sensory, social-emotional-behavioral, and functional skills-adaptive behavior. Examples of functional impairments which may adversely affect educational performance are:

- (1) intellectual-cognitive, ~~such as, but not limited to~~ for example, impaired:
[For text of units (a) to (j), see M.R.]
- (2) academic, ~~such as, but not limited to~~ for example:
[For text of units (a) to (c), see M.R.]
- (3) communication, ~~such as, but not limited to~~ for example:
[For text of units (a) to (j), see M.R.]
- (4) motor, ~~such as, but not limited to~~ for example, impaired:
[For text of units (a) to (d), see M.R.]
- (5) sensory, ~~such as, but not limited to~~ for example, impaired:
[For text of units (a) and (b), see M.R.]
- (6) social-emotional-behavioral, ~~such as, but not limited to~~ for example:
 - (a) impaired ability to initiate or sustain appropriate peer or adult relationships;
[For text of units (b) to (j), see M.R.]
- (7) functional skills-adaptive behavior, ~~such as but not limited to~~ for example, impaired:
[For text of units (a) to (h), see M.R.]

C. The functional impairments are not primarily the result of previously existing:

- (1) visual, hearing, or motor impairments;
- (2) ~~emotional-behavioral~~ emotional and behavioral disorders;
- (3) mental retardation;
- (4) language or specific learning disabilities;
- (5) environmental or economic disadvantage;
- (6) cultural differences.

[For text of item D, see M.R.]

3525.1350 EARLY CHILDHOOD: SPECIAL EDUCATION.

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

Subp. 2. **Criteria for birth through two years of age.** The team shall determine that a child from birth through the age of two years and 11 months is eligible for early childhood special education if:

- A. the child meets the criteria of one of the disability categories; or
- B. the child meets one of the criteria for developmental delay in subitem (1) and the criteria in subitems (2) and (3):
 - (1) the child:

(a) has a medically diagnosed syndrome or condition that is known to hinder normal development ~~including, but not limited to, for example,~~ cerebral palsy, chromosome abnormalities, fetal alcohol syndrome, maternal drug use, neural tube defects, neural muscular disorders, cytomegalovirus, grades III and IV intracranial hemorrhage, and bronchopulmonary dysplasia (BPD);

[For text of units (b) and (c), see M.R.]

[For text of subitems (2) and (3), see M.R.]

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

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Proposed Rules

3525.1352 DEVELOPMENTAL ADAPTED PHYSICAL EDUCATION: SPECIAL EDUCATION.

Subpart 1. **Definition.** “Developmental adapted physical education: special education” means specially designed physical education instruction and services for pupils with disabilities who have a substantial delay or disorder in physical development. Developmental adapted physical education: special education instruction for pupils age three through 21 may include development of physical fitness, motor fitness, fundamental motor skills and patterns, skills in aquatics, dance, individual and group games, and sports.

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

Subp. 2. **Criteria.** A pupil is eligible for developmental adapted physical education: special education ~~when~~ if the team determines the pupil ~~has met~~ meets the criteria in items A and B.

A. The pupil has one of the following disabilities in each respective criteria in parts 3525.1325 to 3525.1341, 3525.1345, and 3525.1354: autism spectrum disorders, ~~deaf/blind~~ deaf-blind, emotional ~~or~~ and behavioral disorders, deaf or hard of hearing impaired, specific learning disability, ~~mentally impaired~~ developmental cognitive disability, severely multiply impaired, other health ~~impaired~~ disability, physically impaired, visually impaired, traumatic brain injury or part 3525.1350, subpart 3.

[For text of item B, see M.R.]

3525.1354 TEAM OVERRIDE ON ELIGIBILITY DECISIONS.

Subpart 1. **Documentation required.** The team may determine that a pupil is eligible for special instruction and related services because the pupil has a disability and needs special instruction even though the pupil does not meet the specific requirement in parts 3525.1325 to 3525.1345 and 3525.2335. The team must include the documentation in the pupil’s special education record ~~in accordance with~~ according to items A, B, C, and D.

A. The pupil’s record must contain documents that explain why the standards and procedures used with the majority of pupils resulted in invalid findings for this pupil.

B. The record must indicate what objective data were used to conclude that the pupil has a disability and is in need of ~~specialized~~ special instruction and related services. These data include, for example, test scores, work products, self-reports, teacher comments, medical data, previous testings, observational data, ecological assessments, and other developmental data.

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

D. The team override decision must be signed by the team members agreeing to the override decision. For those team members who disagree with the override decision, a statement of why they disagree and their signature must be included.

3525.1550 CONTRACTED SERVICES.

Subpart 1. **Licensure.** When contracting for ~~assessments~~ evaluations or special education services, a district shall contract with personnel who hold appropriate licenses issued by the Board of Teaching or commissioner of Children, Families, and Learning. If either the board or commissioner does not issue a license for a necessary service, the district shall contract with personnel who are members in good standing of professional organizations that regulate the conduct of its members and set standards for that profession.

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

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

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

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

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

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

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

Special education services must be provided as required by a pupil's IEP, and to the extent that treatment considerations allow the pupil to participate. Number of school days for determining due process procedures shall begin upon enrollment in an education program. Placement for care and treatment does not of itself require special education placement.

D. For those education programs run by the Department of Corrections, the district shall be the Department of Corrections for the purpose of this part. The district is responsible for ensuring that a cooperative agreement is reached with the care and treatment center facility which addresses all the requirements of *Department of Human Services Rules*, parts 9545.0900 to 9545.1090 and 9545.1400 to ~~9545.1500~~ 9545.1480 which pertain to the provision of education services for students placed in centers for care and treatment. Provision of special education services requires implementation of all due process safeguards defined in state and federal law. Some procedures are modified to assure the pupil's access to education.

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

[For text of subitems (1) to (8), see M.R.]

Subp. 2. **Education programs for students and pupils and regular education students placed in short-term programs for care and treatment.** A placement for care and treatment is a short-term placement if the anticipated duration of the placement is less than 31 school days. The school district must begin to provide instruction to the pupil or regular education student immediately after the pupil or student is enrolled in the education program. If the student is enrolled in the educational program without an educational record or IEP, the district's procedures must include immediate phone contact with the home school to see if the regular education student has been identified as disabled.

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

B. If a regular education student has not been identified as disabled or if the providing district cannot determine if a student has been identified as disabled:

[For text of subitems (1) and (2), see M.R.]

(3) Based on the documented results of the screening, a decision must be made about the need for prereferral interventions or an appropriate special education ~~assessment~~ evaluation according to parts 3525.2550 ~~to 3525.2750~~ and 3525.2910. It is not required that an appropriate ~~assessment~~ evaluation be started unless it appears that it can be completed.

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

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

A. If the student has been identified as disabled and has a current IEP.

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

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

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

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

B. If the student has not been identified as disabled or if the providing district cannot determine if the student has been identified as disabled, the student entering a residential facility for a long-term placement must be screened to determine if there is a need for an appropriate educational ~~assessment~~ evaluation. An ~~assessment~~ evaluation must begin with a review of screening and other

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Proposed Rules

information such as the parent or student interview, available educational and social history, and the purpose of the treatment placement. The ~~assessment~~ evaluation must be conducted according to parts 3525.2550 to ~~3525.2750~~ and 3525.2910.

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

Subp. 4. **When a student or pupil leaves the facility.** If a student or pupil has received an assessment evaluation or special education services for 15 or more school days, the providing district must prepare an exit report summarizing the regular education or special education assessment evaluation or service information and must send the report to the home school, the receiving facility, the parent, and any appropriate social service agency. For a pupil, this report must include a summary of current levels of performance, progress, and any modifications made in the pupil's IEP or services. Record transfers between anyone other than educational agencies and the parent require prior approval of the parents in accordance with data privacy laws.

Subp. 5. **Minimum service required.** The team must predict how long the pupil or regular education student must be placed for care and treatment. If the prediction is for a restricted period of more than 170 school days or its equivalent, exclusive of summer school, the district shall make available:

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

B. preferably a normal school day in accordance with ~~part 3525.2900, subpart 3~~ Code of Federal Regulations, title 34, section 300.347;

C. an average of at least two hours a day of one-to-one instruction; or

D. a minimum of individualized instruction for one-half of the normal school day if it is justified in the pupil's IEP or student's education plan that none of these options are appropriate.

If the predicted restricted period is fewer than 171 school days, exclusive of summer school, the district shall make available at a minimum either small group instruction for one-half of the normal school day or at least an average of one hour a day of one-to-one instruction.

Provision of special educational services for pupils outside of the providing school district's regular calendar is optional unless the pupil has an extended year IEP.

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

A. The IEP developed by the team must include the provisions of ~~part parts~~ parts 3525.2900 and 3525.2920, the location of the special education services, the projected duration of the special education services, and provisions for coordinating the care and treatment and the special education services.

[For text of item B, see M.R.]

C. If a pupil is placed in a residential facility outside the resident district, the providing district must provide appropriate special education services. The placement of the pupil in a residential center for care and treatment outside the resident district is not an initial placement in the receiving district. The providing district shall make every effort to implement the resident district's IEP, making the modifications necessary due to the restrictive care and treatment setting and based on agreements reached with the parent. The providing district shall comply with the due process procedures of parts 3525.2550 to ~~3525.4700~~ 3525.4770. Districts shall develop alternative procedures for implementing the legal requirements for observing the student in a regular classroom and document previous interventions that have been tried before the student placed for care and treatment is identified as having a specific learning disability or an emotional ~~or~~ and behavioral disorder. These alternative procedures must be included in the district's entrance criteria. The district and facility shall cooperatively develop procedures to be used in emergency situations that comply with the Pupil Fair Dismissal Act according to *Minnesota Statutes*, sections 121A.40 to 121A.56, and the district's discipline policy.

Subp. 7. **Student's and pupil's and regular education student's placement; aid for special education.** Special education services provided to pupils and regular education students who have been placed for care and treatment are reimbursable in accordance with parts 3525.0800 and 3525.1310.

[For text of items A and B, see M.R.]

C. The indirect or consultative services provided in conjunction with regular education prereferral interventions and ~~assessment~~ evaluation provided to regular education students suspected of being disabled and who have demonstrated learning or emotional and behavioral problems in a screening are reimbursable.

[For text of item D, see M.R.]

3525.2335 EARLY CHILDHOOD PROGRAM SERVICES, ALTERNATIVES, AND SETTINGS.

Subp. 2. **Program services, alternatives, and settings.** Appropriate program alternatives to meet the special education needs, goals, and objectives of ~~the~~ a pupil must be determined on an individual basis. Choice of specific program alternatives must be based on the pupil's current levels of performance, pupil special education needs, goals, and objectives, and must be written in the IEP. Program alternatives are comprised of the type of services provided, the setting in which services occur, and the amount of time and frequency in which special education services occur. A pupil may receive special education services in more than one alternative based on the IEP or IFSP.

A. There are two types of special education services: ~~services provided directly~~ direct and ~~services provided indirectly~~ indirect.

B. There are three types of settings: home, district early childhood special education (ECSE) classroom, and community-based programs.

(1) Home includes the home of the pupil and parent or relative, or a licensed family child care setting in which the pupil is placed by the parent.

(2) District ECSE classroom includes classrooms that are located in ~~one of the district's~~ district schools or community center buildings housing elementary students or preschool-aged children who do not have disabilities.

[For text of subitem (3), see M.R.]

3525.2340 CASE LOADS.

Subp. 4. **Case loads for school-age educational service alternatives.**

A. The maximum number of school-age pupils that may be assigned to a teacher:

(1) for pupils who receive direct special instruction from a teacher 50 percent or more of the instructional day, but less than a full school day:

(a) deaf-blind, ~~autistic autism spectrum disorders, developmental cognitive disability: severe range,~~ or severely multiply impaired, three pupils;

(b) deaf-blind, ~~autistic autism spectrum disorders, developmental cognitive disability: severe range,~~ or severely multiply impaired with one program support assistant, six pupils;

(c) ~~mild-moderate mentally impaired~~ developmental cognitive disability: moderate range or specific learning disabled, 12 pupils;

(d) ~~mild-moderate mentally impaired~~ developmental cognitive disability: moderate range or specific learning disabled with one program support assistant, 15 pupils;

(e) all other disabilities with one program support assistant, ten pupils; and

(f) all other disabilities with two program support assistants, 12 pupils; and

(2) for pupils who receive direct special education for a full day:

(a) deaf-blind, ~~autistic autism spectrum disorders, developmental cognitive disability: severe range,~~ or severely multiply impaired with one program support assistant, four pupils;

(b) deaf-blind, ~~autistic autism spectrum disorders, developmental cognitive disability: severe range,~~ or severely multiply impaired with two program support assistants, six pupils; and

(c) all other disabilities with one program support assistant, eight pupils.

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

[For text of subp 5, see M.R.]

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Proposed Rules

3525.2350 MULTIDISABILITY TEAM TEACHING MODELS.

[For text of subs 1 and 2, see M.R.]

Subp. 3. **Team member responsibility.** The team member licensed in a pupil's disability shall be responsible for conducting the pupil's ~~assessment~~ evaluation and participating at team meetings when an IEP is developed, reviewed, or revised. Consultation and indirect services as defined in part 3525.0200 must be provided to the general or special education teacher providing instruction if not licensed in the disability. The frequency and amount of time for specific consultation and indirect services shall be determined by the IEP team.

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

3525.2385 STATE INTERPRETER/TRANSLITERATOR STANDARDS FOR THE DEAF AND HARD OF HEARING.

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

Subp. 2. **Special education reimbursement.** ~~By July 1, 2000,~~ To be eligible for special education reimbursement for the employment of American Sign Language (ASL)/English interpreter/transliterator or cued speech transliterator of the Deaf and Hard of Hearing, the school board in each district shall employ persons who meet the requirements in subpart 3 or 4.

[For text of subs 3 and 4, see M.R.]

3525.2405 DIRECTORS.

Subpart 1. **Director requirement.** The school board in every district shall employ, either singly or cooperatively, a director of special education to be responsible for program development, coordination, and evaluation; in-service training; and general special education supervision and administration in the district's total special education system. Cooperative employment of a director may be through a host district, joint powers agreement, or a service cooperative. A director may not be assigned direct instructional duties.

3525.2450 REMOVAL OF SURROGATE PARENT.

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

A. failure to perform the duties required in the team meeting and IEP process and those cited in *Code of Federal Regulations*, title 34, part 300, ~~a federal regulation to implement part B of the Education of the Handicapped Act~~ and United States Code, title 20, chapter 22, sections 1400 et seq.;

B. conflict of interest as referenced in *Code of Federal Regulations*, title 34, section ~~300.514~~ 300.515 (c)(2);

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

D. failure to appear to represent the pupil; or

E. the pupil no longer needs special education and related services.

3525.2455 SURROGATE PARENT KNOWLEDGE AND SKILLS.

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

A. a knowledge of state and federal requirements;

B. a knowledge of district structure and procedures;

C. an understanding of the nature of the pupil's disability and needs; and

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

3525.2550 CONDUCT BEFORE ASSESSMENT EVALUATION.

Subpart 1. [See repealer.]

Subp. 2. **Team duties.** The team shall:

~~A. Plan to conduct the educational assessment preferably at the home, school, or community setting which the person attends. When the district determines that the assessment or a portion of the assessment cannot be performed utilizing the personnel resources of the district, the district shall make arrangements elsewhere for that portion of the assessment and shall assume all costs for such assessment.~~

~~B. Give due consideration to assessment results provided by outside sources but need not implement recommendations unless agreed to by the team.~~

~~C. conduct the assessment~~ an evaluation for special education purposes within a reasonable time not to exceed 30 school days from the date the district receives parental permission to conduct the assessment evaluation or the expiration of the ~~ten-day 14-cal-~~ endar day parental response time in cases other than initial ~~assessment~~ evaluation, unless a conciliation conference or hearing is requested.

3525.2900 DEVELOPMENT AND CONTENT OF INDIVIDUAL EDUCATION PROGRAM PLAN.

Subpart 1. [See repealer.]

Subp. 3. [See repealer.]

Subp. 4. **Transition planning.** By grade nine or age 14, whichever comes first, the IEP plan shall address the pupil's needs for transition from secondary services to postsecondary education and training, employment, and community living.

A. For each pupil, the district shall conduct ~~a multidisciplinary assessment~~ an evaluation of secondary transition needs and plan appropriate services to meet the pupil's transition needs. ~~The~~ areas of assessment evaluation and planning must be relevant to the pupil's needs and may include work, recreation and leisure, home living, community participation, and postsecondary training and learning opportunities. To appropriately ~~assess~~ evaluate and plan for a pupil's secondary transition, additional IEP team members may be necessary and may include vocational education staff members and other community agency representatives as appropriate.

B. Secondary transition assessment evaluation results must be documented as part of an ~~assessment summary according to part 3525.2750~~ evaluation report. Current and secondary transition needs, goals, and instructional and related services to meet the pupil's secondary transition needs must be considered by the team with annual needs, goals, objectives, and services documented on the pupil's IEP.

Subp. 5. **The IEP and regulated interventions.**

[For text of items A and B, see M.R.]

C. If an emergency intervention is used twice in a month or a pupil's pattern of behavior is emerging that interferes with the achievement of the pupil's educational goals and objectives, a team meeting must be called to determine if the pupil's IEP is adequate, if additional assessment evaluation is needed, and, if necessary, to amend the IEP. Districts may use conditional procedures in emergencies until the IEP team meets, provided the emergency measures are deemed necessary by the district to protect the individual pupil or others from harm. The IEP team shall meet as soon as possible, but no later than five school days after emergency procedures have commenced. District administration and parents must be notified immediately when a regulated procedure is used in an emergency situation.

D. Time-out procedures that seclude a student in a specially designated isolation room or similar space must meet the following conditions:

[For text of subitems (1) to (4), see M.R.]

(5) documentation of the length of time spent in each time-out procedure and the number of occurrences each school day;

[For text of subitems (6) to (10), see M.R.]

[For text of item E, see M.R.]

3525.2910 EVALUATIONS AND REEVALUATIONS.

Subpart 1. **Initial evaluations.** A school district shall conduct a full and individual initial evaluation, according to this part before the initial provision of special education and related services to a pupil under this chapter. The initial evaluation shall consist of procedures to determine whether a child is a pupil with a disability that adversely affects the child's educational performance as defined in Minnesota Statutes, section 125A.02, who by reason thereof, needs special education and related services, and to determine the educational needs of the pupil. The district proposing to conduct an initial evaluation to determine if the child qualifies as a pupil with a disability shall obtain an informed consent from the parent of the child before the evaluation is conducted. Parental consent for evaluation shall not be construed as consent for placement for receipt of special education and related services. If the

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Proposed Rules

parents of the child refuse consent for the evaluation, the agency may continue to pursue an evaluation by utilizing mediation and due process procedures.

Subp. 2. Reevaluations. A district shall ensure that a reevaluation of each pupil is conducted if conditions warrant a reevaluation or if the pupil's parent or teacher requests a reevaluation, but at least once every three years and in accordance with subparts 3 and 4.

Subp. 3. Evaluation procedures. Evaluations and reevaluations shall be conducted according to the following procedures:

A. The district shall provide notice to the parents of a pupil, according to *United States Code*, title 20, section 1415, subsections (a), (b)(3), (b)(4), and (c), that describes any evaluation procedures the district proposes to conduct.

B. In conducting the evaluation, the district shall:

(1) use a variety of evaluation tools and strategies to gather relevant functional and developmental information, including information provided by the parent, that may assist in determining whether the child is a pupil with a disability and the content of the pupil's individualized education program, including information related to enabling the pupil to be involved in and progress in the general curriculum or, for preschool pupils, to participate in appropriate activities;

(2) not use any single procedure as the sole criterion for determining whether a child is a pupil with a disability or determining an appropriate education program for the pupil; and

(3) use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

C. Each district shall ensure that:

(1) tests and other evaluation materials used to assess a child under this part are selected and administered so as not to be discriminatory on a racial or cultural basis, and are provided and administered in the pupil's native language or other mode of communication, unless it is clearly not feasible to do so;

(2) any standardized tests that are given to the child have been validated for the specific purpose for which they are used, are administered by trained and knowledgeable personnel, and are administered in accordance with any instructions provided by the producer of such tests;

(3) the child is assessed in all areas of suspected disability;

(4) evaluation tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the pupil are provided;

(5) if an evaluation is not conducted under standard conditions, a description of the extent to which it varied from standard conditions must be included in the evaluation report;

(6) tests and other evaluation materials include those tailored to evaluate specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient;

(7) tests are selected and administered so as best to ensure that if a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills, unless those skills are the factors that the test purports to measure; and

(8) in evaluating each pupil with a disability, the evaluation is sufficiently comprehensive to identify all of the pupil's special education and related services needs, whether or not commonly linked to the disability category in which the pupil has been classified.

D. Upon completion of administration of tests and other evaluation materials, the determination of whether the child is a pupil with a disability as defined in *Minnesota Statutes*, section 125A.02 shall be made by a team of qualified professionals and the parent of the pupil in accordance with item E, and a copy of the evaluation report and the documentation of determination of eligibility will be given to the parent.

E. In making a determination of eligibility under item D, a child shall not be determined to be a pupil with a disability if the determinant factor for such determination is lack of instruction in reading or math or limited English proficiency.

Subp. 4. Additional requirements for evaluations and reevaluations.

A. As part of an initial evaluation, if appropriate, and as part of any reevaluation under this part, or a reinstatement under part 3525.3100, the IEP team and other qualified professionals, as appropriate, shall:

(1) review existing evaluation data on the pupil, including evaluations and information provided by the parents of the pupil, current classroom-based assessments and observations, and teacher and related services providers observation; and

(2) on the basis of the review, and input from the pupil's parents, identify what additional data, if any, are needed to determine whether the pupil has a particular category of disability, as described in *Minnesota Statutes*, section 125A.02, or, in case of a reevaluation of a pupil, whether the pupil continues to have such a disability, the present levels of performance and educational needs of the pupil, whether the pupil needs special education and related services, or in the case of a reevaluation of a pupil, whether the pupil continues to need special education and related services, and whether any additions or modifications to the special education and related services are needed to enable the pupil to meet the measurable annual goals set out in the individualized education program of the pupil and to participate, as appropriate, in the general curriculum.

B. The district shall administer such tests and other evaluation materials as may be needed to produce the data identified by the IEP team under item A, subitem (2).

C. Each district shall obtain informed parental consent, in accordance with subpart 1, prior to conducting any reevaluation of a pupil, except that such informed parental consent need not be obtained if the district can demonstrate that it had taken reasonable measures to obtain such consent and the pupil's parent has failed to respond.

D. If the IEP team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the pupil continues to be a pupil with a disability, the district shall notify the pupil's parents of that determination and the reasons for it, and the right of such parents to request an evaluation to determine whether the pupil continues to be a pupil with a disability, and shall not be required to conduct such an evaluation unless requested to by the pupil's parents.

E. A district shall evaluate a pupil in accordance with this part before determining that the pupil is no longer a pupil with a disability.

F. Prior to using any conditional procedure, the IEP team must conduct a functional behavioral assessment (FBA). The FBA is a process for gathering information to maximize the efficiency of behavior supports. It includes a clear description of problem behaviors, identification of events, times, and situations that predict the occurrence and nonoccurrence of the behavior, and it identifies the consequences and reinforcers that maintain the behavior and the possible functions of the behavior.

3525.2920 DEVELOPMENT OF INDIVIDUALIZED EDUCATION PROGRAM PLAN.

Subpart 1. Definitions. As used in parts 3525.0200 to 3525.4770, 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 accordance with this part and that includes:

(1) a statement of the pupil's present levels of educational performance, including how the pupil's disability affects the pupil's involvement and progress in the general curriculum, or for preschool pupils, as appropriate, how the disability affects the pupil's participation in appropriate activities;

(2) a statement of measurable annual goals, including benchmarks or short-term objectives, related to meeting the pupil's needs that result from the pupil's disability to enable the pupil to be involved in and progress in the general curriculum, and meeting each of the pupil's other educational needs that result from the pupil's disability;

(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;

(4) an explanation of the extent, if any, to which the pupil will not participate with students in the regular class and in the activities described in subitem (3);

(5) a statement of any individual modifications in the administration of state or districtwide assessments of student achievement that are needed in order for the pupil to participate in such assessment. If the IEP team determines that the pupil will not participate in a particular state or districtwide assessment of student achievement or part of such an assessment, a statement of why that assessment is not appropriate for the pupil; and how the pupil will be assessed;

(6) the projected date for the beginning of the services and modifications described in subitem (3), and the anticipated frequency, location, and duration of those services and modifications;

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Proposed Rules

(7) beginning at age 14, and updated annually, a statement of the transition service needs of the pupil in accordance with part 3525.2900, subpart 4;

(8) beginning at least one year before the pupil reaches the age of 18, a statement that the pupil has been informed of his or her rights under this chapter, if any, that will transfer to the pupil on reaching the age of majority under *United States Code*, title 20, section 1415(m); and

(9) a statement of how the pupil's progress toward the annual goals described in subitem (2) will be measured, how the pupil's parents will be regularly informed by such means as periodic report cards, at least as often as parents are informed of their nondisabled student's progress, of the pupil's progress toward the annual goals described in subitem (2), and the extent to which that progress is sufficient to enable the pupil to achieve the goals by the end of the year.

B. "Individualized education program team" or "IEP team" means a group of individuals composed of:

(1) the parents of a pupil;

(2) at least one regular education teacher of the pupil, if the pupil is, or may be, participating in the regular education environment;

(3) at least one special education teacher, or where appropriate, at least one special education provider of the pupil;

(4) a representative of the school district who is qualified to provide or supervise the provision of, specially designed instruction to meet the unique needs of pupils with disabilities, is knowledgeable about the general curriculum, and is knowledgeable about the availability of resources of the district;

(5) an individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in subitems (2) to (6);

(6) at the discretion of the parent of the district, other individuals who have knowledge or special expertise regarding the pupil, including related services personnel, as appropriate; and

(7) whenever appropriate, the pupil.

Subp. 2. Requirement that program be in effect. At the beginning of each school year, each district shall have in effect, for each pupil in its jurisdiction, an individualized education program, as defined in subpart 1, item A.

Subp. 3. Development of IEP.

A. In developing each pupil's IEP, the IEP team shall consider the strengths of the pupil and the concerns of the parents for enhancing the education of the pupil and the results of the initial evaluation or most recent evaluation of the pupil.

B. The IEP team shall:

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

(2) in the case of a pupil with limited English proficiency, consider the language needs of the pupil as such needs relate to the pupil's IEP;

(3) in the case of a pupil who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP team determines, after an evaluation of the pupil's reading and writing skills, needs, and appropriate reading and writing media, including an evaluation of the pupil's future needs for instruction in Braille or the use of Braille, that instruction in Braille or the use of Braille is not appropriate for the pupil;

(4) consider the communication needs of the pupil, and in the case of a pupil who is deaf or hard of hearing, consider the pupil's language and communication needs, opportunities for direct communications with peers and professional personnel in the pupil's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the pupil's language and communication mode; and

(5) consider whether the pupil requires assistive technology devices and services.

C. The regular education teacher of the pupil, as a member of the IEP team, shall, to the extent appropriate, participate in the development of the IEP of the pupil, including the determination of appropriate positive behavioral interventions and strategies and the determination of supplementary aids and services, program modifications, and support for school personnel consistent with subpart 1, item A, subitem (3).

Subp. 4. Review and revision of IEP.

A. The district shall ensure that the IEP team reviews the pupil's IEP periodically, but not less than annually to determine whether the annual goals for the pupil are being achieved, and revises the IEP as appropriate to address:

- (1) any lack of expected progress toward the annual goals and in the general curriculum, where appropriate;
- (2) the results of any reevaluation conducted under part 3525.2910;
- (3) information about the pupil provided to, or by, the parents; or
- (4) the pupil's anticipated needs and other matters.

B. The regular education teacher of the pupil, as a member of the IEP team, shall, to the extent appropriate, participate in the review and revision of the IEP of the pupil.

Subp. 5. Failure to meet transition objectives. If a participating agency, other than the local school district, fails to provide the transition services described in the IEP in accordance with subpart 1, item A, subitem (7), the district shall reconvene the IEP team to identify alternative strategies to meet the transition objectives for the pupil set out in that program.

Subp. 6. Construction. Nothing in this part shall be construed to require the IEP team to include information under one component of a pupil's IEP that is already contained under another component of such IEP.

3525.2930 EDUCATIONAL PLACEMENT.

Subpart 1. Continuum of alternative placements. Each district must ensure that a continuum of alternative placements is available to meet the needs of pupils for special education and related services. The continuum must:

A. include the alternative placements listed in the definition of special education of *Code of Federal Regulations*, title 34, section 300.26; and

B. make provision for supplementary services, including resource room or itinerant instruction, to be provided in conjunction with regular class placement.

Subp. 2. General least restrictive environment requirements. Each district must ensure:

A. that to the maximum extent appropriate, pupils, including pupils in public or private institutions or other care facilities, are educated with students who are nondisabled; and

B. that special classes, separate schooling, or other removal of pupils from the regular educational environment occurs only if the nature of severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

Subp. 3. Nonacademic settings. In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in *Code of Federal Regulations*, title 34, section 300.306, each district must ensure that each pupil participates with nondisabled students in those services and activities to the maximum extent appropriate to the needs of that pupil.

Subp. 4. Educational placement. Each district shall ensure that the parents of each pupil are members of any group that makes decisions on the educational placement of the pupil.

3525.3100 FOLLOW-UP REVIEW REQUIREMENTS.

Pupils who are discontinued from all special education services may be reinstated within 12 months. If data on the student's pupil's present levels of performance are available and an ~~assessment~~ evaluation had been conducted within three years pursuant to part ~~3525.2750~~ 3525.2910, the district is not required to document two prereferral interventions or conduct a new ~~assessment~~ evaluation.

3525.3300 CONTENTS OF NOTICE.

Notices must be sufficiently detailed and precise to constitute adequate notice for hearing of the proposed action and contain a full explanation of the procedural safeguards available to parents under parts 3525.0200 to ~~3525.4700~~ 3525.4770. Notices must:

A. ~~Inform the parents of their right and the procedure and time for them to participate as a team member in developing and determining their child's educational program, including special education services and to provide information relative to the child's assessment and the development of the program plan.~~

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Proposed Rules

~~B. Inform the parents of their right and the procedure to receive interpretations of assessment evaluation or reassessment reevaluation procedures, instruments and data or results and of the program plan from a knowledgeable school employee and for that conference to be held in private.~~

~~C. Inform the parents of their right and the procedure to have included on the team that interprets the assessment data and develops the individual program plans, the persons described in part 3525.2900, subpart 1, including a person who is a member of the same minority or cultural background or who is knowledgeable concerning the racial, cultural, or disability differences of the student.~~

~~D. Inform the parents that they may:~~

~~(1) Obtain an independent assessment at their own expense.~~

~~(2) Request from the district information about where an independent assessment may be obtained.~~

~~(3) Obtain an independent assessment at public expense if the parent disagrees with an assessment obtained by the district. The district shall initiate conciliation and a due process hearing if necessary when refusing a parent's request for an independent assessment at public expense. If the hearing officer determines that the district's assessment is appropriate, the parents still have the right to an independent assessment, but not at public expense. When an independent evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria the district uses when it initiates an evaluation.~~

~~E. Inform the parents that the district will not proceed with proposed actions defined in part 3525.0200, subparts 7a and 8a, without prior written consent.~~

~~F. Inform the parents that if they notify the district in writing that they do not agree with the proposed assessment or placement, they will be requested to attend a conciliation conference at a mutually convenient time and place. If this is not an initial assessment or an initial placement being proposed by the district, the district must proceed with its proposal after ten school days of the parent's receipt of the notice and response form unless the parent objects in writing.~~

~~G. Inform the parents that if they do not wish to participate in a conciliation conference they have a right to proceed directly to an impartial due process hearing and bypass the informal conciliation conference. Even if they do attend a conciliation conference, if they do not agree with action proposed by the district, they have a right to proceed to a due process hearing. The conciliation process cannot be used to delay or deny the parents' rights to a due process hearing.~~

~~H. Inform the parents that they have the right to be represented by counsel or another person of their choosing at the conciliation conference or the impartial due process hearing.~~

~~I. Include a statement assuring that their child's educational program will not be changed as long as the parent objects to the proposed action, in the manner prescribed by parts 3525.0200 to 3525.4700.~~

~~J. Inform the parents of their right to be represented in preparation of and at the hearing by legal counsel or other representative of their choice.~~

~~K. Inform the parents of their right, in accordance with laws relating to confidentiality, to examine and receive copies of the child's school records before the hearing, including tests, assessments, reports, or other information concerning the educational assessment or reassessment upon which the proposed action may be based.~~

~~L. Inform the parents of their right to call their own witnesses and to present evidence, including expert medical, psychological, and educational testimony and relevant records, tests, assessments, reports, or other information.~~

~~M. Inform the parents of their right to compel the attendance of any official or employee of the providing or resident school district or any other person, who may have evidence relating to the proposed action and the manner and time in which to do so.~~

~~N. Inform the parents of their right to present evidence and cross-examine any employee of the school district or other persons who present evidence at the hearing.~~

~~O. Inform the parents of any free or low cost legal services available in the area.~~

~~P. Inform the parents of their right to have the child who is the subject of the hearing present at the hearing.~~

~~Q. Inform the parents that the hearing shall be closed unless the parents request an open hearing.~~

~~R. Inform the parents that they have a right to obtain a record of the hearing including the written findings of fact and decisions whether or not they appeal.~~

~~S. Inform the parents that if a due process hearing is held and the parents' position is upheld, the parents may be awarded attorney's fees by the courts in certain situations.~~

~~T. Inform the parents that their consent for their child's program and placement including the use of aversive and deprivation procedures is voluntary and that they may revoke it at any time.~~

~~U. Include a response form on which the parents may indicate their approval of or objection to the proposed action and identify the district employee to whom the response form must be mailed or given and to whom questions may be directed.~~

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

3525.3400 NOTICE TO RESIDENT SCHOOL DISTRICT.

The resident school district, if different from the providing school district, shall receive notice of and will be responsible for any hearings or appeals provided under parts 3525.0200 to ~~3525.4700~~ 3525.4770 for pupils placed by the resident district if the providing district notifies the school district according to part 3525.0800, subpart 5.

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

Before the initiation or significant change or the refusal to initiate or significantly change a pupil's educational placement or special education services, as set forth in ~~part 3525.2900, subpart 1, item F~~ United States Code, title 20, chapter 33, sections 1400 et seq., the school district shall prepare and serve a notice that meets the requirements of ~~parts 3525.3200 to 3525.3400~~ Code of Federal Regulations, title 34, section 300.503.

The portion of the notice which is specific to the educational placement and provision of services shall:

- A. include a copy of the individual educational program plan as described in part ~~3525.2900, subpart 3~~ 3525.2910;
- B. inform the parents that the school district will not proceed with the initial placement and provision of services as defined in part 3525.0200 without prior written consent of the pupil's parents; and
- C. inform the parents that except for the initial placement and provision of services, the district will proceed with the proposed placement and provision of services unless the parents object in writing on the enclosed response form or otherwise in writing within ~~ten~~ 14 calendar days after the receipt of the notice.

3525.3700 CONCILIATION CONFERENCE.

~~Subpart 1. When a conference must be offered. If the parent does not object in writing, to a proposed action as set forth in parts 3525.2550 to 3525.2750 or part 3525.2900, subpart 5, within 14 days after receipt of the notice, and the proposed action is not an initial action as defined in part 3525.0200, subparts 7a and 8a, the proposed action shall take place. If a written objection is made, the resident school district shall offer the parent an opportunity to conciliate the matter. If the parent is willing to enter conciliation, the district shall arrange for a conference with the parent to review the reasons for the proposed action and conciliating the matter. The conference shall be held at a time and place mutually convenient to the parent and the school district representatives and shall be held within ten days after receipt of the written objection. There may be more than one conference and the parent or district may request a hearing under part 3525.3800 at any time. A parent must have the opportunity for at least one conciliation conference within 14 calendar days after receipt of notice if, the parent refuses to provide prior written consent for initial assessment and evaluation or initial placement under parts 3525.3500, item D, and 3525.3600, item A, subitem (2), within ten days after the receipt of the notice and response form, the district shall offer the parent an opportunity to conciliate the matter. If the parent is willing to enter conciliation, the district shall arrange for a conference with the parent to review the parent's suggestions and concerns, and to conciliate the matter, the parent objects in writing to any proposal, or the district refuses to make a change as described in Code of Federal Regulations, title 34, section 300.503(a)(1). The district must engage in a conciliation conference if one is requested by the parent.~~

~~Subp. 1a. When and where held; results. The conference shall be held at a time and place mutually convenient to the parent and school district representatives. If no response is received in cases of initial assessment or placement, the school district shall offer a conciliation conference to be held within ten days after the expiration of the ten-day period for parent response. In cases where the parent fails to attend the initial conciliation conference, the district may choose to offer to schedule additional conciliation conferences. A conciliation conference must be held in accordance with the following:~~

- ~~A. A conciliation conference must be held within ten calendar days from the district's receipt of the parent's agreement to participate at a time and place mutually convenient to the parent and school district representatives;~~

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Proposed Rules

B. A conciliation conference must not be used to unilaterally delay or deny a parent's right to a hearing;

C. All discussion involving or concerning the contents of a conciliation conference must remain confidential and must not be permitted as evidence in a due process hearing, except as provided in item D:

D. Within seven calendar days after the final conciliation conference, the district must serve the parent with a written notice that conforms with the requirements of Code of Federal Regulations, title 34, section 300.503, and must provide the parent with any proposed IEP resulting from the conciliation conference. The notice and IEP may be used in a subsequent proceeding as permitted by part 3525.4100 and Minnesota Statutes, section 125A.09, subdivision 4; and

E. If the proposed action is an initial action, as defined in part 3525.0200, subparts 7a and 8a, the district must proceed upon informed consent of the parents. For all other proposed actions, the district must proceed within seven calendar days after notice is sent to the parents, unless the parent objects in writing to the proposed action within that time period.

Subp. 2. [See repealer.]

Subp. 3. ~~Right to a hearing without conciliation~~ **Refusal to conciliate; request for hearing.** ~~The conciliation process must not be used to deny or delay a parent's right to a due process hearing. If the parent refuses efforts by the district to conciliate the dispute with the school district, the district's obligation to offer an opportunity for conciliation is satisfied.~~

When the parent refuses efforts by the district to conciliate the dispute and notifies the district of the intent to go to an impartial due process hearing, the district must provide the parent with the procedure and time in which to request the hearing, and the identification of the district employee to whom the written request form or other written request for a hearing must be mailed, and to whom questions and legal documents or requests about the hearing may be directed.

3525.3750 MEDIATION AND OTHER ALTERNATIVE DISPUTE RESOLUTION.

Pursuant to Minnesota Statutes, section 125A.09, and Code of Federal Regulations, title 34, section 300.506, districts and parents are encouraged to resolve disputes about any matter described in Code of Federal Regulations, title 34, section 300.503(a)(1), through mediation or other forms of alternative dispute resolution, including those developed by the commissioner. Mediations and forms of dispute resolution must be agreed to by both parties. A mediation or other form of alternative dispute resolution must not be used to unilaterally delay or deny a parent's right to a hearing. All discussion involving or concerning the contents of a mediation or other form of alternative dispute resolution must remain confidential and must not be permitted as evidence in a due process hearing. Mediation must be conducted in accordance with Code of Federal Regulations, title 34, section 300.506. Other forms of alternative dispute resolution must be conducted pursuant to the agreement of the parties.

3525.3800 WHEN A HEARING MUST BE HELD.

A hearing pursuant to Minnesota Statutes, section 125A.09, or ~~United States Code, title 20, section 1415(b)(6) and (k)~~ Code of Federal Regulations, title 34, sections 300.500 to 300.514, shall be held whenever a parent, as defined in Code of Federal Regulations, title 34, section 300.20, or district requests a hearing.

3525.3900 NOTICE OF A HEARING.

Written notice of the time, date, and place of ~~hearings~~ a hearing shall be given to all parties by the hearing officer at least ten ~~calendar~~ days in advance of the ~~hearings; and hearing.~~ The hearing shall be held at a time, date, and place ~~determined by the hearing officer~~ in the district responsible for assuring that an appropriate program is provided and that is reasonably convenient to the parents and child involved, ~~as determined by the hearing officer.~~

Upon receipt of the parent's written request for a hearing, or upon the district's initiation of a hearing, the district shall serve the parent with a written notice of rights and procedures relative to the hearing that informs the parent:

A. That the hearing shall take place before an impartial hearing officer mutually agreed to by the school board and the parent. The notice must include a list of possible hearing officers and information on their backgrounds as maintained by the state. If the parties have not agreed upon a hearing officer, and the board has not requested that a hearing officer be appointed by the commissioner within four business days after the receipt of the request, the commissioner shall appoint a hearing officer upon the request of either party.

B. That ~~they~~ the parent will receive notice of the time, date, and place of the hearing at least ten calendar days in advance of the hearing which ~~will~~ must be held within 30 calendar days after the written request.

C. Of ~~their~~ the parent's right to receive a list of persons who will testify on behalf of the district concerning the ~~proposed action~~ issues within five business days of the date the district receives ~~their~~ the parent's written request for the list of persons testifying.

D. Of ~~their~~ the parent's responsibility, within five business days after written request by the school district, to provide to the district a list of persons who will testify on the parent's behalf concerning the ~~proposed action~~ issues.

E. Consistent with *Code of Federal Regulations*, title 34, section 300.509, that the hearing officer may prohibit evidence not disclosed five business days before a hearing.

F. That at the hearing the burden of proof is on the district to show that the proposed action or refusal is justified on the basis of the ~~person's~~ pupil's educational needs, current educational performance, or ~~presenting disabilities~~ progress, taking into account the presumption that placement in a regular public school class with special education services is preferable to removal from the regular classroom.

G. That the hearing officer will make a written decision based only on evidence received and introduced into the record at the hearing not more than 45 calendar days from the receipt of the request for the hearing and that the proposed action or refusal will be upheld only upon showing by the school district by a preponderance of the evidence. ~~A proposed action that would result in the pupil being removed from a regular education program may be sustained only when, and to the extent the nature or severity of the disability is such that a regular education program would not be satisfactory and the pupil would be better served in an alternative program. Consideration of alternative educational programs must also be given.~~

H. That the decision of the hearing officer is binding on all parties unless appealed to the commissioner by the parent or the district, except as provided in *Code of Federal Regulations*, title 34, section 300.514.

I. That unless the district and parents agree otherwise, the pupil shall not be denied initial admission to school and the pupil's education program shall not be changed in conformance with ~~United State Code, title 20, section 1415(j)~~ Code of Federal Regulations, title 34, section 300.514.

3525.4000 HEARING OFFICERS.

~~The hearing shall take place before an impartial hearing officer mutually agreed to by the school board and the parents. If the parties have not agreed upon a hearing officer, and the board has not requested that a hearing officer be appointed by the commissioner within four business days after the receipt of the request, the commissioner shall appoint a hearing officer upon the request of either party. The hearing officer shall not be a school board member or employee of the school district where the pupil or child resides or of the child's school district of residence, an employee of any other public agency involved in the education or care of the child or regular education pupil, or any person with a personal or professional interest which would conflict with the person's objectivity at the hearing. A person who otherwise qualifies as a hearing officer is not an employee of the district solely because the person is paid by the district to serve as a hearing officer. If a hearing officer requests an independent educational evaluation of a child or regular education pupil, the cost of the evaluation shall be at district expense.~~

3525.4100 PREHEARING REVIEW BY ~~THE~~ HEARING OFFICER.

Subpart 1. **Information received before the hearing.** Five business days before the hearing, ~~the person conducting~~ the hearing officer shall receive copies of:

A. the district's due process notices ~~and memorandum~~ prepared pursuant to ~~part 3525.3700, subpart 2~~ parts 3525.3600 and 3525.3900 and Code of Federal Regulations, title 34, section 300.503, to the parents;

B. written information concerning the district's educational evaluation or ~~re-evaluation~~ reevaluation and copies of any parties' tests, evaluations, or other admissible reports or written information relating to the evaluation or ~~re-evaluation~~ reevaluation, or the proposed action or refusal;

C. a copy of the pupil's current and proposed IEP; ~~and~~

D. information about relevant progress made by the pupil; and

E. other information from the district or parent as the hearing officer may have requested at a prior date provided that a copy of the information is provided to all parties, and further provided that the information is made a part of the hearing record.

The provisions of items B and C need not apply when the hearing concerns a proposed action under ~~parts 3525.2550 to 3525.2750~~ Code of Federal Regulations, title 34, sections 300.532 to 300.533.

Subp. 2. **Duties ~~of hearing officers~~ after receipt of the information.** Upon receipt of the information in subpart 1, the hearing officer:

A. shall review the same for compliance with parts 3525.0200 to ~~3525.4700~~ 3525.4770 and Code of Federal Regulations, title 34, part 300;

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Proposed Rules

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

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

D. may require the district to perform an additional educational evaluation or ~~re-evaluation~~ may arrange for an independent educational evaluation, which must be at district expense;

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

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

G. may do the additional things necessary to comply with parts 3525.0200 to ~~3525.4700~~ 3525.4770 and Code of Federal Regulations, title 34, part 300;

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

I. may grant specific extensions of time beyond the 45-calendar day period established in ~~part 3525.3900, item E~~ Code of Federal Regulations, title 34, section 300.511, at the request of either party for good cause shown on the record.

3525.4210 HEARING RIGHTS OF RESPECTIVE PARTIES.

Subpart 1. Basic hearing rights. The hearing rights of the respective parties are those in Code of Federal Regulations, title 34, section 300.509.

Subp. 2. Additional hearing rights. At least five business days after the request for hearing is made, the objecting party shall provide the other party with a brief statement of the particulars of the objection, the reasons for the objection, and the specific remedies sought. The other party must provide the objecting party with a written response to the statement of objections within five business days of receipt of the objecting party's statement. Any request to compel the attendance of witnesses must be made in writing to the appropriate school district or to the person whose attendance is compelled at least five business days in advance of the hearing. The written requests shall also be filed with the hearing officer at the time of hearing. The hearing officer may subpoena witnesses and documents under Minnesota Statutes, section 14.51.

3525.4300 HEARING PROCEDURES.

The hearing officer shall preside over and conduct the hearing and shall rule on procedural and evidentiary matters, ~~and the hearing officer's decision shall be based solely upon the evidence introduced and received into the record.~~ The district ~~shall bear~~ bears the burden of proof as to all facts and ~~as to the grounds for the proposed action or refusal.~~ ~~One purpose of the hearing is to develop evidence of specific facts concerning the educational needs, current educational performance, or apparent disabilities of the person as it relates to the need for the proposed action.~~ Consistent with the rights and procedures in parts 3525.3300 to 3525.4770, ~~nothing in parts 3525.0200 to 3525.4770 limits the right of~~ The hearing officer must ensure that issues for hearing are appropriately identified and that evidence is limited to that which is relevant to the issues and is not incompetent, immaterial, cumulative, or irrelevant. The hearing officer must limit the hearing to the amount of time necessary for each party to present its case and must establish the means for doing so. The hearing officer has unlimited authority to question witnesses ~~or~~ and request information.

A tape recording, stenographic record, or other record of the hearing shall be made, ~~and if an appeal is filed under parts 3525.4600 and 3525.4700, the hearing must be transcribed by the district and must be accessible to the parties involved within five days of the filing of the appeal.~~

3525.4410 DECISIONS OF HEARING OFFICER.

Not more than 45 calendar days from the receipt of the request for a hearing, the hearing officer shall prepare a written decision based on evidence received and introduced into the record at the hearing.

The decision must:

A. contain written findings of fact and conclusions of law, including a statement of the controlling facts upon which the decision is made in sufficient detail to apprise the parties and the commissioner of the basis and reasons for the decision;

B. be based upon a preponderance of the evidence;

C. be based on the standards and principles in this chapter; Minnesota Statutes, section 125A.08; and Code of Federal Regulations, title 34, part 300; and

D. be consistent with FAPE standards according to Code of Federal Regulations, title 34, section 300.13.

3525.4500 FILING AND MAILING THE DECISION.

All decisions shall be filed with the commissioner of Children, Families, and Learning and shall be sent by mail to the parties. The decision(s) shall ~~also~~ include information detailing the right to appeal the decision, the procedure and time in which to do so, and an appeal form on which to indicate the desire to appeal ~~as set forth in~~ under part 3525.4600.

3525.4600 EFFECTIVE DATE OF ACTION AND APPEALS.

~~The decision of the hearing officer is binding on all parties unless appealed to the commissioner by the parent or the district, except as provided in Code of Federal Regulations, title 34, section 300.514(e). The hearing officer's decision issued under part 3525.4400, subpart 2, 3, or 4, may be appealed by the parent or the district to the commissioner within 30 days of that written decision in the following manner:~~ The hearing officer's decision is final according to Code of Federal Regulations, title 34, sections 300.510, 300.511, and 300.514(c). Notices of appeal shall may be on the appeal form or otherwise but must be in writing and shall be sent by mail to all parties to the hearing when the appeal is filed with the commissioner. The notice of appeal must identify the specific parts of the hearing decision being appealed.

~~The school board shall be a party to any appeal. The hearing review officer shall issue a~~ hearing review officer's final decision must be issued within 30 calendar days after the filing of the appeal, and be based on a review of the local decision and the entire records within 30 calendar days after the filing of the appeal record, and any additional evidence obtained. A written transcript of the hearing shall be made by the district; the transcript and entire record shall be ~~accessible~~ provided to the parties and ~~provided to~~ the hearing review officer within five calendar days after the filing of the appeal. If the transcript and record are not provided to the hearing review officer within five calendar days of the filing of the appeal, the district shall request an extension of the time beyond the 30-calendar day period equal to the number of days which exceeded the five-calendar day period for filing the transcript and entire record. The hearing review officer shall seek additional evidence if necessary and may afford the parties an opportunity for written or oral argument. A hearing held to seek additional evidence must be an impartial due process hearing but is not a contested case hearing. The hearing review officer may grant specific extensions of time beyond the 30-calendar day period at the request of any party for good cause shown on the record.

3525.4700 FINAL DECISION.

The hearing review officer's final decision must be in writing, include findings and conclusions, and be based on the standards in this chapter; Minnesota Statutes, section 125A.08, and the standards, requirements, and principles in parts 3525.4400, subparts 2 and 3, and 3525.0200 to 3525.4700; Code of Federal Regulations, title 34, part 300; and be consistent with FAPE standards according to Code of Federal Regulations, title 34, section 300.13.

The decision of the hearing review officer is final and effective upon issuance. Any party aggrieved by the findings and decisions made by a hearing review officer shall have the right to bring a civil action ~~regarding the complaint and decision in any state court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy pursuant to Code of Federal Regulations, title 34, section 300.512.~~

If the district fails to implement the hearing officer's or hearing review officer's decision, the parent shall have the right to bring the failure to the attention of the commissioner through the special education complaint process. In accordance with *Minnesota Statutes*, section 127A.42, the commissioner of Children, Families, and Learning shall impose sanctions necessary to correct any failure.

3525.4750 EXPEDITED HEARINGS, WHO MAY REQUEST.

[For text of subps 1 and 2, see M.R.]

Subp. 3. **Continued placement.** When a district proposes that an interim alternative placement should continue beyond 45 calendar days, it must provide parents with a written statement of the reasons for this proposal.

3525.4770 EXPEDITED HEARINGS, TIMELINES.

Subpart 1. **When parents request hearing.** When requesting an expedited hearing the parents shall provide the district with:

- A. the address of the residence of the pupil;
- B. the name of the school the pupil is attending;
- C. a description of the nature of the problem of the pupil relating to the manifestation determination, interim placement, or proposed interim placement; and
- D. a proposed resolution of the problem to the extent known and available to the parents at the time.

The district may not deny or delay a parent's right to an expedited hearing for failure to provide the notice required here.

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Proposed Rules

Immediately upon receipt of the request for an expedited hearing by the district superintendent, or upon initiating an expedited hearing, the district shall serve the parents with a written notice of right and procedures relative to the hearing, including the availability of free or low-cost legal and other relevant legal services, and a list of approved hearing officers.

Subp. 2. **When district requests hearing.** When the district requests an expedited hearing it shall provide the parents with a written notice of:

- A. a description of the nature of the problem including the behavior for which the change of placement is requested;
- B. a description of the interim placement or proposed interim placement; ~~and~~
- C. a proposed resolution of the problem to the extent known at the time; and
- D. a list of approved hearing officers.

Subp. 3. **Hearing officer appointment.** ~~The parties may agree upon a hearing officer, but~~ the district shall send a copy of the hearing request to the commissioner by facsimile by the end of the business day following receipt of the parent's notice to the district superintendent or initiation of an expedited hearing. ~~Upon~~ Within two business days of receipt of the notice, if the parties have not agreed to a hearing officer, the commissioner shall appoint a hearing officer ~~from the roster maintained by the department for that purpose. The parties may agree to a hearing officer other than the one appointed by the commissioner in which case the district shall send, by facsimile, notice of the hearing officer requested. If the agreed parties agree upon a hearing officer is, the hearing officer must be~~ from the roster maintained by the department, ~~the department shall appoint the hearing officer, if available, and assign a hearing case number. The district must contact the agreed upon hearing officer, and the hearing officer, if available to hear the matter, must notify the commissioner, who will then assign a hearing case number. If the agreed upon hearing officer is unavailable, the department district shall inform both parties of that fact, and the parties may mutually agree to commissioner must appoint another hearing officer by the end of the following business day. If the parties are unable to reach agreement, either party may inform the department of that fact and request the immediate appointment of the next available hearing officer. If the agreed upon hearing officer is not from the department's roster, the department shall inform the parties of the case number so that it can maintain a record of all hearing proceedings~~ The same hearing officers shall be used for the expedited hearings as for hearings under parts 3525.3800 to 3525.4500.

Subp. 4. **Strikes Removal of hearing officer.** In an expedited hearing, ~~a party may not strike the appointment of a hearing officer as of right, but~~ a party may only remove a hearing officer on an affirmative showing of prejudice under *Minnesota Statutes*, section 125A.09. ~~A hearing officer must meet the qualifications under Minnesota Statutes, section 125A.09, subdivision 11.~~

[For text of subp 5, see M.R.]

Subp. 6. **Prehearing conference.** Within two business days of appointment, the hearing officer shall hold a prehearing conference, which may be by telephone. At that conference, or later, the hearing officer may take any appropriate action ~~a court may take under Rule 16 of Minnesota Rules of Civil Procedure including, but not limited to,~~ relating to scheduling, jurisdiction, and listing witnesses, including expert witnesses. Specific pleadings including statements of objection under *Minnesota Statutes*, section 125A.09, subdivision 6, clause (5), and the statement of material allegations under part 3525.4200 shall be required; however the timelines for their exchange shall be established by the hearing officer. Issues not pled with specificity in an expedited due process hearing are not waived in subsequent proceedings. ~~The~~ Any exchange of witness lists, evidence, and any other information deemed necessary by the hearing officer shall be exchanged based on the timeline ordered by the hearing officer as required to allow the hearing officer to render a written decision within 20 business days of the request for the hearing. At the prehearing conference, and subsequently, the hearing officer may order either party to submit educational records, evaluations, and any other information to the hearing officer for prehearing review. The hearing officer may establish procedures necessary to ensure the timely and fair resolution of the dispute.

Subp. 7. **Appeal.** The final decision of a hearing officer in an expedited hearing may be appealed to a hearing review officer in the same manner as set forth in *United States Code*, title 20, section 1415, and *Minnesota Rules* this chapter and Code of Federal Regulations, title 34, sections 300.510 and 300.511, except that the appeal must be made within five business days of the hearing officer's final decision. The hearing review officer's decision must be issued within ten business days of appointment and receipt of the hearing records. A time extension of up to five business days may be granted for good cause shown on the record.

Subp. 8. **Decision.** A written decision for an expedited hearing shall be rendered by the hearing officer in 20 business days. An extension of up to five business days may be granted by the hearing officer for good cause shown on the record. The decision is effective upon issuance consistent with *Code of Federal Regulations*, title 34, section 300.514.

REPEALER. *Minnesota Rules*, parts 3525.0200, subpart 2; 3525.1329, subpart 2; 3525.1333, subpart 3; 3525.1510; 3525.2550, subpart 1; 3525.2750; 3525.2900, subparts 1 and 3; 3525.3700, subpart 2; 3525.4200; and 3525.4400, are repealed.

RENUMBERING INSTRUCTION. The revisor shall renumber part 3525.0200, subpart 1c, as part 3525.0200, subpart 2d.

Minnesota Housing Finance Agency

Proposed Permanent Rules Relating to Capital Contribution of Investors

NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING

Proposed Amendment to Rules Governing the Definition of Capital Contribution of the Investors for the Redefined Equity Program, *Minnesota Rules*, Part 4900.0010, Subpart 7, Paragraph A(3)

Introduction. The Minnesota Housing Finance Agency intends to adopt rules without a public hearing following the procedures set forth in the Administrative Procedure Act, *Minnesota Statutes*, sections 14.22 to 14.28, and rules of the Office of Administrative Hearings, *Minnesota Rules*, parts 1400.2300 to 1400.2310. You have 30 days to submit written comments on the proposed rules and may also submit a written request that a hearing be held on the rules.

Agency Contact Person. Comments or questions on the rules and written requests for a public hearing on the rules must be submitted to the agency contact person. The agency contact person is: Gayle Rusco at the Minnesota Housing Finance Agency, 400 Sibley Street, St. Paul MN, 55101; **phone:** (651) 296-8093; **email:** gayle.rusco@state.mn.us. **TTY:** (651) 297-2361.

Subject of Rules and Statutory Authority. The proposed rules amend the definition of the Capital Contributions of the Investors for the Redefined Equity Program. The statutory authority to adopt the rules is *Minnesota Statutes*, section 462A.06 subdivisions 4 and 11, and section 462A.03, subdivision 13. A copy of the proposed rules is published in the *State Register* and attached to this notice as mailed.

Comments. You have until 4:30 p.m. on April 19, 2001, to submit written comment in support of or in opposition to the proposed rules and any part or subpart of the rules. Your comment must be in writing and received by the agency contact person by the due date. Comment is encouraged. Your comment should identify the portion of the proposed rules addressed and the reason for the comment. You are encouraged to propose any change desired. Any comments that you would like to make on the legality of the proposed rules must also be made during this comment period.

Request for a Hearing. In addition to submitting comments, you may also request that a hearing be held on the rules. Your request for a public hearing must be in writing and must be received by the agency contact person by 4:30 p.m. on April 19, 2001. Your written request for a public hearing must include your name and address. You must identify the portion of the proposed rules to which you object or state that you oppose the entire set of rules. Any request that does not comply with these requirements is not valid and cannot be counted by the agency for determining whether a public hearing must be held. You are also encouraged to state the reason for the request and any changes you want made to the proposed rules.

Withdrawal of Requests. If 25 or more persons submit a written request for a hearing, a public hearing will be held unless a sufficient number withdraw their requests in writing. If enough requests for hearing are withdrawn to reduce the number below 25, the agency must give written notice of this to all persons who requested a hearing, explain the actions the agency took to effect the withdrawal, and ask for written comments on this action. If a public hearing is required, the agency will follow the procedures in *Minnesota Statutes*, sections 14.131 to 14.20.

Alternative Format. Upon request, this Notice can be made available in an alternative format, such as large print, Braille, or cassette tape. To make such a request, please contact the agency contact person at the address or telephone number listed above.

Modifications. The proposed rules may be modified as a result of public comment. The modifications must be supported by comments and information submitted to the agency, and the adopted rules may not be substantially different than these proposed rules. If the proposed rules affect you in any way, you are encouraged to participate in the rulemaking process.

Statement of Need and Reasonableness. A statement of need and reasonableness is now available from the agency contact person. This statement contains a summary of the justification for the proposed rules, including a description of who will be affected by the proposed rules and an estimate of the probable cost of the proposed rules. Copies of the statement may be obtained at the cost of reproduction from the agency.

Adoption and Review of Rules. If no hearing is required, the agency may adopt the rules after the end of the comment period. The rules and supporting documents will then be submitted to the Office of Administrative Hearings for review for legality. You may ask to be notified of the date the rules are submitted to the office. If you want to be so notified, or want to receive a copy of the

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Proposed Rules

adopted rules, or want to register with the agency to receive notice of future rule proceedings, submit your request to the agency contact person listed above.

Dated: 5 March 2001

Katherine G. Hadley, Commissioner

4900.0010 DEFINITIONS.

[For text of subs 1 to 6, see M.R.]

Subp. 7. **Capital contribution of the investors.**

A. "Capital contribution of the investors" means the excess of the value of the project at the times and in the manner determined by the agency, whether or not paid in cash, over the then current principal amount of the agency's loan:

(1) for those developments that:

[For text of units (a) to (j), see M.R.]

(k) the owner agrees to execute any documents that the agency deems necessary and appropriate to effectuate the intent of this definition; ~~or~~

(2) for those developments that:

[For text of units (a) to (e), see M.R.]

(f) the owner agrees to execute any documents that the agency deems necessary and appropriate to effectuate the intent of this subitem, which shall include an agreement by the agency that the owner shall be entitled to cumulative dividends; or

(3) for those developments that:

(a) are subject to an agency-financed first mortgage but do not receive federal assistance pursuant to a project-based Section 8 or Section 236 contract;

(b) meet the requirements of subitem (1), units (a) to (e), (h), (i), and (k);

(c) the owner agrees not to prepay its mortgage with the agency for ten years from the date of execution of legal documents for developments which meet the requirements of this subitem; and

(d) have sustained an average occupancy of rent-paying tenants of 95 percent or more for the prior 24 months, but the requirements of this unit are not applicable to developments that have reserves equal to or exceeding the sum that is the greater of 40 percent of the outstanding principal balance of the mortgage or \$5,000 per unit.

[For text of item B, see M.R.]

[For text of subs 7 to 23, see M.R.]

Subp. 24. Section 8. "Section 8" means Section 8 of the United States Housing Act of 1937, codified at *United States Code*, title 42, section 1437f.

Subp. 25. Section 236. "Section 236" means Section 236 of the National Housing Act, codified at *United States Code*, title 12, section 1715z-1.

Official Notices

Pursuant to Minnesota Statutes §§ 14.101, an agency must first solicit comments from the public on the subject matter of a possible rulemaking proposal under active consideration within the agency by publishing a notice in the State Register at least 60 days before publication of a notice to adopt or a notice of hearing, and within 60 days of the effective date of any new statutory grant of required rulemaking. The State Register also publishes other official notices of state agencies and non-state agencies, including notices of meetings and matters of public interest.

Department of Agriculture

Minnesota Rural Finance Authority

Notice of Public Hearing on the Issuance of an Agricultural Development Revenue Bond Under *Minnesota Statutes*, Chapter 41C

NOTICE IS HEREBY GIVEN that a public hearing will be held on April 13, 2001, at 9:00 a.m., in Room 145 Department of Agriculture Building, 90 West Plato Boulevard, St. Paul Minnesota, on a proposal that the Minnesota Rural Finance Authority (the Authority) issue its revenue bond under *Minnesota Statutes*, Chapter 41C, in order to finance the purchase of approximately 137 acres of bare land located in Section 25, Township 127N - R47W, Traverse County, Minnesota on behalf of Steven G. Lundquist, (the Borrower/s). The maximum aggregate face amount of the proposed bond issue is \$192,000.00. The revenue bond will be a limited obligation of the Authority, payable solely from the revenue pledged to the payment thereof. No holder of such revenue bond will ever have the right to compel any exercise of the taxing power of the State of Minnesota to pay the bond or the interest thereon, nor to enforce payment against any property of the Authority or the State of Minnesota, except the revenues specifically pledged to the payment thereof. Before issuing the revenue bond, the Authority will enter into an agreement with the Borrower whereby the Borrower will be obligated to make payments at least sufficient at all times to pay the principal of and interest on such revenue bond when due. All persons interested may appear and be heard at the time and place set forth above, or may file written comments with the Executive Director of the Authority prior to the date of the hearing set forth above.

Dated: 7 March 2001

Jim Boerboom
RFA Director

Department of Agriculture

Minnesota Rural Finance Authority

Notice of Public Hearing on the Issuance of an Agricultural Development Revenue Bond Under *Minnesota Statutes*, Chapter 41C

NOTICE IS HEREBY GIVEN that a public hearing will be held on April 13, 2001, at 9:00 a.m., in Room 145 Department of Agriculture Building, 90 West Plato Boulevard, St. Paul Minnesota, on a proposal that the Minnesota Rural Finance Authority (the Authority) issue its revenue bond under *Minnesota Statutes*, Chapter 41C, in order to finance the purchase of approximately 160 acres of bare land located in Section 34, Kintire Township, Redwood County, Minnesota on behalf of Todd R. Mertens, (the Borrower/s). The maximum aggregate face amount of the proposed bond issue is \$250,000.00. The revenue bond will be a limited obligation of the Authority, payable solely from the revenue pledged to the payment thereof. No holder of such revenue bond will ever have the right to compel any exercise of the taxing power of the State of Minnesota to pay the bond or the interest thereon, nor to enforce payment against any property of the Authority or the State of Minnesota, except the revenues specifically pledged to the payment thereof. Before issuing the revenue bond, the Authority will enter into an agreement with the Borrower whereby the Borrower will be obligated to make payments at least sufficient at all times to pay the principal of and interest on such revenue bond when due. All persons interested may appear and be heard at the time and place set forth above, or may file written comments with the Executive Director of the Authority prior to the date of the hearing set forth above.

Dated: 7 March 2001

Jim Boerboom
RFA Director

Department of Agriculture

Minnesota Rural Finance Authority

Notice of Public Hearing on the Issuance of an Agricultural Development Revenue Bond Under *Minnesota Statutes*, Chapter 41C

NOTICE IS HEREBY GIVEN that a public hearing will be held on April 13, 2001, at 9:00 a.m., in Room 145 Department of Agriculture Building, 90 West Plato Boulevard, St. Paul Minnesota, on a proposal that the Minnesota Rural Finance Authority (the Authority) issue its revenue bond under *Minnesota Statutes*, Chapter 41C, in order to finance the purchase of approximately 80 acres of bare land located in Section 1, Normania Township, Yellow Medicine County, Minnesota on behalf of Paul and Julie Neisius, (the Borrower/s). The maximum aggregate face amount of the proposed bond issue is \$48,000.00. The revenue bond will be a limited obligation of the Authority, payable solely from the revenue pledged to the payment thereof. No holder of such revenue bond will ever have the right to compel any exercise of the taxing power of the State of Minnesota to pay the bond or the interest thereon, nor to enforce payment against any property of the Authority or the State of Minnesota, except the revenues specifically pledged to the payment thereof. Before issuing the revenue bond, the Authority will enter into an agreement with the Borrower whereby the Borrower will be obligated to make payments at least sufficient at all times to pay the principal of and interest on such revenue bond when due. All persons interested may appear and be heard at the time and place set forth above, or may file written comments with the Executive Director of the Authority prior to the date of the hearing set forth above.

Dated: 7 March 2001

Jim Boerboom
RFA Director

Minnesota Bureau of Mediation Services

Request for Comments on Planned Amendment to Rules Governing Delivery of Documents to the Bureau of Mediation Services, *Minnesota Rules* 5510.0310, and Independent Review for Public Employee Grievances, *Minnesota Rules* 7315.0400-7315.2200

Subject of Rules. The Minnesota Bureau of Mediation Services requests comments on its planned amendment to rules governing Representation Matters and Fair Share Fee Challenges, and Independent Review of Public Employees Grievances. The Bureau is considering rule amendments that:

5510.0310, subp. 19 – amends the definition of “service” or “serve” to allow parties to file documents via facsimile.

7315.0400-7315.2200 – amends rules governing Independent Review Matters. These rules were originally adopted to govern the Public Employment Relations Board (PERB), a body created with the enactment of the Public Employment Labor Relations Act in 1971. One of the Board’s duties was to administer requests for independent review under *Minnesota Statute* 179A.25. The Board was abolished by a line-item veto in 1992. The board’s duties were then assigned to the Bureau. The Bureau has administered requests for independent review in accordance with an internal policy. In a recent ruling (*William Cross v. Beltrami County*, March 7, 2000) the Minnesota Court of Appeals held that the rules of the former PERB for administration of the independent review appeals (MR 7315) remain in effect and are to be applied by the Bureau. This ruling created the need to amend the rules to replace reference to PERB with the Bureau. Other proposed amendments update and clarify Independent Review procedures and allow the Commissioner of the Bureau to refer independent review cases to independent arbitrators.

The Board also had arbitration roster duties (which were duplicative of Bureau duties and the Bureau has continued to perform them under its own rules) and heard appeals of bureau decisions (now made directly to district courts in accordance with *Minnesota Statute* 179A.051). The rules governing appeals and the PERB arbitration roster have been repealed through the legislative process rather than the rule-making process.

Persons Affected. The amendment to the rules would likely affect public employers, public employees, public employer advocates, employee organizations, employer associations, and arbitrators.

Statutory Authority. *Minnesota Statutes*, section 179.04, subd. 3(6), authorizes the Bureau to adopt rules relating to the administration of *Minnesota Statutes* 179A and the conduct of hearings and elections.

Public Comment. Interested persons or groups may submit comments or information on these planned rules in writing until **4:30 p.m., on May 21, 2001**. The Bureau does not contemplate appointing an advisory committee to comment on the planned rules.

Rules Drafts. The Bureau has prepared a draft of the planned amendments.

Agency Contact Person. Written comments, questions, requests to receive a draft of the rules, and requests for more information on these planned rules should be directed to: Carol Clifford at the Bureau of Mediation Services, 1380 Energy Lane, Suite Two, St. Paul, MN 55108; **phone:** (651) 649-5423; **fax:** (651) 643-3013; or **email:** *cclifford@mediation.state.mn.us*. **TTY:** (800) 627-3529.

Alternative Format. Upon request, this Request for Comments can be made available in an alternative format, such as large print, Braille, or cassette tape. To make such a request, please contact the agency contact person at the address or telephone number listed above.

Note: Comments received in response to this notice will not necessarily be included in the formal rulemaking record submitted to the administrative law judge when a proceeding to adopt rules is stated. The agency is required to submit to the judge only those written comments received in response to the rules after they are proposed.

Dated: 19 March 2001

Lance Teachworth, Commissioner
Bureau of Mediation Services

Metropolitan Airports Commission

Notice of Public Hearing Concerning Acquisition of Property Near the Minneapolis-St. Paul International Airport Hennepin County, Minnesota

NOTICE IS HEREBY GIVEN that the Metropolitan Airports Commission, a public corporation organized under the laws of the State of Minnesota, will hold a public hearing pursuant to *Minnesota Statute* § 473.641 to consider the acquisition by the Metropolitan Airports Commission of certain property located in the City of Bloomington proximate South of the Minneapolis-St. Paul International Airport, more specifically:

Approximately 82 acres lying in the S 1/2 of the SE 1/4 of Section 1, Township 27, Range 24 and lying in the NE 1/4 of the SE 1/4 of Section 1, Township 27, Range 24, City of Bloomington, Hennepin County, Minnesota.

The public hearing will commence at 1:00 p.m., on the 3rd day of April, 2001 in Room 3040 of the Lindbergh Terminal Building at the Minneapolis-St. Paul International Airport.

The hearing will afford interested persons, groups and agencies an opportunity for public consideration of the economic, social, and environmental effects of the proposed acquisition. Any person wishing to submit information relating to this matter may appear at the public hearing and make an oral statement or present written material. Persons intending to make oral presentations are requested to notify the Commission by April 3, 2001 in writing or by telephone to Ms. Jenn Unruh, Metropolitan Airports Commission, 6040 28th Avenue South, Minneapolis, Minnesota 55450; **phone:** (612) 726-8189. Written statements and other exhibits relating to this matter will be incorporated into the transcript of the hearing, provided such statements or exhibits are submitted at the hearing or are presented to the Metropolitan Airports Commission prior to the close of business on Friday, April 6, 2001.

Dated: 12 March 2001

Jeffrey W. Hamiel
Executive Director
Metropolitan Airports Commission
6040 28th Avenue South
Minneapolis, MN 55450

Department of Natural Resources

Notice of Intent to Hold State Metallic Minerals Lease Sale

State Lands to be Offered for Metallic Minerals Exploration

The Minnesota Department of Natural Resources announces that plans are being developed to hold the state's twenty-fifty sale of metallic minerals exploration and mining leases. The sale is tentatively scheduled for July 2001. The lease sale plans are being announced at this time in order to give mining companies, public interest groups and all other interested parties additional time to review the areas under consideration.

The purpose of Minnesota's metallic minerals rules (*Minnesota Rules*, parts 6125.0100 - .0700) is to promote and regulate the exploration for, mining and removal of metallic minerals on state-owned and state-administered lands. These rules, and the leases issued under these rules, authorize exploration and development of these minerals and impose certain requirements on the lessee. The requirements include: the payment of rentals that increase with the passage of time, the payment of royalty for all ore mined and removed, the submission of data and other reports, and the addressing of environmental considerations. In addition, the state lessee must comply with all applicable regulatory laws.

The areas under consideration for the lease sale cover portions of Aitkin, Lake, and Saint Louis Counties. Some of the lands being considered have been offered in previous metallic minerals lease sales, but based upon the interest shown by industry, new geologic data, and exploration techniques developed during the past few years, it is felt that within these lands there is significant potential for the discovery of mineral resources. Certain new lands of interest are also being considered for the lease sale.

The exact time and place of the lease sale will be announced by legal notice at least thirty (30) days prior to the sale. Mining unit books, listing the state lands to be offered at the lease sale, will be available for inspection or purchase at that time.

A map showing the general areas under consideration may be obtained from the Division of Lands and Minerals, Box 45, 500 Lafayette Road, St. Paul, MN 55155-4045, **phone:** (651) 296-4807.

Dated: 19 March 2001

Allen Garber
Commissioner of Natural Resources
by William C. Brice
Director, Division of Lands and Minerals

Pollution Control Agency

Policy and Planning Division

Request for Comments on Planned Amendment to Rules Governing Individual Sewage Treatment Systems, *Minnesota Rules*, Chapter 7080

Subject of Rules. The Minnesota Pollution Control Agency (Agency) requests comments on its planned amendment to rules governing individual sewage treatment systems. The Agency is considering rule amendments that correct errors and omissions in the existing rules. The Agency is considering the following changes.

1. Reestablishment of the minimum suitable soil requirement for placement and use of mound systems.
2. Clarification of pipe requirements.
3. Clarify the cross-reference to existing *Minnesota Statutes*, section 115.55, subd. 5a (c) and (d)

Persons Affected. The amendment to the rules would likely affect land developers, and those involved in the design and construction, and inspection of individual sewage treatment systems.

Statutory Authority. *Minnesota Statutes*, section, 115.55, subd. 3 authorizes the Agency to adopt rules for the design and construction of individual sewage treatment systems.

Public Comment. Interested persons or groups may submit comments or information on these planned rules in writing or orally until 4:30 p.m. on April 27. The Agency does not contemplate appointing an advisory committee to comment on the planned rules.

Rules Drafts. The Agency has prepared a draft of the planned rule amendments.

Agency Contact Person. Written or oral comments, questions, requests to receive a draft of the amendments, and requests for more information on these planned amendments should be directed to: Mark Wespetal at the Minnesota Pollution Control Agency, 520 Lafayette Road, St. Paul, MN, 55155-4194, **phone:** (651) 296-9322, **email:** *Mark.Wespetal@pca.state.mn.us*. **TTY:** (651) 282-5332 or (800) 657-3864.

Alternate Format. Upon request, this Request for Comments can be made available in an alternative format, such as large print, Braille, or cassette tape. To make such a request, please contact the agency contact person at the address or telephone number listed above.

Note: Comments received in response to this notice will not necessarily be included in the formal rulemaking record submitted to the administrative law judge when a proceeding to adopt rules is started. The Agency is required to submit to the judge only those written comments received in response to the rules after they are proposed.

Dated: 19 March 2001

Karen A. Studders
Commissioner

Pollution Control Agency

Metro District

Request For Comments on Planned Rule Governing the Prohibition of Distribution for Sale or Use of Twenty Two Specified or New Products in Minnesota

Subject of Rule. The Minnesota Pollution Control Agency (MPCA) requests comments on its planned rule implementing the Listed Metals in Specified Products program created by *Minnesota Statute* § 115A.9651. If adopted, the proposed rule will make effective the recommendations of the Listed Metal Advisory Counsel (LMAC). The LMAC has recommended that the MPCA prohibit the distribution for sale or use of 22 “specified” or “new products” that contain “listed metals” as described in *Minnesota Statute* § 115A.9651, Listed metals in specified products; enforcement. The products affected by this rulemaking were the subject of proceedings before the LMAC and a list of the products that would be affected by this rule, if adopted, appears at the end of this notice. The list of products that were reviewed by the LMAC was published in the *State Register* on February 16, 1999 (23 S.R. 1705), in accordance with *Minnesota Statute* § 115A.9651, subd. 5(g).

Persons Affected

This proposed rule has the potential to affect persons who manufacture, sell, and use the products that are proposed to be prohibited from sale or use. The products that will be prohibited if this rule is adopted include four inks and 18 paint products. Of these products, the proposed rule will likely include phase out periods as recommended by the LMAC for those products that are in active use. The LMAC frequently recommended 2 to 5 year phase-out periods to (1) minimize the economic impact of the prohibitions to Minnesota and non-Minnesota businesses that currently use the products and (2) promote orderly use of remaining product inventories in the state. Some manufacturers potentially stand to gain market share with listed-metal free alternative products to the products recommended for prohibition.

Once the prohibitions are in place, Minnesota citizens will be positively impacted since approximately 88,600 pound less lead, mercury, and hexavalent chromium from inks and paints will be released into the Minnesota environment each year. For example, the prohibition of four commonly used traffic marking paints will result in annual reductions of approximately 71,500 pounds of lead and 17,500 pounds of hexavalent chromium added to Minnesota roadways. Additional reduction of listed metals will be realized by the voluntary discontinuation of other products that contain the listed metals. Reductions in the amounts of listed metals from inks and paints used in a wide range of commercial products will lead to reduced amounts of listed metals in landfills and water treatment facilities, providing cost savings to the taxpayers of Minnesota.

Statutory Authority. *Minnesota Statute* § 115A.9651, subd. 11 authorizes the MPCA to adopt rules to implement the Listed Metals in Specified Products program.

Public Comment. Interested persons or groups may submit comments or information on this planned rule in writing or orally until 4:30 p.m. on Wednesday, April 18, 2001. The MPCA does not anticipate that a draft of the rule amendments will be available to the public before the proposed rules are published in the *State Register*. **Comments submitted in response to this notice will not be included in the formal rulemaking record once a proceeding to adopt a rule is started.**

Official Notices

Written or oral comments, questions and requests for more information on the MPCA's plan to adopt this rule should be addressed to:

John Hensel
Metro District
Community & Area Wide Section
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, Minnesota 55155-4194
Phone: (651) 296-7213
MN Toll Free: (800) 657-3864
TTY: (651) 282-5332

The Notice of Intent to Adopt Rules will be mailed to the current MPCA mailing lists for the Listed Metals program and the rule notice mailing list required to be maintained by the MPCA under *Minnesota Statute* Sec. 14.14, subd. 1a. If you are not on these mailing lists and would like to receive this notice, please call Mr. Hensel at the phone number above.

Karen Studders
Commissioner

Products Prohibition Decisions - Listed Metals Program

<u>Product Group</u>	<u>MPCA Product Code</u>	<u>Product Name</u>	<u>Product ID</u>	<u>Phase-Out Period</u>
Traffic Marking Paints	Diamond Vogel 5055	Lead Drier Traffic Paint	LX, TB, TM, VLX series	5 years from 11/16/1999
Traffic Marking Paints	Diamond Vogel 5054	Lead Chromate Traffic Paint	LX, TB, TM, UC, VLX series	5 years from 11/16/1999
Traffic Marking Paints	Valspar 5035	Yellow Traffic Paint	Valspar 143, Hanks 1125	5 years from 11/16/1999
Traffic Marking Paints	Valspar 5441	Plasti-Kote Traffic Stripper	none	5 years from 11/16/1999
Traffic Marking Paints	Sherwin-Williams 5179	Traffic & Zone Marking - Latex	Sherwin-Williams/Dutch Boy/ Martin Senour	5 years from 5/9/2000
Traffic Marking Paints	Sherwin-Williams 5180	Traffic & Zone Marking - Alkyd	Sherwin-Williams/Dutch Boy/ Martin Senour	5 years from 5/9/2000
Auto Finish Paints	PPG 1104	Automotive anti-corrosion primer	ED-5250 and E-6103	2 years from 4/20/2000
Auto Finish Paints	PPG 5015	American Finishes Supertint	7204sp, 7234sp, 7251sp	2 years from 4/20/2000
Auto Finish Paints	PPG 5016	American Series Amerfleet	LVT34sp, SLVT36sp, LVT51sp	2 years from 4/20/2000
Auto Finish Paints	Valspar 5042	Auto Refinish Basecoat	none	2 years from 4/20/2000
Auto Finish Paints	Valspar 5043	Refinish Striping & Lettering Enamels	none	2 years from 4/20/2000
Auto Finish Paints	Valspar 5045	Auto Refinish Pearl	none	2 years from 4/20/2000
Inks	3M 5028	Traffic Control Materials Division	Scotchlite Process Series 700	2 years from 10/19/2000
Inks	3M 5029	Traffic Control Materials Division	Scotchlite Screen Printing Ink Series 900	2 years from 10/19/2000
Inks	3M 5030	Traffic Control Materials Division	Scotchlite Process Color Series 990	2 years from 10/19/2000
Inks	Nazdar 5033	79000 Series Corogloss	Screen Ink	2 years from 10/19/2000
Other Paints	Dexter 5074	100 % Solids Topcoat Resin	bowling lane coatings	5 years from 11/16/2000
Other Paints	Dexter 5162	High Solids Topcoat Resin	bowling lane coatings	5 years from 11/16/2000
Other Paints	Dexter 5163	100% Solids Basecoat Resin	bowling lane coatings	5 years from 11/16/2000
Other Paints	Dexter 5164	High Solids Basecoat/Sealer/Stain Resin	bowling lane coatings	5 years from 11/16/2000
Other Paints	Dexter 5165	Basecoat/Topcoat Blend Resin	bowling lane coatings	5 years from 11/16/2000
Sign Paints	Akzo Nobel 5170a	Lead and Lead Chromate Primers	none	none

**Department of Public Safety
Division of Emergency Management
Emergency Response Commission**

Notice of intent to solicit comments regarding a petition submitted by the University of Minnesota to the Minnesota Emergency Response Commission (ERC)

The petition requests exemption of all facilities having a Standard Industrial Classification Code of 822 (Colleges and Universities) from the Toxic Release Inventory Reporting Requirements contained in *Minnesota Statutes*, Chapter 299K, for application of ammonia in routine agricultural operations. The petition process is provided for in *Minnesota Statutes*, Section 299K.08, Subdivision 4. The University of Minnesota's (U of M's) use of ammonia is limited to routine fertilization for crops that are part of its research efforts at various Agricultural Research Stations and experimental plots throughout the state. Section 313 of the federal Emergency Planning and Community Right-to-Know Act (*United States Code, Title 42*) as adopted and expanded upon in *Minnesota Statutes*, Chapter 299K entitled *Hazardous Chemical Emergency, Planning and Response*, requires the U of M to report this application of ammonia as a release to the environment. This information is reported to the ERC annually by July 1. The collection and dissemination of this statewide data is referred to as the *Toxic Release Inventory* (TRI), and is included as part of the ERC's annual *Right-to-Know Chemical Information Report*. Seven U of M facilities are included in the most recent report. The U of M requests that all colleges and universities in Minnesota be exempt from this reporting requirement for the application of ammonia as a fertilizer.

NOTICE IS HEREBY GIVEN that the Minnesota Emergency Response Commission is accepting written comments which will be accepted until **4:30 pm on Tuesday, May 1, 2001**. In addition, interested parties can provide testimony at the monthly meeting of the Minnesota Emergency Response Commission which is scheduled as follows:

Date: May 10, 2001
Time: 9:30 a.m.
Location: Minnesota Department of Health
Big Fork Room
1645 Energy Park Drive, Suite 300
St. Paul, MN

To obtain a copy of the petition, submit comments, or request additional information, please contact:

Steve Tomlyanovich
Minnesota Emergency Response Commission
444 Cedar Street, Suite 223
St. Paul, MN 55101-6223
Phone: (651) 282-5396
Email: steve.tomlyanovich@state.mn.us

This is the only person designated to answer questions regarding this request for public comments.

Dated: 7 March 2001

Kevin Leuer, Executive Director
Emergency Response Commission

**Minnesota State Retirement System
Board of Directors, Regular Meeting**

The Board of Directors of the Minnesota State Retirement system will be meeting on Friday, March 23, 2001, at 9:00 a.m., in the office of the System, 175 W. Lafayette Frontage Road, Suite 300, St. Paul, Minnesota 55107.

State Grants & Loans

In addition to requests by state agencies for technical/professional services (published in the State Contracts section), the *State Register* also publishes notices about grants and loans available through any agency or branch of state government. Although some grant and loan programs specifically require printing in a statewide publication such as the *State Register*, there is no requirement for publication in the *State Register* itself. Agencies are encouraged to publish grant and loan notices, and to provide financial estimates as well as sufficient time for interested parties to respond.

Department of Economic Security

Rehabilitation Services

Notice of Availability of New Funding Available for Coordinated Employment Services, including Supported Employment and Supported Education, for Persons with Serious and Persistent Mental Illness (SPMI)

The Minnesota Department of Economic Security-Rehabilitation Services is requesting proposals to develop and implement new or enhanced coordinated community-based employment services and supported education services for adults with Serious and Persistent Mental Illness. This funding is available through the Department of Economic Security (DES)-Rehabilitation Services (RS) in collaboration with the Department of Human Services-Mental Health Division (MHD) through a joint interagency cooperative agreement.

Projects considered for funding must develop or enhance linkages and interagency collaboration to provide employment services or supported education services leading to competitive or supported employment outcomes for adults with SPMI. The approach should be designed to improve the acquisition, quality and permanence of employment. Services may include: functional assessment, individualized career planning, job development and job placement, support services designed to assist the individual in succeeding in post-secondary education, job coaching and the provision of employment supports necessary to obtain, maintain and advance in employment in the community.

Organizations which provide Vocational Rehabilitation Services leading to community employment for individuals with disabilities may apply for these funds. Eligible applicants must meet the definition of a community rehabilitation program as defined in the Rehabilitation Act (P.L. 93-112 as amended by P.L. 102-569 and P.L. 105-220) and be organized as a non-profit. Applicants must also have a current operating agreement with DES/RS or be certified by DES/RS as a limited-use vendor. Applicants must be accredited in the appropriate program areas for Employment and Community Support Services by the Rehabilitation Accreditation Commission (CARF) or demonstrate their ability to become accredited within 12 months of receiving grant funds.

Applications must evidence coordination and collaboration with the local Adult Mental Health Initiative. Planning for this grant should include stakeholders from the Adult Mental Health Systems Initiative planning group including the county or counties, consumers of mental health services, local Community Support Services, Regional Treatment Center, and local RS Vocational Rehabilitation field office. Applications involving multiple counties or with a regional focus are encouraged.

A total of \$262,685 annually is available. Individual grant awards are expected to range from \$60,000-\$80,000. A 21.3% cash match is required to receive grant funds. Federal funds may not be used for the cash match. Examples of cash match could include: Adult Mental Health Initiative funding, foundation funding, integrated MH funds, Rule 78 funds, CSSA or county funding or any other non-federal funding source.

It is anticipated that 3-4 projects will be funded statewide. Priority will be given to applications from areas of the state that have not had previous coordinated employability projects, such as southeastern Minnesota, and other areas of the state with demonstrated unmet need for supported employment services including the Twin Cities Metropolitan area.

Grants will be awarded on a calendar year basis starting June 15, 2002 for 12 months. Renewal of projects for continuation funding will be based on performance of the grantee in meeting grant objectives and the availability of funds. Since these projects are being funded under the Vocational Rehabilitation Program, they are time-limited to a maximum of four years of funding. Therefore, applicants must document plans for long term funding and continuation of the project once grant funding ends.

Applications in the form of a request for proposals (RFP) are available from: Claire Courtney, M.S.,CRC, Rehabilitation Specialist-Mental Health, Department of Economic Security, Rehabilitation Services, 390 North Robert Street, St. Paul, Minnesota 55101-1812, **phone:** (651) 296-0219, **TTY:** (651) 296-3900, **email:** ccourtne@ngwmail.des.state.mn.us. Completed applications are due to the DES-RS Administrative Office no later than **4:00 p.m. on Thursday, May 3rd, 2001.**

State Contracts

Department of Administration procedures require that notice of any consultant services contract or professional and technical services contract which has an estimated cost of over \$25,000 be printed in the *State Register*. These procedures also require that the following information be included in the notice: agency name and address, name of agency contact person, description of project and tasks, cost estimate and final submission date and time of completed proposal. Certain quasi-state agencies and MnSCU institutions are exempted from these provisions. In accordance with *Minnesota Rules* 1230.1910, certified Targeted Group Businesses and individuals submitting proposals as prime contractors shall receive the equivalent of a 6% preference in the evaluation of their proposal. Certified Economically Disadvantaged Businesses and individuals shall receive the equivalent of a 4% preference in the evaluation of their proposal. For information regarding certification, call the Materials Management Helpline (651) 296-2600 or [TTY (651) 282-5799.]

Department of Administration

Plant Management Division

Energy Management Services

Request for Proposal to Firms Interested in: Energy Efficiency Improvement Projects

The Department of Administration, Plant Management Division, Energy Management Services has been requested to select a firm to provide energy efficiency improvements in the following four (4) state facilities.

1. Northwest Technical College - Bemidji
2. Northwest Technical College - Detroit Lakes
3. Northwest Technical College - Moorhead
4. Northwest Technical College - Wadena

The State is authorized under *Minnesota Statute* 16C.14 to enter into energy shared-savings agreements to purchase by installment equipment or services to improve the energy efficiency of a state facility. The term of these energy shared-savings is limited to a maximum of 10 years.

Respondents who wish to be considered for this project are required to attend a site visit as scheduled below:

Location: Northwest Technical College - Moorhead
1900 28th Ave. S.
Moorhead, MN 56560

Date: April 5, 2001 (Thursday)

Time: 1:00 p.m.

Respondents must request a copy of "Request For Proposal," and submit a proposal for the facility on or before **2:00 p.m., April 20, 2001 to:**

Rajan C. Thomas, P.E.
Principal Engineer
Energy Management Services
Plant Management Division
117 University Avenue, Room 301
St. Paul, MN 55155
Phone: (651) 297-2867
Fax: (651) 297-5158
Email: rajan.thomas@state.mn.us

Department of Agriculture

Notice of Availability of Contract for Market Study of Identity-Preserved Agricultural Products

The Minnesota Department of Agriculture is requesting proposals for the purpose of a market study of identity-preserved corn, soybeans, wheat, and dried edible beans.

Work is proposed to start after May 15, 2001.

State Contracts

A Request for Proposals will be available by mail from this office through April 20, 2001. **A written request (by direct mail or fax) is required to receive the Request for Proposal.** After April 20, 2001, the Request for Proposal must be picked up in person.

The Request for Proposal can be obtained from:

Tim Bubar, Research Analyst
Commissioners Office
Minnesota Department of Agriculture
90 West Plato Blvd.
St. Paul, MN 55107
Email: *timothy.bubar@state.mn.us*
Fax: (651) 297-5522

Proposals submitted in response to the Request for Proposals in this advertisement must be received at the address above no later than **3:00 pm, CDT, on Monday, April 30, 2001.** **Late proposals will not be considered.** No time extensions will be granted.

This request does not obligate the State to complete the work contemplated in this notice. The State reserves the right to cancel this solicitation. All expenses incurred in responding to this notice are solely the responsibility of the responder.

Minnesota State Colleges and Universities

Winona State University

Request for Bids for Digital Platemaker

NOTICE IS HEREBY GIVEN that Winona State University will receive sealed bids for a Digital Platemaker.

Bid specifications will be available March 19, 2001 from the Winona State University Purchasing Department, P.O. Box 5838, 205 Somsen Hall, Winona, MN 55987 or **phone:** (507) 457-5067.

Sealed bids must be received by Sandra Schmitt at P.O. Box 5838, or 175 W. Mark St., Somsen 205G, Business Office, Winona State University, Winona, MN 55987 by **3:00 p.m., Monday, April 2, 2001.**

Winona State University reserves the right to reject any or all bids or portion thereof, or to waive any irregularities or informalities in proposals received.

Department of Corrections

Notice of Request for Proposals for Blood/Body Fluid/Material Cleanup and Disinfect on an On-Call Basis for Minnesota Correctional Facilities and Central Office

The Minnesota Department of Corrections (DOC) is requesting proposals for a 24 hour service(s) to provide blood/body fluid/material cleanup and disinfect on an on-call basis at all DOC correctional facilities and central office. Response time for cleanup must be within four hours. The cleanup and disinfect must be done in accordance with OSHA regulations by a person(s) trained in accordance to OSHA regulations.

It is expected that this contract will be for a period of two years effective July 1, 2001. It is anticipated there will be multiple contract awards due to location of services. Work is not guaranteed in the resulting contract(s) as work will be done on an as needed basis.

Potential responders interested in submitting a proposal on this service should call, write, e-mail or fax for the full RFP which will be sent free of charge to interested vendors. Proposals must be submitted to the department contact listed below. Other department personnel are NOT allowed to discuss the Request for Proposal with anyone, including responders, before the proposal submission deadline. Proposals must be received by the contact person listed below no later than **2:30 p.m., CDT, April 20, 2001.**

Shelby Richardson, Policy and Legal Services
Department of Corrections
1450 Energy Park Drive, Suite 200
St. Paul, MN 55108-5219
Phone: (651) 642-0372
Fax: (651) 603-6770
Email: *srichardson@co.doc.state.mn.us*

Minnesota Historical Society

Notice to Contractors Lac qui Parle Accessibility Ramp

The Minnesota Historical Society is seeking sealed bids for the construction of a new handicapped accessibility ramp and entrance steps at the Lac qui Parle state historic site near Watson, MN. Bids will be received at the office of the Contracting Officer or an authorized agent located in the Minnesota History Center until **2:00 p.m., local time on Tuesday, 10 April, 2001**. Bids will then be publicly opened and read aloud.

Mailed sealed bids to: Chris M. Bonnell, Contracting Officer
Minnesota Historical Society
345 Kellogg Boulevard West
St. Paul, MN 55102-1906

Please mark envelopes "Lac qui Parle Construction Bid." Authorized agents for receipt of bids are the following: Chris M. Bonnell, Contracting Officer or any Work Service Center staff member in the Finance and Administration Division on the 4th floor of the History Center.

Please note that the above address is the Minnesota History Center. If proposals are being hand delivered, vendors may park in the on-site lot, but should allow enough time to deliver their proposals to the Contracting Office on the 4th floor of the building. Actual receipt of the proposal by the closing time is required for consideration.

The project will consist of removing the existing entrance steps, landing, and hand rails and replacing them with new ones. When this is done, a new handicapped accessibility ramp made with pre-fabricated ramp sections will be installed. All work must meet both Americans with Disabilities Act and the Minnesota Uniform Building Codes standards for handicapped access.

Work is scheduled to start immediately upon award and shall be completed within a reasonable number of work days.

Award will be made to the lowest responsive bidder.

A pre-bid meeting will be held at the job site on **Tuesday, 27 March, 2001 at 1:30 p.m.**

Complete bid sets of drawings, specifications and bid forms are available by contacting Chris M. Bonnell, Minnesota Historical Society at **phone:** (651) 297-5863. A deposit of \$50 payable to MHS is required, but will be refunded upon return of bid sets.

Bids are to be submitted on forms supplied by the Owner. No oral, facsimile, telegraphic or telephonic bids or modifications will be considered. All bids shall be accompanied by a bid bond, executed by the bidder and a duly authorized surety company, certified check, cashiers check or bank draft made payable to the Minnesota Historical Society in an amount not less than 5% of the total bid.

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Natural Resources Department

Proposals Sought for Deep Borehole Drilling and Vibrating Wire Pressure Transducer Installation Near Chub Lake, Dakota County Bid No.: 2001-14-6

Bids will be received by the Regional Business Manager in his office located at the address shown below until **3:00 p.m., April 12, 2001** when they will be publicly read aloud.

Major items of work are drilling of a borehole to about 950' (feet) below ground surface and installation of up to eight vibrating wire pressure transducers in aquifers as the borehole is sealed.

Drawings and specifications, as prepared by the MN DNR Waters Division, are on file at the Metro Regional Business Manager's Office, National Association of Minority Contractors and the Builders Exchanges located in the following cities: Minneapolis, St. Paul.

Copies of proposals forms, contract documents, drawings and specifications for use by Contractors in submitting a bid may be obtained, without a deposit from the Regional Business Manager.

To obtain plans or bidders list, contact the Regional Business Manger.

REGIONAL BUSINESS MANAGER
Minnesota Department of Natural Resources
c/o Wayne Cavadini
1200 Warner Road
St. Paul, MN 55106
Phone: (651) 772-7983
Fax: (651) 772-7977

Project technical information is available from Laurel Reeves, Geologist, at **phone:** (651) 296-9231, or at **email:** laurel.reeves@dnr.state.mn.us

Pollution Control Agency

Request for Proposals: for full range of expert analysis and advice regarding petroleum refining in Minnesota

NOTICE IS HEREBY GIVEN that the Minnesota Pollution Control Agency (MPCA) is seeking proposals from consultants/contractors qualified to conduct expert consultation regarding petroleum refining in Minnesota, especially to provide technical assistance and expertise to staff regarding all aspects (control of air emissions and water quality discharges, storage tanks, site remediation and handling of hazardous waste) at refineries. The MPCA desires to contract with this qualified consultant/contractor for services from May 21, 2001 through April 30, 2003. No actual work or payment is guaranteed pursuant to the contract.

The term of the contract will be two years with an execution date anticipated for May 21, 2001.

A complete Request for Proposal (RFP) describing the requirements necessary for the contract has been prepared. Request for the complete RFP document should be directed to:

Jayne Stilwell Lamb
Minnesota Pollution Control Agency
Metro District
Remediation Section
520 Lafayette Road
St. Paul, Minnesota 55155
Phone: (651) 297-8584
Fax: (651) 296-9707

Proposers should submit in writing a list of questions they would like addressed. Questions must be faxed or mailed to Jayne Stilwell Lamb and received by 4:00 p.m. on April 3, 2001.

The deadline for receipt of completed proposals is **2:00 p.m. April 19, 2001**. Proposals should be submitted to the attention of the above MPCA contact person. Late submittals will not be considered.

Karen A. Studders
Commissioner
Minnesota Pollution Control Agency

Department of Transportation Metro Division, Freeway Operations

Notice of Availability of Contract for Regional Transportation Management Center "Team Building and Shared Process Development"

The Minnesota Department of Transportation (Mn/DOT) is requesting proposals for the purpose of preparing the participating organizational units including Mn/DOT Metro Division (Freeway Operations, Traffic Engineering, Maintenance) and the Department of Public Safety (DPS) State Patrol Dispatch units. to successfully work in a shared (dispatch) operations center.

Work is proposed to start after **May 15, 2001**.

A Request for Proposals will be available by mail from this office through

April 13, 2001. **A written request (by direct mail or fax) is required to receive the Request for Proposal.** After April 13, 2001, the Request for Proposal must be picked up in person.

The Request for Proposal can be obtained from the Agreement Administrator

Trudie Borriello
Minnesota Department of Transportation
Waters Edge Building
1500 County B-2
Roseville, MN 55113
Fax: (651) 582-1131

Proposals submitted in response to the Request for Proposals in this advertisement must be received at the address above no later than April 16, 2001. **Late proposals will not be considered.** No time extensions will be granted.

This request does not obligate Mn/DOT to complete the work contemplated in this notice. Mn/DOT reserves the right to cancel this solicitation. All expenses incurred in responding to this notice are solely the responsibility of the responder.

Department of Transportation Office of Aeronautics

Notice of Availability of Contracts for Navigation Systems Technicians

The Office of Aeronautics will award 12 to 16 maintenance contracts for for navigation systems located at airports throughout the State. FAA certification on at least one of the following is required: Wilcox Mark 10 ILS, ASII 2100 ILS, Wilcox 476 VOR, Cardion 9467 VOR, Aerocom 5351A DME, Aerocom 5321 NDB, Aerocom 5401B NDB, Viasala AWOS, SMI NEXWOS, Viasala runway surface sensor, remote communications outlet, or Honeywell GLS.

Contract period: July 1, 2001 through June 30, 2003

To receive a copy of the full RFP, contact:

Robert Milton
Office of Aeronautics
222 East Plato Blvd.
St. Paul, MN 55107
Phone: (651) 296-9250
Fax: (651) 297-5643
Email: bob.milton@dot.state.mn.us

Proposals must be received no later than April 27, 2001. Late proposals will not be considered.

State Contracts

City of Rochester

Department of Public Works

Request for a Statement of Qualifications (SOQ) to conduct an Alternative Urban Areawide Review (AUAR)

The Rochester Public Works Department is seeking SOQs from firms interested in completing an AUAR that identifies potential impacts from future urban development in a portion of Marion Township in south central Olmsted County. Anticipated development addressed by this AUAR includes only residential, commercial, warehousing, light industrial development and its associated infrastructure. qualified firms interested in submitting an SOQ to the City must complete a questionnaire that may be requested from Barb Huberty, Environmental and Regulatory Affairs Coordinator, at **email:** *bhuberty@ci.rochester.mn.us*. Questions may be directed to Barb, **phone:** (507) 529-4907.

Non-State Contracts & Grants

The *State Register* also serves as a central marketplace for contracts let out on bid by the public sector. The *State Register* meets state and federal guidelines for statewide circulation of public notices. Any tax-supported institution or government jurisdiction may advertise contracts and requests for proposals from the private sector. It is recommended that contracts and RFPs include the following: 1) name of contact person; 2) institution name, address, and telephone number; 3) brief description of project and tasks; 4) cost estimate; and 5) final submission date of completed contract proposal. Allow at least three weeks from publication date (four weeks from date article is submitted for publication). Surveys show that subscribers are interested in hearing about contracts for estimates as low as \$1,000. Contact the editor for further details.

Metropolitan Council Metro Transit

Notice of Call to Artists for Hiawatha Line LRT Public Art and Design Program Contract No. 01P034

NOTICE IS HEREBY GIVEN that the Metropolitan Council Metro Transit (the Council), which provides mass transit bus services and will operate a future light rail transit system for the Twin Cities of Minneapolis/St. Paul, Minnesota, is soliciting proposals from professional artists to provide services to design, fabricate, and install artwork for the Hiawatha Line light rail transit system.

The Council and the Minnesota Department of Transportation are overseeing design and construction of Minnesota's first light rail system which will be funded in part by the Federal Transit Authority (FTA). Titled the Hiawatha Line, the approximately 12-mile system will include 17 stations stretching from downtown Minneapolis south to the Minneapolis/St. Paul International Airport and on to the Mall of America. The \$675 million project will be built through a design/build process that allows construction to begin prior to completion of the system's total design. The Hiawatha Line is scheduled to be completed by the end of 2004.

The purpose of this Call to Artists is to invite artists to submit their qualifications for consideration for artwork commissions for 15 of the 17 light rail stations and the maintenance/administrative office facilities. Opportunities for commissions include: designs and materials inlaid into the surface of the station platforms, treatments to the glazing systems of the wind shelters, custom railings and fences, tree grates, lighting systems, interactive multimedia works, iconographic bas relief and/or ceramic murals, and both large and intimate scale sculpture.

The Council is seeking proposals from professional artists whose work is applicable to an outdoor transit environment and are interested in creating artwork for the Hiawatha LRT project that is consistent with all applicable FTA regulations.

The tentative schedule for this process is:

<i>Call to Artists Issue Date</i>	March 2, 2001
<i>Proposal Due Date</i>	April 27, 2001
<i>Selection of Artists</i>	June, 2001
<i>Design Development</i>	June, 2001 – June, 2002
<i>Fabrication and Installation</i>	June, 2002 – October, 2004

All artists interested in this project should request a copy of the Call to Artists through:

David Allen, Public Art and Design Program Manager
Metro Transit
560 Sixth Avenue North
Minneapolis, MN 55411
Phone: (612) 349-7622
Fax: (612) 349-7675

Metropolitan Council

Metro Transit

Notice of Call to Artists for Hiawatha Line LRT Public Art and Design Program Downtown East Station – Contract No. 01P039

NOTICE IS HEREBY GIVEN that the Metropolitan Council Metro Transit (the Council), which provides mass transit bus services and will operate a future light rail transit system for the Twin Cities of Minneapolis / St. Paul, Minnesota, is soliciting proposals from professional artists to provide services to collaborate in the design of the Downtown East light rail station and an adjacent public plaza, and to fabricate and install artwork for those projects as part of the Hiawatha Line light rail transit system.

The Council and the Minnesota Department of Transportation are overseeing design and construction of Minnesota's first light rail system, which will be funded in part by the Federal Transit Authority (FTA). Titled the Hiawatha Line, the approximately 12-mile system will include 17 stations stretching from downtown Minneapolis south to the Minneapolis / St. Paul International Airport and on to the Mall of America. The \$675 million project will be built through a design/build process that allows construction to begin prior to completion of the system's total design. The Hiawatha Line is scheduled to be completed by the end of 2004.

The purpose of this Call to Artists is to invite artists to submit their qualifications for consideration to be selected to collaborate with the project architects (Hammel, Green and Abrahamson, Inc. in the design of the Downtown East light rail station and plaza and to design/create integrated artwork responsive both formally and contextually to the site and programmatic uses of the station and plaza.

The Council is seeking proposals from professional artists whose work is applicable to an outdoor transit environment and are interested in creating artwork for the Hiawatha LRT project that is consistent with all applicable FTA regulations.

The tentative schedule for this process is:

<i>Call to Artists issue Date</i>	March 19, 2001
<i>Proposal Due Date</i>	April 6, 2001
<i>Selection of Artists</i>	April, 2001
<i>Design Development</i>	April, 2001 – August, 2001
<i>Fabrication and Installation</i>	September, 2001 – March, 2002

All artists interested in this project should request a copy of the Call to Artists – Downtown East Station through:

David Allen, Public Art and Design Program Manager
Metro Transit
560 Sixth Avenue North
Minneapolis, MN 55411
Phone: (612) 349-7622
Fax: (612) 349-7675

Non-State Contracts & Grants

Metro Council

Metro Transit

Invitation for Bids for a In-Ground Heavy Duty Vehicle Lift System – 3 Post Set – 1 Set

NOTICE IS HEREBY GIVEN that Metro Transit will receive bids for the above item at the office of the:

Purchasing Department – 2nd Floor
Metro Transit
515 North Cleveland Avenue
St. Paul, Minnesota 55114

Bids will be accepted until **2:00 p.m., Thursday, April 5, 2001**. All bids must be submitted in accordance with the Invitation for bids document available from Metro Transit at the above address or by phone: (612) 349-5070.

Metro Transit reserves the right to reject any or all bids.

The supplier will be required to comply with all applicable equal employment opportunity laws and regulations.

All bidders will be required to certify that they are not on the Comptroller General's list of ineligible contractors.

Metro Transit hereby notifies all bidders that in regard to any purchase entered into pursuant to this solicitation for bids, minority business enterprises will be afforded full opportunity to submit bids in response, and will not be subject to discrimination on the basis of race, color, sex or national origin in consideration for an award.

University of Minnesota

Notice of Bid Information Service (BIS) Available for All Potential Vendors

The University of Minnesota offers 24 hour/day, 7 day/week access to all Request for Bids/Proposals through its web based Bid Information Services (BIS). Subscriptions to BIS are \$75/year. Visit our web site at bidinfo.umn.edu or call the BIS Coordinator at (612) 625-5534.

Requests for Bids/Proposals are available to the public at no charge each business day from 8:00 a.m. to 4:30 p.m. in Purchasing Services lobby, Suite 560, 1300 S. 2nd Street, Mpls., MN 55454.

Certificates of Assumed Name; Registration of Insignia and Marks

Minnesota Statutes Chapter 333 requires the filing of an assumed name with the Secretary of State. This filing does not protect a users exclusive right to that name. The filing is required as a consumer protection, in order to enable consumers to be able to identify the true owner of a business. For more information, or to register an assumed name, insignia or mark, contact the Secretary of State, Business Services Division, (651) 297-1455.

Certificate of Assumed Name

First Run File # 0248077 - S.H. Smith and Company

1. The exact assumed name under which the business is or will be conducted is: **S.H. Smith and Company**
2. The address of the principal place of business is: **1400 Energy Park, Suite 19, Energy Park Plaza, St. Paul, MN 55108**
3. The name and complete street address of all persons conducting business under the above Assumed Name are:
 - **S.H. Smith Insurance Agency of Minnesota, Inc., c/o CT Corporation System, Inc., 405 Second Avenue, South Minneapolis, MN 55401**

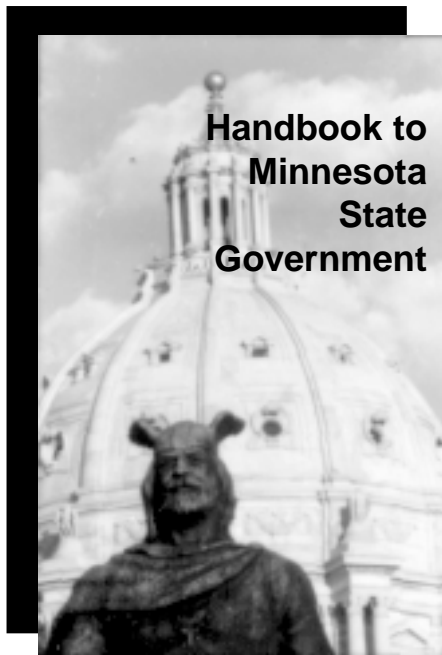
I certify that I am authorized to sign this certificate and I further certify that I understand that by signing this certificate, I am subject to the penalties of perjury as set forth in *Minnesota Statutes* section 609.48 as if I had signed this certificate under oath.

Dated: 12 February 2001

David Kinder, (860) 561-3600



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 St. Paul, MN 55155

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Shipping Charges				
If Subtotal is ----		Please Add: Subtotal	
Up to \$25.00		\$3.00	Applicable sales tax	
\$25.01-\$50.00		\$5.00	(6-1/2% MN residents	
\$50.01-\$100.00		\$7.00	7% St. Paul residents)	
\$100.01-\$1,000.00		\$10.00 Shipping	
			(based on Subtotal)	
			TOTAL	

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