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STATE OF MINNESOTA



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Printing Schedule for Agencies

Issue Number	*Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices	Issue Date
SCHEDULE FOR VOLUME 7			
35	Friday Feb 11	Friday Feb 18	Monday Feb 28
36	Friday Feb 18	Monday Feb 28	Monday Mar 7
37	Monday Feb 28	Monday Mar 7	Monday Mar 14
38	Monday Mar 7	Monday Mar 14	Monday Mar 21

*Deadline extensions may be possible at the editor's discretion; however, none will be made beyond the second Wednesday (12 calendar days) preceding the issue date for rules, proposed rules and executive orders, or beyond the Wednesday (5 calendar days) preceding the issue date for official notices. Requests for deadline extensions should be made only in valid emergency situations.

**Notices of public hearings on proposed rules and notices of intent to adopt rules without a public hearing are published in the Proposed Rules section and must be submitted two weeks prior to the issue date.

Instructions for submission of documents may be obtained from the Office of the State Register, 506 Rice Street, St. Paul, Minnesota 55103, (612) 296-0930.

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The *State Register* is the official publication of the State of Minnesota, containing executive orders of the governor, proposed and adopted rules of state agencies, and official notices to the public. Judicial notice shall be taken of material published in the *State Register*.

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How to Follow State Agency Rulemaking Action in the State Register

State agencies must publish notice of their rulemaking action in the State Register. If an agency seeks outside opinion before promulgating new rules or rule amendments, it must publish a NOTICE OF INTENT TO SOLICIT OUTSIDE OPINION. Such notices are published in the OFFICIAL NOTICES section. Proposed rules and adopted rules are published in separate sections of the magazine.

The PROPOSED RULES section contains:

- Calendar of Public Hearings on Proposed Rules.
• Proposed new rules (including Notice of Hearing and/or Notice of Intent to Adopt Rules without A Hearing).
• Proposed amendments to rules already in existence in the Minnesota Code of Agency Rules (MCAR).
• Proposed temporary rules.

The ADOPTED RULES section contains:

- Notice of adoption of new rules and rule amendments (those which were adopted without change from the proposed version previously published).
• Adopted amendments to new rules or rule amendments (changes made since the proposed version was published).
• Notice of adoption of temporary rules.
• Adopted amendments to temporary rules (changes made since the proposed version was published).

ALL ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES published in the State Register and filed with the Secretary of State before September 15, 1982, are published in the Minnesota Code of Agency Rules 1982 Reprint. ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES filed after September 15, 1982, will be included in a new publication, Minnesota Rules, scheduled for publication in late summer 1983. In the MCAR AMENDMENT AND ADDITIONS listing below, the rules published in the MCAR 1982 Reprint are identified with an asterisk. Proposed and adopted TEMPORARY RULES appear in the State Register but are not published in the 1982 Reprint due to the short-term nature of their legal effectiveness.

The State Register publishes partial and cumulative listings of rule action in the MCAR AMENDMENTS AND ADDITIONS list on the following schedule:

Table with 2 columns: Issue range and Issue number. Includes: Issues 1-13, inclusive (Issue 39); Issues 14-25, inclusive (Issues 40-51); Issue 26, cumulative for 1-26 (Issue 52); Issue 27-38, inclusive (cumulative for 1-52).

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PROPOSED RULES

Pursuant to Minn. Laws of 1980, § 15.0412, subd. 4h, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
 2. that no public hearing will be held unless seven or more persons make a written request for a hearing within the 30-day comment period;
 3. of the manner in which persons shall request a hearing on the proposed rules;
- and
4. that the rule may be modified if modifications are supported by the data and views submitted.

If, during the 30-day comment period, seven 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 § 15.0412, subds. 4 through 4g, which state that if an agency decides to hold a public hearing, it must publish in the *State Register* a notice of its intent to do so. This notice must appear at least 30 days prior to the date set for the hearing, along with the full text of the proposed rules. (If the agency has followed the provisions of subd. 4h and has already published the proposed rules, a citation to the prior publication may be substituted for republication.)

Pursuant to Minn. Stat. § 15.0412, subd. 5, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 20 days thereafter, interested persons may submit data and views in writing to the proposing agency.

State Board of Education Department of Education Instruction Division

Proposed Rules Governing Special Education (5 MCAR §§ 1.0120-1.0127) and Proposed Repeal of Parts of 5 MCAR §§ 1.0120-1.0123

Notice of Hearing

A public hearing concerning the proposed rules will be held at the Sheraton Midway St. Paul, I-94 and Hamline Avenue on April 13, 1983, commencing at 9:00 a.m. and continuing until all interested persons have had an opportunity to be heard. The proposed rules may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rules, you are urged to participate in the rule hearing process.

Following the agency's presentation at the hearing all interested or affected persons will have an opportunity to ask questions and make comments. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted to Jon Lunde, Hearing Examiner, Office of Administrative Hearings, 400 Summit Bank Building, 310 South Fourth Avenue, Minneapolis, MN 55415, telephone (612) 341-7645 either before the hearing or within five working days after the close of the hearing. The hearing examiner may, at the hearing, order that the record be kept open for a longer period not to exceed 20 calendar days. The rule hearing procedure is governed by Minn. Stat. §§ 14.02 to 14.57, and by 9 MCAR §§ 2.101-2.113 (Minnesota Code of Agency Rules). If you have any questions about the procedure, call or write the hearing examiner.

Notice is hereby given that 25 days prior to the hearing, a statement of need and reasonableness will be available for review at the agency and at the Office of Administrative Hearings. This statement of need and reasonableness will include all the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rule or rules. Copies of the statement of need and reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge.

The agency intends to present only a short summary of the statement of need and reasonableness at the hearing but will answer questions raised by interested persons. You are therefore urged to review the Statement of Need and Reasonableness before the hearing. Additional copies will be available at the hearing.

The purposes of the rules are to:

1. establish legitimate standards that offer protection for the rights of handicapped pupils and at the same time allow local school district flexibility,
2. amend or delete obsolete or redundant language at the directive of the Revisor of Statutes Office,
3. recommend rules that provide greater local school district flexibility, cost containment features, and incentives for cooperation among school districts at the directive of the 1981 State Legislature, and
4. update current rules to be consistent with recent court rulings and interpretations of federal regulations.

PROPOSED RULES

The board's statutory authority to promulgate the proposed rules is provided by Minn. Stat. § 120.17, subd. 3.

The board anticipates that because the following are local school district options allowing flexibility in staffing, the department is unable to project an accurate savings or cost estimate for:

- 1.0121 E. Experimental proposal
- 1.01223 D. Early childhood team
- 1.01225 Multidisability team teaching
- 1.01226 Single disability case management services
- 1.01228 Pupil performance plan
- 1.01232 B. Assistant directors
- 1.01232 C. Other supervisory personnel

The board estimates that savings in state aids and local expenditure may be realized for the following rules, depending on the extent to which the rules are implemented.

1. Rule 5 MCAR § 1.01224 C. Level 3. All other disabilities with a ratio of one teacher to 18 pupils may realize a savings in state aids of between zero, if local school districts do not increase the actual ratios beyond those of 1981-82, and \$6,855,000 if local school districts increase by 20 percent the 12.9 ratio reported in 1981-82.

2. Rule 5 MCAR § 1.01232 A. may realize a savings in state aids of between \$61,040 and \$198,160 depending on how the local school districts implement the rule. Based on 1981-82 data there were 13 districts without a director of special education which under this proposal would have to hire at least a part-time person, there were seven districts which employed directors but would not be eligible for aid under this rule. There were nine districts and eight cooperatives which employed full-time directors which would only be eligible for part-time directors under this rule.

3. Rule 5 MCAR § 1.01232 C. may realize a savings in state aids of zero if local school districts choose to keep the same number of supervisors as were employed in 1981-82 or a savings of \$2,152,500 if they choose not to employ supervisors at all. Following the legislated suspension of the supervisory rules in 1981 and based on 1982-83 first and second state aid payments, local school districts did not continue the employment of 23 of the 119 supervisors reported in 1981-82 for an estimated savings of \$416,000 in state aids.

The board anticipates there will be an increased cost to local school districts for the following rules:

1. Rule 5 MCAR § 1.01223 covers an area not clarified in rule previously, (early childhood handicapped) and a number of local school districts were out of compliance. It is estimated that there will be an increase of \$601,823 to bring these districts into compliance.

2. Cost for Rule 5 MCAR § 1.01224 C. Level 4 is estimated to be \$1,284,000 and Levels 5 and 6 \$912,680. This may occur because programs for children who are emotionally/behaviorally disordered are relatively new in Minnesota and the previous ratios are not considered appropriate for effective programming.

It is estimated that the savings of the total rules proposal will range up to \$6,407,260 depending on the implementation decisions made by the local school districts.

A copy of the proposed rules is attached hereto. One free copy may be obtained by writing to Mr. Wayne A. Erickson, Capitol Square Building, 550 Cedar Street, St. Paul, MN 55101. Additional copies will be available at the door on the date of the hearing. If you have any questions on the content of the proposed rules, contact Dr. Norena A. Hale at 612/296-1793.

Notice: Any person may request notification of the date on which the hearing examiner's report will be available, after which date the board may not take any final action on the rules for a period of five working days. Any person may request notification of the date on which the hearing record has been submitted or resubmitted to the Attorney General by the board. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the hearing examiner, in the case of the hearing examiner's report, or to the board, in the case of the board's submission or resubmission to the Attorney General.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

PROPOSED RULES

Minn. Stat. ch. 10A. requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any one month or more than \$250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than \$250, not including his own traveling expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, MN 55155, telephone (612) 296-5615.

January 18, 1983

John J. Feda, Secretary
State Board of Education

FISCAL STATEMENT

The board anticipates that because the following are local school district options allowing flexibility in staffing, the Department is unable to project an accurate savings or cost estimate for:

- 1.0121 E. Experimental proposal
- 1.01223 D. Early childhood team
- 1.01225 Multidisability team teaching
- 1.01226 Single disability case management services
- 1.01228 Pupil performance plan
- 1.01232 B. Assistant directors
- 1.01232 C. Other supervisory personnel

The board estimates that savings in state aids and local expenditure may be realized for the following rules, depending on the extent to which the rules are implemented.

1. Rule 5 MCAR § 1.01224 C. Level 3. All other disabilities with a ratio of one teacher to 18 pupils may realize a savings in state aids of between zero, if local school districts do not increase the actual ratios beyond those of 1981-82, and \$6,855,000 if local school districts increase by 20 percent the 12.9 ratio reported in 1981-82.

2. Rule 5 MCAR § 1.01232 A. may realize a savings in state aids of between \$61,040 and \$198,160 depending on how the local school districts implement the rule. Based on 1981-82 data there were 13 districts without a director of special education which under this proposal would have to hire at least a part-time person, there were seven districts which employed directors but would not be eligible for aid under this rule. There were nine districts and eight cooperatives which employed full-time directors which would only be eligible for part-time directors under this rule.

3. Rule 5 MCAR § 1.01232 C. may realize a savings in state aids of zero if local school districts choose to keep the same number of supervisors as were employed in 1981-82 or a savings of \$2,152,500 if they choose not to employ supervisors at all. Following the legislated suspension of the supervisory rules in 1981 and based on 1982-83 first and second state aid payments, local school districts did not continue the employment of 23 of the 119 supervisors reported in 1981-82 for an estimated savings of \$344,000 in state aids.

The board anticipates there will be an increased cost to local school districts for the following rules:

1. Rule 5 MCAR § 1.01223 covers an area not clarified in rule previously, (early childhood handicapped) and a number of local school districts were out of compliance. It is estimated that there will be an increase of \$601,823 to bring these districts into compliance.

2. Cost for Rule 5 MCAR § 1.01224 C. Level 4 is estimated to be \$1,284,000 and Levels 5 and 6, \$912,680. This may occur because programs for children who are emotionally/behaviorally disordered are relatively new in Minnesota and the previous ratios are not considered appropriate for effective programming.

It is estimated that the savings of the total rules proposal will range up to \$6,407,260 depending on the implementation decisions made by the local school districts.

Rules as Proposed**5 MCAR § 1.0120 Policies ~~and definitions~~ for special education.****A. ~~Policies.~~**

1. [Reletter as A.]
2. [Reletter as B.]
- 3.-4. [See Repealer.]
5. [Reletter as C.]
- 6.-8. [See Repealer.]

B. 5 MCAR § 1.01201 Definitions for special education.

A. Applicability. As used in 5 MCAR §§ 1.0120-1.0129 the ~~following~~ terms used throughout these rules defined in this rule shall have the following meanings ascribed to given them.

- 1.-14. [See Repealer.]

B. Assessment. “Assessment” means an individual educational evaluation of a pupil’s performance or development conducted in accordance with recognized professional standards and the provisions of 5 MCAR § 1.0124.

~~15. C. Days. “Days” shall be construed to exclude Saturdays, Sundays, and~~ means the days school is not in session when used in 5 MCAR §§ 1.0121-1.0126. “Days” shall be construed to mean means calendar days when used in 5 MCAR §§ 1.0128 and 1.0129.

D. Individual education program plan or IEP. “Individual education program plan” or “IEP” means a written individualized educational plan developed for a pupil. It is based on an assessment of the pupil’s performance utilizing licensed personnel, a determination of the pupil’s needs in a team process, an identification of appropriate goals and objectives, a selection of teaching strategies designed to enhance learning, delivery of services in an environment which is conducive to learning, and periodic review and evaluation of the pupil’s performance.

E. Initial formal assessment. “Initial formal assessment” means the first formal assessment of a pupil provided by the district proposing to conduct the assessment.

F. Initial placement. “Initial placement” means the first special education placement and provision of instruction and related services by the district proposing the placement.

G. Instruction. “Instruction” means the action or practice of a teacher.

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

~~16. I. Nondiscrimination. “Nondiscrimination” for purposes of this rule means the a requirement that school districts shall:~~

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

b. provide procedures that insure ensure that, in accordance with recognized professional standards, testing and evaluation materials and procedures utilized for the purposes of identification, assessment, classification, educational program plan development, educational placement including special education services, program implementation, review and

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PROPOSED RULES

evaluation, notice and hearing are selected and administered so as not to be discriminatory including cultural discrimination. All such procedures and materials shall take into account the special limitations of handicapped persons and the racial or cultural differences presented by persons and must be justified on the basis of their usefulness in making educational program decisions which will serve the individual ~~student~~ pupil.

17.-21. [See Repealer.]

J. Parent. "Parent" or "parents" means the mother, father, legally appointed guardian, or surrogate parent for a pupil under 18 years and for a pupil 18 years old or older and under legal guardianship. It means the pupil if a pupil is 18 years old or older and not under legal guardianship. When the parents are separated or divorced, it means the parent who has the legal right, by court decree or agreement, to determine the pupil's education, even though the other parent may have custody of the pupil.

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

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

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

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

O. Related services. "Related services" means any specially designed services not provided by regular education or special education instruction to meet the unique needs of a pupil to benefit from the educational program. This includes psychological services, social worker services, occupational therapy, physical therapy, audiology, orientation and mobility training, health services, medical services for diagnostic purposes, and other similar services.

P. Resident district. "Resident district" means the district in which the pupil's parent resides or the district designated by the commissioner of education. It does not mean the district in which the surrogate parent resides.

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

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

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

5 MCAR § 1.0121 Application.

A. District special education plan. ~~On or before September 1, 1977,~~ Each district shall submit to the commissioner the district's plan for providing ~~special~~ instruction and related services for all ~~handicapped~~ pupils as required by Minnesota Statutes, section 120.17. The plan may represent the plan of a single district or a plan for all of 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 prior to the beginning of the next school year. The plan shall include descriptions of the district's:

- ~~1. the district's~~ study procedures for the identification and assessment of ~~handicapped~~ pupils-;
- ~~2. the district's~~ method of providing the ~~special~~ instruction and related services for the identified ~~handicapped~~ pupils-;
- ~~3. the district's~~ administration and management plan to assure effective and efficient results of 1 and 2 ~~above~~.
4. [See Repealer.]

B. On or before January 1, 1978, and as soon as possible after receiving revised plans, the commissioner shall approve or implement appropriate procedures for modification of the district plan. The commissioner may grant the district a reasonable

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period of time to make necessary modifications of the plan ~~provided that~~ if the commissioner has satisfactory assurances of compliance with standards for the education of ~~handicapped~~ pupils.

C. Annual application for programs and budget.

1. ~~Regular school term. On or before May 1 of each year school~~ Districts shall submit to the commissioner an annual application for the regular school term for program and budget approval necessary ~~for determining~~ to determine the special education aids during the next school year. ~~On or before July 1~~ The commissioner shall approve, disapprove, or modify each application and notify each applying district of ~~his~~ the action and the estimated level of education aid to be paid when the first aid payment is made.

2. ~~Summer school term. On or before March 15~~ Districts shall submit separate applications for program and budget approval for summer school. The commissioner shall approve, disapprove, or modify each application and notify the district of ~~his~~ the action and the estimated level of special education aid by May 1.

3. ~~Amendment to applications. School~~ Districts shall may apply to amend applications as needed during the school term to reflect program and budget changes necessary to meet the changing needs of ~~handicapped~~ pupils in the district.

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

D. [See repealer.]

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

1. child find and pupil identification;
2. necessary short-term activities to determine whether referrals for assessments shall be made;
3. assessment and IEP planning for individual pupils;
4. instruction or related and support services to pupils who have an IEP;
5. necessary follow-up activities after termination from special education;
6. parental involvement and due process;
7. personnel development;
8. special education curriculum development;
9. special education program evaluation;
10. supervision and administration of the total special education system; and
11. other activities approved through the annual application for programs and budget.

E. Experimental proposal.

1. The State Board of Education shall approve or disapprove a district's experimental proposal for exemption from its rules. No exemption shall be given from federal regulations, 5 MCAR §§ 1.0122 B.1. and 1.01225 B.

2. When a district applies for exemption it shall submit a proposal which sets forth:

- a. the proposal's goals and objectives;
- b. the method by which the proposal will improve effectiveness and efficiency;
- c. annual review procedures for up to three years;

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d. rules from which it seeks exemption;

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

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

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

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

5 MCAR § 1.0122 Facilities, ~~and staff and supervision.~~

A. Facilities.

1. ~~Housing space. Housing space for each class~~ Classrooms and other facilities in which pupils receive instruction, related services, and support services shall be adequate:

a. be accessible;

b. be essentially equivalent to the regular education program;

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

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

2. ~~Equipment and materials. Each special class and group shall be supplied with~~ The necessary special equipment and instructional materials shall be supplied to provide instruction, related services, and support services.

B. Staff.

1. Teachers. Every teacher ~~who teaches a special class must shall~~ hold a special class license appropriate to the ~~type handicapping condition of handicapped children she or he is teaching the pupil taught except as designated in~~ 5 MCAR § 1.01225.

2. ~~Administrators and supervisors~~ Directors. Every administrator and supervisor of any special education program director and assistant director shall hold an appropriate ~~license~~ supervisory license for general special education or one or more program areas.

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

~~3. 4. Other professional or essential personnel~~ Related services staff. ~~The qualifications of other professional or essential personnel who are not licensed teachers, administrators or supervisors~~ Every related services staff member shall ~~be based upon~~ hold an appropriate license issued by the Board of Teaching or the State Board of Education. ~~When such license is not available, related services staff shall meet recognized professional standards and which shall be documented by the school district in their application as provided for in 5 MCAR § 1.0121. The commissioner or his designee shall review requests for approval of such personnel assigned to programs for handicapped children.~~

5. Contracts. When contracting for assessments, instruction, or related services, a district shall contract with personnel who hold licenses issued by the Board of Teaching or State Board of Education, or who meet recognized professional standards.

6. Personnel variances. A district may apply to the commissioner of education for a variance from 1.-5. for one year or less when, in an emergency situation, instruction or related services must be initiated or continued and documented attempts have been made to find a licensed person.

4. [Re-number as 7.]

C.-D. [See Repealer.]

E. [Re-letter as C.]

5 MCAR § 1.01222 Pupils placed for care and treatment.**A. Handicapped pupil placement.**

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

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

3. In a facility.

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

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

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

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

5. Team meeting required. The placing agency or the providing district shall hold a team meeting as soon as possible after it is determined that a pupil may be placed for care and treatment. At least the following persons shall receive written notice to attend: the person or agency placing the pupil, the resident district, the appropriate teachers and related services staff from the providing district, the parents, and, when appropriate, the pupil. This team meeting may be held in conjunction with a meeting called by the placing agency according to Minnesota Statutes, section 124.2129, subdivision 4.

6. IEP required. The IEP developed by the team shall include the provisions of 5 MCAR § 1.0125, the location of the instruction and related services when provided other than in the facility, the projected duration of the instruction and related services, and provisions for coordinating the care and treatment and the instruction and related services.

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

8. Aid for special education only. When regular education, instruction, and related services are provided, only the special education portion shall be reimbursed with special education aid. The cost of care and treatment for which a child is placed shall not be reimbursed with special education aid, nor is such expense assessable against the resident district.

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

5 MCAR § 1.01223 Early childhood program alternatives.

A. Instruction and related services required. If a district provides permissive special education to pupils under four years old, the pupils shall be provided instruction and related services in one or more early childhood program alternatives. If pupils are

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four years old but less than seven years old on September 1 of any year, the district shall provide services in one or more early childhood program alternatives or in one or more school-age levels of service in 5 MCAR § 1.01224 B.

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

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

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

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

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

<u>Consultation and indirect services program</u>	<u>24</u>
<u>Center-based program</u>	
<u>Deaf/blind, autistic, or severely multiply handicapped</u>	
<u>One class, with one aide</u>	<u>4</u>
<u>One class, with two aides</u>	<u>6</u>
<u>More than one class, with one aide</u>	<u>8</u>
<u>More than one class, with two aides</u>	<u>12</u>
<u>All other disabilities</u>	
<u>One class, with one aide</u>	<u>8</u>
<u>More than one class, with one aide</u>	<u>16</u>
<u>Home-based program</u>	<u>12</u>

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

5 MCAR § 1.01224 School-age levels of service.

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

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

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

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

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

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

5. In level 5 a pupil receives full-time direct instruction from a teacher within a district building, day school, or special station or facility. Integrated activities solely for socialization or enrichment, and related services are excluded when determining full-time. Consultation and indirect services are included.

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

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

<u>Level 2</u>	
<u>Speech and language handicapped and developmental adaptive physical education</u>	60
<u>All other disabilities</u>	<u>30</u>
<u>Level 3</u>	
<u>Speech and language handicapped and developmental adaptive physical education</u>	40
<u>All other disabilities</u>	<u>18</u>
<u>Level 4</u>	
<u>Deaf/blind, autistic, or severely multiply handicapped</u>	3
<u>With one aide</u>	<u>6</u>
<u>Mildly mentally handicapped or specific learning disabled</u>	12
<u>With one aide</u>	<u>15</u>
<u>All other disabilities</u>	8
<u>With one aide</u>	<u>10</u>
<u>With two aides</u>	<u>12</u>
<u>Levels 5 and 6</u>	
<u>Deaf/blind, autistic, or severely multiply handicapped</u>	
<u>With one aide</u>	4
<u>With two aides</u>	<u>6</u>
<u>All other disabilities</u>	
<u>With one aide</u>	<u>8</u>

5 MCAR § 1.0125 Multidisability team teaching.

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

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

C. Team member responsibility. The team member licensed in a pupil's disability shall be responsible for that pupil's reassessment, IEP development and coordination, periodic and annual reviews, and ongoing consultation and indirect services to the teacher providing instruction.

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

E. Case loads. The total case load assigned to the team shall not exceed the case loads at the appropriate level of service set forth in 5 MCAR § 1.01224 C., times the full-time teachers and related services staff members assigned to the team. Case load means the number of IEP's for which a teacher is responsible. An aide or aides shall be a part of the team when designated in 5 MCAR § 1.01224 C.

5 MCAR § 1.01226 Single disability case management services.

A. Case management may include: initial screening and assessment; development, coordination, and implementation of the individual IEP; compliance with procedural requirements; communication coordination among home, regular and special

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education programs; placement facilitation; and coordination and scheduling of team meetings, periodic reviews, and follow-up reviews. It does not include direct instruction to pupils.

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

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

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

1. 18 pupils, times
2. the number of teachers in the team plus the case management teacher.

5 MCAR § 1.01228 Pupil performance plan.

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

1. Development of IEP's for all pupils in levels 2, 3, and 4 based on district-wide performance expectations;
2. Implementation of a system to measure ongoing pupil performance with individual pupil performance being reviewed at least monthly; and
3. Criteria for the modification of instruction, related services, and support services to meet the changing pupil needs indicated in the pupil performance measurement system.

5 MCAR § 1.01229 Considerations to be made when determining ratios.

A. Variances. The district may apply to the State Board of Education or its designee for a variance from the ratios in 5 MCAR §§ 1.01223, 1.01224, and 1.01226 for one year or less when special circumstances exist or when unanticipated special education enrollment increases occur.

B. Method of counting pupils. For the purposes of the ratios in 5 MCAR §§ 1.01223, 1.01224, and 1.01226, each pupil receiving instruction shall be counted as one pupil in the teacher's case load.

C. Reduction of ratios. The district shall reduce the teacher to pupil ratio accordingly, to ensure the provision of services delineated in each pupil's IEP, if a teacher;

1. is assigned to more than one early childhood program alternative, or
2. is assigned to pupils in more than one level of service; or
3. is serving pupils representing a significant range of severity of problems, or
4. is providing instruction at more than one building.

5 MCAR § 1.01232 Supervision.

A. Directors.

1. 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 an educational cooperative service unit.

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

- a. enrollment of 5,000 or more in public and nonpublic schools within one district; or
- b. enrollment of 4,000 or more in public and nonpublic schools in a group of two or more districts cooperating to provide special education; or
- c. eight or more districts cooperating to provide special education through a host district, joint powers agreement, or educational cooperative service unit; or
- d. districts numbered 287, 916, 917, or other similarly legislated multidistricts.

3. Conditions for special education reimbursement of a part-time director of special education include an enrollment of 2,000 in public and nonpublic schools within a district or group of districts cooperating to provide special education. The maximum reimbursement shall equal the ratio of the actual enrollment to 5,000 within a district or 4,000 in a group of cooperating districts, as applicable, but not less than one-half. A part-time director must be assigned duties other than direct instruction for unreimbursed time.

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

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

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

D. Variance. A district may apply to the commissioner of education for a variance from A. when:

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

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

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

5 MCAR § 1.01233 Surrogate parent.

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

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

C. The district shall appoint the surrogate parent when:

1. the parent or guardian is unknown or unavailable; or

2. parental rights have been terminated; or

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

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

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

1. failure to perform the duties;

2. conflict of interest;

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

4. failure to appear to represent the pupil; or

5. change in eligibility for special education.

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

1. state and federal requirements;

2. district structure and procedures;

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

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

5 MCAR § 1.01234 Suspension, exclusion, and expulsion.

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

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

C. Team meeting required. A team meeting shall be held prior to a suspension, exclusion, or expulsion of a pupil. The team shall:

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

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

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

D. Exclusion and expulsion. A pupil may be placed, through a team meeting and the IEP, in a more restrictive alternative but shall not be excluded or expelled when the misconduct is related to the pupil's handicapping condition. When it is determined in a team meeting or a Pupil Fair Dismissal Act proceeding that a pupil's misconduct is related to the pupil's handicapping condition, then the assessment, IEP, and least restrictive alternative shall be reviewed according to the provisions of 5 MCAR §§ 1.0120-1.0129.

5 MCAR § 1.0124 Identification and assessment procedures.

A. [Unchanged.]

B. Formal educational assessment.

1. An assessment:

a. [Unchanged.]

b. must be conducted at least every ~~two~~ three years as required by 5 MCAR § 1.0126 B.;

c. [Unchanged.]

2.-4. [Unchanged.]

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

A. Periodic reviews.

1. [Unchanged.]

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

3.-5. [Unchanged.]

B. Requirements for reassessment. When a ~~student~~ pupil is continued in ~~his or her~~ the primary placement in a special education program, the providing district shall conduct an educational reassessment according to the procedures specified in 5 MCAR § 1.0124 B., at least once every ~~two~~ three years.

C. [Unchanged.]

5 MCAR § 1.0127 Formal notice to parents.**A. General notice provisions.**

1.-4. [Unchanged.]

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

a.-d. [Unchanged.]

e. inform the parents that they may:

(1)-(2) [Unchanged.]

(3) obtain an independent assessment at public expense if the parent disagrees with an assessment obtained by the public agency district. However, a district may initiate a due process hearing to show that its assessment is appropriate after at least one conciliation conference. If the final decision is that its assessment is appropriate, the parents still have the right to an independent assessment, but not at public expense. Whenever 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 which the public agency district uses when it initiates an evaluation.

f.-t. [Unchanged.]

6. [Unchanged.]

B.-C. [Unchanged.]

Repealer. 5 MCAR §§ 1.0120 A.3., A.4., A.6., A.7., A.8., B.1., B.2, B.3., B.4., B.5., B.6., B.7., B.8., B.9., B.10., B.11., B.12., B.13., B.14., B.17., B.18., B.19., B.20., B.21.; 5 MCAR §§ 1.0121 A.4., D.; 1.0122 C. and D.; and 1.0123 are repealed.

Effective date. 5 MCAR §§ 1.01223, 1.01224, and 1.01232 are effective for the school year beginning in 1984. The remaining rules are effective five working days after the notice of adoption is published in the *State Register*.

ADOPTED RULES

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 15.0412, subd. 4, have been met and five working days after the rule is published in the *State Register*, unless a later date is required by statutes or specified in the rule.

If an adopted rule is identical to its proposed form as previously published, a notice of adoption and a citation to its previous *State Register* publication will be printed.

If an adopted rule differs from its proposed form, language which has been deleted will be printed with strike outs and new language will be underlined, and the rule's previous *State Register* publication will be cited.

A temporary rule becomes effective upon the approval of the Attorney General as specified in Minn. Stat. § 15.0412, subd. 5. Notice of his decision will be published as soon as practicable, and the adopted temporary rule will be published in the manner provided for adopted rules under subd. 4.

**Department of Administration
Building Codes and Standards Division****Adopted Rules Governing Amendments to the *State Building Code***

The rules proposed and published at *State Register*, Volume 7, Number 21, pp. 766-782 (7 S.R. 766), November 22, 1982, are now adopted without modification.

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ADOPTED RULES

Minnesota Housing Finance Agency

Adopted Temporary Rules Governing Income Limits for the Limited Unit Development Mortgages

The temporary rule proposed and published at *State Register*, Volume 7, Number 23, pages 888-889, December 6, 1982 (7 S.R. 888) is adopted as proposed.

Minnesota Housing Finance Agency

Adopted Temporary Rules Governing Eligible Applications in the Home Improvement Loan Program

The temporary rule proposed and published at *State Register*, Volume 7, Number 18, page 672, November 1, 1982 (7 S.R. 671) is adopted as proposed.

Minnesota Housing Finance Agency

Adopted Temporary Rules Governing Income Limits for the Medium Density Housing Demonstration Program

The temporary rule proposed and published at *State Register*, Volume 7, Number 18, page 671, November 1, 1982 (7 S.R. 671) is adopted as proposed.

Minnesota Housing Finance Agency

Adopted Temporary Rules Governing Income Limits for the Rollover Housing Demonstration Program

The temporary rule proposed and published at *State Register*, Volume 7, Number 18, pages 670-671, November 1, 1982 (7 S.R. 670) is adopted as proposed.

Minnesota Public Utilities Commission

Adopted Amendment of Rules Governing the Cold Weather Rule

The rule proposed and published at *State Register*, Volume 7, Number 23, pages 889-890, December 6, 1982 (7 S.R. 889) is adopted as proposed.

Department of Natural Resources

Commissioner's Order No. 2137

Regulations for the Taking of Beaver during the 1983 Spring Season

Pursuant to authority vested in me by law, I, Joseph N. Alexander, Commissioner of Natural Resources, hereby prescribe the following regulations for the taking of beaver during the 1983 spring season.

Section 1. BEAVER SEASON DATES, HOURS AND OPEN ZONE.

Except as otherwise provided herein, beaver may be taken by trapping from March 1, 1983 through April 30, 1983, both dates inclusive. Beaver may be taken statewide except in that portion of the state lying within the following described area which is closed to the taking of beaver:

Beginning at the intersection of the midline of the Mississippi River and U.S. Highway 61 at Hastings, thence southerly along U.S. Highway 61 to U.S. Highway 16 at LaCrescent, thence southerly along U.S. Highway 16 to State Trunk Highway 26, thence southerly along State Trunk Highway 26 to the southern boundary of the state; thence along the southern and eastern boundaries of the state to the confluence of the St. Croix and Mississippi Rivers, thence along the midline of the Mississippi River to the point of beginning.

Sec. 2. BEAVER SEASON LIMITS.

Beaver may be taken by licensed trappers during the open season without limit.

Sec. 3. WILDLIFE MANAGEMENT AREAS, STATE GAME REFUGES, FEDERAL WATERFOWL PRODUCTION AREAS, STATE PARKS AND NATIONAL WILDLIFE REFUGES.

- a. Beaver may be taken within wildlife management areas in the open zone of the state during the open season by licensed trappers provided they have a permit issued by a state game manager.
- b. Federal Waterfowl Production Areas which are located in the open zone of the state are open to the trapping of beaver during the open season.
- c. No person shall take beaver in any of the areas under the administration of the Division of Parks and Recreation.
- d. Within the Agassiz and Tamarac National Wildlife Refuges, beaver may be taken by licensed trappers provided they have a permit issued by the refuge manager. All other National Wildlife Refuges are closed to beaver trapping.
- e. All game refuges which are located in the open zone of the state are open to the trapping of beaver during the open season pursuant to Commissioner's Order No. 2127.

Sec. 4. GENERAL PROVISIONS.

- a. No traps of any kind shall be set upon the outside of any beaver house above the waterline, or inside any beaver house.
- b. No person shall molest or damage any beaver house or dam.
- c. No person shall set, place, or operate, except as a waterset, any body-gripping or "conibear" type trap that has a maximum jaw opening, when set, of greater than seven inches measured from the inside edges of the body-gripping portions of the jaws. No person shall set, place, or operate in a culvert, except as a completely submerged waterset, any body-gripping or "conibear" type trap that has a maximum jaw opening, when set, of greater than six inches measured from the inside edges of the body-gripping portions of the jaws.
- d. No person shall tend or set any trap for any wild animals between the hours of 6:00 p.m. and 6:00 a.m.
- e. Snowmobiles and all terrain vehicles may be used only in the North Furbearer Zone, plus that portion of the South Furbearer Zone lying north of U.S. Highway 10, to transport or check beaver traps and to transport beaver carcasses. Furbearer zones are described in Commissioner's Order No. 2129.
- f. All persons 13 years of age and older must have a valid 1983 trapping license in order to trap beaver.
- g. All persons 16 years of age or older are required to have a small game license in addition to the trapping license, except that the resident owner or lessee of any lands occupied by himself as a permanent abode, and any member of such person's immediate family residing with him, may lawfully trap protected furbearing animals upon such lands by procuring the appropriate trapping license, but without procuring a small game license.
- h. No person shall place, set, operate, possess or transport any trap in the field unless his or her name and either address or driver's license number is etched legibly onto the trap or onto a metal tag no less than 30 gauge in thickness which is welded, brazed or soldered to the trap or affixed to the trap with a tightly twisted wire or solid metal ring.
- i. Traps capable of taking more than one animal at a time shall not be used.
- j. Any traps set for protected wild animals and not capable of drowning the animals shall be tended at least once every 36 hours.
- k. Except as expressly provided herein, this order shall not be construed to limit the number of any furbearing animals that may lawfully be possessed, transported or sold by any licensed fur buyer.
- l. All animals taken pursuant to this order must be killed before being removed from the site where taken.
- m. No person shall set or maintain any leg-hold trap within 20 feet of bait located in such a manner that it may be seen by soaring birds. Bait is defined as any animal or parts thereof, except that small aggregates of fur and feathers may be used for flagging purposes.
- n. No person shall be accompanied by a dog or dogs while engaged in tending or setting traps for protected wild animals,

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

ADOPTED RULES

unless such dog or dogs are harnessed and attached to a sled or securely tethered to a tree or other permanent device with a leash of no more than 15 feet in length.

o. No person shall possess or transport any fisher, otter, pine marten, fox, bobcat, lynx, or timber wolf, which was accidentally killed or was lawfully killed on account of causing or threatening injury or damage until such a person notifies the local conservation officer, other authorized department employee, or regional enforcement office, of the killing and receives authorization to possess, transport, or skin the animal. A person may possess or transport mink, muskrat, beaver, badger or raccoon accidentally killed or lawfully killed on account of causing or threatening injury or damage only if the local conservation officer or other authorized employee of the Department is notified within 24 hours of such killing and before the animal is skinned.

Regulations governing payment of pelting fees are set forth in Commissioner's Order No. 2117 or superseding orders.

Dated at Saint Paul, Minnesota, this 7th day of February, 1983.

Joseph N. Alexander, Commissioner
Department of Natural Resources

SUPREME COURT

Decisions Filed Friday, February 11, 1983

Compiled by Wayne Tschimperle, Clerk

C1-81-1295 State of Minnesota v. Leonard McAdoo, Appellant. Hennepin County.

Trial court in criminal trial did not prejudicially err in admitting *Spreigl* evidence and police identification photographs, from which victim of charged offense and *Spreigl* offense first identified defendant.

Trial court, in determining presumptive sentence under Minnesota Sentencing Guidelines, properly computed defendant's criminal history score.

Affirmed. Amdahl, C. J. Dissenting, Coyne, J., and Wahl, J.

C9-82-1135 Kenneth Ahearn, petitioner, Appellant, v. State of Minnesota. Hennepin County.

Postconviction court properly denied petition seeking resentencing according to the Minnesota Sentencing Guidelines.

Affirmed. Amdahl, C.J.

C5-81-1204 Med-Care Associates, Inc. v. Arthur Noot, Commissioner of Public Welfare, Appellant. Hennepin County.

The trial court properly concluded that exercise of the option by the lessee nursing home operator resulted in an extension of the lease.

The legislature intended to include an extension of a lease through use of the term "renewal" in Minn. Stat. § 256B.45, subd. 3 (1982).

The rate limitation statute applies to reimbursements paid during the second 5-year term of the lease.

Reversed. Wahl, J.

CX-81-1215 Sharon A. Heaton, Appellant, v. Ralph R. Heaton. Anoka County.

The fact that the earnings of both parents increased by approximately the same percentages since the divorce decree had been entered 11 years before does not, by itself, establish that there has been no substantial change of circumstances warranting denial of a motion for an increase in child support by the noncustodial parent; other factors, including the expenses of the parties and the needs of the children, must also be considered.

Inflation is not to be considered as a separate factor or circumstance in the "change in circumstances" test for support modification cases.

Reversed and remanded for further proceedings. Simonett, J.

C5-81-1252 Darrell Ogilvie, *et al.*, Appellants, v. Independent School District No. 341, Atwater, Minnesota. Kandiyohi County.

The decision to assign a vocational agriculture teacher to teach part-time in an adjacent school district pursuant to a joint powers agreement is an inherent managerial policy decision and not a subject for negotiation.

The adoption of a criteria by which individual teachers may be identified for part-time extra-district assignment pursuant to a joint powers agreement is a proper subject of negotiation.

When the obligation to meet and negotiate the criteria for identifying an individual teacher for part-time assignment pursuant to a joint powers agreement exists and there has been no demand and no refusal to meet and negotiate, a school district does not commit an unfair labor practice.

Affirmed. Coyne, J.

C5-81-1378 Jeffery W. Mickelson, *et al.* v. American Family Mutual Insurance Company, Defendant, and Mutual Service Casualty Insurance Company, Appellant. Hennepin County.

An adult person who is neither the spouse nor a relative of the named insured but who resides in the named insured's household is not an "insured" under the Minnesota No-Fault Automobile Insurance Act, Minn. Stat. §§ 65B.41 to 65B.71 (1982) and is not entitled to recover basic economic loss benefits under the named insured's automobile insurance policy with respect to injuries sustained while a pedestrian through being struck by an uninsured motorist.

An automobile owner who is not entitled to recover basic economic loss benefits under the plan of reparation security covering his owned motor vehicle with respect to injuries sustained while a pedestrian through being struck by an uninsured motorist is not eligible for basic economic loss benefits through the assigned claims plan, Minn. Stat. §§ 65B.63 to 65B.66 (1982).

Affirmed in part, reversed in part. Coyne, J. Dissenting, Scott, J., and Yetka, J.

OFFICIAL NOTICES

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

Department of Health

Application for Licensure—Scheduled Basic Life Support

As of February 21, 1983, a complete application for scheduled basic life support transportation service was submitted by Ellsworth Area Ambulance Service, 151 South Plum, Ellsworth, Wisconsin. The application is requested to transport patients from St. John's Hospital in Red Wing, Minnesota, to other hospitals in the State of Minnesota.

Each municipality, county, community health service agency, and any other interested person wishing to comment on this application may submit comments to the Office of State Health Planning, 550 Cedar Street, 100 Capitol Square Building, St. Paul, Minnesota 55101, Attn: John Dilley. Your comments must be submitted before the close of business on March 23, 1983.

The Office of State Health Planning will hold a public hearing in one of the municipalities in which the service is to be provided. The State Health Planning Agency shall then recommend that the Commissioner of Health either grant or deny a license or recommend that a modified license be granted. The State Health Planning Agency shall make the recommendations and reasons available to any individual requesting them.

Within 30 days of the recommendation to the Commissioner of Health, the Commissioner shall grant or deny a license to the applicant.

Department of Natural Resources Waters Division

Notice of Intent to Solicit Outside Opinion Regarding Amendment of the Rules Establishing Fee Schedules for Permit Applications, Field Inspections and Monitoring

The Department of Natural Resources is seeking information and opinion from sources outside the agency in preparing changes to the rules. The department is considering changes to the rules to establish additional fee schedules for permit applications, field inspections and monitoring with regard to: Underground gas or liquid storage (Minn. Stat. § 84.57), appropriation and use of waters of the State (Minn. Stat. § 105.41), construction, abandonment or change of any reservoir, dam, or waterway obstruction on any protected waters (Minn. Stat. § 105.42), change in the course, current or cross-section of any protected waters (Minn. Stat. § 105.42) and drainage, diversion, control or use of any waters to facilitate mining (Minn. Stat. § 105.64).

The rules being amended are authorized by Minn. Stat. § 105.44, subd. 10 and § 84.58, subd. 8.

You may submit information or comments, orally or in writing, concerning the subject matter of the proposed amendments to:

Hedia Rieke
Division of Waters
Department of Natural Resources
3rd Floor Space Center
444 Lafayette Road
St. Paul, MN 55101
(612) 296-0515

The department will accept information and comment through March 31, 1983. Written material will become part of the record of the amendment proceedings.

Office of the Secretary of State

Notice of Vacancies in Multi-member State Agencies

Notice is hereby given to the public that vacancies have occurred in multi-member state agencies, pursuant to Minn. Stat. § 15.0597, subd. 4. Application forms may be obtained at the Office of the Secretary of State, 180 State Office Building, St. Paul 55155-1299; (612) 296-2805. Application deadline is March 15, 1983.

FAMILY FARM ADVISORY COUNCIL has 2 vacancies open immediately, one for a cash grain farmer and 1 for an officer from a farm credit association. The council assists farmers in obtaining credit to purchase farm real estate by guaranteeing loans and deferring interest payments. Members are appointed by the Commissioner of Agriculture. Monthly meetings are held, and members receive \$35 per diem plus expenses. For specific information contact the Family Farm Advisory Council, Dept. of Agriculture, 90 W. Plato Blvd., St. Paul 55107; (612) 296-8435.

BOARD OF PSYCHOLOGY has 1 vacancy open for a professional licensed consulting psychologist. The board examines and licenses psychologists, and investigates complaints. Members are appointed by the Governor and must file with the EPB. Monthly meetings are held. Members receive \$35 per diem plus expenses. For specific information contact the Board of Psychology, Room 343, 717 Delaware St. S.E., Mpls 55416; (612) 296-5419.

POISON INFORMATION CENTER ADVISORY COUNCIL has 1 vacancy open for a nurse. Applicants can not be a resident of St. Louis, Hennepin, Olmsted, Scott, Ramsey, Clay, Dakota, Washington, Anoka or Carver counties and may not be affiliated with the designated poison information center. The council advises the Commissioner of Health on establishing a poison information center to provide educational services to the public and to health professionals. Members receive no compensation. For specific information contact the Poison Information Center Advisory Council, 717 Delaware St. S.E., Mpls 55414; (612) 623-5284.

Water Planning Board

Notice of Meeting

Notice is hereby given that the Water Planning Board will hold a meeting on Friday, February 25, 1983 in the Department of Natural Resources third floor conference room in the Centennial Office Building, 658 Cedar Street, St. Paul, Minnesota at 9:00 a.m. An agenda for the meeting may be obtained one week prior to the meeting by contacting the undersigned at 600 American Center Building, 150 E. Kellogg Boulevard, St. Paul, Minnesota 55101.

Thomas Kalitowski, Chairman
Water Planning Board

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