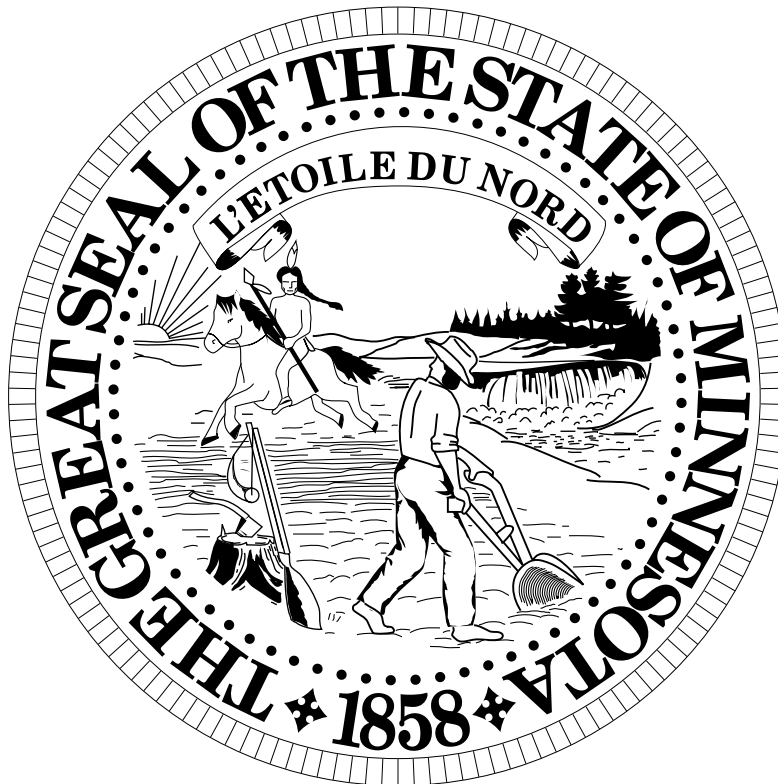


State of Minnesota

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- proposed, adopted, exempt, expedited emergency and withdrawn rules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
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#24	Monday 11 December	Noon Wednesday 29 November	Noon Tuesday 5 December
#25	Monday 18 December	Noon Wednesday 6 December	Noon Tuesday 12 December
#26	Tuesday 26 December	Noon Wednesday 13 December	Noon Tuesday 19 December
#27	Tuesday 2 January 2001	Noon Wednesday 20 December	Noon Tuesday 26 December

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Minnesota Rules: Amendments & Additions		
Volume 25, Issue #14-24	1054	
Proposed Rules		
Children, Families and Learning Department		
Special education	1092	
Minnesota Housing Finance Agency		
Capital contribution of investors.....	1120	
Official Notices		
Attorney General's Office		
Notice of annual meeting regarding landlord and tenant rights and responsibilities	1122	
Human Services Department		
Authorization list	1122	
Minnesota Comprehensive Health Association		
Board of director meeting notice	1126	
Enrollee appeal committee meeting notice	1126	
Public Employees Retirement Association (PERA)		
Board of trustees meeting	1127	
Physical Therapy Board		
Comments sought on planned amendment to rule governing physical therapy	1127	
Transportation Department		
Petition for variance from State Aid requirements from: City of Stewartville for plan approval after opening of contract bids.....	1127	
City of Rochester for design speed	1128	
		State Contracts
		Colleges and Universities, Minnesota State (MnSCU)
		Proposals sought for executive search firm
		1129
		Proposals sought for Paulucci Planetarium foundation repair
		1129
		Human Services Department
		Proposals sought for family group decision making evaluation.....
		1130
		Proposal sought for general practitioner services
		1131
		Minnesota Historical Society
		Proposals sought for printing of The Last Full Measure
		1131
		Proposal sought for printing of Swedes in the Twin Cities
		1131
		Proposals sought for MHS site brochure production.....
		1131
		Proposals sought for electronic records project
		1132
		Public Employees Retirement Association (PERA)
		Request for information for medical consultant services costs.....
		1132
		Transportation Department
		Proposals sought for property management services.....
		1132
		Proposals sought for Mn/Model process and data modeling project
		1133
		Non-State Contracts and Grants
		Metropolitan Council
		Proposals sought for security guard service.....
		1134
		Proposals sought for engineering services.....
		1134

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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 # 14-24

Agriculture Department

1545.3130; .3150 (proposed)	801
1545.3130 s. 2; .3180; .3190; .3200; .3210; .3220; .3230; .3240; .3250; .3260; .3270; .3280; .3290; .3300; .3310; .3320; .3330; .3350 (proposed repealer)	801

Animal Health Board

1705.1090; .1130; .1131; .1145; .1146; .1147; .1151; .1152; .1175; .1180; .1190; .1200; .1210; .1215 (proposed)	871
---	-----

Arts Board

1900.1010; .1550; .1710 (proposed)	907
1900.1010; .1550; .1710 (errata on hearing, dates, times)	933

Chiropractic Examiners Board

2500.0100 s.8a is renumbered as 2500.0100 s.5a; and 2500.0100 s.5a is renumbered as 2500.0100 s.5b (adopted renumbering)	779
2500.0100; .2500; .2510; .2520; .2525 (adopted)	779

Crime Victims Reparations

3050.0100; .2800; .3200; .3400; .3500; .3600; .3700; .3900 (proposed)	968
---	-----

Dietetics and Nutrition Practice Board

3250.0045; .0050; .0150 (adopted)	779
---	-----

Children, Families and Learning Department

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; .3100; .3300; .3400; .3600; .3700; .3800; .3900; .4000; .4100; .4210; .4300; .4410; .4500; .4600; .4700; .4750; .4770 (proposed)	1092
3525.0200 s.1c renumbered as 3525.0200 s.2d. (proposed renumbering)	1092
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)	1092

Trade and Economic Development Department

4355.0500 (proposed)	875
----------------------------	-----

Health Department

4617.0002 (adopted)	805
4615.0900; .1000; .1100; .1200; .1300; .1400; .1500; .1600; .1700; .1800; .1900; .2000; .2100; .2200 s.1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26; .2300; .2400; .2500; .2600; .2700; .2800; .2900; .3000; .3100; .3200; .3300; .4617.0002 s.6, 13, 20, 33; .0035; .0044; .0045; .0049; .0050; .0052; .0054; .0056; .0058 (repealed)	805
4620.3250; .3300; .3310; .3330; .3340; .3350; .3460; .3470; .3480 (proposed)	763
4690.3800 (proposed repealer)	825
4717.7000 (proposed)	803
4630.4800; .4900; .5000; .5100; .5200; .5300; .5400; .5500; .5600; .5700; .5800; .5900; .6000; .6100; .6200; .6300; .6400; .6500; .6550 (proposed repealer)	803
4725.0100; .0475; .0650; .1820; .1833 (proposed)	768

Housing Finance Agency

4900.0010 (adopted)	877
---------------------------	-----

Minnesota Housing Finance Agency

4900.0010 (proposed)	1120
----------------------------	------

Labor and Industry Department

5200.1105; .1106 (proposed)	772
5205.0030; 5207.0100; .1000 (proposed exempt)	780
5225.0300; .2200; .6140; .6975; .6980; .8600; 5230.0050; .0100; .0115 (proposed)	992
5230.0110 (proposed repealer)	992

Natural Resources Department

6100.1950 (adopted exempt)	782
6216.0350 (adopted expedited emergency)	972
6230.0400; 6232.1600; .1950; .2100 (adopted expedited emergency)	911
6262.0200 (proposed)	831

Pollution Control Agency

7001.0020; 7002.0270; .0280; 7020.0200; .0205; .0250; .0300; .0350; .0405; .0505; .0535; .1600; .2000; .2002; .2003; .2005; .2015; .2025; .2100; .2110; .2125; .2225 (adopted)	834
--	-----

Minnesota Rules: Amendments and Additions

Public Safety Department		
7410.0700 (proposed)	931	
Revenue Department		
8001.0100; .0200; .0400; 8003.0100; 8009.7300 s.1; 8014.0100;		
8019.0200; .0300 s.1,2,3,4,6,7,8,9,10,11; .0405 s.12,14;		
8021.0100; .0200; 8023.0500; 8030.0100; 8031.0100 s.1,2;		
.0300; 8035.0100; 8038.3000; 8043.0200 s.3; 8093.0500 s.4,5;		
8097.0300 (proposed repealer)	1056	
8002.0200 s. 1 (exempt repealed)	806	
8009.7400; 8019.0100; .0405; 8043.0100; .0200; 8050.0100; 8052.0300;		
.0400; 8160.0630 (proposed)	1056	
8160.0500 (adopted)	971	
Transportation Department		
8820.9920; .9926; .9936; .9946; .9956; .9961; .9981; .9986; .9990;		
.9995 (proposed administrative variance)	943	
		Teaching Board
		8710.0300; .0400; .0500; .0550; .0600; .0700; .0800; .0850; .0900;
		.1000; .1050; .1250; .1400; .3300; .6000; .6100; .6200; .6300;
		.6400 (adopted)
		805
		8710.0300 s.4; .0350; .1100; .1200; .1300; .6000 s.3; .6100 s.3;
		.6200 s. 3; .6300 s. 3; .6400 s. 4 (repealed)
		805
		8710.0500 (adopted)
		877
		8710.0500 s.9 (repealed)
		877
		Human Services Department
		9500.1100 (adopted exempt)
		1021
		9505.0323; .0325; .0326; .0327 (proposed)
		1012
		9515.0200; .0310; .0450; .0500; .0600; .0700; 9525.2700
		(proposed)
		826
		9515.0300; .0400; .0800 (proposed repealer)
		826

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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

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 two public hearings on the above-entitled rules on Monday, January 22, 2001, one beginning at 2:30 p.m. and one beginning at 6:30 p.m., at the Minnesota Department of Health Distance Learning Center, Metro Annex Building, 3rd Floor, 130 East 7th Street, St. Paul, Minnesota. The hearings will be conducted via video conference at the following locations:

Nobles County Court House
Room 111
315 Tenth Street
Worthington, MN

Jefferson High School
Between Rooms 304 and 305
1401 Jefferson Street
Fergus Falls, MN

All interested or affected persons, including those attending the hearings via video conference in Fergus Falls or Worthington, 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.asche@state.mn.us. **TTY** users may call the Department of Children, Families and Learning at (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 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.

A copy of the proposed rules is published in the *State Register*. A free copy of the rules is available 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. A Statement of Need and Reasonableness is now available for review at the agency offices and at the Office of Administrative Hearings. 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 the fiscal impact of the proposed rules. The statement may be reviewed and copies obtained at the cost of reproduction from either the agency 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 prior to the hearing or during the comment period 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 November 2000

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 re-evaluation.** “Evaluation” or “re-evaluation” 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, part 3525.2550 to 3525.2750,~~ and *United States Code*, title 20, chapter 33, sections 1400 et seq.

[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~~ *United States Code*, title 20, chapter 33, sections 1400 et seq.

[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~~ 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,~~ mittens, straps, or restraint chairs to limit a ~~person’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,~~ 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~~ 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 subs 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 part~~ 3525.2550 to 3525.2750 and United States Code, title 20, chapter 33, sections 1400 et seq.

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 ~~120.17, 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 for the provision of a free, appropriate public education.

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

A. “Learning rate” means the amount of learning that has taken place during the term of the current IEP.

B. “Recoupment” means a pupil’s ability to regain the performance of a skill or acquired knowledge. Recoupment becomes significant when a pupil’s ability to regain a skill or acquired knowledge exceeds 30 percent of the pupil’s learning rate.

C. “Regression” means a significant deficit in the performance of a skill or acquired knowledge specified in a pupil’s annual goals as stated in the pupil’s IEP.

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Proposed Rules

D. "Self-sufficiency" means a domain of skills which a pupil attains to achieve a reasonable degree of personal independence as identified in the pupil's annual IEP goals. Skill areas within the domain of self-sufficiency include:

- (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; and
- (7) basic communication.

Subp. 3. **Provision of ESY.** The basis for determining ESY needs is a significant regression and delay in recoupment of skills or acquired knowledge or the attainment and maintenance of the pupil's self-sufficiency. On an annual basis, the IEP team must determine a pupil is in need of ESY services when the pupil meets the conditions of item A or B.

A. Regression of a skill or acquired knowledge occurs following a break in instruction or services, and the time required to recoup the skill or knowledge exceeds 30 percent of the pupil's learning rate.

B. Services are necessary to attain and maintain self-sufficiency.

Subp. 4. **Other factors to be considered.** In making its determination of ESY needs, the IEP team must 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 parent's ability to provide an educational structure at home;
- D. the pupil's rate of progress;
- E. the pupil's behavioral or physical problems;
- F. the availability of alternative resources;
- G. the pupil's ability and need to interact with nondisabled peers;
- H. the areas of the pupil's curriculum which need continuous attention; and
- I. 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 subps 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)~~ 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 *Code of Federal Regulations*, title 34, chapter III, *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:

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.

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Proposed Rules

~~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. F. 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~~ 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:

(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.

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Proposed Rules

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 environments. 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 D.

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 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 environments, 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.

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: 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, or child care provider; or standardized adaptive behavior scales.

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Proposed Rules

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.** The team shall determine that a pupil is eligible as having a ~~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 physical 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 ~~critierion~~ criteria in ~~item~~ items A and one of the criteria in ~~item~~ items B, and C.

A. There is written and signed documentation by a licensed physician of a medically diagnosed chronic or acute physical health ~~impairment~~ condition. A diagnosis of Attention Deficit Disorder/Attention Deficit Hyperactivity Disorder must include documentation that DSM-IV criteria in items A to E have been met. This documentation must be provided by either a licensed physician or a practitioner with appropriate clinical training and experience in diagnosis. All documentation must be dated within the previous 12 months.

~~B. The pupil’s:~~

~~(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:

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Proposed Rules

(1) excessive absenteeism linked to the physical 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 subitems (1) and (2), see M.R.]

(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

(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:

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Proposed Rules

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 ~~subitems~~ 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.]

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.]

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Proposed Rules

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 part 3525.2550 to 3525.2750 and United States Code, title 20, chapter 33, sections 1400 et seq.~~ 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 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 part 3525.2550 to 3525.2750 and United States Code, title 20, chapter 33, sections 1400 et seq.~~

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;

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Proposed Rules

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 3525.2900 and Code of Federal Regulations, title 34, section 300.347, 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.]

3525.2350 MULTIDISABILITY TEAM TEACHING MODELS.

[For text of subps 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 subps 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.

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Proposed Rules

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-calendar 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.]

3525.3100 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~~ United States Code, title 20, chapter 33, sections 1400 et seq., the district is not required to document two preferential 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.~~

~~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 place~~

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Proposed Rules

ment, 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~~ Code of Federal Regulations, title 34, sections 300.346 and 300.347;

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, MEDIATION, OR OTHER ALTERNATIVE DISPUTE RESOLUTION.

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 be offered at least one conciliation conference, mediation, or other form of alternative dispute resolution developed by the commissioner, if, within 14 calendar days after receipt of notice, 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 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). Mediation and other forms of alternative dispute resolution must be agreed to by both parties. The district must engage in a conciliation conference if one is requested by the parent.~~

Subp. 1a. When and where held; results. The A conciliation conference, mediation, or other form of alternative dispute resolution shall be held within ten calendar days after receipt of written objection 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, 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 evidence involving or concerning the contents of a conciliation conference, mediation, or other form of alternative dispute resolution must remain confidential and must not be permitted as evidence in a due process hearing.

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.

3525.3800 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~~

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Proposed Rules

~~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;

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 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.

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Proposed Rules

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~~ 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.

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

<p>KEY: PROPOSED RULES SECTION — <u>Underlining</u> 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 — <u>Underlining</u> indicates additions to proposed rule language. Strike outs indicate deletions from proposed rule language.</p>
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Proposed Rules

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** users may call the Minnesota Housing Finance Agency at (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 December 18, 2000, 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 December 18, 2000. 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 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: 16 November 2000

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

<p>KEY: PROPOSED RULES SECTION — <u>Underlining</u> 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 — <u>Underlining</u> indicates additions to proposed rule language. Strike outs indicate deletions from proposed rule language.</p>
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Proposed Rules

(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 subps 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.

Attorney General's Office

Landlords and Tenants: Rights and Responsibilities

Notice of Annual Meeting

NOTICE IS HEREBY GIVEN that the attorney general's office will hold the annual public meeting on changes in landlord/tenant law and *Landlords and Tenants: Rights and Responsibilities*, a publication of the attorney general's office. The meeting will be held at 12:00 p.m., Monday, December 18, 2000 at the attorney general's office at 1400 North Central Life Tower, 445 Minnesota Street, St. Paul, Minnesota.

Department of Human Services

Authorization List

The following is a listing of adds, deletes and changes to the current authorization list. The newly added, deleted and changed codes will require authorization on or after January 2, 2001. As authorized by *Minnesota Statutes*, section 256B.0625,9 subdivision 25, the following list includes all health services that have been added, changed, or deleted from authorization as a condition of Minnesota Health Care Programs (MHCP) payment. The list is presented in sections: Dental Services, Vision Care Services, Medical Supplies and Equipment, Prosthetics and Orthotics, Hearing Aids, Drugs, Rehabilitative Services, and All Other Services. The criteria used to develop this list are as follows:

- A. The health service could be considered, under some circumstances, to be of questionable medical necessity.
- B. Use of the health services needs monitoring to control the expenditure of program funds.
- C. Less costly, appropriate alternatives to the health services are generally available.
- D. The health service is newly developed or modified.
- F. The health service is of a continuing nature and requires monitoring to prevent its continuation when it ceases to be beneficial.

- G. The health service is comparable to a service provided in a skilled nursing facility or hospital but is provided in a recipient's home.
- H. The health service could be considered cosmetic.

These newly added or changed codes will require Authorization for services provided on or after January 2, 2001 .

☛ Identifies added or changed codes

I. DENTAL

No updates this publication

II. VISION CARE SERVICES

No updates this publication

III. MEDICAL SUPPLIES AND EQUIPMENT; PROSTHESES AND ORTHOSES

ADDED CODES

<u>Code</u>	<u>Description</u>
☛E0168	Extra wide/heavy duty commode chair, stationary or mobile with or without arms (replaces code K0457)
☛E0298	Hospital bed, heavy duty, extra wide, with any type side rails, with mattress (replaces code K0456)
☛E0756	Implantable neurostimulator pulse generator
☛E0757	Implantable neurostimulator radiofrequency receiver
☛E0758	Radiofrequency transmitter (external) for use with Implantable neurostimulator
☛E0765	FDA approved nerve stimulator, with replaceable batteries, for treatment of nausea and vomiting
☛E0786	Implantable programmable infusion pump, replacement (excludes Implantable intraspinal catheter)
☛J7330	Autologous cultured chondrocytes, implant
☛K0538	Negative pressure wound therapy electrical pump, stationary or portable
☛K0541	Speech generating device, digitized speech using pre-recorded messages, less
☛K0542	Speech generating device, digitized speech, using pre-recorded messages,
☛K0543	Speech generating device, synthesized speech, requiring message formulation
☛K0544	Speech generating device, synthesized speech, permitting multiple methods
☛K0545	Speech generating software program, for personal computer or personal digital
☛K0546	Accessory for speech generating device, mounting system
☛K0547	Accessory for speech generating device, not otherwise classified
☛L3760	Elbow orthosis, with adjustable position locking joint(s), prefabricated,
☛L3923	Hand finger orthosis, without joint(s), prefabricated, includes fitting and

ADDED CODES

<u>Code</u>	<u>Description</u>
☛L8040	Nasal prosthesis, provided by a non-physician (authorization required if over \$3000.00)
☛L8041	Midfacial prosthesis, provided by a non-physician (authorization required if over \$3000.00)
☛L8042	Orbital prosthesis, provided by a non-physician (authorization required if over \$3000.00)
☛L8043	Upper facial prosthesis, provided by a non-physician (authorization required if over \$3000.00)
☛L8044	Hemi-facial prosthesis, provided by a non-physician (authorization required if over \$3000.00)
☛L8045	Auricular prosthesis, provided by a non-physician (authorization required if over \$3000.00)
☛L8046	Partial facial prosthesis, provided by a non-physician (authorization required if over \$3000.00)
☛L8047	Nasal septal prosthesis, provided by a non-physician (authorization required if over \$3000.00)

Official Notices

- ☛ L8048 Unspecified maxillofacial prosthesis, by report, provided by a non-physician (authorization required if over \$3000.00)
- ☛ L8049 Repair or modification of maxillofacial prosthesis, labor component, 15 min unit (authorization required if over \$3000.00)
- ☛ S8105 Oximeter for measuring blood O2 levels non-invasive (replaces Z0443 and Z0432)

CHANGED CODE

- | <u>Code</u> | <u>Description</u> |
|-------------|---|
| ☛ A4245 | Alcohol wipes, per box (limit five boxes per month) |
| ☛ B4150 | Enteral formulae; category I: semisynthetic intact protein/protein isolates, 100 calories = 1 unit (no authorization required if client is on tube feeding. Oral nutrition requires authorization after first 30 days. Use modifier 52 to indicate oral administration) |
| ☛ B4151 | Enteral formulae; category I: natural intact protein/protein isolates, 100 calories = 1 unit (no authorization required if client is on tube feeding. Oral nutrition requires authorization after first 30 days. Use modifier 52 to indicate oral administration) |
| ☛ B4152 | Enteral formulae; category II: intact protein/protein isolates (calorically dense), 100 calories = 1 unit |

<u>Code</u>	<u>Description</u>
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- | | |
|---------|---|
| | (no authorization required if client is on tube feeding. Oral nutrition requires authorization after first 30 days. Use modifier 52 to indicate oral administration) |
| ☛ B4153 | Enteral formulae; category III: hydrolyzed protein/ amino acids, 100 calories = 1 unit (no authorization required if client is on tube feeding. Oral nutrition requires authorization after first 30 days. Use modifier 52 to indicate oral administration) |
| ☛ B4154 | Enteral formulae; category IV: defined formula for special metabolic need, 100 calories = 1 unit (no authorization required if client is on tube feeding. Oral nutrition requires authorization after first 30 days. Use modifier 52 to indicate oral administration) |
| ☛ B4155 | Enteral formulae; category V: modular components. 100 calories = 1 unit (no authorization required if client is on tube feeding. Oral nutrition requires authorization after first 30 days. Use modifier 52 to indicate oral administration) |
| ☛ B4156 | Enteral formulae; category VI: standardized nutrients, 100 calories = 1 unit (no authorization required if client is on tube feeding. Oral nutrition requires authorization after first 30 days. Use modifier 52 to indicate oral administration) |
| ☛ E1399 | is the unspecified equipment code. This code is only to be used when there is no specific, descriptive HCPCS or DHS code assigned. Refer to equipment guide. Authorization required if more than \$400.00 |

DELETED CODES (no longer needs authorization)

- | <u>Code</u> | <u>Description</u> |
|-------------|--|
| ☛ A4231 | Infusion set for external insulin pump, needle type |
| ☛ A4232 | Syringe with needle for external insulin pump, sterile, 3cc |
| ☛ E0236 | Pump for water circulating pad |
| ☛ E0520 | Hospital bed, fixed height, with any type side rails, with mattress |
| ☛ E0251 | Hospital bed, fixed height, with any type side rails, without mattress |
| ☛ E0255 | Hospital bed, variable height, hi-lo, with any type side rails, with mattress |
| ☛ E0256 | Hospital bed, variable height, hi-lo, with any type side rails, without mattress |

DELETED CODES

<u>Code</u>	<u>Description</u>
☛E0271	Mattress, inner spring
☛E0272	Mattress, foam rubber
☛E0291	Hospital bed, variable height, hi-lo without side rails, without mattress
☛E0292	Hospital bed, variable height, hi-lo without side rails, with mattress
☛E0293	Hospital bed, variable height, hi-lo without side rails, without mattress

IV. HEARING AIDS

No updates this publication

V. DRUGS

No updates this publication

VI. REHABILITATIVE SERVICES**OCCUPATIONAL THERAPY**

Any combination of the following codes that exceed 50 hours (200 units):

ADDED CODES

<u>Code</u>	<u>Description</u>
☛97532	Development of cognitive skills to improve attention, memory, problem solving (includes compensatory training)
☛97533	Sensory integrative techniques to enhance sensory processing and promote adaptive responses to environmental demands

DELETED CODES

<u>Code</u>	<u>Description</u>
☛97770	Sensory integrative or cognitive skills

PHYSICAL THERAPY

No change this publication

SPEECH-LANGUAGE PATHOLOGY

The following codes always require authorization:

ADDED CODES

<u>Code</u>	<u>Description</u>
☛G0198	Patient adaptation and training for use of speech generating devices.
☛G0201	Modification or training in use of voice prosthetic

Any combination of the following codes that exceed two (2) treatment sessions:

☛G0197	Evaluation of patient for prescription of speech generating device.
☛G0199	Re-evaluation of patient using speech generating device
☛G0200	Evaluation of patient for prescription of voice prosthetic.

Official Notices

DELETED CODES

<u>Code</u>	<u>Description</u>
☞92598	Modification of voice prosthetic or augmentative/ alternative communication device to support oral speech
☞92597	Evaluation for use and/or fitting of voice prosthetic or augmentative/alternative communication device to support oral speech that exceed eight units.

VII. ALL OTHER SERVICES

1. Non-investigative Services

ADDED CODES

<u>Code</u>	<u>Description</u>
☞44132	Donor enterectomy, open, with preparation and maintenance of allograft; from cadaver donor
☞44133	Donor enterectomy, open, with preparation and maintenance of allograft;
☞44135	Intestinal allotransplantation; from cadaver donor
☞44136	Intestinal allotransplantation; from living donor

<u>Code</u>	<u>Description</u>
☞69714	Implantation, osseointegrated implant, temporal bone, with percutaneous
☞69715	Implantation, osseointegrated implant, temporal bone, with percutaneous
☞69717	Replacement (including removal of existing device), osseointegrated implant
☞69718	Replacement (including removal of existing device), osseointegrated implant,

II. INVESTIGATIVE LIST ALPHA ORDER

No update this publication

III. INVESTIGATIVE LIST NUMERIC

No update this publication

Minnesota Comprehensive Health Association

Notice of Meeting of the Board of Directors

NOTICE IS HEREBY GIVEN that a meeting of the Minnesota Comprehensive Health Association's (MCHA) Board of Directors will be held at 1:00 p.m., on Wednesday, December 13, 2000 at Allina Health Systems, 5601 Smetana Drive, Conference Room 300, Minnetonka, Minnesota.

For additional information, please call Lynn Gruber at (612) 593-9609.

Minnesota Comprehensive Health Association

Notice of Meeting of the Enrollee Appeal Committee

NOTICE IS HEREBY GIVEN that a meeting of the Minnesota Comprehensive Health Association's (MCHA), Enrollee Appeal Committee will be held at 10:30 a.m., on Monday, December 18, 2000, at the MCHA executive office located at 5775 Wayzata Blvd., Suite 910, St. Louis Park, Minnesota.

This meeting may be closed to the public, if so requested by the appellant, pursuant to *Minnesota Statute* 62E.10, subd. 4.

For additional information, please call Lynn Gruber at (612) 593-9609.

Public Employees Retirement Association (PERA)

Board of Trustees Meeting Notice

The regular meeting of the Board of Trustees of the Public Employees Retirement Association (PERA) will be held on Thursday, December 14, 2000, at 10:00 a.m., in the PERA offices, 514 St. Peter Street, Suite 200 – Skyway Level, St. Paul, Minnesota.

Minnesota Board of Physical Therapy

Comments Sought on Planned Amendment to Rules Governing Physical Therapy, *Minnesota Rules, 5601.0100-5601.2900*

Subject of Rules. The Minnesota Board of Physical Therapy requests comments on its planned amendment to rules governing physical therapy. The board is considering a rule amendment to prescribe a code of ethics for licensed physical therapists.

Persons Affected. The amendment to the rules would likely affect licensed physical therapists, and the facilities where physical therapists practice.

Statutory Authority. *Minnesota Statute* section 148.67 (7) (1999), requires the board to adopt rules for a code of ethics for licensees; and *Minnesota Statute* section 148.74 (1999), provides statutory authority for the board to adopt rules.

Public Comment. Interested persons or groups may submit comments or information on these planned rules in writing until 4:30 p.m. on February 9, 2001. The board does not contemplate appointing an advisory committee to comment on the planned rules.

Rules Drafts. The board has not yet prepared a draft of the planned rules amendment.

Agency Contact Person. Written or oral comments, questions, requests to receive a draft of the rules when it has been prepared, and requests for more information on these planned rules should be directed to: Stephanie Lunning at Minnesota Board of Physical Therapy, Suite 315, 2829 University Avenue SE, Minneapolis, MN 55414, **phone:** (612) 627-5406, **fax:** (612) 617-2125, or **email:** Stephanie.Lunning@state.mn.us. For **TTY** communication contact the board through the Minnesota Relay Service (MRS) at (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 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: 29 November 2000

Stephanie Lunning, Executive Director
Board of Physical Therapy

Department of Transportation

State Aid for Local Transportation Group

Petition of the City of Stewartville for a variance from State Aid requirements for PLAN APPROVAL AFTER OPENING OF CONTRACT BIDS

NOTICE IS HEREBY GIVEN that the Stewartville City Council has made written request to the Commissioner of Transportation pursuant to *Minnesota Rules* 8820.3300, for a variance from rules as they apply to a signal construction project located on Municipal State Aid Street No. 109 (20th Street Northwest) at the junction with Trunk Highway No. 63 in the City of Stewartville, Minnesota, known as State Project No. 5509-68, and State Aid Project No. 228-109-02.

Official Notices

The request is for a variance from *Minnesota Rules* for State Aid Operations 8820.2800, Subp. 2, adopted pursuant to *Minnesota Statutes* Chapter 161 and 162, so as to allow opening of contract bids prior to the approval of construction plans by the State Aid Engineer on the signal construction project located on Municipal State Aid Street No. 109 at the junction with Trunk Highway No. 63 in the City of Stewartville, Minnesota.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the State Register, the variance can be granted only after a contested case hearing has been held on the request.

Dated: 26 November 2000

Julie A. Skallman
State Aid Engineer
State Aid for Local
Transportation

Department of Transportation

State Aid for Local Transportation Group

Petition of the City of Rochester for a variance from State Aid requirements for DESIGN SPEED

NOTICE IS HEREBY GIVEN that the Rochester City Council has made written request to the Commissioner of Transportation pursuant to *Minnesota Rules* 8820.3300, for a variance from rules as they apply to a construction project located on Municipal State Aid Street No. 145 (Fox Valley Drive), located approximately 900 feet west of 23rd Avenue Southwest in the City of Rochester, Minnesota.

The request is for a variance from *Minnesota Rules* for State Aid Operations 8820.9936, adopted pursuant to *Minnesota Statutes* Chapter 161 and 162, so as to permit construction of a round-a-bout with a horizontal design speed of 20 mph, in lieu of the required 30 mph design speed on Municipal State Aid Street No. 145 (Fox Valley Drive) approximately 900 feet west of 23rd Avenue Southwest in the City of Rochester, Minnesota.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

Dated: 26 November 2000

Julie A. Skallman
State Aid Engineer
State Aid for Local
Transportation

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.]

Colleges and Universities, Minnesota State (MnSCU)

Request for Proposals for Executive Search Firm

NOTICE IS HEREBY GIVEN that proposals are being solicited to select an executive search consultant to assist the Minnesota State Colleges and Universities System in the search for qualified candidates for a President of Bemidji State University.

Applicants must have evidence of successful experience in working with search committees on searches for higher education chief executives and evidence of success in providing clients with diverse pools of candidates for searches in higher education. For further information or to request a copy of the full Request for Proposal, please contact:

Linda Skallman, Associate Vice Chancellor
Minnesota State Colleges & Universities/Personnel
500 World Trade Center, 30 East Seventh Street
St. Paul, MN 55101
Phone: (651) 297-8263
Fax: (651) 297-3145

Review of proposals will begin by December 26, 2000, and continue until a firm is chosen.

This request for proposal does not obligate the state to complete the proposed project, and the state reserves the right to cancel the solicitation if it is considered to be in its best interest.

Colleges and Universities, Minnesota State (MnSCU)

Proposals Sought for Paulucci Planetarium Foundation Repair

PROJECTED ID NUMBER: ARI Project: #00 163
DEPARTMENT: Minnesota State Colleges and Universities
Sealed Proposals for: **Paulucci Planetarium Foundation Repair**
Hibbing Community College
Hibbing, Minnesota
will be received by: Ron Blakesley
Hibbing Community College
1515 East 25th Street
Hibbing, MN 55746

until **2:00 p.m., local time, December 21, 2000**, at which time the proposals will be opened and publicly read aloud in the Business Office of the Hibbing Community College, Hibbing, Minnesota.

Proposal Forms, Contract Documents, Plans and Specifications as prepared by the Project Architect/Engineer; Architectural Resources, Inc.; are on file at the office of the:

- 1) above named Project Architect/Engineer.
- 2) following Builders Exchanges: Hibbing, Duluth, St. Paul, and Minneapolis.
- 3) National Association of Minority Contractors of Minnesota.
- 4) Construction Bulletin Plan Room.
- 5) Dodge Plan Room.

State Contracts

Sets of Proposal Forms and Plans and Specifications for use by contractors in submitting a bid may be obtained at the following address:

Architectural Resources, Inc.
704 East Howard Street
Hibbing, MN 55746
Phone: (218) 263-6868
Fax: (218) 722-6803

A deposit of \$100.00 is required for each set.

Each bid which totals over \$15,000.00 must be accompanied by either a certified check, payable to the State of Minnesota, in the sum of not less than five percent (5%) of the total bid or a corporate surety bond for the same amount by a surety company authorized to do business in the State of Minnesota.

Department of Human Services

Children's Division

Request for Proposals to Research Organizations

Request for Proposals for Family Group Decision Making Evaluation

The Minnesota Department of Human Services is soliciting proposals from research organizations with the capacity to conduct field research to evaluate the Department's Family Group Decision Making (FGDM) project. In the context of time-limited reunification services, Family Group Decision-Making engages the family and community in planning for the child's safe return home from out-of-home placement. Family Group Decision-Making resolves concerns of social services, strengthens families and decreases caseworker burnout. Finally, Family Group Decision-Making decreases the overall time the child(ren) spends in out-of-home placement.

The Family Group Decision Making-project involves grantees developing reunification services for children in out-of-home placement. Specifically, FGDM coordinators and facilitators arrange for family and kin to meet together to discuss issues that are keeping a child in placement and to assist them in developing a plan for the child(ren) to return to a safe home.

The project expects to serve approximately 500 families from 19 counties and 3 American Indian reservations between March 1, 2001 and March 30, 2002. More information about the FGDM program is available from the Department of Human Services, Family and Children Services Division, by contacting Jerry Lindskog at (651) 296-3910.

For consideration, applicants must submit a complete evaluation proposal including an evaluation design and methodology, a work plan, a line-item budget and justification and must demonstrate proficiency in conducting research projects with similar populations.

The evaluation of the Family Group Decision-Making program will begin in January 2001 or upon finalization of the contract and will end on December 31, 2002. The total amount available for the evaluation preparation, implementation and reporting is \$120,000.

All proposals must be received at the Department of Human Services by January 19, 2001 by 4:00 p.m. No late proposals will be accepted. A detailed Request for Proposal to evaluate FGDM is available from the Department of Human Services by contacting:

Claudia Fercello
Research, Planning and Evaluation Director
444 Lafayette Road
St. Paul, MN 55155-3832
Phone: (651) 215-5759

Department of Human Services St. Peter Regional Treatment Center

Notice of Request for a Proposal for General Practitioner Services

NOTICE IS HEREBY GIVEN that the St. Peter Regional Treatment Center, Residential Facilities Administration, Department of Human Services, is seeking services which are to be performed as requested by the Administration of the St. Peter Regional Treatment Center. The following contracts will be written for the period January 10, 2001 through June 30, 2001.

1. Services of one general practitioner for the patients at St. Peter Regional Treatment Center.

Responses must be received by January 2, 2001. Direct inquiries to:

Cindy Zahratka, Contract Coordinator
St. Peter Regional Treatment Center
100 Freeman Drive
St. Peter, MN 56082
Phone: (507) 931-7715

Minnesota Historical Society

Notice of Request for Bids for Printing Services – *The Last Full Measure*

The Minnesota Historical Society (Society) is seeking bids from qualified firms and individuals for printing of 5,500 books, titled *The Last Full Measure* (5,000 paperbound books and 500 casebound). Shipping date to the MHS Warehouse of February 1, 2001 must be maintained.

The Request for Bids is available by calling or writing Chris M. Bonnell, Contracting Officer, Minnesota Historical Society, 345 Kellogg Boulevard West, St. Paul, MN 55102. **Phone:** (651) 297-5863 or **email:** chris.bonnell@mnhs.org

Bids must be received no later than 10:00 a.m., Local Time, Wednesday, January 3, 2001. **No late bids will be accepted.**

Minnesota Historical Society

Notice of Request for Bids for Printing Services – *Swedes in The Twin Cities*

The Minnesota Historical Society (Society) is seeking bids from qualified firms and individuals for printing of 2,600 books, titled *Swedes in the Twin Cities* (600 jacketed paperbound books, to be shipped to Stockholm, Sweden, and 2,000 jacketed casebound books shipped to the Society). Shipping date to the MHS Warehouse of February 1, 2001 must be maintained. Shipping to Sweden should occur at the same time.

The Request for Bids is available by calling or writing Chris M. Bonnell, Contracting Officer, Minnesota Historical Society, 345 Kellogg Boulevard West, Saint Paul, MN 55102. **Phone:** (651) 297-5863 or **email:** chris.bonnell@mnhs.org

Bids must be received no later than 10:00 a.m., Local Time, Tuesday, January 2, 2001. **No late bids will be accepted.**

Minnesota Historical Society

Notice of Request for Bids for MHS Site Brochure Production

The Minnesota Historical Society is seeking bids from qualified firms and individuals to produce MHS Site Brochures.

The work will generally consist of color production of brochures per specifications, with delivery prior to Jan. 31, 2001.

The Request for Bids is available by calling or writing Chris M. Bonnell, Contracting Officer, Minnesota Historical Society, 345 Kellogg Blvd. West, St. Paul, MN 55102. **Phone:** (651) 297-5863.

Bids must be received not later than 2:00 p.m., Central Time Tuesday, January 3, 2001.

Complete specifications and details concerning submission requirements are included in the Request for Bids.

Minnesota Historical Society

Request for Proposals for Electronic Records Project

The Minnesota Historical Society is seeking proposals from qualified firms and individuals to create introductory texts explaining specific electronic records issue. The State Archives has developed a variety of resources to help government agencies and offices manage electronic records. These are available online at <http://www/mnhs.org/preserve/records>

For the most part, these resources address broad topics, such as the design and evaluation of record keeping systems, data warehouses, search engines, XML and the like. In the course of developing these resources, the State Archives identified a number of more focused topics that need to be analyzed and explored. The selected vendor will research and write pamphlet-length introductions to the topics as determined by the State Archives.

The Request for Proposals is available by calling or writing Chris M. Bonnell, Contracting Officer, 345 Kellogg Boulevard West, St. Paul, Minnesota 55102. **Phone:** (651) 297-5863, **email:** chris.bonnell@mnhs.org

All proposals must be received by Chris M. Bonnell, Contracting Officer for the Minnesota Historical Society, 345 Kellogg Boulevard West, St. Paul, MN 55102 or an authorized agent no later than 2:00 p.m., Local Time, Wednesday, January 3, 2001. A proposal opening will be conducted at that time. Proposals must be submitted in a sealed envelope with the project name clearly written on the envelope. **Late proposals will not be considered.**

Authorized agents for receipt of proposals are the following: Mary Green-Toussaint, Contracting and Procurement Technician or any Work Service Center Staff member in the Finance and Administration Division on the 4th floor of the History Center. Proposals may not be delivered to the information desk, to the guard or to any location or individual other than as specified above.

Complete specifications and details concerning submission requirements are included in the Request for Proposals.

Public Employees Retirement Association

Notice of Request for Information (RFI) for Medical Consultant Services Costs

The Public Employees Retirement Association of Minnesota (PERA) requests information from medical vendors to provide cost estimates for providing medical evaluations that PERA would use to evaluate the burden of proof requirement in PERA disability benefit cases.

Established by the Minnesota Legislature in 1931, PERA administers three defined benefit plans. PERA's membership includes over 50,000 retirees, survivors and dependents; 33,000 inactive members; and 160,000 active members.

To receive a complete copy of the RFI, please mail or fax your request to:

Sandy Stolt, Administrative Secretary
Public Employees Retirement Association
Suite 200-Skyway Level
514 Saint Peter Street
St. Paul, MN 55102-1090
Fax: (651) 297-2547

Proposals must be received no later than 4:00 p.m. on December 29, 2000.

Department of Transportation

Program Delivery Group

Metro Division

Notice of Availability of Contract for Property Management Services

The Mn/DOT Metro Division is requesting proposals for property management services for a 130,100 sq. ft. multi-tenant office building at 1500 W. County Road B-2 in Roseville, Minnesota, by providing the customary services necessary for the comfort, service, convenience and safety of tenants, including: employment of personnel, receipt of funds, payment of expenses, maintenance of records, etc.

The Department of Transportation has estimated that the cost of this project need not approach, but shall not exceed \$40,000 per year. It is anticipated that the contract period will begin on February 1, 2001 and continue through January 31, 2006.

For further information, or to obtain a copy of the completed Request for Proposal, contact:

Jim Koivisto, Assistant Division Engineer - Property Management
Minnesota Department of Transportation - Metro Division
1500 West County Road B2
Roseville, Minnesota 55113
Phone: (651) 583-1348
Fax: (651) 582-1302
Email: *James.Koivisto@dot.state.mn.us*

Proposals must be received at the above address no later than 4:30 p.m., on December 29, 2000. This request does not obligate the State of Minnesota, Department of Transportation to complete the work contemplated in this notice, and the department reserves the right to cancel this solicitation. All expenses incurred in responding to this notice shall be borne by the responder.

Department of Transportation

Program Support Group

Office of Technical Support

Request for Proposal (RFP) Mn/Model Process and Data Modeling Project

Notice of availability of Contract for Highway Related Technical Activity. Responses to this advertisement become public information under the Minnesota Government Data Practices Act. This request does not obligate the State of Minnesota Department of Transportation to complete the work contemplated in this notice, and the department reserves the right to cancel this solicitation. All expenses incurred in responding to this notice shall be borne by the responder.

Mn/Model is the Minnesota Department of Transportation's spatial predictive model for the avoidance of pre-contact archaeological sites during construction projects. It was developed in ARC/INFO GRID (GIS software) and S-Plus (statistical software). However, the procedures and databases evolved over the five-year development period without the benefit of formal process or data models. The first objective of this project is to develop such models to capture the data conversion and modeling procedures that will be required to update data and create new spatial predictive models in the future. The second objective is to develop a formal database design that will be flexible and functional to support future spatial predictive modeling, as well as use of the data and spatial models for other applications.

Mn/DOT is requesting proposals for services required to insure that all Mn/Model procedures and data are accurately and efficiently modeled so that future spatial predictive modeling efforts can be conducted by staff or contractors who were not involved in the original project. The process model and database design should also help streamline the future process and provide greater flexibility in the use of the data and spatial predictive models.

Request for Proposals (RFP) are available by mail, email or in person. **Please submit in writing, a request for the RFP for Mn/Model Process and Data Modeling.**

Request for the **RFP** may be mailed or faxed to:

Dawn D. Thompson, Agreement Administrator,
Minnesota Department of Transportation Consultant Services Unit
395 John Ireland Boulevard, Seventh Floor North, Mail Stop 680
St. Paul, MN 55155
Fax: (651) 282-5127

In order to obtain the RFP in time, requests for the RFP must be received on or before January 2, 2001. Requests made after that date must be in person.

NOTE: PROPOSALS WILL BE DUE ON TUESDAY, JANUARY 9, 2001 AT 2:00 P.M., CENTRAL STANDARD TIME.

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.

The Metropolitan Council

Sought for Security Guard Service

Proposals will be accepted at the offices of the Metropolitan Council, Mears Park Centre, 230 East 5th Street., St. Paul, Minnesota, 55101, until 4:00 p.m., on Thursday, January 18, 2001, for Security Guard Service at the Metropolitan Council, Environmental Services (MCES) Metro Wastewater Treatment Plant.

Information packets are available and can be obtained by **phone**: (612) 602-1499 or **fax** : (612) 602-1083.

All candidates are urged to attend a pre-proposal information meeting and a site visit on January 4, 2001, at 11:00 a.m., at the Metropolitan Wastewater Treatment Plant, 2400 Childs Road, St. Paul, Minnesota, 55101. For further information and to confirm attendance **phone**: (651) 602-1499 or (651) 602-1770.

The Metropolitan Council reserves the right to reject any and all proposals, or any part of any proposal, to waive minor defects or technicalities or to advertise for new offers as it deems in its best interest.

Metropolitan Council

Notice of Request for Proposals (RFP) Project Number 970325/970628

The Metropolitan Council is requesting engineering services proposals for: Engineering Services for the specification and design of a standby generator and its associated equipment at the Metropolitan Wastewater Treatment Plant.

<i>Issue Request for Proposals</i>	December 11, 2000
<i>Receive Proposals</i>	January 12, 2001
<i>Evaluate and Rank Proposals</i>	January 19, 2001
<i>Metropolitan Council authorization</i>	February 7, 2001
<i>Contract negotiated, executed, NTP</i>	February 14, 2001

All firms interested in being considered for this project and desiring to receive a RFP package are invited to submit a Letter of Interest to:

Amanda Petersen
Administrative Assistant
Contracts and Procurement Unit
230 East Fifth Street
Mears Park Centre
St. Paul, MN 55101
Fax: (651) 602-1138
Email: amanda.petersen@metc.state.mn.us

Inquiries regarding technical aspects of the project should be directed to Steve Kaukola at (651) 602-1064.

Minnesota Statutes, Sections 473.144 and 363.073, and *Minnesota Rules*, Parts 5000.3400 to 5000.3600 will be incorporated into any contract based upon the Proposals or any modifications to it. If a contract for the project is awarded in excess of \$100,000, the requirements of *Minnesota Rules* 5000.3530 will be applicable.

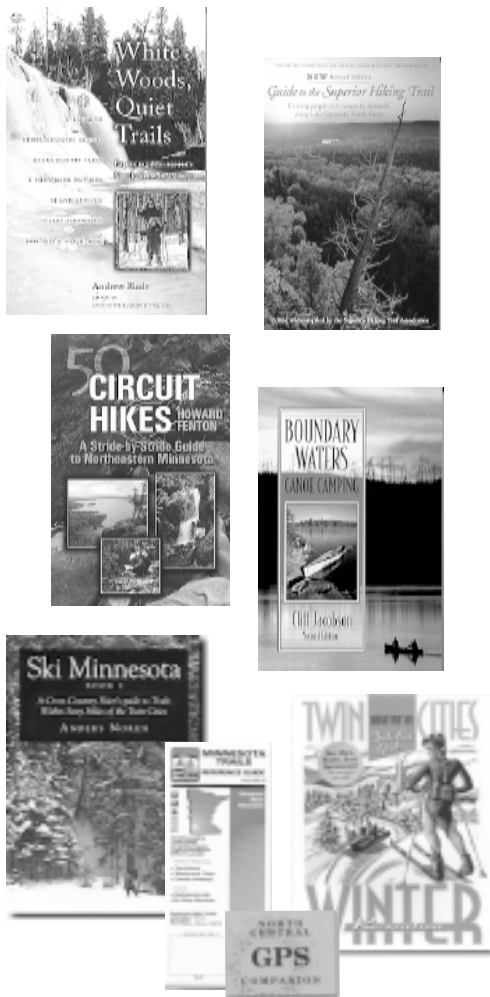
University of Minnesota

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.

Available at Minnesota Bookstore – Fall and Winter Recreation
Order form on back page



White Woods, Quiet Trails:

Exploring Minnesota's North Shore in Winter

A great companion to the "Guide to the Superior Hiking Trail", this book summarizes all the winter fun to be had on the North Shore in and around Lake Superior's Sawtooth Mountains. Explore the region as you cross-country ski, go on backcountry treks, snowshoe, and more. Each trail includes information about trailhead access, length, pass requirements, facilities, and special features. Softcover, 178pp. **Stock No. 9-71 \$15.95**

Guide to Superior Hiking Trail:

Linking People with Nature by Footpath Along Lake Superior's North Shore

The Superior hiking trail is broken down step-by-step with great hints, tips and ideas as to what to see, where and when to go. This trail guide provides VERY readable maps for the more than 200 miles of the North Shore. Includes information on trailhead access, parking, campsites, scenic overlooks and linkages to the eight state parks along the trail. Softcover, 191pp. **Stock No. 9-65 \$15.95**

50 Circuit Hikes: A Stride-by-Stride Guide to Northeastern Minnesota

Explore the countryside of Pine, Aitkin, Carlton, Cook, St. Louis, and Lake counties with easy-to-follow maps and descriptions of each trail and specific "mileposts" along each route. You'll find hikes for all ages and abilities, from quick strolls to 1-3 hour outings. Each hike is rated for length and difficulty and includes GPS coordinates and parking information. Softcover, 218pp. **Stock No. 9-10 \$14.95**

Boundary Waters Canoe Camping

Canoeing authority Cliff Jacobson explains the best and safest ways of planning and enjoying a BWCA journey. Learn about obtaining permits, packing the right supplies, and practicing low-impact camping techniques to polishing your paddling skills, traveling with children, and knowing how to deal with hazards when you are deep in the wilderness. Softcover, 171pp. **Stock No. 9-12 \$14.95**

Ski Minnesota: A Cross Country Skier's Guide to Trails Within Sixty Miles of the Twin Cities

This comprehensive guide provides descriptions of 90 trail systems a short distance from the metro area. Trail maps, ratings, directions to each trailhead, rules and more make winter adventure easy to access. Softcover, 160pp. **Stock No. 19-30 \$10.95**

Twin Cities Winter Recreation

Enjoy winter outings with this guide to 95 parks and trails within 50 miles of the metro area. Includes cross-country skiing, snowshoeing and 10 downhill ski areas. Softcover, 128pp. **Stock No. 19-68 \$14.95**

Minnesota Trails Reference Guide

This carry-along guide will point the way to trails ideal for cross-country skiing, snowshoeing, or snowmobiling. You'll find trail locations, charts designating trail length, effort level and surface conditions. Unfolds to 11" x 17". **Stock No. 12-57 \$2.95**

North Central GPS Companion: MN, WI, IA

This pocket-sized Global Positioning System guide charts the latitude of 8200 cities and landmarks. Softcover, 425pp. **Stock No. 12-4 \$13.95**



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